

Pub. L. 115-174, set out above, see section 2 of Pub. L. 115-174, set out as a Definitions note below.]

Pub. L. 115-174, title IV, § 401(g), May 24, 2018, 132 Stat. 1359, provided that: “Nothing in this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section] shall be construed to—

“(1) affect the legal effect of the final rule of the Board of Governors of the Federal Reserve System entitled ‘Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations’ (79 Fed. Reg. 17240 (March 27, 2014)) as applied to foreign banking organizations with total consolidated assets equal to or greater than \$100,000,000,000; or

“(2) limit the authority of the Board of Governors of the Federal Reserve System to require the establishment of an intermediate holding company under, implement enhanced prudential standards with respect to, or tailor the regulation of a foreign banking organization with total consolidated assets equal to or greater than \$100,000,000,000.”

SUPERVISORY STRESS TEST

Pub. L. 115-174, title IV, § 401(e), May 24, 2018, 132 Stat. 1359, provided that: “Beginning on the effective date described in subsection (d)(1) [of section 401 of Pub. L. 115-174, set out above], the Board of Governors of the Federal Reserve System shall, on a periodic basis, conduct supervisory stress tests of bank holding companies with total consolidated assets equal to or greater than \$100,000,000,000 and total consolidated assets of less than \$250,000,000,000 to evaluate whether such bank holding companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.”

[For definition of “bank holding companies” as used in section 401(e) of Pub. L. 115-174, set out above, see section 2 of Pub. L. 115-174, set out as a Definitions note below.]

GLOBAL SYSTEMICALLY IMPORTANT BANK HOLDING COMPANIES

Pub. L. 115-174, title IV, § 401(f), May 24, 2018, 132 Stat. 1359, provided that: “Any bank holding company, regardless of asset size, that has been identified as a global systemically important BHC under section 217.402 of title 12, Code of Federal Regulations, shall be considered a bank holding company with total consolidated assets equal to or greater than \$250,000,000,000 with respect to the application of standards or requirements under—

“(1) this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section];

“(2) sections 116(a), 121(a), 155(d), 163(b), 164, and 165 of the Financial Stability Act of 2010 (12 U.S.C. 5326(a), 5331(a), 5345(d), 5363(b), 5364, 5365); and

“(3) paragraph (2)(A) of the second subsection (s) (relating to assessments) of section 11 of the Federal Reserve Act (12 U.S.C. 248(s)(2)(A)).”

[For definition of “bank holding company” as used in section 401(f) of Pub. L. 115-174, set out above, see section 2 of Pub. L. 115-174, set out as a Definitions note below.]

DEFINITIONS

Pub. L. 115-174, § 2, May 24, 2018, 132 Stat. 1297, provided that: “In this Act [see Short Title of 2018 Amendment note set out under section 1601 of Title 15, Commerce and Trade]:

“(1) APPROPRIATE FEDERAL BANKING AGENCY; COMPANY; DEPOSITORY INSTITUTION; DEPOSITORY INSTITUTION HOLDING COMPANY.—The terms ‘appropriate Federal banking agency’, ‘company’, ‘depository institution’, and ‘depository institution holding company’ have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

“(2) BANK HOLDING COMPANY.—The term ‘bank holding company’ has the meaning given the term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).”

§ 5366. Early remediation requirements

(a) In general

The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title, except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) Purpose of the early remediation requirements

The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) Remediation requirements

The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

(Pub. L. 111-203, title I, § 166, July 21, 2010, 124 Stat. 1432.)

§ 5367. Affiliations

(a) Affiliations

Nothing in this part shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 1843 of this title.

(b) Requirement

(1) In general

(A) Board authority

If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to

be financial in nature or incidental thereto under section 1843(k) of this title, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

(B) Necessary actions

Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

- (i) appropriately supervise activities that are determined to be financial in nature or incidental thereto; or
- (ii) to¹ ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company.

(2) Internal financial activities

For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 1843(k) of this title, as described in paragraph (1), shall not include internal financial activities, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to July 21, 2010, such company (or an affiliate that is not an intermediate holding company or subsidiary of an intermediate holding company) may continue to engage in such activity, as long as not less than 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(3) Source of strength

A company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

(4) Parent company reports

The Board of Governors may, from time to time, require reports under oath from a company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes

of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

(5) Limited parent company enforcement

(A) In general

In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(B) Application of other Act

Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] for purposes of subparagraph (A).

(C) No effect on other authority

No provision of this paragraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law.

(c) Regulations

The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (b); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

(Pub. L. 111-203, title I, §167, July 21, 2010, 124 Stat. 1432.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original “this subtitle”, meaning subtitle C (§§161-176) of title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The Federal Deposit Insurance Act, referred to in subsec. (b)(5)(B), is act Sept. 21, 1950, ch. 967, §2, 64 Stat.

¹ So in original. The word “to” probably should not appear.

873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

§ 5368. Regulations

The Board of Governors shall have authority to issue regulations to implement parts A and C and the amendments made thereunder. Except as otherwise specified in part A or C, not later than 18 months after the effective date of this Act, the Board of Governors shall issue final regulations to implement parts A and C, and the amendments made thereunder.

(Pub. L. 111-203, title I, §168, July 21, 2010, 124 Stat. 1434.)

Editorial Notes

REFERENCES IN TEXT

Part C, referred to in text, was in the original “sub-title C”, meaning subtitle C (§§161-176) of title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The effective date of this Act, referred to in text, is 1 day after July 21, 2010, except as otherwise specifically provided in Pub. L. 111-203, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

§ 5369. Avoiding duplication

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this part that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

(Pub. L. 111-203, title I, §169, July 21, 2010, 124 Stat. 1434.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle C (§§161-176) of title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

§ 5370. Safe harbor

(a) Regulations

The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) Considerations

In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 5323 of this title in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) Rule of construction

Nothing in this section shall be construed to require supervision by the Board of Governors of

a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) Revisions

(1) In general

The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(2) Transition period

No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) Report

The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report 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 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

(Pub. L. 111-203, title I, §170, July 21, 2010, 124 Stat. 1435.)

§ 5371. Leverage and risk-based capital requirements

(a) Definitions

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

(1) Generally applicable leverage capital requirements

The term “generally applicable leverage capital requirements” means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831o of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) Generally applicable risk-based capital requirements

The term “generally applicable risk-based capital requirements” means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository