tion to study establishment of premium assessment categories related to types of risk to insurance funds and report its recommendations to Congress not later than Jan. 1, 1991; if Corporation recommended establishment of such a risk-based assessment plan, it was to provide a timetable and plan for implementation; and not later than 180 days after receipt of report and accompanying plan and timetable, Congress was to make a recommendation to Chairperson of Board of Directors regarding disposition of such plan and timetable.

§ 1828. Regulations governing insured depository institutions

(a) Representations of deposit insurance

(1) Insured depository institutions

(A) In general

Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

(B) Statement to be included

Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

(2) Regulations

The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) Penalties

For each day that an insured depository institution continues to violate paragraph (1) or any regulation issued under paragraph (2), it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

(4) False advertising, misuse of FDIC names, and misrepresentation to indicate insured status

(A) Prohibition on false advertising and misuse of FDIC names

No person may represent or imply that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation—

(i) by using the terms ‘‘Federal Deposit’’, ‘‘Federal Deposit Insurance’’, ‘‘Federal Deposit Insurance Corporation’’, any combination of such terms, or the abbreviation ‘‘FDIC’’ as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) by using such terms or any other terms, sign, or symbol as part of an advertisement, solicitation, or other document.

(B) Prohibition on misrepresentations of insured status

No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is insured, under this chapter, if such deposit liability, obligation, certificate, or share is not so insured; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured under this chapter, if such deposit liability, obligation, certificate, or share is not so insured, to the extent or in the manner represented.

(C) Authority of the appropriate Federal banking agency

The appropriate Federal banking agency shall have enforcement authority in the case of a violation of this paragraph by any person for which the agency is the appropriate Federal banking agency, or any institution-affiliated party thereof.

(D) Corporation authority if the appropriate Federal banking agency fails to follow recommendation

(i) Recommendation

The Corporation may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 1818 of this title for purposes of enforcement of this paragraph with respect to any person for which the agency is the appropriate Federal banking agency or any institution-affiliated party thereof.

(ii) Agency response

If the appropriate Federal banking agency does not, within 30 days of the date of receipt of a recommendation under clause (i), take the enforcement action with respect to this paragraph recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the situation presented, the Corporation may take the recommended enforcement action against such person or institution-affiliated party.

(E) Additional authority

In addition to its authority under subparagraphs (C) and (D), for purposes of this paragraph, the Corporation shall have, in the same manner and to the same extent as with respect to a State nonmember insured bank—

(i) jurisdiction over—

(I) any person other than a person for which another agency is the appropriate Federal banking agency or any institution-affiliated party thereof; and

(II) any person that aids or abets a violation of this paragraph by a person described in subclause (I); and

(ii) for purposes of enforcing the requirements of this paragraph, the authority of the Corporation under—

(I) section 1630(c) of this title to conduct investigations; and

(II) subsections (b), (c), (d) and (i) of section 1818 of this title to conduct enforcement actions.

(F) Other actions preserved

No provision of this paragraph shall be construed as barring any action otherwise
available, under the laws of the United States or any State, to any Federal or State agency or individual.

(b) Payment of dividends by defaulting depository institutions

No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both: Provided, That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply if the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(c) Merger transactions; consent of banking agencies; emergency approval; notice; uniform standards; antitrust actions; review de novo; limitations; report to Congress; money laundering; applicability

(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be “deposits” except for the proviso in section 1813(l)(5) of this title) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a Federal savings association;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank; and

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank or a State savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a “merger transaction”) shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) Reports on competitive factors.—

(A) Request for report.—In the interests of uniform standards and subject to subparagraph (B), before acting on any application for approval of a merger transaction, the responsible agency shall—

(i) request a report on the competitive factors involved from the Attorney General of the United States; and

(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

(B) Furnishing of report.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

(i) not later than 30 calendar days after the date on which the Attorney General received the request; or

(ii) not later than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

(C) Exceptions.—A responsible agency may not be required to request a report under subparagraph (A) if—

(i) the responsible agency finds that it must act immediately in order to prevent the probable failure of 1 of the insured depository institutions involved in the merger transaction; or

(ii) the merger transaction involves solely an insured depository institution and 1 or more of the affiliates of such depository institution.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects
of the proposed transaction are clearly out-
weighed in the public interest by the probable
effect of the transaction in meeting the con-
venience and needs of the community to be
served.

In every case, the responsible agency shall take
into consideration the financial and managerial
resources and future prospects of the existing
and proposed institutions, the convenience and
needs of the community to be served, and the
risk to the stability of the United States bank-
ing or financial system.

(6) The responsible agency shall immediately
notify the Attorney General of any approval by
it pursuant to this subsection of a proposed
merger transaction. If the agency has found that
it must act immediately to prevent the probable
failure of one of the insured depository institu-
tions involved, or if the proposed merger trans-
action is solely between an insured depository
institutions and 1 or more of its affiliates, and
the report on the competitive factors has been
dispensed with, the transaction may be con-
summated immediately upon approval by the
agency. If the agency has advised the Attorney
General under paragraph (4)(B)(ii) of the exist-
ence of an emergency requiring expeditious ac-
tion and has requested a report on the competi-
tive factors within 10 days, the transaction may
not be consummated before the fifth calendar
day after the date of approval by the agency.
In all other cases, the transaction may not be con-
summated before the thirtieth calendar day af-
after the date of approval. In

(7)(A) Any action brought under the antitrust
laws arising out of a merger transaction shall be
commenced prior to the earliest time under
paragraph (6) at which a merger transaction ap-
proved under paragraph (5) might be con-
summated. The commencement of such an ac-
tion shall stay the effectiveness of the agency’s
approval unless the court shall otherwise spe-
cifically order. In any such action, the court
shall review de novo the issues presented.

(B) In any judicial proceeding attacking a
merger transaction approved under paragraph
(5) on the ground that the merger transaction
alone and of itself constituted a violation of any
antitrust laws other than section 2 of title 15,
the standards applied by the court shall be identi-
cal with those that the banking agencies are
directed to apply under paragraph (5).

(C) Upon the consummation of a merger trans-
action in compliance with this subsection and
after the termination of any antitrust litigation
commenced within the period prescribed in this
paragraph, or upon the termination of such pe-
riod if no such litigation is commenced therein,
the transaction may not thereafter be attacked
in any judicial proceeding on the ground that it
alone and of itself constituted a violation of any
antitrust laws other than section 2 of title 15,
but nothing in this subsection shall exempt any
bank or savings association resulting from a
merger transaction from complying with the
antitrust laws after the consummation of such
transaction.

(D) In any action brought under the antitrust
laws arising out of a merger transaction ap-
proved by a Federal supervisory agency pursuant
to this subsection, such agency, and any
State banking supervisory agency having juris-
diction within the State involved, may appear
as a party of its own motion and as of right, and
be represented by its counsel.

(8) For the purposes of this subsection, the
term "antitrust laws" means the Act of July 2,
1890 (the Sherman Antitrust Act), the Act of Oc-
tober 15, 1914 (the Clayton Act), and any other
Acts in pari materia.

(9) Each of the responsible agencies shall in-
clude in its annual report to the Congress a de-
scription of each merger transaction approved
by it during the period covered by the report,
along with—

(A) the name and total resources of each
bank or savings association involved;

(B) whether a report was submitted by the
Attorney General under paragraph (4), and, if
so, a summary by the Attorney General of the
substance of such report; and

(C) a statement by the responsible agency of
the basis for its approval.

(10) Until June 30, 1976, the responsible agency
shall not grant any approval required by law
which has the practical effect of permitting a
conversion from the mutual to the stock form of
organization, including approval of any applica-
tion pending on the date of enactment of this
subsection, except that this sentence shall not
be deemed to limit now or hereafter the author-
ity of the responsible agency to grant approvals
in cases where the responsible agency finds that
it must act in order to maintain the safety,
soundness, and stability of an insured depository
institution. The responsible agency may by rule,
regulation, or otherwise and under such civil
penalties (which shall be cumulative to any
other remedies) as it may prescribe take what-
ever action it deems necessary or appropriate to
implement or enforce this subsection.

(11) MONEY LAUNDERING.—In every case, the re-
sponsible agency, shall take into consideration
the effectiveness of any insured depository insti-
tution involved in the proposed merger trans-
action in combatting money laundering activi-
ties, including in overseas branches.

(12) The provisions of this subsection do not
apply to any merger transaction involving a for-

(A) Except as provided in subparagraph (B),
the responsible agency may not approve an ap-

(B) Subparagraph (A) shall not apply to an
interstate merger transaction that involves 1 or
more insured depository institutions in default
or in danger of default, or with respect to which

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Branch banks

(C) In this paragraph—

(i) the term ''interstate merger transaction'' means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

(ii) the term ''home State'' means—

(I) with respect to a national bank, the State in which the main office of the bank is located;

(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.

(d) Branch banks

(1) No State nonmember insured bank shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 1816 of this title.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(3) EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES—

(A) IN GENERAL.—Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in section 1831u(f)(4) of this title) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 1823(f), 1823(k), or 1831u of this title.

(B) RETENTION OF BRANCHES.—In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in section 1831u(f)(4) of this title) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if—

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

(ii) the branch resulted from—

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

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

(4) STATE "OPT-IN" ELECTION TO PERMIT INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if—

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

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

(B) CONDITIONS ON ESTABLISHMENT AND OPERATION OF INTERSTATE BRANCH.—

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

(ii) OPERATION.—Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch of an insured State nonmember bank which—

(I) is originally established by the State bank as a branch; and

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

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

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

(D) "HOME STATE" DEFINED.—The term "home State" means the State by which a State bank is chartered.

(E) "HOST STATE" DEFINED.—The term "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(e) Indemnity insurance

The Corporation may require any insured depository institution to provide protection and
indent, against burglary, defalcation, and other similar insurable losses. Whenever any ins-
ured depository institution refuses to comply with any such requirement the Corporation may
contract for such protection and indemnity and add the cost thereof to the assessment otherwise
payable by such bank.  

(f) Publication of reports

Whenever any insured depository institution (except a national bank), after written notice of
the recommendations of the Corporation based on a report of examination of such insured de-
pository institution by an examiner of the Cor-
poration, shall fail to comply with such recom-
mendations within one hundred and twenty days
after such notice, the Corporation shall have the
power, and is authorized, to publish only such part
of such report of examination as relates to any recommendation not complied with: Pro-
vided, That notice of intention to make such
publication shall be given to the insured deposi-
tory institution at least ninety days before such
publication is made.

(g) [Repealed]

(h) Penalty for failure to timely pay assessments

(1) In general

Subject to paragraph (3), any insured de-
pository institution which fails or refuses to pay
any assessment shall be subject to a penalty in
an amount of not more than 1 percent of the
amount of the assessment due for each day
that such violation continues.

(2) Exception in case of dispute

Paragraph (1) shall not apply if—
(A) the failure to pay an assessment is due
to a dispute between the insured depository
institution and the Corporation over the
amount of such assessment; and
(B) the insured depository institution de-
posits security satisfactory to the Corpora-
tion for payment upon final determination
of the issue.

(3) Special rule for small assessment amounts

If the amount of the assessment which an in-
sured depository institution is subject under para-
graph (1) shall not exceed $100 for each day
that such violation continues.

(4) Authority to modify or remit penalty

The Corporation, in the sole discretion of
the Corporation, may compromise, modify or
remit any penalty which the Corporation may
assess or has already assessed under paragraph
(1) upon a finding that good cause prevented
the timely payment of an assessment.

(i) Reduction or retirement of capital stock,
notes, or debentures; conversion of insured
Federal depository institutions to insured
State banks or noninsured institutions; con-
sent of banking agencies; applicability

(1) No insured State nonmember bank shall,
without the prior consent of the Corporation, re-
duce the amount or retire any part of its com-
mon or preferred capital stock, or retire any
part of its capital notes or debentures.

(2) No insured Federal depository institution
shall convert into an insured State depository
institution if its capital stock or its surplus will
be less than the capital stock or surplus, respec-
tively, of the converting bank at the time of the
shareholder’s meeting approving such conver-
sion, without the prior written consent of—
(A) the Board of Governors of the Federal
Reserve System if the resulting bank is to be
a State member bank;
(B) the Corporation if the resulting bank is
to be a State nonmember insured bank; and
(C) the Corporation if the resulting institu-
tion is to be an insured State savings associa-
tion.

(3) Without the prior written consent of the
Corporation, no insured depository institution
shall convert into a noninsured bank or institu-
tion.

(4) In granting or withholding consent under
this subsection, the responsible agency shall
consider—
(A) the financial history and condition of
the bank,
(B) the adequacy of its capital structure,
(C) its future earnings prospects,
(D) the general character and fitness of its
management,
(E) the convenience and needs of the commu-
nity to be served, and
(F) whether or not its corporate powers are
consistent with the purposes of this chapter.

(j) Restrictions on transactions with affiliates
and insiders

(1) Transactions with affiliates

(A) In general

Sections 371c and 371c–1 of this title shall
apply with respect to every nonmember in-
sured bank in the same manner and to the
same extent as if the nonmember insured
bank were a member bank.

(B) “Affiliate” defined

For the purpose of subparagraph (A), any
company that would be an affiliate (as de-
fined in sections 371c and 371c–1 of this title)
of a nonmember insured bank if the non-
member insured bank were a member bank
shall be deemed to be an affiliate of that
nonmember insured bank.

(2) Extensions of credit to officers, directors,
and principal shareholders

Sections 375a and 375b of this title shall
apply with respect to every nonmember in-
sured bank in the same manner and to the
same extent as if the nonmember insured
bank were a member bank.

(3) Avoiding extraterritorial application to for-

eign banks

(A) Transactions with affiliates

Paragraph (1) shall not apply with respect
to a foreign bank solely because the foreign
bank has an insured branch.

(B) Extensions of credit to officers, directors,
and principal shareholders

Paragraph (2) shall not apply with respect
to a foreign bank solely because the foreign

So in original. Probably should be “insured depository insti-
tution.”
bank has an insured branch, but shall apply with respect to the insured branch.

(C) “Foreign bank” defined
For purposes of this paragraph, the term “foreign bank” has the same meaning as in section 3101(7) of this title.

(k) Authority to regulate or prohibit certain forms of benefits to institution-affiliated parties
(1) Golden parachutes and indemnification payments
The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account
The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:
(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or covered company that has had a material affect on the financial condition of the institution.
(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—
(i) the insolvency of the depository institution or covered company;
(ii) the appointment of a conservator or receiver for the depository institution; or
(iii) the troubled condition of the depository institution (as defined in the regulations prescribed pursuant to section 1831i(f) of this title).
(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.
(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—
(i) section 215, 656, 607, 1005, 1006, 1007, 1014, 1032, or 1343 of title 18; or
(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.
(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.
(F) The length of time the party was affiliated with the insured depository institution or covered company, and the degree to which—
(i) the payment reasonably reflects compensation earned over the period of employment; and
(ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited
No insured depository institution or covered company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—
(A) in contemplation of the insolvency of such institution or covered company or after the commission of an act of insolvency; and
(B) with a view to, or has the result of—
(i) preventing the proper application of the assets of the institution to creditors; or
(ii) preferring one creditor over another.

(4) “Golden parachute payment” defined
For purposes of this subsection—
(A) In general
The term “golden parachute payment” means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or covered company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or covered company that—
(i) is contingent on the termination of such party’s affiliation with the institution or covered company; and
(ii) is received on or after the date on which—
(I) the insured depository institution or covered company, or any insured depository institution subsidiary of such covered company, is insolvent;
(II) any conservator or receiver is appointed for such institution;
(III) the institution’s appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title);
(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or
(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

(B) Certain payments in contemplation of an event
Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included
The term “golden parachute payment” shall not include—
(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory benefit plan;
(ii) any payment made pursuant to a bona fide deferred compensation plan or
arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) Other definitions

For purposes of this subsection—

(A) Indemnification payment

Subject to paragraph (6), the term “indemnification payment” means any payment (or any agreement to make any payment) by any insured depository institution or covered company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 1818(b)(6) of this title with respect to such institution.

(B) Liability or legal expense

The term “liability or legal expense” means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term “payment” includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(D) Covered company

The term “covered company” means any depository institution holding company (including any company required to file a report under section 1843(f)(6) of this title), or any other company that controls an insured depository institution.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any insured depository institution or covered company, from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any liability or legal expense of the institution or covered company which is described in paragraph (5)(A).

(l) Acquisition of foreign banks or entities

When authorized by State law, a State member insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State member insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) Activities of savings associations and their subsidiaries

(1) Procedures

When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct, or acquire, any new activity through a subsidiary that the insured savings association controls, the insured savings association—

(A) shall notify the Corporation or the Comptroller of the Currency, as appropriate, not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency.

(2) Enforcement powers

With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Comptroller of the Currency, as appropriate, shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 1818 of this title; and

(B) the Corporation or the Comptroller of the Currency, as appropriate, may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or con-
control of, or its relationship to, the subsidiary—
(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or
(ii) is inconsistent with sound banking principles or with the purposes of this chapter.

Upon making any such determination, the Corporation or the Office of the Comptroller of the Currency, as appropriate, shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.

(3) Activities incompatible with deposit insurance

(A) In general
The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Deposit Insurance Fund. Prior to adopting any such regulation, the Corporation shall, in the case of a Federal savings association, consult with the Comptroller of the Currency and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that any savings association may engage in the activity directly.

(B) Authority of Comptroller of the Currency
This section does not limit the authority of the Comptroller of the Currency to issue regulations to promote safety and soundness, or to enforce compliance as to Federal savings associations with other applicable laws.

(C) Additional authority of FDIC to prevent serious risks to insurance fund
Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Deposit Insurance Fund.

(4) “Subsidiary” defined
As used in this subsection, the term “subsidiary” does not include an insured depository institution.

(5) Applicability to certain savings banks
Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—
(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or
(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

(n) Calculation of capital
No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 1464(t) of this title.

(o) Real estate lending

(1) Uniform regulations
Not more than 9 months after December 19, 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—
(A) secured by liens on interests in real estate; or
(B) made for the purpose of financing the construction of a building or other improvements to real estate.

(2) Standards

(A) Criteria
In prescribing standards under paragraph (1), the agencies shall consider—
(i) the risk posed to the Deposit Insurance Fund by such extensions of credit;
(ii) the need for safe and sound operation of insured depository institutions; and
(iii) the availability of credit.

(B) Variations permitted
In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—
(i) as may be required by Federal statute;
(ii) as may be warranted, based on the risk to the Deposit Insurance Fund; or
(iii) as may be warranted, based on the safety and soundness of the institutions.

(3) Loan evaluation standard
No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution’s safety and soundness.

(4) Effective date
The regulations adopted under paragraph (1) shall become effective not later than 15 months after December 19, 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

(p) Periodic review of capital standards
Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to
determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the Deposit Insurance Fund, consistent with section 1831o of this title.

(q) Sovereign risk
Section 633 of this title shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(r) Subsidiary depository institutions as agents for certain affiliates
(1) In general
Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) Bank acting as agent is not a branch
Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) Prohibitions on activities
A depository institution may not—
(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or
(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

(4) Existing authority not affected
No provision of this subsection shall be construed as affecting—
(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or
(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

(5) Agency relationship required to be consistent with safe and sound banking practices
An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

(6) Affiliated insured savings associations
An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—
(A) any State in which—
(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and
(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or
(B) any State in which—
(i) the bank is not expressly prohibited from operating a branch under a State law described in section 1831u(a)(2) of this title; and
(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

(s) Prohibition on certain affiliations
(1) In general
No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) Exception for members of a Federal home loan bank
Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

(3) Routine business financing
Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

(4) Student loans
(A) In general
This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that—
(i) the reorganization of such Association in accordance with section 1087–3 of title 20 will not be adversely affected by the arrangement;
(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: Provided, That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years; and
(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;
(iv) the operations of the Association will be separate from the operations of the depository institution; and
(v) until the “dissolution date” (as that term is defined in section 1087–3 of title 20) has occurred, such depository institution will not use the trade name or service
mark “Sallie Mae” in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that—

(I) the depository institution is the only institution offering such product or service using the “Sallie Mae” name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

(B) Terms and conditions

In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including—

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

(C) Additional limitations

In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association’s “investment portfolio” shall not at any time exceed the lesser of—

(I) the value of such portfolio on the date of the enactment of this subsection; or

(II) the value of such portfolio on the date such an arrangement is consummated. The term “investment portfolio” shall mean all investments shown on the consolidated balance sheet of the Association other than—

(I) any instrument or assets described in section 1087-2(d) of title 20, as such section existed on the day before the date of the repeal of such section;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

(D) Enforcement

The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 1087-3 of title 20.

(E) Definitions

For purposes of this paragraph, the following definition shall apply—

(i) Association; Holding Company

Notwithstanding any provision in section 1813 of this title, the terms “Association” and “Holding Company” have the same meanings as in section 1087-3(1) of title 20.

(ii) Secretary

The term “Secretary” means the Secretary of the Treasury.

(5) “Government-sponsored enterprise” defined

For purposes of this subsection, the term “Government-sponsored enterprise” has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(f) Recordkeeping requirements

(1) Requirements

Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 78c(a) of title 15. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

(2) Availability to Commission; confidentiality

Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) Definition

As used in this subsection the term “Commission” means the Securities and Exchange Commission.

(u) Limitation on claims

(1) In general

No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital; and

(B) for that portion of the transfer that is made by an entity covered by section 1844(g) of this title or section 1831v of this title, the Federal banking agency has followed the procedure set forth in such section.

(2) Definition of claim

For purposes of paragraph (1), the term “claim”—
(v) Loans by insured institutions on their own stock

(1) General prohibition

No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

(2) Exclusion

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

(w) Written employment references may contain suspicions of involvement in illegal activity

(1) Authority to disclose information

Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

(2) Information not required

Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

(3) Malicious intent

Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution, under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

(4) Definition

For purposes of this subsection, the term “insured depository institution” includes any uninsured branch or agency of a foreign bank.

(x) Privileges not affected by disclosure to banking agency or supervisor

(1) In general

The submission by any person of any information to the Bureau of Consumer Financial Protection, any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Bureau, agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Bureau, agency, supervisor, or authority.

(2) Rule of construction

No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the Bureau of Consumer Financial Protection, any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.

(y) State lending limit treatment of derivatives transactions

An insured State bank may engage in a derivative transaction, as defined in section 84(b)(3) of this title, only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.

(z) General prohibition on sale of assets

(1) In general

An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 375b of this title), unless—

(A) the transaction is on market terms; and

(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured, a derivatives transaction, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

(2) Rulemaking

The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes of this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.
Section 1831u of this title, referred to in subsec. (d)(3), was subsequently amended, and subsec. (f)(4) of section 1831u no longer defines the term "home State". However, such term is defined elsewhere in this section.

The date of the enactment of this subsection, referred to in subsec. (a)(4)(C)(i), probably means the date of enactment of Pub. L. 106–77, which added par. (4) of subsec. (e) and redesignated former par. (4) as (5), and which was approved Oct. 21, 1998.

For the date of the repeal of section 1087–2(d) of title 20, referred to in subsec. (a)(4)(C)(ii)(1), see section 1010c(e)(1) (title VI, §622(d)(2)) of div. A of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment note under section 1087–2 of Title 20, Education.

Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (a)(5), is section 1404(e)(1)(A) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

CODIFICATION

Section 202 of Pub. L. 96–104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96–161. See Savings Provisions note describing the provisions of this section for that amendment of this title.

Section 302 of Pub. L. 93–501, cited as a credit to this section, was repealed by Pub. L. 96–104, § 363(7)(A)(ii), in subsec. (c)(2)(B). The amendment of this title by that repealed provision, described in the 1974 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96–104. See Savings Provisions note, describing the provisions of this section for that amendment of this title.

REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (c)(8), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of the Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 24, 1913 (the Clayton Act), referred to in subsec. (c)(8), is act Oct. 24, 1913, ch. 337, 38 Stat. 709, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The date of enactment of this subsection, referred to in subsec. (c)(10), probably means the date of enactment of Pub. L. 93–485, which was approved Oct. 28, 1974.

The transfer date, referred to in subsec. (c)(13)(C)(i)(III), probably means the transfer date defined in section 5301 of this title.

AMENDMENTS


Subsec. (c)(2)(C). Pub. L. 111–203, § 363(7)(A)(iii), substituted "or a State savings association," for "(except a savings bank supervised by the Director of the Office of Thrift Supervision);" and

Subsec. (c)(2)(D). Pub. L. 111–203, § 363(7)(A)(iv), struck out subpar. (D) which read as follows: "the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association."

Subsec. (c)(5). Pub. L. 111–203, § 604(f), substituted "the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system for" and the convenience and needs of the community to be served in concluding provisions.

Subsec. (g), Pub. L. 111–203, § 627(a)(3), amended subsec. (g) generally to read "[Repealed]." Prior to amendment, subsec. (g) related to subparts 15 to interest or dividend on demand deposits, definitions, and regulation of interest rates.
Subsec. (g)(1). Pub. L. 111–203, §3687(b), substituted “the Comptroller of the Currency” for “for the Director of the Office of Thrift Supervision”.


Subsec. (m)(2)(B). Pub. L. 111–203, §3687(d)(y)(II), in introductory provisions, substituted “Corporation or the Comptroller of the Currency, as appropriate,” for “Director of the Office of Thrift Supervision” and, in concluding provisions, substituted “the Office of the Comptroller of the Currency, as appropriate,” for “the Director of the Office of Thrift Supervision” and “the Corporation or the Comptroller of the Currency, as appropriate,” may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.” for “the Director of the Office of Thrift Supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.”


“(I) applies equally to all banks; and

“(II) expressly permits all out-of-State banks to establish de novo branches in such State;”.


“there is in effect in the host State a law that—

“(I) applies equally to all banks; and

“(II) expressly permits all out-of-State banks to establish de novo branches in such State;”.


“the responsible agency by the applicable date under the circumstances stated in the proviso of subsection (b) of this section.”

Subsec. (d)(4)(A)(i). Pub. L. 111–203, §613(b), amended cl. (i) generally. Prior to amendment, text read as follows:

“the responsible agency by the applicable date under the circumstances stated in the proviso of subsection (b) of this section.”

Subsec. (k)(2)(A). Pub. L. 111–203, §623(a), amended par. (13). Subsec. (k)(2)(B). Pub. L. 111–203, §704(1), added subpar. (B) and struck out former subpar. (B) which read as follows: “Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvent condition of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution’s troubled condition (as defined in the regulations prescribed pursuant to section 1818(l) of this title).”


Subsec. (k)(3)(A). Pub. L. 111–203, §704(5), substituted “covered company for the benefit” for “depository institution holding company for the benefit” and “covered company that—” for “holding company that—”.
for “depository institution holding company,” and “such covered company” for “such holding company” in cl. (1)(i).


Subsec. (k)(6). Pub. L. 109–351, §704(b)(7), substituted “covered company,” for “depository institution holding company” and “or covered company which is described” for “or holding company which is described”.

Subsec. (m)(3). Pub. L. 109–173, §8(a)(28), in subpar. (A) substituted “Deposit Insurance Fund” for “Savings Association Insurance Fund” and “savings association” for “Savings Association Insurance Fund member” and “Savings Association Insurance Fund or the Bank Insurance Fund”.


Subsec. (u)(1). Pub. L. 109–351, §702(b), inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B), which read as follows: “the insured depository institution is undercapitalized (as defined in section 1831(o) of this title); and”.


Subsec. (f). Pub. L. 108–386, §8(a)(5)(E), struck out “or a District bank” after “national bank”.


Subsec. (h)(2)(A) to (D). Pub. L. 108–386, §8(a)(5)(G)–(I), redesignated subpars. (B) to (D) as (A) to (C), respectively, struck out “except a District bank” before “semiconductor in subpar. (A) and (B), and struck out former subpar. (A), which read as follows: “the Comptroller of the Currency if the resulting bank is to be a District bank”.


2000—Subsecs. (t), (u). Pub. L. 106–569, §1207(b)(1), redesignated subsec. (t), relating to limitation on claims, as (u).


Pub. L. 106–102, §204, which directed amendment of section by adding at end subsec. (t) relating to recordkeeping requirements, was executed by making the additions after subsec. (s) to reflect the probable intent of Congress.


Subsec. (s). Pub. L. 104–208, §2615(b), added subsec. (s).

1994—Subsec. (b). Pub. L. 103–325, §620(a)(46), substituted “if the insured depository institution deposits” for “, if such bank shall deposit”.

Subsec. (c)(1)(B). Pub. L. 103–325, §620(a)(45), inserted “or” at end.

Subsec. (c)(4). Pub. L. 103–325, §§324, 620(a)(46), substituted “other Federal banking agencies” for “other two banking agencies” and in two places and inserted at end “Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.”

Subsec. (c)(6). Pub. L. 103–325, §§321(b), 620(a)(47), substituted “other Federal banking agencies” for “other two banking agencies” and inserted before period at end “or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval”.

Subsec. (c)(9). Pub. L. 103–325, §620(a)(48), substituted “with—” for “with the following information:”.


Subsec. (f). Pub. L. 103–325, §§620(a)(49), substituted “such insured depository institution” for “such bank” and “the insured depository institution” for “the bank”.


1991—Subsec. (j). Pub. L. 102–242, §306(k), amended subsec. (j) generally, revising and restating as paras. (1) to (3) provisions of former pars. (1) to (6).


Pub. L. 102–242, §304(a), added subsec. (o) relating to real estate lending.


1989—Subsec. (a). Pub. L. 101–73, §221(1), substituted heading and pars. (1) to (3) for first two sentences which read as follows: “Every insured bank shall display at each place of business maintained by it a sign or signs, and shall include a statement to the effect that its deposits are insured by the Corporation in all of its advertisements: Provided, That the Board of Directors may exempt from this requirement advertisements which do not relate to deposits or when it is impractical to include such statement therein. The Board of Directors shall prescribe by regulation the forms of such signs and the manner of display and the substance of such statements and the manner of use.”

Pub. L. 101–73, §201(a), substituted “insured depository institution” for “insured bank”.

Subsecs. (b), (c)(1), (2). Pub. L. 101–73, §201(a), substituted “insured depository institution” for “insured bank” wherever appearing.

Subsec. (c)(2)(C), (D). Pub. L. 101–73, §221(2)(A), added subpars. (C) and (D) and struck out former subpar. (C).
which read as follows: “the Corporation if the acquiring, assuming or resulting bank is to be a nonmember insured bank (except a District bank).” Subsec. (c)(3). Pub. L. 101–73, § 221(2)(C)(2), substituted “banks or savings associations” for “banks” wherever appearing and “default” for “failure.” Subsec. (j)(5). Pub. L. 101–73, § 221(2)(C)(9), substituted “bank or savings association” for “bank.”

Subsec. (c)(12). Pub. L. 101–73, § 221(2)(B), struck out par. (12) which read as follows: “The provisions of this subsection shall not apply to any transaction where the acquiring, assuming, or resulting institution is an insured Federal savings bank or an institution insured by the Federal Savings and Loan Insurance Corporation, except that any insured bank involved in the transaction shall notify the Corporation in writing at least 30 days prior to consummation of the transaction and, if any approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is required in connection therewith, such approving authority shall provide the Corporation with notification of application for approval, shall consult with the Corporation before disposing of the application, and shall provide notification to the Corporation of the determination with respect to said application.”

Subsec. (g)(1). Pub. L. 101–73, § 201(b), substituted “Di rector of the Office of Thrift Supervision” for “Federal Home Loan Bank Board.”

Subsec. (h). Pub. L. 101–73, § 201(a), substituted “insured depository institution” for “insured bank” wherever appearing.

Subsec. (g)(1). Pub. L. 101–73, § 201(b), substituted “Director of the Office of Thrift Supervision” for “Federal Home Loan Bank Board”.

Subsec. (i)(2). Pub. L. 101–73, § 221(3)(A), (B), substituted “insured Federal depository institution” and “insured State depository institution” for “insured bank” respectively.

Subsec. (i)(2)(D). Pub. L. 101–73, § 221(3)(C), (D), added subpar. (D).

Subsec. (i)(3). Pub. L. 101–73, § 201(a), substituted “insured depository institution” for “insured bank”.

Subsec. (i)(4)(D). Pub. L. 101–73, § 221(3)(E), which directed the amendment of subsec. (i)(2) by inserting “and fitness” after “character” in par. (4)(D), was executed to par. (4)(D) as the probable intent of Congress.

Subsec. (i)(5). Pub. L. 101–73, § 221(3)(F), which directed the amendment of subsec. (i)(2) by striking out par. (5) as the probable intent of Congress. Prior to amendment, par. (5) read as follows: “Nothing in this subsection shall apply to a conversion of an insured bank to an insured institution pursuant to section 3726(e) of this title.”

Subsec. (j)(3)(D). Pub. L. 101–73, § 201(a), substituted “insured depository institution” for “insured bank”.

Subsec. (j)(4). Pub. L. 101–73, § 207(c), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows: “(4)(A) Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such nonmember insured bank who violates any provision of section 371c, 371c–1, or 375b of this title, or any lawful regulation issued pursuant thereto, or any provision of section 377 of this title, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues; Provided, That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, conniving at, or aiding or abetting a violation.

“(B) In determining the amount of the penalty the Corporation shall take into account the appropriate

ness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

“(C) The nonmember insured bank or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as hereinafter provided the assessment shall constitute a final and unappealable order.

“(D) Any nonmember insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court pursuant to section 705 of title 5 the penalty was imposed, as provided in section 2112 of title 28. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706 of title 5.

“(E) If any nonmember insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

“(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

“(G) All penalties collected under the authority of this paragraph shall be covered into the Treasury of the United States.

“(H) The provisions of this subsection shall not apply to an insured Federal savings bank.”


Subsecs. (m), (n). Pub. L. 101–73, § 221(4), added subsecs. (m) and (n).

1982—Subsec. (c)(12). Pub. L. 97–320, § 113(n), amended par. (12) generally. Prior to amendment, par. (12) read as follows: “The provisions of this subsection shall not apply to any merger transaction involving an insured Federal savings bank unless the resulting institution will be an insured bank other than an insured Federal savings bank.”


Subsec. (j)(3). Pub. L. 100–86, § 103(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (j)(4). Pub. L. 100–86, §§ 102(b)(2), 103, redesignated former par. (3) as (4) and in subpar. (A) inserted “371c–1,” and “or any provision of section 377 of this title.”

Subsec. (i)(5). Pub. L. 100–86, § 103(a), redesignated former par. (4) as (5).


Subsec. (j)(1). Pub. L. 97–320, § 410(d), struck out “within the meaning of section 221a of this title and” after “of a nonmember insured bank.”

Subsec. (j)(2). Pub. L. 97–320, § 423, inserted provisions relating to the applicability of this subsection to any foreign bank as defined in section 3101(7) of this title and its branch in the United States.

Subsec. (j)(3)(A). Pub. L. 97–320, § 424(b), (d)(10), inserted proviso giving the Corporation discretionary au-
authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted “may be assessed” for “shall be assessed”.

Subsec. (l)(1)(C). Pub. L. 97–424(e), substituted “twenty days from the service” for “ten days from the date”.

Public L. 96–321, §§ 302(b), 307, inserted provision identifying entities which read as follows: “The Board of Directors may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of insured nonmember banks or their depositors, or according to such other reasonable bases as the Board of Directors may deem desirable in the public interest. Such regulations shall prohibit any insured nonmember bank from paying any time deposit except as to all savings deposits having the same require. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or withdrawal of deposits, the offending bank shall be subject to a penalty of not more than $100, which the Corporation may recover for its use. See Effective Date of 1980 Amendment note below.


Subsec. (l)(5). Pub. L. 95–630, § 108, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (l)(6). Pub. L. 95–369, § 6(c)(28), inserted at end “The provisions of this subsection shall not apply to any foreign bank having an insured branch having respect to dealings between such bank and any affiliate thereof.”

Subsec. (m). Pub. L. 95–630, § 302(c), added subsec. (i).


Subsec. (g). Pub. L. 95–95, § 8(c)(27), inserted “and in insured branches of foreign banks” after “in insured nonmember banks”.

Subsec. (f). Pub. L. 95–630, § 108, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (e). Pub. L. 95–369, § 6(c)(28), inserted at end “The provisions of this subsection shall not apply to any foreign bank having an insured branch having respect to dealings between such bank and any affiliate thereof.”

Subsec. (d). Pub. L. 95–630, § 301(b), designated existing provisions as par. (1) and added “domestic” after “operate any new” and “such” after “main office or any”, and added par. (2).

Subsec. (c). Pub. L. 95–369, § 6(c)(28), inserted provision prohibiting any foreign bank from moving any insured branch from one location to another without the consent of the Corporation.

Subsec. (b). Pub. L. 95–95, § 8(c)(27), inserted “and in insured branches of foreign banks” after “in insured nonmember banks”.

Subsec. (a). Pub. L. 95–630, § 108, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 95–630, § 108, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 95–369, § 6(c)(28), inserted at end “The provisions of this subsection shall not apply to any foreign bank having an insured branch having respect to dealings between such bank and any affiliate thereof.”

Subsec. (e). Pub. L. 95–630, § 302(c), added subsec. (i).

Subsec. (d). Pub. L. 95–630, § 301(b), designated existing provisions as par. (1) and added “domestic” after “operate any new” and “such” after “main office or any”, and added par. (2).

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Subsec. (b). Pub. L. 95–95, § 8(c)(27), inserted “and in insured branches of foreign banks” after “in insured nonmember banks”.

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Subsec. (d). Pub. L. 95–630, § 301(b), designated existing provisions as par. (1) and added “domestic” after “operate any new” and “such” after “main office or any”, and added par. (2).

Subsec. (c). Pub. L. 95–369, § 6(c)(28), inserted provision prohibiting any foreign bank from moving any insured branch from one location to another without the consent of the Corporation.
rates of member banks in the several Federal Reserve districts.


1965—Subsec. (g). Pub. L. 89–79 extended until Oct. 15, 1968, the period during which the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1962—Subsec. (g). Pub. L. 87–827 inserted sentence making the subsection inapplicable, during the period commencing on Oct. 15, 1962, and ending upon the expiration of three years after such date, to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1960—Subsec. (c). Pub. L. 86–463 prohibited merger or consolidation of any insured bank with any other insured bank, or acquisition of assets of, or assumption of liability to pay any deposits made in, any other insured bank without prior written consent, required publication of notice of any proposed merger, consolidation, acquisition of assets, or assumption of liabilities, enumerated specific items required to be considered before consent may be granted or withheld, directed the agency involved to request a report on competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection, and provided for inclusion in the annual report of the Comptroller, the Board and the Corporation of each banking agencies referred to in this subsection, and provisions for inclusion in the annual report of the Comptroller, the Board and the Corporation of each banking agencies referred to in this subsection.

**Effective Date of 2010 Amendment**

Amendment by section 363(7) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(c) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Pub. L. 111–203, title VI, §611(b), July 21, 2010, 124 Stat. 1612, provided that: "The amendment made by this section (amending this section) shall take effect 18 months after the transfer date."

[For definition of "transfer date" as used in section 611(b) of Pub. L. 111–203, set out as a note under section 1462 of this title.]

Amendment by sections 613(b) and 623(a) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 615(a) of Pub. L. 111–203 effective on the transfer date, see section 615(c) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Amendment by sections 627(a)(3) of Pub. L. 111–203 effective 1 year after July 21, 2010, see section 627(b) of Pub. L. 111–203, set out as an Effective Date note under section 371a of this title.

**Effective Date of 2006 Amendment**


Amendment by section 2102(b) of Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on Feb. 6, 2006, see section 2102(c) of Pub. L. 109–171, set out as a note under section 1811 of this title.

**Effective Date of 2004 Amendments**

Amendment by section 604(f) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1817 of this title.

**Effective Date of 2003 Amendment**

Amendment by section 604(f) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1811 of this title.

**Effective Date of 2002 Amendment**

Amendment by section 604(f) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1811 of this title.

**Effective Date of 2001 Amendment**

Amendment by section 604(f) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1811 of this title.
Amendment by section 907(c) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(i) of Pub. L. 101–73, set out as a note under section 93 of this title.

Amendment by section 302(b) of Pub. L. 96–221 effective at the close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 1464 of this title.

Effective Date of 1980 Amendment

Pub. L. 96–221, title II, §207(b), Mar. 31, 1980, 94 Stat. 144, provided in part that the amendment by that section is effective 6 years after Mar. 31, 1980.

Amendment by section 302(b) of Pub. L. 96–221, provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

Effective and Termination Dates of 1979 Amendments

Amendment by section 101(b) of Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, formerly set out as a note under section 371a of this title.

Amendment by section 209 of Pub. L. 96–161 applicable only with respect to deposits made or obligations issued in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment made by Pub. L. 96–161 to apply with respect to such deposits and obligations; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 211 of Pub. L. 96–161, set out as an Effective Date of 1979 Amendment note under section 371b–1 of this title.

Amendment by Pub. L. 96–104 applicable to deposits made or obligations issued in any State during the period beginning on Nov. 5, 1979, and ending on the earlier of (1) in the case of a State statute, July 1, 1981, the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to such deposits and obligations, or (2) the date on which such State certifies that the voters of such State, after Nov. 5, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 204 of Pub. L. 96–104, set out as an Effective Date of 1979 Amendment note under section 371b–1 of this title.

Effective Date of 1978 Amendment

Amendment by section 100 of Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

Amendment by sections 301(c) and 306 of Pub. L. 95–630 effective on the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

Effective Date of 1974 Amendment

Pub. L. 93–501, title I, §102(b), Oct. 29, 1974, 88 Stat. 1538, provided that: "The amendment made by sub-section (a) [amending this section] shall not apply to any bank holding company which has filed prior to the date of enactment of this Act [Oct. 29, 1974] an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act (section 1843 of this title), or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933 [section 77a(a)(3) of Title 15, Commerce and Trade]."

Amendment by section 392 of Pub. L. 93–501 applicable to deposits made or obligations issued in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law limiting the amount of interest which may be charged in connection with such deposits or obligations, see section 304 of Pub. L. 93–501, set out as a note under section 371b–1 of this title.

Effective Date of 1973 Amendment

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

Effective and Termination Dates of 1969 Amendment

Section 7 of Pub. L. 89–597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of this section was repealed), was repealed by section 207(a) of Pub. L. 96–221.

Effective and Termination Dates of 1966 Amendment

Section 7 of Pub. L. 89–597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of this section was repealed), was repealed by section 207(a) of Pub. L. 96–221.

Repeals

Amendment by section 101 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 302 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

Savings Provision

Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided in part that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, the provisions of subsec. (k) of this section (which had been added to this section by those repealed laws) shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (c)(9) of this section is listed on page 171), see section 3003 of Pub. L. 104–66, set out as a note under section 1113 of Title 31, Money and Finance.

Banking Agency Publication Requirements

Pub. L. 105–18, title V, §50004, June 12, 1997, 111 Stat. 212, provided that:
“(a) IN GENERAL.—A qualifying regulatory agency may take any of the following actions with respect to depository institutions or other regulated entities whose principal place of business is within, or with respect to transactions or activities within, an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, if the agency determines that the action would facilitate recovery from the major disaster:

“(1) PROCEDURE.—Exercising the agency’s authority under provisions of law other than this section without complying with—

“(A) any requirement of section 553 of title 5, United States Code; or

“(B) any provision of law that requires notice or opportunity for hearing or sets maximum or minimum time limits with respect to agency action.

“(2) PUBLICATION REQUIREMENTS.—Making exceptions, with respect to institutions or other entities for which the agency is the primary Federal regulator, to—

“(A) any publication requirement with respect to establishing branches or other deposit-taking facilities; or

“(B) any similar publication requirement.

“(b) PUBLICATION REQUIRED.—A qualifying regulatory agency shall publish in the Federal Register a statement that—

“(1) describes any action taken under this section; and

“(2) explains the need for the action.

“(c) QUALIFYING REGULATORY AGENCY DEFINED.—For purposes of this section, the term ‘qualifying regulatory agency’ means—

“(1) the Board of Governors of the Federal Reserve System;

“(2) the Comptroller of the Currency;

“(3) the Director of the Office of Thrift Supervision;

“(4) the Federal Deposit Insurance Corporation;

“(5) the Financial Institutions Examination Council;

“(6) the National Credit Union Administration; and

“(7) with respect to chapter 53 of title 31, United States Code, the Secretary of the Treasury.

“(d) EXPIRATION.—Any exception made under this section shall expire not later than February 28, 1998.”

“Similar provisions were contained in the following prior acts:


Review of Risk-Based Capital Standards


“(a) IN GENERAL.—Notwithstanding section 5(t)(4) of the Home Owners’ Loan Act [former 12 U.S.C. 1464(t)(4)], each appropriate Federal banking agency shall determine, with respect to insured depository institutions for which it is the appropriate Federal regulator, the amount of readily marketable purchased mortgage servicing rights that may be included in calculating such institution’s tangible capital, risk-based capital, or leverage limit, if—

“(1) such servicing rights are valued at not more than 90 percent (or such other percentage exceeding 90 percent but not exceeding 100 percent, as may be determined under subsection (b)) of their fair market value; and

“(2) the fair market value of such servicing rights is determined not less often than quarterly.

“(b) AUTHORITY TO DETERMINE PERCENTAGE BY WHICH TO DISCOUNT VALUE OF SERVING RIGHTS.—The appropriate Federal banking agencies may allow readily marketable purchased mortgage servicing rights to be valued at more than 90 percent of their fair market value but at not more than 100 percent of such value, if such agencies jointly make a finding that such valuation would not have an adverse effect on the deposit insurance funds or the safety and soundness of insured depository institutions.

“(c) DEFINITION.—For purposes of this section, the terms ‘appropriate Federal banking agency’, ‘deposit insurance fund’, and ‘insured depository institution’ have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(d) EFFECTIVE DATE.—This section shall apply after the end of the 60-day period beginning on the date of the enactment of this Act (Dec. 19, 1991).”

Elimination of Interest Rate Differentials


“(b)(1) Interest rate differentials for all categories of deposits or accounts between (i) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation, and (ii) any savings and loan, building and loan, or mutual savings association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813), (i) shall be phased out on or before January 1, 1984.

“(2) Any differential which is being phased out pursuant to a schedule established by regulations prescribed by the Depository Institutions Deregulation Committee prior to the date of enactment of this Act (Oct. 15, 1982) shall be phased out as soon as practicable, but in no event later than such schedule provides.

“(3) Notwithstanding any other provision of law, no differential for any category of deposits or accounts shall be established or maintained on or after January 1, 1984.

“(c) No interest rate differential may be established or maintained in the case of the deposit account au-
as to which no litigation was initiated by the Attorney General prior to the date of enactment of this Act [Feb. 21, 1966] may be attacked after such date in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

“(c) Any court having pending before it on or after the date of enactment of this Act [Feb. 21, 1966] any litigation initiated under the antitrust laws by the Attorney General after June 16, 1963 with respect to the merger, consolidation, acquisition of assets, or assumption of liabilities of an insured bank consummated after June 16, 1963, shall apply the substantive rule of law set forth in section 18(c)(3) of the Federal Deposit Insurance Act [subsec. (c)(5) of this section], as amended by this Act.

“(d) For the purposes of this section, the term ‘antitrust laws’ means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.”

§ 1828a. Prudential safeguards

(a) Comptroller of the Currency

(1) In general

The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are—

(A) consistent with the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of insured depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) Review

The Comptroller of the Currency shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Comptroller finds is no longer required for such purposes.

(b) Board of Governors of the Federal Reserve System

(1) In general

The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank;

if the Board makes a finding described in paragraph (2) with respect to such restriction or requirement.