

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

### Editorial Notes

#### REFERENCES IN TEXT

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

### § 42. Territorial application

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

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

### § 43. Interpretations concerning preemption of certain State laws

#### (a) Notice and opportunity for comment required

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

- (1) publish in the Federal Register notice of the preemption or discrimination issue that the agency is considering (including a description of each State law at issue);
- (2) give interested parties not less than 30 days in which to submit written comments; and
- (3) in developing the final opinion letter or interpretive rule issued by the agency, or making any determination under section 36(f)(1)(A)(ii) of this title, consider any comments received.

#### (b) Publication required

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

- (1) any final opinion letter or interpretive rule concluding that Federal law preempts the application of any State law regarding community reinvestment, consumer protection, fair lending, or establishment of intrastate branches to a national bank; and
- (2) any determination under section 36(f)(1)(A)(ii) of this title.

#### (c) Exceptions

##### (1) No new issue or significant basis

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

- (A) raises issues of Federal preemption of State law that are essentially identical to those previously resolved by the courts or on which the agency has previously issued an opinion letter or interpretive rule; or
- (B) responds to a request that contains no significant legal basis on which to make a preemption determination.

### (2) Judicial, legislative, or intragovernmental materials

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

### (3) Emergency

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

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

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

- (i) an acquisition of 1 or more banks in default or in danger of default (as such terms are defined in section 1813 of this title); or
- (ii) an acquisition with respect to which the Federal Deposit Insurance Corporation provides assistance under section 1823(c) of this title.

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

### Editorial Notes

#### CODIFICATION

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

#### SUBCHAPTER II—CAPITAL, STOCK, AND STOCKHOLDERS

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

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

### § 51a. Preferred stock; issuance authorized

Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail or by certified mail pursuant to action taken by its board of directors, issue preferred stock of one or more classes, in such amount and with such par value as shall be approved by said Comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, or cashier of said association, has been transmitted to the Comptroller of the Currency and his certificate obtained specifying the amount of such issue of preferred stock and his approval thereof and that the amount has been duly paid in as a part of the capital of such association;