

Pub. L. 102-242, title III, §302(c), Dec. 19, 1991, 105 Stat. 2348, provided that: “To implement the risk-based assessment system required under section 7(b) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)] (as amended by subsection (a)), the Federal Deposit Insurance Corporation shall—

“(1) provide notice of proposed regulations in the Federal Register, not later than December 31, 1992, with an opportunity for comment on the proposal of not less than 120 days; and

“(2) promulgate final regulations not later than July 1, 1993.”

Pub. L. 102-242, title III, §302(f), Dec. 19, 1991, 105 Stat. 2349, provided that: “To carry out the amendments made by this section [amending this section and sections 1815, 1818, and 1820 of this title], the Corporation may promulgate regulations governing the transition from the assessment system in effect on the date of enactment of this Act [Dec. 19, 1991] to the assessment system required under the amendments made by this section.”

#### TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE

Pub. L. 111-203, title III, §334(c)–(e), July 21, 2010, 124 Stat. 1539, provided that:

“(c) For a period of not less than 5 years after the date of the enactment of this title [July 21, 2010], the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under [former] section 7(b)(2)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(2) does not contain a subpar. (C)].

“(d) RESERVE RATIO.—Notwithstanding the timing requirements of section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(3)(E)(ii)], the Corporation shall take such steps as may be necessary for the reserve ratio of the Deposit Insurance Fund to reach 1.35 percent of estimated insured deposits by September 30, 2020.

“(e) OFFSET.—In setting the assessments necessary to meet the requirements of subsection (d), the Corporation shall offset the effect of subsection (d) on insured depository institutions with total consolidated assets of less than \$10,000,000,000.”

[For definitions of terms used in section 334(c)–(e) of Pub. L. 111-203, set out above, see section 5301 of this title.]

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### REPORT TO CONGRESS ON REFUNDS, DIVIDENDS, AND CREDITS FROM DEPOSIT INSURANCE FUND

Pub. L. 109-173, §5, Feb. 15, 2006, 119 Stat. 3606, required that any determination under former subsection (e)(2)(E) of this section be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 270 days after making such determination and provided that the report submitted include a detailed explanation for the determination and a discussion of the factors required to be considered under former subsection (e)(2)(F) of this section.

#### SPECIAL ASSESSMENT TO CAPITALIZE SAIF

Pub. L. 104-208, div. A, title II, §2702, Sept. 30, 1996, 110 Stat. 3009-479, provided that the Board of Directors of the Federal Deposit Insurance Corporation was to impose a special assessment on the SAIF-assessable deposits of each insured depository institution in accordance with assessment regulations of the Corporation at a rate applicable to all such institutions that the Board of Directors determined would cause the Savings Asso-

ciation Insurance Fund to achieve the designated reserve ratio on the first business day of the 1st month beginning after Sept. 30, 1996.

#### SMALL BUSINESS AND SMALL FARM LOAN INFORMATION

Pub. L. 102-242, title I, §122, Dec. 19, 1991, 105 Stat. 2251, as amended by Pub. L. 102-550, title XVI, §1603(c), Oct. 28, 1992, 106 Stat. 4079, provided that:

“(a) IN GENERAL.—Before the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 19, 1991], the appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to annually submit information on small businesses and small farm lending in their reports of condition.

“(b) CREDIT AVAILABILITY.—The regulations prescribed under subsection (a) shall require insured depository institutions to submit such information as the agency may need to assess the availability of credit to small businesses and small farms.

“(c) CONTENTS.—The information required under subsection (a) may include information regarding the following:

“(1) The total number and aggregate dollar amount of commercial loans and commercial mortgage loans to small businesses.

“(2) Charge-offs, interest, and interest fee income on commercial loans and commercial mortgage loans to small businesses.

“(3) Agricultural loans to small farms.”

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

Nothing contained in section 201 of Pub. L. 89-695, which amended this section, to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89-695, set out as a note under section 1813 of this title.

### § 1818. Termination of status as insured depository institution

#### (a) Termination of insurance

##### (1) Voluntary termination

Any insured depository institution which is not—

- (A) a national member bank;
- (B) a State member bank;
- (C) a Federal branch;
- (D) a Federal savings association; or
- (E) an insured branch which is required to be insured under subsection (a) or (b)<sup>1</sup> of section 3104 of this title,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

##### (2) Involuntary termination

###### (A) Notice to primary regulator

If the Board of Directors determines that—

- (i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

- (ii) an insured depository institution is in an unsafe or unsound condition to con-

<sup>1</sup> See References in Text note below.

tinue operations as an insured institution; or

(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation,

the Board of Directors shall notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the State banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based for the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than 30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agreement of such agency.

**(B) Notice of intention to terminate insurance**

If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution, the Board shall—

(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured depository institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the institution's insured status.

**(3) Hearing; termination**

If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5 and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection

(w) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

**(4) Appearance; consent to termination**

Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

**(5) Judicial review**

Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

**(6) Publication of notice of termination**

The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

**(7) Temporary insurance of deposits insured as of termination**

After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

**(8) Temporary suspension of insurance**

**(A) In general**

If the Board of Directors initiates a termination proceeding under paragraph (2), and

the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

**(B) Special rule for certain savings institutions**

**(i) Certain goodwill included in tangible capital**

In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 1464(t) of this title. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a "special supervisory association".

**(ii) Suspension order**

The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 1464(t) of this title.

Nothing in this paragraph limits the right of the Corporation or the Comptroller of the Currency to enforce a contractual provision which authorizes the Corporation or the Comptroller of the Currency, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this chapter or under applicable accounting standards.

**(C) Effective period of temporary order**

Any order issued under subparagraph (A) shall become effective not earlier than 10

days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

**(D) Judicial review**

Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

**(E) Continuation of insurance for prior deposits**

The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this chapter.

**(F) Publication of order**

The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

**(G) Notice by Corporation**

If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

**(H) Lack of notice**

Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

(i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

**(9) Final decisions to terminate insurance**

Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

**(10) Low- to moderate-income housing lender**

In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

**(b) Cease-and-desist proceedings**

(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party, or any written agreement entered into with the agency, the appropriate Federal banking agency for the depository institution may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 1467a of this title),<sup>2</sup> any noninsured State member bank and to any organization organized and operated under section 25(a)<sup>1</sup> of the Federal Reserve Act [12 U.S.C. 611 et seq.] or operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank) or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution).

(4) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title shall apply to any foreign bank or company to which subsection (a) of section 3106 of this title applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under paragraph (3) of this subsection. For the purposes of this paragraph, the term "subsidiary" shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Federal banking agency is the Comptroller of the Currency, to any national banking association chartered by the Comptroller of the Currency, including an uninsured association.

(6) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (c) which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

<sup>2</sup>So in original. The second closing parenthesis probably should not appear.

- (B) restrict the growth of the institution;
- (C) dispose of any loan or asset involved;
- (D) rescind agreements or contracts; and
- (E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and
- (F) take such other action as the banking agency determines to be appropriate.

(7) **AUTHORITY TO LIMIT ACTIVITIES.**—The authority to issue an order under this subsection or subsection (c) includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) **UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY AS UNSAFE OR UNSOUND PRACTICE.**—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

(9) [Repealed]

(10) **STANDARD FOR CERTAIN ORDERS.**—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

**(c) Temporary cease-and-desist orders**

(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the depository institution or any institution-affiliated party pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (b)(6). Such order shall become effective upon service upon the depository institution or such institution-affiliated party and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss

the charges specified in such notice, or if a cease-and-desist order is issued against the depository institution or such party, until the effective date of such order.

(2) Within ten days after the depository institution concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the depository institution or such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the depository institution or such party under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

(3) **INCOMPLETE OR INACCURATE RECORDS.**—

(A) **TEMPORARY ORDER.**—If a notice of charges served under subsection (b)(1) specifies, on the basis of particular facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) **EFFECTIVE PERIOD.**—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b)(1) in connection with the notice of charges; or

(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.

(4) **FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.**—

(A) **TEMPORARY ORDER.**—

(i) **IN GENERAL.**—If a notice of charges served under subsection (b)(1) specifies on the basis of particular facts that any person engaged or is engaging in conduct described in section 1828(a)(4) of this title, the Corporation or other appropriate Federal banking agency may issue a temporary order requiring—

(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

(II) affirmative action to prevent any further, or to remedy any existing, violation.

(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

(i) until such time as the Corporation or other appropriate Federal banking agency dismisses the charges specified in such notice; or

(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

(C) CIVIL MONEY PENALTIES.—Any violation of section 1828(a)(4) of this title shall be subject to civil money penalties, as set forth in subsection (i), except that for any person other than an insured depository institution or an institution-affiliated party that is found to have violated this paragraph, the Corporation or other appropriate Federal banking agency shall not be required to demonstrate any loss to an insured depository institution.

**(d) Temporary cease-and-desist orders; enforcement**

In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of this section, the appropriate Federal banking agency may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

**(e) Removal and prohibition authority**

(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or request by such depository institution or institution-affiliated party; or

(IV) any written agreement between such depository institution and such agency;

(ii) engaged or participated in any unsafe or unsound practice in connection with any

insured depository institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution,

the appropriate Federal banking agency for the depository institution may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.

**(2) SPECIFIC VIOLATIONS.—**

(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31 and such violation was not inadvertent or unintentional;

(ii) an officer or director of an insured depository institution has knowledge that an institution-affiliated party of the insured depository institution has violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii);

(iii) an officer or director of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.]; or

(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company or of a subsidiary (other than a savings association) of a savings and loan holding company has been convicted of any criminal offense involving dishonesty or a breach of trust or a criminal offense under section 1956, 1957, or 1960 of title 18 or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,

the agency may serve upon such party, officer, or director a written notice of the agency's intention to remove such party from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the agency shall consider

whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) **SUSPENSION ORDER.**—

(A) **SUSPENSION OR PROHIBITION AUTHORIZED.**—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency—

(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

(ii) serves such party with written notice of the suspension order.

(B) **EFFECTIVE PERIOD.**—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

(I) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

(C) **COPY OF ORDER.**—If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall serve a copy of such order on any insured depository institution with which such party is associated at the time such order is issued.

(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. Any such order shall become

effective at the expiration of thirty days after service upon such depository institution and such party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" within the term "institution-affiliated party" as used in this subsection means an employee or officer with management functions, and the term "director" within the term "institution-affiliated party" as used in this subsection includes an advisory or honorary director, a trustee of a depository institution under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) **PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.**—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(7) **INDUSTRYWIDE PROHIBITION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g), has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(9);<sup>1</sup>

(iii) any insured credit union under the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];

(v) any appropriate Federal depository institution regulatory agency; and

(vi) the Federal Housing Finance Agency and any Federal home loan bank.

(B) **EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.**—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured

depository institution, such party receives the written consent of—

- (i) the agency that issued such order; and
- (ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Corporation and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) “APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY” DEFINED.—For purposes of this paragraph and subsection (j), the term “appropriate Federal financial institutions regulatory agency” means—

- (i) the appropriate Federal banking agency, in the case of an insured depository institution;
- (ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];
- (iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]); and
- (iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Agency and any Federal home loan bank.

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the appropriate Federal banking agency specifically finds that it should apply to a corporation, firm, or other business enterprise.

**(f) Stay of suspension and/or prohibition of institution-affiliated party**

Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured depository institution under subsection (e)(3) of this section, such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

**(g) Suspension, removal, and prohibition from participation orders in the case of certain criminal offenses**

(1) SUSPENSION OR PROHIBITION.—

(A) IN GENERAL.—Whenever any institution-affiliated party is the subject of any information, indictment, or complaint, involving the commission of or participation in—

- (i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or
- (ii) a criminal violation of section 1956, 1957, or 1960 of title 18 or section 5322 or 5324 of title 31,

the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any depository institution.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon any depository institution that the subject of the notice is affiliated with at the time the notice is issued.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the agency.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any man-

ner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

**(D) PROVISIONS APPLICABLE TO ORDER.—**

(i) **COPY.**—A copy of any order under subparagraph (C) shall also be served upon any depository institution that the subject of the order is affiliated with at the time the order is issued, whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such depository institution.

(ii) **EFFECT OF ACQUITTAL.**—A finding of not guilty or other disposition of the charge shall not preclude the agency from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

(iii) **EFFECTIVE PERIOD.**—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.

**(E) RELEVANT DEPOSITORY INSTITUTION.**—For purposes of this subsection, the term “relevant depository institution” means any depository institution of which the party is or was an institution-affiliated party at the time at which—

(i) the information, indictment, or complaint described in subparagraph (A) was issued; or

(ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to the interests of the bank’s<sup>3</sup> depositors or threaten to impair public confidence in the depository institution. Upon receipt of any such request, the ap-

propriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the depository institution will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency’s decision, if adverse to such party. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

**(h) Hearings and judicial review**

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a

<sup>3</sup> So in original. Probably should be “depository institution’s”.

written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

**(i) Jurisdiction and enforcement; penalty**

(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section or under section 1831o or 1831p-1 of this title, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section or under section 1831o or 1831p-1 of this title no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.

**(2) CIVIL MONEY PENALTY.—**

(A) **FIRST TIER.**—Any insured depository institution which, and any institution-affiliated party who—

- (i) violates any law or regulation;
- (ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) or any final order under section 1831o or 1831p-1 of this title;
- (iii) violates any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party; or
- (iv) violates any written agreement between such depository institution and such agency,

shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

(B) **SECOND TIER.**—Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who—

- (i) (I) commits any violation described in any clause of subparagraph (A);
- (II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such depository institution; or

(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

(C) **THIRD TIER.**—Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution-affiliated party who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) **MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).**—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured depository institution, an amount to not exceed \$1,000,000; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of—

(I) \$1,000,000; or

(II) 1 percent of the total assets of such institution.

**(E) ASSESSMENT.—**

(i) **WRITTEN NOTICE.**—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

(ii) **FINALITY OF ASSESSMENT.**—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) **AUTHORITY TO MODIFY OR REMIT PENALTY.**—Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) **MITIGATING FACTORS.**—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) REGULATIONS.—Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after August 9, 1989).

(4) PREJUDGMENT ATTACHMENT.—

(A) IN GENERAL.—In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 1821(d)(18) of this title) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) STANDARD.—

(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect

to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State.

#### (j) Criminal penalty

Whoever, being subject to an order in effect under subsection (e) or (g), without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6)) in the conduct of the affairs of—

(1) any insured depository institution;

(2) any institution treated as an insured bank under subsection (b)(3) or (b)(4);

(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]); or

(4) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.],

shall be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

**(k) Repealed. Pub. L. 101-73, title IX, § 920(c), Aug. 9, 1989, 103 Stat. 488**

#### (l) Notice of service

Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any State depository institution or any institution-affiliated party, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

#### (m) Notice to State authorities

In connection with any proceeding under subsection (b), (c)(1), or (e) of this section involving an insured State bank or any institution-affiliated party, the appropriate Federal banking agency shall provide the appropriate State supervisory authority with notice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the agency may proceed as provided in this section. No bank or other party who is the subject of any notice or order issued by the agency under this section shall have standing to raise the requirements of this

subsection as ground for attacking the validity of any such notice or order.

**(n) Ancillary provisions; subpoena power, etc.**

In the course of or in connection with any proceeding under this section, or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title, the agency conducting the proceeding, examination, or investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured depository institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the depository institution or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both.

**(o) Termination of membership of State bank in Federal Reserve System**

Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of subchapter VIII of chapter 3 of this title, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as pro-

vided in subsection (c) or (d) of section 1814 of this title, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation.

**(p) Banks not receiving deposits**

Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the depository institution that its insured status will terminate at the expiration of the first full assessment period following such notice. A finding by the Board of Directors that a depository institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the notice to be given by the depository institution of such termination and the Corporation may publish notice thereof. Upon the termination of the insured status of any such depository institution, its deposits shall thereupon cease to be insured and the depository institution shall thereafter be relieved of all future obligations to the Corporation, including the obligation to pay future assessments.

**(q) Assumption of liabilities**

Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the assessment period in which the assumption takes effect.

**(r) Action or proceeding against foreign bank; basis; removal of officer or other person; venue; service of process**

(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent thereof may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which, in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank has branches or agencies in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any State, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any State, service shall be made on at least one branch or agency so involved.

**(s) Compliance with monetary transaction recordkeeping and report requirements**

**(1) Compliance procedures required**

Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter II of chapter 53 of title 31.

**(2) Examinations of depository institution to include review of compliance procedures**

**(A) In general**

Each examination of an insured depository institution by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

**(B) Exam report requirement**

The report of examination shall describe any problem with the procedures maintained by the insured depository institution.

**(3) Order to comply with requirements**

If the appropriate Federal banking agency determines that an insured depository institution—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such depository institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

**(t) Authority of FDIC to take enforcement action against insured depository institutions and institution-affiliated parties**

**(1) Recommending action by appropriate Federal banking agency**

The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 1817(j) of this title, this section, or section 1828(j) of this title with respect to any insured depository institution, any depository institution holding company, or any institution-affiliated party. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

**(2) FDIC's authority to act if appropriate Federal banking agency fails to follow recommendation**

If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

(A) the insured depository institution is in an unsafe or unsound condition;

(B) the institution or institution-affiliated party is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution or institu-

tion-affiliated party from continuing such practices;

(C) the conduct or threatened conduct (including any acts or omissions) poses a risk to the Deposit Insurance Fund, or may prejudice the interests of the institution's depositors or<sup>4</sup>

(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund;<sup>5</sup>

**(3) Effect of exigent circumstances**

**(A) Authority to act**

The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

**(B) Agreement on exigent circumstances**

The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

**(4) Corporation's powers; institution's duties**

For purposes of this subsection—

(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

(B) the institution and its affiliates shall have the same duties and obligations with respect to the Corporation as the institution and its affiliates have with respect to the appropriate Federal banking agency.

**(5) Requests for formal actions and investigations**

**(A) Submission of requests**

A regional office of an appropriate Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution or institution-affiliated party shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

**(B) Agencies required to report on requests**

Each appropriate Federal banking agency shall report semiannually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.

**(6)<sup>6</sup> Powers and duties with respect to depository institution holding companies**

For purposes of exercising the backup authority provided in this subsection—

(A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.

**(6)<sup>6</sup> Referral to Bureau of Consumer Financial Protection**

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.

**(u) Public disclosures of final orders and agreements**

**(1) In general**

The appropriate Federal banking agency shall publish and make available to the public on a monthly basis—

(A) any written agreement or other written statement for which a violation may be enforced by the appropriate Federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

**(2) Hearings**

All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

**(3) Transcript of hearing**

A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (i). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5.

<sup>4</sup> So in original. Probably should be “; or”.

<sup>5</sup> So in original. The semicolon probably should be a period.

<sup>6</sup> So in original. Two pars. (6) have been enacted.

**(4) Delay of publication under exceptional circumstances**

If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

**(5) Documents filed under seal in public enforcement hearings**

The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

**(6) Retention of documents**

Each Federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

**(7) Disclosures to Congress**

No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

**(v) Foreign investigations****(1) Requesting assistance from foreign banking authorities**

In conducting any investigation, examination, or enforcement action under this chapter, the appropriate Federal banking agency may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

**(2) Providing assistance to foreign banking authorities****(A) In general**

Any appropriate Federal banking agency may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

**(B) Investigation by Federal banking agency**

Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall

comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

**(C) Factors to consider**

In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

**(D) Treatment of foreign banking authority**

For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

**(3) Rule of construction**

Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

**(w) Termination of insurance for money laundering or cash transaction reporting offenses****(1) In general****(A) Conviction of title 18 offenses****(i) Duty to notify**

If an insured State depository institution has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

**(ii) Notice of termination; pretermination hearing**

After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a).

**(B) Conviction of title 31 offenses**

If an insured State depository institution is convicted of any criminal offense under section 5322 or 5324 of title 31 after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

**(C) Notice to State supervisor**

The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

**(2) Factors to be considered**

In determining whether to terminate insurance under paragraph (1), the Board of Directors shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the depository institution knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the depository institution which were designed to prevent the occurrence of any such offense.

(C) The extent to which the depository institution has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty.

(D) The extent to which the depository institution has implemented additional internal controls (since the commission of the offense of which the depository institution was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

**(3) Notice to State banking supervisor and public**

When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described in paragraph (1), where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

**(4) Temporary insurance of previously insured deposits**

Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with subsection (a)(7).

**(5) Successor liability**

This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

**(6) “Senior executive officer” defined**

The term “senior executive officer” has the same meaning as in regulations prescribed under section 1831i(f) of this title.

(Sept. 21, 1950, ch. 967, §2[8], 64 Stat. 879; Pub. L. 89-695, title II, §§202, 204, Oct. 16, 1966, 80 Stat. 1046, 1054; Pub. L. 93-495, title I, §110, Oct. 28, 1974, 88 Stat. 1506; Pub. L. 95-369, §§6(c)(14), (15), 11, Sept. 17, 1978, 92 Stat. 618, 624; Pub. L. 95-630, title I, §§107(a)(1), (b), (c)(1), (d)(1), (e)(1), 111(a), title II, §208(a), title III, §§303, 304, Nov. 10, 1978, 92 Stat. 3649, 3653, 3654, 3656, 3660, 3665, 3674, 3676; Pub. L. 97-320, title I, §113(g), (h), title IV, §§404(c), 424(c), (d)(6), (e), 425(b), (c), 427(d), 433(a), Oct. 15, 1982, 96 Stat. 1473, 1474, 1512, 1523-1527; Pub. L. 99-570, title I, §1359(a), Oct. 27, 1986, 100 Stat. 3207-27; Pub. L. 101-73, title II, §201, title IX, §§901(b)(1), (d), 902(a), 903(a), 904(a), 905(a), 906(a), 907(a), 908(a), 912, 913(a), 920(a), (c), 926, Aug. 9, 1989, 103 Stat. 187, 446, 450, 453, 457, 459, 462, 477, 482, 483, 488; Pub. L. 101-647, title XXV, §§2521(b)(1), 2532(a), 2547(a)(1), (2), 2596(a), (b), Nov. 29, 1990, 104 Stat. 4864, 4880, 4886, 4887, 4908; Pub. L. 102-233, title III, §302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102-242, title I, §131(c)(1), (2), title III, §§302(e)(5), formerly (e)(4), 307, Dec. 19, 1991, 105 Stat. 2266, 2349, 2360; Pub. L. 102-550, title XV, §§1503(a), 1504(a), title XVI, §§1603(d)(2)-(4), 1605(a)(5)(A), (11), Oct. 28, 1992, 106 Stat. 4048, 4051, 4080, 4085, 4086; Pub. L. 102-558, title III, §§303(b)(6)(A), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103-204, §25, Dec. 17, 1993, 107 Stat. 2408; Pub. L. 103-325, title IV, §411(c)(2)(A), title VI, §602(a)(11)-(18), Sept. 23, 1994, 108 Stat. 2253, 2289; Pub. L. 105-164, §3(a)(2), Mar. 20, 1998, 112 Stat. 35; Pub. L. 105-362, title X, §1001(d), Nov. 10, 1998, 112 Stat. 3291; Pub. L. 106-569, title XII, §1232, Dec. 27, 2000, 114 Stat. 3037; Pub. L. 109-173, §§3(a)(6), (7), 8(a)(10), Feb. 15, 2006, 119 Stat. 3605, 3611; Pub. L. 109-351, title III, §303, title VII, §§702(c), 708(a), 710(b), 715(a), 716(a), 717, Oct. 13, 2006, 120 Stat. 1970, 1985, 1988, 1991, 1995, 1996; Pub. L. 110-343, div. A, title I, §126(b), Oct. 3, 2008, 122 Stat. 3795; Pub. L. 111-203, title I, §172(b), title III, §363(3), title X, §1090(1), July 21, 2010, 124 Stat. 1439, 1551, 2093.)

## REFERENCES IN TEXT

Subsections (a) and (b) of section 3104 of this title, referred to in subsec. (a)(1)(E), were redesignated subsections (b) and (c), respectively, of section 3104 of this title by Pub. L. 103-328, title I, §107(a)(1), Sept. 29, 1994, 108 Stat. 2358.

The Bank Holding Company Act of 1956, referred to in subsec. (b)(3), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(3), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that Act by Pub. L. 102-242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

The Federal Rules of Civil Procedure, referred to in subsecs. (b)(10) and (i)(4)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Depository Institution Management Interlocks Act, referred to in subsec. (e)(2)(A)(iii), is title II of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3672, which is classified principally to chapter 33 (§3201 et seq.) of this

title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

Subsection (b)(9) of this section, referred to in subsec. (e)(7)(A)(ii), was repealed by Pub. L. 111-203, § 363(3)(C). See 2010 Amendment note below.

The Federal Credit Union Act, referred to in subsec. (e)(7)(A)(iii), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsecs. (e)(7)(A)(iv), (D)(ii) and (j)(4), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Subchapter VIII of chapter 3 of this title, referred to in subsec. (o), was in the original “section 9 of the Federal Reserve Act”, meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of this title.

The Consumer Financial Protection Act of 2010, referred to in subsec. (t)(6), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of this title and enacted, amended, and repealed numerous other sections and notes in the Code. Subtitle B of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

#### PRIOR PROVISIONS

Section is derived from subsec. (i) of former section 264 of this title. See Codification note set out under section 1811 of this title.

#### AMENDMENTS

2010—Subsec. (a)(8)(B)(ii). Pub. L. 111-203, § 363(3)(A), substituted “Comptroller of the Currency” for “Director of the Office of Thrift Supervision” in two places in concluding provisions.

Subsec. (b)(3). Pub. L. 111-203, § 363(3)(B), inserted “any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 1467a of this title), any noninsured State member bank” before “and to any organization” and “or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution)” before the period at the end.

Subsec. (b)(9). Pub. L. 111-203, § 363(3)(C), substituted “[Repealed]” for heading and text. Text read as follows: “Subsections (a) through (s) of this section and subsection (u) of this section shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, [sic] whether wholly or partly owned, in the same manner as such subsections apply to a savings association.”

Subsec. (e)(7)(A)(v) to (vii). Pub. L. 111-203, § 363(3)(D)(i), inserted “and” after the semicolon in cl. (v), substituted “Agency” for “Board” and a period at the end for “; and” in cl. (vi), and struck out cl. (vii) which read as follows: “the Resolution Trust Corporation.”

Subsec. (e)(7)(D)(iii) to (v). Pub. L. 111-203, § 363(3)(D)(ii), inserted “and” after the semicolon in cl. (iii), substituted “Agency” for “Board” and a period at the end for “; and” in cl. (iv), and struck out cl. (v) which read as follows: “the Thrift Depositor Protection Oversight Board, in the case of the Resolution Trust Corporation.”

Subsec. (j)(2). Pub. L. 111-203, § 363(3)(E)(i), which directed striking out “, or as a savings association under subsection (b)(9) of this section”, was executed by striking out “, or as a savings association under sub-

section (b)(9)” before the semicolon at the end, to reflect the probable intent of Congress, because original text did not include the phrase “of this section”.

Subsec. (j)(3) to (5). Pub. L. 111-203, § 363(3)(E)(ii)–(iv), inserted “or” after the semicolon in par. (3), substituted a comma at the end for “; or” in par. (4), and struck out par. (5) which read as follows: “the Resolution Trust Corporation.”

Subsec. (o). Pub. L. 111-203, § 363(3)(F), substituted “Directors, the Comptroller of the Currency” for “Directors, the Director of the Office of Thrift Supervision”.

Subsec. (t)(1). Pub. L. 111-203, § 172(b)(1), inserted “, any depository institution holding company,” before “or any institution-affiliated party”.

Subsec. (t)(2)(D). Pub. L. 111-203, § 172(b)(2), added subpar. (D).

Subsec. (t)(6). Pub. L. 111-203, § 1090(1), added par. (6) relating to referral to Bureau of Consumer Financial Protection.

Pub. L. 111-203, § 172(b)(3), added par. (6) relating to powers and duties with respect to depository institution holding companies.

Subsec. (w)(3)(A). Pub. L. 111-203, § 363(3)(G), struck out “and the Office of Thrift Supervision” after “paragraph (1)”.

2008—Subsec. (c)(4). Pub. L. 110-343 added par. (4).

2006—Subsec. (b)(1). Pub. L. 109-351, §§ 716(a)(1), 717(1), in first sentence, substituted “in writing by a Federal banking agency” for “in writing by the agency”, “any action on any application, notice, or other request by the depository institution or institution-affiliated party,” for “the granting of any application or other request by the depository institution”, and “the appropriate Federal banking agency for the depository institution may issue and serve” for “the agency may issue and serve”.

Subsec. (b)(3). Pub. L. 109-351, § 702(c)(1), substituted “This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title” for “This subsection and subsections (c) through (s) and subsection (u) of this section”.

Subsec. (b)(4). Pub. L. 109-351, § 702(c)(2), substituted “This subsection, subsections (c) through (s) and subsection (u) of this section, and section 1831aa of this title” for “This subsection and subsections (c) through (s) and subsection (u) of this section”.

Subsec. (e)(1). Pub. L. 109-351, § 717(2)(B), substituted “the appropriate Federal banking agency for the depository institution may serve upon such party” for “the agency may serve upon such party” in concluding provisions.

Subsec. (e)(1)(A)(i)(III). Pub. L. 109-351, §§ 716(a)(2), 717(2)(A), substituted “in writing by a Federal banking agency” for “in writing by the appropriate Federal banking agency” and “any action on any application, notice, or request by such depository institution or institution-affiliated party” for “the grant of any application or other request by such depository institution”.

Subsec. (e)(2)(A)(iv). Pub. L. 109-351, § 710(b), added cl. (iv).

Subsec. (e)(4). Pub. L. 109-351, § 303, struck out “In any action brought under this section by the Comptroller of the Currency in respect to any such party with respect to a national banking association or a District depository institution, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve System for the determination of whether any order shall issue.” before “Any such order shall become effective”.

Subsec. (g). Pub. L. 109-351, § 708(a)(2), inserted heading.

Subsec. (g)(1)(A). Pub. L. 109-351, § 708(a)(1)(A), substituted, in introductory provisions, “is the subject of any information, indictment, or complaint, involving the commission of or participation in” for “is charged in any information, indictment, or complaint, with the commission of or participation in” and, in concluding provisions, “posed, poses, or may pose a threat to the

interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),” for “may pose a threat to the interests of the depository institution’s depositors or may threaten to impair public confidence in the depository institution,” and “affairs of any depository institution” for “affairs of the depository institution”.

Subsec. (g)(1)(B)(i). Pub. L. 109-351, §708(a)(1)(B), substituted “any depository institution that the subject of the notice is affiliated with at the time the notice is issued” for “the depository institution”.

Subsec. (g)(1)(C)(i). Pub. L. 109-351, §708(a)(1)(C), substituted “posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),” for “may pose a threat to the interests of the depository institution’s depositors or may threaten to impair public confidence in the depository institution,” and “affairs of any depository institution” for “affairs of the depository institution”.

Subsec. (g)(1)(C)(ii). Pub. L. 109-351, §708(a)(1)(D), substituted “affairs of any depository institution” for “affairs of the depository institution”.

Subsec. (g)(1)(D)(i). Pub. L. 109-351, §708(a)(1)(E), substituted “any depository institution that the subject of the order is affiliated with at the time the order is issued” for “the depository institution”.

Subsec. (g)(1)(E). Pub. L. 109-351, §708(a)(1)(F), added subpar. (E).

Subsec. (i)(2)(A)(iii). Pub. L. 109-351, §§716(a)(3), 717(3), substituted “in writing by a Federal banking agency” for “in writing by the appropriate Federal banking agency” and “any action on any application, notice, or other request by the depository institution or institution-affiliated party” for “the grant of any application or other request by such depository institution”.

Subsec. (i)(3). Pub. L. 109-351, §715(a), inserted “or order” after “notice” in two places.

Subsec. (p). Pub. L. 109-173, §3(a)(6), struck out “semiannual” before “assessment period”.

Subsec. (q). Pub. L. 109-173, §3(a)(7), substituted “assessment period” for “semiannual period”.

Subsec. (t)(2)(C). Pub. L. 109-173, §8(a)(10), substituted “Deposit Insurance Fund” for “deposit insurance fund”.

2000—Subsec. (o). Pub. L. 106-569 substituted “subsection (c) or (d) of section 1814” for “subsection (d) of section 1814”.

1998—Subsec. (b)(9). Pub. L. 105-164, §3(a)(2)(A), struck out “to any service corporation of a savings association and to any subsidiary of such service corporation” after “of a savings and loan holding company”.

Subsec. (e)(7)(A)(ii). Pub. L. 105-164, §3(a)(2)(B), substituted “(b)(9)” for “(b)(8)”.

Subsec. (j)(2). Pub. L. 105-164, §3(a)(2)(C), substituted “(b)(9)” for “(b)(8)”.

Subsec. (u)(3) to (8). Pub. L. 105-362 redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out heading and text of former par. (3). Text read as follows: “A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.”

1994—Subsec. (a)(3). Pub. L. 103-325, §602(a)(11), substituted “paragraph (2)(B)” for “subparagraph (B) of this subsection”.

Subsec. (a)(7). Pub. L. 103-325, §602(a)(12), inserted comma after “Board of Directors” in first sentence and substituted “the period” for “the period the period” in third sentence.

Subsec. (b)(4). Pub. L. 103-325, §602(a)(13), substituted “paragraph (3)” for “subparagraph (3)”.

Subsec. (c)(2). Pub. L. 103-325, §602(a)(14), substituted “injunction” for “injunction”.

Subsec. (g)(1)(A)(ii). Pub. L. 103-325, §411(c)(2)(A), substituted “section 5322 or 5324 of title 31” for “section 5322 of title 31”.

Subsec. (g)(2). Pub. L. 103-325, §602(a)(15), substituted “bank” for “depository institution” wherever appearing.

Subsec. (o). Pub. L. 103-325, §602(a)(16), in second sentence, substituted “subsection (d)” for “subsection (b)” and “Board of Directors” for “board of directors” in two places.

Subsec. (p). Pub. L. 103-325, §602(a)(17), substituted “depository” for “banking” wherever appearing.

Subsec. (r)(2). Pub. L. 103-325, §602(a)(18), substituted “agent thereof” for “agent thereof”.

Subsec. (w)(1)(B). Pub. L. 103-325, §411(c)(2)(A), substituted “section 5322 or 5324 of title 31” for “section 5322 of title 31”.

1993—Subsec. (b)(10). Pub. L. 103-204, §25(2), added par. (10).

Subsec. (i)(4)(B). Pub. L. 103-204, §25(1), added subpar. (B) and struck out former subpar. (B) which read as follows: “A permanent or temporary injunction or restraining order shall be granted without bond upon a prima facie showing that money damages, restitution, or civil money penalties, as sought by such agency, is appropriate.”

1992—Subsec. (a)(3). Pub. L. 102-550, §1503(a)(2), inserted “of this subsection or subsection (w)” after “subparagraph (B)”.

Subsec. (e)(2). Pub. L. 102-550, §1504(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act, the agency may serve upon such director or officer a written notice of its intention to remove him from office.”

Subsec. (g)(1). Pub. L. 102-550, §1504(a)(2), amended par. (1) generally, subdividing existing provisions into subpars. (A) to (D) and, in subpar. (A), including violations under section 1956, 1957, or 1960 of title 18, or section 5322 of title 31, as cause for suspension of any institution-affiliated party.

Subsec. (i)(1). Pub. L. 102-550, §1603(d)(3), inserted reference to section 1831p-1 of this title in two places, and substituted “order under any such section, or to review” for “order under this section, or to review”.

Pub. L. 102-550, §1603(d)(2), amended directory language of Pub. L. 102-242, §131(c)(2)(A). See 1991 Amendment note below.

Subsec. (i)(2)(A)(ii). Pub. L. 102-550, §1603(d)(4), substituted “subsection (b), (c), (e), (g), or (s) or any final order under section 1831o or 1831p-1 of this title” for “subsection (b), (c), (e), (g), or (s) of this section, or final order under section 1831o of this title”.

Subsec. (q). Pub. L. 102-558, §303(b)(6)(A), amended directory language of Pub. L. 102-242, §302(e). See 1991 amendment note below. Pub. L. 102-550, §1605(a)(5)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102-558, §305, set out in a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (t)(2)(B). Pub. L. 102-550, §1605(a)(11)(A), inserted “or institution-affiliated party” after “institution” in two places.

Subsec. (t)(2)(C). Pub. L. 102-550, §1605(a)(11)(B), substituted “the conduct or threatened conduct” for “the institution’s conduct or threatened conduct”.

Subsec. (t)(5)(A). Pub. L. 102-550, §1605(a)(11)(C), inserted “or institution-affiliated party” after “depository institution”.

Subsec. (w). Pub. L. 102-550, §1503(a)(1), added subsec. (w).

1991—Subsec. (b)(8), (9). Pub. L. 102-242, §131(c)(1), added par. (8) and redesignated former par. (8) as (9).

Subsec. (i)(1). Pub. L. 102-242, §131(c)(2)(A), as amended by Pub. L. 102-550, §1603(d)(2), inserted “or under section 1831o of this title” after first and second references to “section”.

Subsec. (i)(2)(A)(ii). Pub. L. 102-242, §131(c)(2)(B), inserted “, or final order under section 1831o of this title” after “section”.

Subsec. (q). Pub. L. 102-242, §302(e)(5), as renumbered by Pub. L. 102-558, §303(b)(6)(A), substituted "assessment with respect to the deposits" for "assessment upon the deposits".

Subsec. (t). Pub. L. 102-242, §307, amended subsec. (t) generally, substituting present provisions for provisions relating to authority of Board to take enforcement action against savings associations.

1990—Subsec. (b)(4). Pub. L. 101-647, §2596(a)(2), substituted "subsections (c) through (s) and subsection (u) of this section" for "subsections (c), (d), (h), (i), (k), (l), (m), and (n) of this section".

Subsec. (b)(6). Pub. L. 101-647, §2596(a)(1), inserted "or remedy" after "to correct".

Subsec. (c)(1). Pub. L. 101-647, §2596(b), inserted "or remedy" after "to prevent" and substituted "(b)(6)" for "(b)(6)(B)".

Subsec. (h)(1). Pub. L. 101-647, §2547(a)(2), struck out after first sentence "Such hearing shall be private, unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest."

Subsec. (i)(4). Pub. L. 101-647, §2521(b)(1), added par. (4).

Subsec. (u). Pub. L. 101-647, §2547(a)(1), amended subsec. (u) generally. Prior to amendment, subsec. (u) read as follows:

"(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public—

"(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

"(B) any modification to or termination of any final order described in subparagraph (A) of this paragraph.

"(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety or soundness of an insured depository institution, such agency may delay the publication of such order for a reasonable time."

Subsec. (v). Pub. L. 101-647, §2532(a), added subsec. (v).

1989—Pub. L. 101-73, §201(a), substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

Subsec. (a). Pub. L. 101-73, §926(1), inserted heading.

Subsec. (a)(1) to (3). Pub. L. 101-73, §926(1), added pars. (1) to (3) and struck out first four sentences which read as follows: "Any insured bank (except a national member bank, a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title, or State member bank) may, upon not less than ninety days' written notice to the Corporation, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an insured bank, or violated an applicable law, rule, regulation or order, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the bank, or any written agreement entered into with the Corporation the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a district bank, to the Federal Home Loan Bank Board in the case of an insured Federal savings bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days, or such shorter period not less than

twenty days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the Federal Home Loan Bank Board in the case of an insured Federal savings bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention."

Subsec. (a)(4). Pub. L. 101-73, §926(2), designated fifth sentence as par. (4) and inserted heading.

Pub. L. 101-73, §901(d), substituted "depository institution" for "bank".

Subsec. (a)(5). Pub. L. 101-73, §926(3), designated sixth sentence as par. (5), inserted heading, and substituted "Any insured depository institution whose insured status" for "Any insured bank whose insured status".

Subsec. (a)(6). Pub. L. 101-73, §926(4), designated seventh sentence as par. (6) and inserted heading.

Pub. L. 101-73, §901(d), substituted "depository institution" for "bank" wherever appearing.

Subsec. (a)(7). Pub. L. 101-73, §926(5), (6), designated last three sentences as par. (7), inserted heading, substituted "of at least 6 months or up to 2 years, within the discretion of the Board of Directors" for first reference to "of two years", and "the period referred to in the 1st sentence" for second reference to "of two years", and struck out "of two years" after "within such period".

Pub. L. 101-73, §901(d), substituted "depository institution" for "bank" wherever appearing.

Subsec. (a)(8) to (10). Pub. L. 101-73, §926(7), added pars. (8) to (10).

Subsec. (b)(1). Pub. L. 101-73, §901(d), substituted "depository institution" for "bank" wherever appearing.

Pub. L. 101-73, §901(b)(1)(A)(i), (B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents, or other persons participating in the conduct of banks.

Pub. L. 101-73, §901(b)(1)(A)(ii), which directed that "institution-affiliated parties" be substituted for "directors, officers, employees, agents, or other persons participating in the conduct of the affairs of such bank", was executed by making the substitution for "directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank", as the probable intent of Congress.

Subsec. (b)(2). Pub. L. 101-73, §901(d), substituted "depository institution" for "bank".

Subsec. (b)(3). Pub. L. 101-73, §902(a)(1)(A), substituted "subsections (c) through (s) and subsection (u)" for "subsections (c) through (f) and (h) through (n)".

Subsec. (b)(4). Pub. L. 101-73, §902(a)(1)(B), which directed the substitution of "subsections (c) through (s) and subsection (u)" for "subsections (c) through (f) and (h) through (n)", could not be executed because the words "subsections (c) through (f) and (h) through (n)" did not appear. See 1990 Amendment note above.

Subsec. (b)(6) to (8). Pub. L. 101-73, §902(a)(1)(C), added pars. (6) to (8).

Subsec. (c)(1). Pub. L. 101-73, §902(a)(2)(A), substituted "insolvency or significant dissipation" for "insolvency

or substantial dissipation”, struck out “seriously” before “weaken the condition of” and before “prejudice the interests of”, and inserted after first sentence “Such order may include any requirement authorized under subsection (b)(6)(B)”.

Pub. L. 101-73, §901(d), substituted “depository institution” for “bank” wherever appearing.

Pub. L. 101-73, §901(b)(1)(B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents or other persons participating in the conduct of the affairs of banks.

Subsec. (c)(2). Pub. L. 101-73, §901(d), substituted “depository institution” for “bank” wherever appearing.

Pub. L. 101-73, §901(b)(1)(B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents or other persons participating in the conduct of the affairs of banks.

Subsec. (c)(3). Pub. L. 101-73, §902(a)(2)(B), added par. (3).

Subsec. (d). Pub. L. 101-73, §901(d), substituted “depository institution” for “bank”.

Subsec. (e)(1). Pub. L. 101-73, §903(a)(1), amended par. (1) generally, by, among other changes, giving existing provisions subpar. designations, and by adding as conditions for removal of a party a violation of any condition imposed by writing in connection with a grant of any application or request, and violation of any written agreement between such depository institution and agency.

Subsec. (e)(2). Pub. L. 101-73, §903(a)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the bank.”

Subsec. (e)(3). Pub. L. 101-73, §903(a)(2), added par. (3). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 101-73, §903(a)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: “In respect to any director or officer of an insured bank or any other person referred to in paragraph (1), (2), or (3) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1), (2), or (3) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.”

Pub. L. 101-73, §901(b)(1)(C), substituted references to institution-affiliated parties for references to directors, officers, or other persons.

Pub. L. 101-73, §901(d), substituted reference to depository institutions for reference to banks.

Subsec. (e)(5). Pub. L. 101-73, §903(a)(2), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 101-73, §901(b)(1)(D), inserted “within the term ‘institution-affiliated party’” after “the term ‘officer’”, and inserted “within the term ‘institution-affiliated party’ as used in this subsection” after “the term ‘director’”.

Pub. L. 101-73, §901(d), substituted reference to depository institution for reference to bank.

Subsec. (e)(6). Pub. L. 101-73, §903(a)(2), (3), added par. (6) and redesignated former par. (6) as (5).

Subsec. (e)(7). Pub. L. 101-73, §904(a), added par. (7).

Subsec. (f). Pub. L. 101-73, §903(a)(4)(A), substituted “(e)(3)” for “(e)(4)” and “(e)(1) or (e)(2)” for “(e)(1), (e)(2), or (e)(3)”.

Pub. L. 101-73, §901(b)(1)(E), substituted “any institution-affiliated party” and “such party” for “any director, officer, or other person” and “such director, officer, or other person”, respectively, wherever appearing.

Pub. L. 101-73, §901(d), substituted “depository institution” for “bank”.

Subsec. (g)(1). Pub. L. 101-73, §906(a), struck out “authorized by a United States attorney” after “information, indictment, or complaint”, and substituted “or an agreement to enter a pre-trial diversion or other similar program” for “with respect to such crime”.

Pub. L. 101-73, §903(a)(4)(B), substituted “(1), (2), or (3)” for “(1), (2), (3), or (4)”.

Pub. L. 101-73, §901(d), substituted references to depository institutions for references to banks wherever appearing.

Pub. L. 101-73, §901(b)(1)(F)(i), substituted “institution-affiliated party” for “director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank”.

Pub. L. 101-73, §901(b)(1)(F)(v), which directed the substitution of “party” for “director, officer or other person”, could not be executed, because the phrase did not appear.

Pub. L. 101-73, §901(b)(1)(F)(ii)-(iv), (vi), substituted “such party” for “the individual” wherever appearing, “such party” for “such director, officer, or other person” wherever appearing, “such party” for “him” wherever appearing, and “whereupon such party (if a director or an officer)” for “whereupon such director or officer”.

Subsec. (g)(2). Pub. L. 101-73, §901(d), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (g)(3). Pub. L. 101-73, §901(d), substituted references to depository institutions for references to banks wherever appearing.

Pub. L. 101-73, §901(b)(1)(G), substituted “the institution-affiliated party concerned” for “the director, officer, or other person concerned” and substituted “such party” for “such individual”, for “the concerned director, officer, or other person”, and for any other reference to the director, officer or other person.

Subsec. (h)(1). Pub. L. 101-73, §901(d), substituted “depository institution” for “bank”.

Subsec. (h)(2). Pub. L. 101-73, §920(a), substituted “Any party to any proceeding under paragraph (1)” for “Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein.”

Pub. L. 101-73, §901(d), substituted “depository institution” for “bank” wherever appearing.

Pub. L. 101-73, §901(b)(1)(H), substituted “institution-affiliated party” for “director or officer or other person”.

Subsec. (i)(1). Pub. L. 101-73, §901(d), substituted “depository institution” for “bank”.

Subsec. (i)(2). Pub. L. 101-73, §907(a), amended par. (2) generally, revising and restating as subpars. (A) to (K) provisions of former cls. (i) to (vii).

Subsec. (i)(3). Pub. L. 101-73, §905(a), added par. (3).

Subsec. (j). Pub. L. 101-73, §908(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "Any director or officer, or former director or officer of an insured bank, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (e)(4), (e)(5), or (g) of this section, and who (i) participates in any manner in the conduct of the affairs of the bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written approval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both."

Subsec. (k). Pub. L. 101-73, §920(c), struck out subsec. (k) which defined the terms "cease-and-desist order which has become final", "order which has become final", and "violation", as those terms were used in this section.

Subsec. (l). Pub. L. 101-73, §901(d), substituted "State depository institution" for "State bank".

Pub. L. 101-73, §901(b)(1)(I), substituted "institution-affiliated party" for "director or officer thereof or other person participating in the conduct of its affairs".

Subsec. (m). Pub. L. 101-73, §901(b)(1)(J), substituted "institution-affiliated party" for "director or officer or other person participating in the conduct of its affairs".

Subsec. (n). Pub. L. 101-73, §901(d), substituted "depository institution" for "bank".

Subsec. (o). Pub. L. 101-73, §201(b), substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

Subsec. (q). Pub. L. 101-73, §901(d), substituted "depository institution" for "bank" wherever appearing and "depository institutions" for "banks".

Subsec. (s). Pub. L. 101-73, §901(d), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (t). Pub. L. 101-73, §912, added subsec. (t).

Subsec. (u). Pub. L. 101-73, §913(a), added subsec. (u). 1986—Subsec. (i)(2)(i). Pub. L. 99-570, §1359(a)(2), inserted reference to subsec. (s) of this section.

Subsec. (s). Pub. L. 99-570, §1359(a)(1), added subsec. (s).

1982—Subsec. (a). Pub. L. 97-320, §113(g), inserted "to the Federal Home Loan Bank Board in the case of an insured Federal savings bank," after "national bank or a district bank," and "or the Federal Home Loan Bank Board in the case of an insured Federal savings bank," after "Currency in the case of a national bank."

Subsec. (b)(3). Pub. L. 97-320, §425(b), substituted "25(a)" for "25A".

Subsec. (b)(4). Pub. L. 97-320, §425(c), which directed the amendment of subsec. (b) by adding a new par. (4) at end, was executed (as the probable intent of Congress) as a general amendment of existing par. (4), as added by Pub. L. 95-369, the two pars. (4) being identical except that the new par. (4) refers to "purposes of this paragraph" rather than "purposes of this subparagraph".

Subsec. (b)(5). Pub. L. 97-320, §404(c), added par. (5).

Subsec. (e)(3). Pub. L. 97-320, §427(d)(1)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 97-320, §427(d)(1)(A), (B), redesignated former par. (3) as (4) and inserted references to par. (3) of this subsection in two places. Former par. (4) redesignated (5).

Subsec. (e)(5), (6). Pub. L. 97-320, §427(d)(1)(A), redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 97-320, §427(d)(2), substituted references to "subsection (e)(4)" for "subsection (e)(5) or

(e)(7)" and "subsection (e)(1), (e)(2), or (e)(3)" for "subsection (e)(1), (e)(3), or (e)(7)".

Subsec. (g)(1). Pub. L. 97-320, §427(d)(3), in penultimate sentence, included reference to par. (4) of subsec. (e) of this section.

Subsec. (i)(2)(i). Pub. L. 97-320, §424(c), (d)(6), inserted proviso giving agency discretionary authority to compromise, etc., any civil money penalty imposed under such authority, and substituted "may be assessed" for "shall be assessed".

Subsec. (i)(2)(iv). Pub. L. 97-424(e) substituted "twenty days from the service" for "ten days from the date".

Subsec. (j). Pub. L. 97-320, §427(d)(4), struck out reference to subsec. (e)(3) and included reference to subsec. (e)(5) of this section.

Subsec. (o). Pub. L. 97-320, §113(h), inserted provision that whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Federal Home Loan Bank Board shall appoint a receiver for the bank, which shall be the Corporation.

Subsec. (q). Pub. L. 97-320, §433(a), struck out item (3) provisions requiring the assuming or resulting bank to give notice of an assumption to each of the depositors of the bank whose liabilities are assumed within thirty days after such assumption takes effect.

1978—Subsec. (a). Pub. L. 95-369, §6(c)(14), inserted "a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title" after "(except a national member bank)".

Subsec. (b)(1), (2). Pub. L. 95-630, §107(a)(1), extended coverage of par. (1) to include directors, officers, employees, agents, or other persons participating in the conduct of the affairs of an insured bank or a bank which has insured deposits, and reenacted par. (2) without change.

Subsec. (b)(3). Pub. L. 95-630, §107(b), substituted "subsections (c) through (f) and (h) through (n) of this section" for "subsections (c), (d), (h), (i), (k), (l), (m), and (n) of this section" and inserted provisions relating to any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act and provisions relating to the issuance of a notice of charges or cease-and-desist order against a bank holding company or subsidiary by any Federal banking agency other than the Board of Governors of the Federal Reserve System.

Subsec. (b)(4). Pub. L. 95-369, §11, added par. (4).

Subsec. (c). Pub. L. 95-630, §107(c)(1), in pars. (1) and (2) inserted references to any director, officer, employee, agent, or other person participating in the conduct of the affairs of the bank and in par. (1) inserted "prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section" after "interests of its depositors" and "and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings" after "violation or practice".

Subsec. (e). Pub. L. 95-630, §§107(d)(1), 208(a), generally revised and condensed the provisions relating to the suspension and removal of bank directors and officers, consolidated procedures relating to the certification of facts to the Board of Governors of the Federal Reserve System by the Comptroller of the Currency, substituted references to insured banks for references to insured State banks (other than a District Bank), and inserted provisions defining "officer" and "director" for the purpose of enforcing any law, rule, etc., in connection with an interlocking relationship.

Subsec. (g). Pub. L. 95-630, §111(a)(1), among other changes, inserted in par. (1) " , if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank" after "agency may" in two places, inserted provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under

paragraph (3) hereof unless terminated by the agency, and added par. (3).

Subsec. (h)(1). Pub. L. 95-630, §111(a)(2), inserted "(other than the hearing provided for in subsection (g)(3) of this section)" after "provided for in this section".

Subsec. (i). Pub. L. 95-630, §107(e)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95-630, §111(a)(3), substituted "subsections (e)(3), (e)(4)" for "subsections (e)(5), (e)(7), (e)(8)".

Subsec. (k). Pub. L. 95-630, §111(a)(4), substituted "paragraph (1) or (3) of subsection (g)" for "paragraph (1) of subsection (g)".

Subsec. (n). Pub. L. 95-630, §111(a)(5), inserted provision creating a criminal penalty for a willful failure or refusal to attend and testify or to answer any lawful inquiry or to produce books, papers, etc. in obedience to the subpoena of the appropriate Federal banking agency.

Pub. L. 95-630, §303, inserted "or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title," after "proceeding under this section," "examination, or investigation or considering the claim for insured deposits," after "conducting the proceeding," and "such agency or any" before "party to proceedings" and substituted "any such proceedings, claims, examinations, or investigations" for "any such proceedings" and "subpoenaed under this subsection" for "subpoenaed under this section".

Subsec. (q). Pub. L. 95-630, §304, among other changes, substituted provisions requiring the assuming or resulting bank to give notice of an assumption to each of the depositors of the bank whose liabilities are so assumed within thirty days after such assumption takes effect for provisions requiring the bank whose liabilities are being assumed to give notice of such assumption to its depositors within thirty days after such assumption takes effect, by publication or by any reasonable means, in accordance with regulations to be prescribed by the Board of Directors.

Subsec. (r). Pub. L. 95-369, §6(c)(15), added subsec. (r). 1974—Subsec. (b)(3). Pub. L. 93-495 added par. (3).

1966—Subsec. (a). Pub. L. 89-695, §204, enlarged the authority of the Corporation to institute involuntary termination proceedings against an insured bank which had engaged in or whose directors or trustees had engaged in, rather than merely continued unsafe or unsound practices, or was in an unsafe or unsound condition to continue operations as an insured bank, or had violated any law, rule, regulation or order, or any condition imposed in writing by the Corporation or any written agreement entered into with the Corporation; made it clear that the Corporation would be required to give the State authority a copy of the statement dealing the practices or violations where the State bank involved was a State member bank; provided for an alternative and shortened correction period of not less than twenty days in those cases where the Board of Directors of the Corporation on its discretion determined that the insurance risk of the Corporation was unduly jeopardized; provided the State authority with power to shorten the correction period in those cases involving State banks whether member or nonmember banks; transposed the position of the fourth and fifth sentences; and provided a bank whose insured status had been terminated with right of judicial review to the extent provided in subsec. (h) of this section.

Subsecs. (b) to (q). Pub. L. 89-695, §202, added subsecs. (b) to (n) and redesignated former subsecs. (b) to (d) as (o) to (q), respectively.

#### CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102-233, formerly set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)-(d) of Pub. L. 105-216, formerly set out as a note under section 1441a of this title.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 172(b) 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 363(3) 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 1090(1) of Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 3(a)(6), (7) of Pub. L. 109-173 effective Jan. 1, 2007, see section 3(b) of Pub. L. 109-173, set out as a note under section 1817 of this title.

Amendment by section 8(a)(10) of Pub. L. 109-173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109-173, set out as a note under section 1813 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(6)(A) of Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 4502 of Title 50, War and National Defense.

Amendment by sections 1603(d)(2)-(4) and 1605(a)(5)(A), (11) of Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102-242 effective after Dec. 19, 1992, then amendment by Pub. L. 102-550 effective on effective date of amendment by Pub. L. 102-242, see section 1609 of Pub. L. 102-550, set out as a note under section 191 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 131(c)(1), (2) of Pub. L. 102-242 effective 1 year after Dec. 19, 1991, see section 131(f) of Pub. L. 102-242, set out as a note under section 1464 of this title.

Amendment by section 302(e)(4) of Pub. L. 102-242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102-242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102-242, set out as a note under section 1817 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-647, title XXV, §2547(a)(3), Nov. 29, 1990, 104 Stat. 4887, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to all written agreements which are entered into and all written statements which become effective after the date of the enactment of this Act [Nov. 29, 1990]."

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 903(a) of Pub. L. 101-73 applicable with respect to violations committed and activities engaged in after Aug. 9, 1989, see section 903(e) of Pub. L. 101-73, set out as a note under section 1786 of this title.

Amendment by section 907(a) 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(l) of Pub. L. 101-73, set out as a note under section 93 of this title.

#### EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

The regulations required to be prescribed under amendment by Pub. L. 99-570 effective at end of 3-

month period beginning on Oct. 27, 1986, see section 1364(e) of Pub. L. 99-570, set out as a note under section 1464 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630, except for amendment by section 107(e)(1), effective upon 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.

Amendment by section 107(e)(1) 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.

#### EXPIRATION OF 1966 AMENDMENT

Pub. L. 91-609, title IX, §908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89-695 which had provided that: "The provisions of titles I and II of this Act [amending sections 1464, 1730, 1813, 1817 to 1820 and repealing section 77 of this title and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted."

#### IMPROVED ADMINISTRATIVE HEARINGS AND PROCEDURES FOR FEDERAL BANKING AGENCIES AND NATIONAL CREDIT UNION ADMINISTRATION BOARD

Pub. L. 101-73, title IX, §916, Aug. 9, 1989, 103 Stat. 486, provided that before close of 24-month period beginning on Aug. 9, 1989, appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) and National Credit Union Administration Board jointly establish their own pool of administrative law judges and develop a set of uniform rules and procedures for administrative hearings, including provisions for summary judgment rulings where there are no disputes as to material facts of the case.

#### TASK FORCE STUDY OF DELEGATION OF ENFORCEMENT ACTIONS

Pub. L. 101-73, title IX, §917, Aug. 9, 1989, 103 Stat. 487, directed appropriate Federal banking agencies (as defined in section 1813(q) of this title and National Credit Union Administration Board to create a joint task force to study desirability and feasibility of delegating investigation and enforcement authority to their regional or district offices or banks, provided for composition of task force, and required that not later than Sept. 30, 1990, task force report to Congress its findings and recommendations, together with responses of Comptroller of the Currency, Director of Office of Thrift Supervision, Chairperson of Federal Deposit Insurance Corporation, Chairman of Board of Governors of Federal Reserve System, and Chairman of National Credit Union Administration.

#### CREDIT STANDARDS ADVISORY COMMITTEE

Pub. L. 101-73, title XII, §1205, Aug. 9, 1989, 103 Stat. 521, as amended by Pub. L. 102-242, title IV, §422, Dec. 19, 1991, 105 Stat. 2377; Pub. L. 111-203, title III, §367(7), July 21, 2010, 124 Stat. 1557, provided that:

"(a) ESTABLISHMENT.—There is hereby established the Credit Standards Advisory Committee (in this section referred to as the 'Committee').

"(b) MEMBERSHIP.—

"(1) APPOINTMENT.—The Committee shall consist of 11 members, as follows:

"(A) The Chairman of the Board of Governors of the Federal Reserve System, or the Chairman's designee.

"(B) The Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson's designee.

"(C) The Comptroller of the Currency, or the Comptroller's designee.

"(D) The Chairman of the National Credit Union Administration, or the Chairman's designee.

"(E) 6 members of the public appointed by the President who are knowledgeable with the credit standards and lending practices of insured depository institutions, no more than 3 of whom shall be from the same political party.

"(2) TERMS.—Each member appointed under paragraph (1)(E) shall serve for the life of the Committee.

"(3) CHAIRPERSON.—The Chairperson of the Committee shall be designated by the President from among the members appointed under paragraph (1)(F) [now (1)(E)].

"(4) VACANCIES.—Any vacancy on the Committee shall be filled in the manner in which the original appointment was made.

"(5) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed for expenses incurred in connection with attendance of such members at meetings of the Committee. All expenses of the Committee shall be shared on a pro rata basis, based upon each agency's total budget for the preceding year by the Federal financial regulators specified in subparagraphs (A) through (E) of paragraph (1).

"(6) MEETINGS.—The Committee shall meet, not less frequently than quarterly, at the call of the chairperson or a majority of the members.

"(c) DUTIES OF THE COMMITTEE.—The Committee shall do the following:

"(1) REVIEW CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Review the credit standards and lending practices of insured depository institutions and the supervision of such standards and practices by the Federal financial regulators.

"(2) PREPARE RECOMMENDATIONS.—Prepare written comments and recommendations for the Federal financial regulators to ensure that insured depository institutions adhere to prudential credit standards and lending practices that are consistent for all insured depository institutions, to the maximum extent possible.

"(3) MONITOR CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Monitor the credit standards and lending practices of insured depository institutions, and the supervision of such standards and practices by the Federal financial regulators, to ensure that insured depository institutions can meet the demands of a modern and globally competitive financial world.

"(d) ANNUAL REPORT.—

"(1) REQUIRED.—Not later than January 30 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) CONTENTS.—The report required by paragraph (1) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Federal financial regulators.

"(e) CONFLICT OF INTEREST GUIDELINES.—The Committee shall prescribe such guidelines as the Committee determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to insured depository institutions and the Federal financial regulators.

"(f) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act [5 U.S.C. App.] shall not apply with respect to the Committee."

[For termination, effective May 15, 2000, of reporting provisions under 1205(d) of Pub. L. 101-73, set out above, see section 3003 of Pub. L. 104-66, as amended, set out

as a note under section 1113 of Title 31, Money and Finance, and page 159 of House Document No. 103-7.]

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

Nothing contained in sections 202 and 204 of Pub. L. 89-695 amending this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89-695, set out as a note under section 1813 of this title.

**§ 1819. Corporate powers**

**(a) In general**

Upon June 16, 1933, the Corporation shall become a body corporate and as such shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until dissolved by an Act of Congress.

Third. To make contracts.

Fourth. To sue and be sued, and complain and defend, by and through its own attorneys, in any court of law or equity, State or Federal.

Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this chapter, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted.

Eighth. To make examinations of and to require information and reports from depository institutions, as provided in this chapter.

Ninth. To act as receiver.

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this chapter or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

**(b) Agency authority**

**(1) Status**

The Corporation, in any capacity, shall be an agency of the United States for purposes of section 1345 of title 28 without regard to whether the Corporation commenced the action.

**(2) Federal court jurisdiction**

**(A) In general**

Except as provided in subparagraph (D), all suits of a civil nature at common law or in

equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

**(B) Removal**

Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

**(C) Appeal of remand**

The Corporation may appeal any order of remand entered by any United States district court.

**(D) State actions**

Except as provided in subparagraph (E), any action—

(i) to which the Corporation, in the Corporation's capacity as receiver of a State insured depository institution by the exclusive appointment by State authorities, is a party other than as a plaintiff;

(ii) which involves only the preclosing rights against the State insured depository institution, or obligations owing to, depositors, creditors, or stockholders by the State insured depository institution; and

(iii) in which only the interpretation of the law of such State is necessary,

shall not be deemed to arise under the laws of the United States.

**(E) Rule of construction**

Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

**(3) Service of process**

The Board of Directors shall designate agents upon whom service of process may be made in any State, territory, or jurisdiction in which any insured depository institution is located.

**(4) Bonds or fees**

The Corporation shall not be required to post any bond to pursue any appeal and shall not be subject to payments of any filing fees in United States district courts or courts of appeal.

(Sept. 21, 1950, ch. 967, §2[9], 64 Stat. 881; Pub. L. 89-695, title II, §205, Oct. 16, 1966, 80 Stat. 1055; Pub. L. 95-630, title III, §309, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 101-73, title II, §209, Aug. 9, 1989, 103 Stat. 216; Pub. L. 102-242, title I, §161(d), Dec. 19, 1991, 105 Stat. 2286; Pub. L. 103-325, title III, §331(e), Sept. 23, 1994, 108 Stat. 2232.)

PRIOR PROVISIONS

Section is derived from subsec. (j) of former section 264 of this title. See Codification note set out under section 1811 of this title.