Copyright © 2024 Michael P. Malloy. All rights reserved.

Banking and Financial Services Law

Cases, Materials, and Problems

Third Edition

2024 Supplement

Michael P. Malloy
Distinguished Professor and Scholar
University of the Pacific
McGeorge School of Law

Carolina Academic Press
Durham, North Carolina

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024
Michael P. Malloy
All Rights Reserved

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

Copyright © 2024 Michael P. Malloy. All rights reserved.

Supplementary Material

Excerpts from United States Code Current as of 30 November 2023

Title 12. Banks and Banking

Chapter 2 – National Banks

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 3 – Federal Reserve System

Copyright © 2024 Michael P. Malloy. All rights reserved.

CONTENTS

Chapter 12 – Federal Savings Associations

Chapter 14 – Federal Credit Unions

Subchapter I – General Provisions

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 16 – Federal Deposit Insurance Corporation

Chapter 17 – Bank Holding Companies

Copyright © 2024 Michael P. Malloy. All rights reserved.

CONTENTS

Chapter 22 – Tying Arrangements

Chapter 30 – Community Reinvestment

Chapter 33 – Depository Institution Management Interlocks

Chapter 40 – International Lending Supervision

Title 15. Commerce and Trade

Chapter 1 – Monopolies and Combinations in Restraint of Trade

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 2A – Securities and Trust Indentures
Subchapter I – Domestic Securities

Chapter 2B – Securities Exchanges

Chapter 2D – Investment Companies and Advisers
Subchapter I – Investment Companies

Subchapter II – Investment Advisers

Chapter III – Insurance

Subtitle A – State Regulation of Insurance

Subtitle B – Redomestication of Mutual Insurers

Copyright © 2024 Michael P. Malloy. All rights reserved.

CONTENTS

Subtitle C – National Association of Registered Agents and Brokers

Chapter V -- Privacy

Subtitle A -- Disclosure of Nonpublic Personal Information

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Supplementary Material

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 1

The Regulatory Environment for Financial Services

p. 19: *Replace line 1 with the following*:

elected president. His constituency of small merchants, farmers, laborers and other populists

p.90: *Add the following at the end of paragraph* ***b***:

To date, the FSOC has identified only four nonbank financial firms as systemically significant financial institutions (SIFIs) that could pose a risk to U.S. financial stability if it fell into financial distress—American International Group Inc. (AIG), GE Capital (a subsidiary of General Electric Co.), Prudential Financial Inc. and MetLife, Inc. After selling off its online deposits, GE Capital's designation as a SIFI was rescinded by the FSOC in June 2016. AIG also restructured itself and was de-designated in September 2017. MetLife successfully challenged its designation in litigation.[254a] Finally, in October 2018, the FSOC de-designated Prudential Financial, leaving no nonbank currently designated as an SIFI.

[254a] *See, e.g., MetLife, Inc. v. Financial Stability Oversight Council*, 865 F.3d 661 (D.C. Cir. 2017) (holding that DFA confidentiality rules in FSOC designation determinations, per 12 U.S.C. § 5322(d)(5)(A), did not abrogate common-law right of public access to judicial records)..

Copyright © 2024 Michael P. Malloy. All rights reserved.

p. 94: Add the following new notes at the end of the chapter:

1.71. *Delays in Dodd-Frank implementation*. The delays in regulatory implementation have been pervasive. For example, As of year-end 2013, slightly more than 50 percent of all required rulemakings under Dodd-Frank had been completed, according to a report by the law firm Davis Polk & Wardwell, LLP.[282] Based on the report's count of 398 total rulemakings required, 201 final rules had been issued, or 50.5 percent of total required. The significant delays in rulemaking have continued nonetheless; statutory deadlines for 280 of the total 398 required rulemakings have already passed, with 132 deadlines (47.14 percent) missed by regulators. As of early January 2014, 56 of those 132 required rulemakings have not even been the subject of published proposed rules.[283]

1.72. *Possible Revisions of the Dodd-Frank Act*. Following the election of Donald Trump in November 2016, proposals for wide-ranging revisions of Dodd-Frank were the focus of much attention, but little change in the regulatory structure and environment resulted from this. Initiatives for revision proceeded on two separate tracks. Incremental changes were undertaken by administrative action, and a broader proposal for legislative revision and amendments of the act slowly made its way through the Congress. On January 30, 2017, the President signed Executive Order No. 13,771,[284] directing federal agencies to eliminate *two* regulations for each new regulation issued and to limit costs for the current fiscal year to zero. On February 24, 2017, the President issued Executive Order No. 13,777,[285] requiring the agencies to convene a regulatory reform task force to assist in the implementation of Executive Order No. 13771. Little in terms of concrete effects resulted from this presidential initiative.

1.73. *Proposed Financial CHOICE Act* (*FCA*). Introduced in the House in April 2017, the FCA[286] would replace or amend Dodd-Frank, among other statutory provisions. Its principal effects would include the repeal of the Volcker Rule restrictions on proprietary securities trading by banks.[287] It would eliminate FDIC orderly liquidation authority OLA)[288] and establish new provisions for financial institution bankruptcy proceedings.[289] As originally proposed, the FCA would have repealed the DFA "Durbin Amendment"[290] limitations on fees that can be charged to retailers for debit card processing, but this provision was removed in an effort to improve the chances of enactment.[291] In addition, the bill

---

[282] Davis Polk, *Dodd-Frank Progress Report* (Jan. 2014) *available at* http://www.davispolk.com/download.php?file=sites/default/files/Jan2014_Dodd.Frank_.Progress.Report_0.pdf.

[283] Rob Tricchinelli, *Dodd-Frank Rules More Than Half Done, Yet Missed Deadlines Pervade Law's Rollout*, BNA Banking Daily (Jan. 6, 2014), *available at* http://www.bna.com (discussing continuing delays in implementation of DFA).

[284] Exec. Order No. 13,771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9339 (2017).

[285] Exec. Order No. 13,777, Enforcing the Regulatory Reform Agenda, 82 Fed. Reg. 12,285 (2017).

[286] H.R. 10, 115th Cong., 1st Sess. (2017) (FCA).

[287] FCA § 901. On the Volcker Rule, see 1.70.d, *supra*.

[288] FCA § 111. On OLA, see 1.70.b, *supra*.

[289] FCA §§ 121-123.

[290] 15 U.S.C. § 1693o-2(b)(3)(A)-(B).

[291] *See* Rob Tricchinelli, *Debit Caps Stay in Dodd-Frank Overhaul Among Other Tweaks*, BNA Banking Daily (May 31, 2017), *available at* https://www.bloomberglaw.com/ (reporting on new version of bill).

Copyright © 2024 Michael P. Malloy. All rights reserved.

would allow well-capitalized and well-managed banks to be exempt from specified regulatory standards.[292] It also would remove the authority of the FSOC to designate non-bank financial institutions and financial market utilities as "systemically important" and as such subject to additional regulatory restrictions.[293] Furthermore, the bill would convert the CFPB into an independent Consumer Law Enforcement Agency.[294] On May 4, 2017, the House Financial Services Committee approved the FCA in a party-line vote of 34-26.[295] On June 8, 2017, the House approved the bill in a 233-to-186 vote. At that point, however, there was little prospect of passage in the Senate, as Senate Majority Leader Mitch McConnell made it clear that he was "not optimistic" about the prospects of the bill's passage in the Senate, as "that would require Democratic involvement.[296]

1.74. *Economic Growth, Regulatory Relief, and Consumer Protection Act* (*EGRRCPA*). On May 24, 2018, the EGRRCPA[297] was enacted. Although it does represent the most extensive piece of financial services legislation since the enactment of the DFA in July 2008, the EGRRCPA is a more specialized legislative effort than its supporters might claim.[298] The act primarily affects small and regional depository institutions, rather than large financial services firms or the financial sector generally. On the other hand, the enactment of the EGRRCPA does make it clear that even a polarized House and Senate can pass legislation with an important policy impact. EGRRCPA is still in the process of being implemented by regulation. For our purposes, the major provisions of the EGRRCPA are as follows:

a. *Consumer access to mortgage credit*. Title I of the EGRRCPA attempts to improve consumer access to mortgage credit.[299] The underlying assumption is that if regulatory requirements are removed from lenders, they will then expand their mortgage lending. However, there is no explicit condition that requires expanded lending in order to benefit from eased regulatory requirements. So, for example, an insured depository institution or insured credit union that, together with its affiliates, has less than $10 billion in total consolidated assets will in many instances

[292] FCA §§ 601-605.

[293] FCA § 151. On the FSOC, see 1.70.b, *supra*.

[294] FCA § 711. On the CFPB, see 1.70.c, *supra*.

[295] *See* Rob Tricchinelli, *Dodd-Frank Overhaul Bill Approved by House Committee*, BNA Banking Report (May 08, 2017), *available at* https://www.bloomberglaw.com/ (reporting on bill passage in House Committee).

[296] Chelsea Mes, *McConnell 'Not Optimistic' About Congressional Dodd-Frank Revamp*, BNA Banking Daily (May 16, 2017), *available at* https://www.bloomberglaw.com/ (reporting on remarks by Senator McConnell in an interview with Bloomberg News).

[297] Pub. L. No. 115-174, 132 Stat. 1296 (May 24, 2018) (codified at scattered sections of 12, 15, 20, 38, 42, 50 U.S.C.).

[298] During the signing of the new act, the president puffed, "This is all about the Dodd-Frank disaster, and they fixed it or at least have gone a long way to fixing it.… It's a big deal … for our country." Elizabeth Dexheimer, *Trump Signs Biggest Rollback of Bank Rules Since Dodd-Frank Act*, BNA Bankruptcy Law Reporter (May 24, 2018), *available at* www.bna.com.

[299] EGRRCPA, tit. I, 132 Stat. at 1297-1306.

Copyright © 2024 Michael P. Malloy. All rights reserved.

not be subject to the consideration and documentation requirements of Truth in Lending Act regulations,[300] regardless of who it lends to

b. *Regulatory relief and consumer access to credit*. Title II of the EGRRCPA[301] also seeks to expand consumer access to credit through "regulatory relief" to financial services firms, primarily through the easing of capital requirements.[302] It also eases restrictions on brokered deposits under specified circumstances involving deposit networks,[303] as well as restrictions on interest rates for brokered deposits.[304] Relatively small banks are also exempted from restrictions on proprietary trading in securities.[305] The act also includes a technical amendment that allows some investment firms to continue trading with funds that share their name.[306] In addition, for relatively small depository institutions, the number of periodic "call reports" that they must make to their regulator may be reduced from four to two in a yearly cycle.[307]

c. *Regulatory relief for bank holding companies*. Title IV of the Act[308] is intended to ease regulatory burdens for certain bank holding companies (BHCs). While "systemically significant financial institutions" (SIFIs) are subject to enhanced supervision and standards applicable to certain bank holding companies and to nonbank financial companies supervised by the Fed, the assets threshold that identifies an institution as a SIFI has been raised to $250 billion from $50 billion.[309] The problem with this approach is that, in addition to freeing up relatively small and regional financial institutions, EGRRCPA also removes companies such as American Express and SunTrust Banks from the SIFI category.[310]

---

[300] 12 C.F.R. pt. 1026, App. Q. *See* EGRRCPA § 101, 132 Stat. at 1297 (codified at 15 U.S.C. § 1639c(b)(2)(F)(ii)-(iv)). *See also id*. § 108, 132 Stat. at 1304-1305 (codified at 15 U.S.C. § 1639d(c)) (easing escrow requirements relating to certain consumer credit transactions); *id*. § 109(a), 132 Stat. at 1305-1306 (codified at 15 U.S.C. § 1639(b)(3)-(4)) (easing disclosure requirements with respect to lower-rate second offers). *Cf. Elliott v. First Federal Cmty. Bank of Bucyrus*, 821 Fed. Appx. 406 (6th Cir. 2020) (holding that bank failed to verify and document borrower's listed income in violation of TILA; reversing grant of summary judgment to Bank on TILA claim and reversing denial of summary judgment to borrower).

[301] EGRRCPA, tit. II, 132 Stat. at 1306–1326.

[302] *See, e.g.*, EGRRCPA § 201, 132 Stat. at 1306–1307 (codified at 12 U.S.C. § 5371 Note) (providing "capital simplification" for certain community banks).

[303] *Id.* § 202(a), 132 Stat. at 1307–1308 (codified at 12 U.S.C. § 1831f(i)).

[304] *Id.* § 202(b), 132 Stat. at 1308-1309 (codified at 12 U.S.C. § 1831f(e)).

[305] *Id.* § 203, 132 Stat. at 1309 (codified at 12 U.S.C. § 1851(h)(1)).

[306] *Id.* § 204, 132 Stat. at 1309–1310 (codified at 12 U.S.C. § 1851(d)(1)(G)(vi), (h)(5)(C)).

[307] *Id.* § 205, 132 Stat. at 1310 (codified at 12 U.S.C. § 1817(a)(12)).

[308] EGRRCPA, tit. IV, 132 Stat at 1356-1360.

[309] EGRRCPA § 401(a), 132 Stat. at 1356-1358 (codified at 12 U.S.C. § 5365(a)). *But cf. id*. § 401(f), 132 Stat. at 1359 (codified at 12 U.S.C. § 5365 Note) (providing that any bank holding company, regardless of asset size, identified by the Fed as a *global systemically important BHC* "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" § 401 and other specified sections).

[310] Dexheimer, *Trump Signs Biggest Rollback*, *supra*.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 2

Entry Rules

pp. 101-105: *Replace § 5.20 with the following, reflecting integration of federal savings association chartering and national bank chartering rules*:

§ 5.20 Organizing a national bank or Federal savings association.

(a) Authority. 12 U.S.C. 21, 22, 24(Seventh), 26, 27, 92a, 93a, 1814(b), 1816, 1462a, 1463, 1464, 2903, and 5412(b)(2)(B).

(b) Licensing requirements. Any person desiring to establish a national bank or a Federal savings association must submit an application and obtain prior OCC approval. An existing national bank or Federal savings association desiring to change the purpose of its charter must submit an application and obtain prior OCC approval.

(c) Scope. This section describes the procedures and requirements governing OCC review and approval of an application to establish a national bank or a Federal stock or mutual savings association, including a national bank or a Federal savings association with a special purpose. Information regarding an application to establish an interim national bank or an interim Federal savings association solely to facilitate a business combination is set forth in § 5.33. This section also describes the requirements for an existing national bank or Federal savings association to change the purpose of its charter and refers such institutions to § 5.53 for the procedures to follow.

(d) Definitions. For purposes of this section:

(1) Bankers' bank means a bank owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies (as that term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813), the activities of which are limited by its articles of association exclusively to providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and to providing correspondent banking services at the request of other depository institutions or their holding companies.

(2) Control means with respect to an application to establish a national bank, control as used in section 2(a)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2), and with respect to an application to establish a Federal savings association, control as used in section 10(a)(2) of the Home Owners' Loan Act, 12 U.S.C. 1467a(a)(2).

(3) Final approval means the OCC action issuing a charter and authorizing a national bank or Federal savings association to open for business.

(4) Holding company means any company that controls or proposes to control a national bank or a Federal savings association whether or not the company is a bank holding

Copyright © 2024 Michael P. Malloy. All rights reserved.

company under section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(1), or a savings and loan holding company under section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a.

(5) Lead depository institution means the largest depository institution controlled by a bank holding company or savings and loan holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income required to be filed for the immediately preceding four calendar quarters.

(6) Institution means either a national bank or Federal savings association.

(7) Organizer means a member of the organizing group.

(8) Organizing group means five or more natural persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank or Federal savings association charter.

(9) Preliminary approval means a decision by the OCC permitting an organizing group to go forward with the organization of the proposed national bank or Federal savings association. A preliminary approval generally is subject to certain conditions that a filer must satisfy before the OCC will grant final approval.

(10) Principal shareholder means a person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of their immediate family, will own, control, or hold 10 percent or more of the voting stock of the proposed national bank or Federal savings association.

(e) Requirements—

(1) In general.

(i) The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 et seq. The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: Receiving deposits; paying checks; or lending money. The name of a proposed national bank must include the word "national."

(ii) The OCC charters a Federal savings association under the authority of section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464, which in an application to establish a Federal savings association requires the OCC to consider:

(A) Whether the filers are persons of good character and responsibility;

(B) Whether a necessity exists for the association in the community to be served;

(C) Whether there is a reasonable probability of the association's usefulness and success; and

(D) Whether the association can be established without undue injury to properly conducted existing local savings associations and home financing institutions.

(iii) In determining whether to approve an application to establish a national bank or Federal savings association, the OCC verifies that the proposed national bank or Federal savings association has complied with the following requirements. A national bank or a Federal savings association must:

(A) File either articles of association (for a national bank), or a charter and by-laws (for a Federal savings association) with the OCC;

(B) In the case of an application to establish a national bank, file an organization certificate containing specified information with the OCC;

(C) Ensure that all capital stock is paid in, or in the case of a Federal mutual savings association, ensure that at least a minimum amount of capital is paid in; and

(D) Have at least five elected directors.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) Community Reinvestment Act. Twelve CFR part 25 requires the OCC to take into account a proposed insured national bank's or Federal savings association's description of how it will meet its CRA objectives.

(3) Federal Deposit Insurance. Preliminary approval for an application to establish a Federal savings association will be conditioned on the savings association applying for and receiving approval for deposit insurance from the FDIC. Final approval for an application to establish a Federal savings association will not be issued until receipt by the OCC of written confirmation by the FDIC that the accounts of the Federal savings association will be insured by the FDIC.

(f) Policy—

(1) In general. In determining whether to approve an application to establish a national bank or Federal savings association, the OCC is guided by the following principles:

(i) Maintaining a safe and sound banking system;

(ii) Encouraging a national bank or Federal savings association to provide fair access to financial services by helping to meet the credit needs of its entire community;

(iii) Ensuring compliance with laws and regulations; and

(iv) Promoting fair treatment of customers including efficiency and better service.

(2) Policy considerations.

(i) In evaluating an application to establish a national bank or Federal savings association, the OCC considers whether the proposed institution:

(A) Has organizers who are familiar with national banking laws and regulations or Federal savings association laws and regulations, respectively;

(B) Has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided;

(C) Has capital that is sufficient to support the projected volume and type of business;

(D) Can reasonably be expected to achieve and maintain profitability;

(E) Will be operated in a safe and sound manner; and

(F) Does not have a title that misrepresents the nature of the institution or the services it offers.

(ii) In evaluating an application to establish a Federal savings association, the OCC considers whether the proposed Federal savings association will be operated as a qualified thrift lender under section 10(m) of the Home Owners' Loan Act, 12 U.S.C. 1467a(m).

(iii) The OCC may also consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 U.S.C. 1816, including the risk to the Federal deposit insurance fund, and whether the proposed institution's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act, the National Bank Act, and the Home Owners' Loan Act, as applicable.

(3) OCC evaluation. The OCC evaluates a proposed institution's organizing group and its business plan or operating plan together. The OCC's judgment concerning one may affect the evaluation of the other. An organizing group and its business plan or operating plan must be stronger in markets where economic conditions are marginal or competition is intense.

(g) Organizing group—

(1) In general. Strong organizing groups generally include diverse business and financial interests and community involvement. An organizing group must have the experience, competence, willingness, and ability to be active in directing the proposed institution's affairs in a safe and sound manner. The institution's initial board of directors generally is comprised of many, if not all, of the organizers. The business plan or operating plan and other information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful national bank or Federal savings association in the economic and competitive conditions of the market to be served. Each organizer should be knowledgeable about the business plan or operating plan. A poor business

Copyright © 2024 Michael P. Malloy. All rights reserved.

plan or operating plan reflects adversely on the organizing group's ability, and the OCC generally denies applications with poor business plans or operating plans.

(2) Management selection. The initial board of directors must select competent senior executive officers before the OCC grants final approval. Early selection of executive officers, especially the chief executive officer, contributes favorably to the preparation and review of a business plan or operating plan that is accurate, complete, and appropriate for the type of national bank or Federal savings association proposed and its market, and reflects favorably upon an application. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a two-year period from the date the institution commences business, or longer as appropriate.

(3) Financial resources.

(i) Each organizer must have a history of responsibility, personal honesty, and integrity. Personal wealth is not a prerequisite to become an organizer or director of a national bank or Federal savings association. However, directors' stock purchases, or, in the case of a Federal mutual savings association, capital contributions, individually and in the aggregate, should reflect a financial commitment to the success of the institution that is reasonable in relation to their individual and collective financial strength. A director should not have to depend on institution dividends, fees, or other compensation to satisfy financial obligations.

(ii) Because directors are often the primary source of additional capital for an institution not affiliated with a holding company, it is desirable that the proposed directors of the national bank or Federal savings association, as a group, be able to supply or have a realistic plan to enable the institution to obtain capital when needed.

(iii) Any financial or other business arrangement, direct or indirect, between the organizing group or other insiders and the proposed national bank or Federal savings association must be on nonpreferential terms.

(4) Organizational expenses.

(i) Organizers are expected to contribute time and expertise to the organization of the national bank or Federal savings association. Organizers should not bill excessive charges to the institution for professional and consulting services or unduly rely upon these fees as a source of income.

(ii) A proposed national bank or Federal savings association may not pay any fee that is contingent upon an OCC decision. Such action generally is grounds for denial of the application or nullification or rescission of a preliminary approval. Organizational expenses for denied applications are the sole responsibility of the organizing group.

(5) Sponsor's experience and support. A sponsor must be financially able to support the new institution's operations and to provide or locate capital when needed. The OCC primarily considers the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group, if an organizing group is sponsored by:

(i) An existing holding company;

(ii) Individuals currently affiliated with other depository institutions; or

(iii) Individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(h) Business plan or Operating plan—

(1) In general.

(i) Organizers of a proposed national bank or Federal savings association must submit a business plan or operating plan that adequately addresses the statutory and policy considerations set forth in paragraphs (e) and (f)(2) of this section. In the case of a proposed Federal savings association the plan must also specifically address meeting qualified thrift

Copyright © 2024 Michael P. Malloy. All rights reserved.

lender requirements. The plan must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served.

(ii) The OCC may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other factors, such as capital adequacy, or may be serious enough by themselves to result in denial. The OCC considers inadequacies in a business plan or operating plan to reflect negatively on the organizing group's ability to operate a successful institution.

(2) Earnings prospects. The organizing group must submit pro forma balance sheets and income statements as part of the business plan or operating plan. The OCC reviews all projections for reasonableness of assumptions and consistency with the business plan or operating plan.

(3) Management.

(i) The organizing group must include in the business plan or operating plan information sufficient to permit the OCC to evaluate the overall management ability of the organizing group. If the organizing group has limited banking experience or community involvement, the senior executive officers must be able to compensate for such deficiencies.

(ii) The organizing group may not hire an officer or elect or appoint a director if the OCC objects to that person at any time prior to the date the institution commences business.

(4) Capital. A proposed bank or Federal savings association must have sufficient initial capital, net of any organizational expenses that will be charged to the institution's capital after it begins operations, to support the institution's projected volume and type of business.

(5) Community service.

(i) The business plan or operating plan must indicate the organizing group's knowledge of and plans for serving the community. The organizing group must evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The business plan or operating plan must demonstrate how the proposed national bank or Federal savings association responds to those needs consistent with the safe and sound operation of the institution. The provisions of this paragraph may not apply to an application to organize an institution for a special purpose.

(ii) As part of its business plan or operating plan, the organizing group must submit a statement that demonstrates its plans to achieve CRA objectives.

(iii) Because community support is important to the long-term success of a national bank or Federal savings association, the organizing group must include plans for attracting and maintaining community support.

(6) Safety and soundness. The business plan or operating plan must demonstrate that the organizing group (and the sponsoring company, if any), is aware of, and understands, applicable depository institution laws and regulations, and safe and sound banking operations and practices. The OCC will deny an application that does not meet these safety and soundness requirements.

(7) Fiduciary powers. The business plan or operating plan must indicate if the proposed institution intends to exercise fiduciary powers. The information required by § 5.26 must be filed with the charter application. A separate application is not required.

(i) Procedures—

(1) Prefiling meeting. The OCC normally requires a prefiling meeting with the organizers of a proposed national bank or Federal savings association before the organizers file an application. Organizers should be familiar with the OCC's chartering policy and procedural requirements in the Comptroller's Licensing Manual before the prefiling meeting. The prefiling meeting normally is held in the district office where the application will be filed but may be held at another location at the request of the filer.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) Business plan or operating plan. An organizing group must file a business plan or operating plan that addresses the subjects discussed in paragraph (h) of this section.

(3) Biographical and financial reports—

(i) Each proposed organizer, director, executive officer, or principal shareholder must submit to the appropriate OCC licensing office:

(A) The information prescribed in the Interagency Biographical and Financial Report, available at www.occ.gov; and

(B) Legible fingerprints.

(ii) The OCC may require additional information about any proposed organizer, director, executive officer, or principal shareholder, if appropriate. The OCC may waive any of the information requirements of this paragraph if the OCC determines that it is in the public interest.

(4) Contact person. The organizing group must designate a contact person to represent the organizing group in all contacts with the OCC. The contact person must be an organizer and proposed director of the new national bank or Federal savings association, except a representative of the sponsor or sponsors may serve as contact person if an application is sponsored by an existing holding company, individuals currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(5) Decision notification. The OCC notifies the contact person and other relevant parties in writing of its decision on an application.

(6) Activities.

(i) Before the OCC grants final approval, a proposed national bank or Federal savings association must be established as a legal entity. A national bank becomes a legal entity after it has filed its organization certificate and articles of association with the OCC as required by law. A Federal savings association becomes a legal entity after it has filed its proposed charter and bylaws with the OCC. A proposed national bank may offer and sell securities prior to OCC preliminary approval of the proposed national bank's charter application, provided that the proposed national bank has filed articles of association, an organization certificate, and a completed charter application and the bank complies with paragraph (i)(6)(iii) of this section. A proposed Federal stock savings association may offer and sell securities prior to OCC preliminary approval of the proposed Federal stock savings association's charter application, provided that the proposed Federal stock savings association has filed a proposed charter, bylaws, and a completed charter application and the Federal stock savings association complies with paragraph (i)(6)(iii) of this section.

(ii)(A) After the OCC grants preliminary approval, the organizing group must elect a board of directors, take steps necessary to organize the proposed national bank or Federal savings association and prepare it for commencing business.

(B) A proposed national bank may not conduct the business of banking until the OCC grants final approval and issues a charter. A proposed Federal savings association may not commence business until the OCC grants final approval and issues a charter, which must be in the form provided in this part.

(iii) For all capital obtained through a public offering a proposed national bank or Federal savings association must use an offering circular that complies with the OCC's securities offering regulations, 12 CFR part 16, as applicable. All securities of a particular class in the initial offering must be sold at the same price.

(iv) A national bank or Federal savings association in organization must raise its capital before it commences business. Preliminary approval expires if the proposed national bank or Federal savings association does not raise the required capital within 12 months from the date the OCC grants preliminary approval. Preliminary approval expires if the proposed national bank or Federal savings association does not commence business within

Copyright © 2024 Michael P. Malloy. All rights reserved.

18 months from the date of preliminary approval, unless the OCC grants an extension. If preliminary approval expires, all cash collected on subscriptions must be returned.

(j) Expedited review. An application to establish a full-service national bank or Federal savings association that is sponsored by a bank holding company or savings and loan holding company whose lead depository institution is an eligible bank or eligible savings association is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC:

(1) Notifies the filer prior to that date that the filing has been removed from expedited review, or the expedited review process is extended, under § 5.13(a)(2); or

(2) Notifies the filer prior to that date that the OCC has determined that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

(k) National bankers' banks—

(1) Activities and customers. In addition to the other requirements of this section, when an organizing group seeks to organize a national bankers' bank, the organizing group must list in the application the anticipated activities and customers or clients of the proposed national bankers' bank.

(2) Waiver of requirements. At the organizing group's request, the OCC may waive requirements that are applicable to national banks in general if those requirements are inappropriate for a national bankers' bank and would impede its ability to provide desired services to its market. A filer must submit a request for a waiver with the application and must support the request with adequate justification and legal analysis. A national bankers' bank that is already in operation may also request a waiver. The OCC cannot waive statutory provisions that specifically apply to national bankers' banks pursuant to 12 U.S.C. 27(b)(1).

(3) Investments. A national bank or Federal savings association may invest up to 10 percent of its capital and surplus in a bankers' bank and may own five percent or less of any class of a bankers' bank's voting securities. . . .

Copyright © 2024 Michael P. Malloy. All rights reserved.

pp. 133-134: *Replace § 5.24 with the following*:

§ 5.24 Conversion to become a national bank.

(a) Authority. 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) Licensing requirements. A State bank, a stock State savings association, or a Federal stock savings association must submit an application and obtain prior OCC approval to convert to a national bank charter. A Federal mutual savings association that plans to convert to a national bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) Scope.

(1) This section describes procedures and standards governing OCC review and approval of an application by a State bank, a stock State savings association, or a Federal stock savings association to convert to a national bank charter.

(2) As used in this section, State bank includes a State bank as defined in 12 U.S.C. 214(a).

(d) Policy. Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. A converting financial institution also must obtain all necessary regulatory and shareholder approvals. The OCC may deny an application by any State bank, stock State savings association, and any Federal stock savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the filer to escape supervisory action by its current regulators.

(e) Procedures—

(1) Prefiling communications. The filer should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held at the OCC licensing office where the application will be filed, but may be held at another location at the request of the filer.

(2) Application. A State bank, a stock State savings association, or a Federal stock savings association must submit its application to convert to a national bank to the appropriate OCC licensing office and send a copy to its current appropriate Federal banking agency. The application must:

(i) Identify each branch that the resulting bank expects to operate after conversion;

(ii) Include the institution's most recent audited financial statements (if any);

(iii) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(iv) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of a State bank, the conversion is not in contravention of applicable State law, or in the case of a Federal stock savings association, the conversion is not in contravention of applicable Federal law;

(v) State whether the institution wishes to exercise fiduciary powers after the conversion;

(vi) Identify all subsidiaries, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities, the bank service company investments, and the other equity investments that would be required if the converting bank or savings association were a national bank establishing each subsidiary or making each bank service company investment or other equity investment pursuant to §§ 5.34, 5.35, 5.36, 5.39, 12 CFR part 1, or other applicable law and regulation;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(vii) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in and describe the plans to retain or divest those assets and activities;

(viii) Include a business plan if the converting institution has been operating for fewer than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC;

(ix) List all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current State bank supervisor or State attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether the conversion is prohibited under 12 U.S.C. 35, and state the institution's plans regarding adhering to such conditions or requirements after conversion;

(x) Include a list of directors and senior executive officers, as defined in § 5.51, of the converting institution; and

(xi) Include a list of individuals, directors, and shareholders who directly or indirectly, or acting in concert with one or more persons or companies, or together with members of their immediate family, do or will own, control, or hold 10 percent or more of the institution's voting stock.

(3) The OCC may permit a national bank to retain nonconforming assets of a State bank or stock State savings association, subject to conditions and an OCC determination of the carrying value of the retained assets, pursuant to 12 U.S.C. 35. The OCC may permit a national bank to continue nonconforming activities of a State bank or stock State savings association, or to retain the nonconforming assets or nonconforming activities of a Federal stock savings association, for a reasonable period of time following a conversion, subject to conditions imposed by the OCC.

(4) The OCC may require directors and senior executive officers of the converting institution to submit the Interagency Biographical and Financial Report, available at www.occ.gov, and legible fingerprints.

(5) Approval for an institution to convert to a national bank expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(6) When the OCC determines that the filer has satisfied all statutory and regulatory requirements, including those set forth in 12 U.S.C. 35, and any other conditions, the OCC issues a charter certificate. The certificate provides that the institution is authorized to begin conducting business as a national bank as of a specified date.

(f) Conversion of a Federal stock savings association to a national bank—supplemental rules—

(1) Additional information. A Federal stock savings association may convert to a national bank. In addition to the rules and procedures set forth in paragraph (e) of this section, a Federal stock savings association that desires to convert to a national bank must include in its application information demonstrating compliance with applicable laws regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(2) Termination and change of status. The appropriate OCC licensing office provides instructions to the converting Federal stock savings association for terminating its status as a Federal stock savings association and beginning its status as a national bank.

(g) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all of §§ 5.8, 5.10, and 5.11 apply.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(h) Expedited review. An application by an eligible savings association to convert to a national bank charter is deemed approved by the OCC as of the 45th day after the filing is received by the OCC, unless the OCC notifies the filer prior to that date that the filing has been removed from expedited review, or the expedited review process is extended, under § 5.13(a)(2).

(i) Continuation of business and corporate entity. The corporate existence of the converting institution continues in the resulting national bank. The resulting national bank is considered the same business and corporate entity as the converting institution, although as to rights, powers, and duties, the resulting national bank is a national bank. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution become assets and property of the resulting national bank when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the national bank when the conversion occurs.

Copyright © 2024 Michael P. Malloy. All rights reserved.

2024 SUPPLEMENT

pp. 142-143: *Replace the excerpt from § 5.24 with the following*:

§ 5.25 Conversion from a national bank or Federal savings association to a State bank or State savings association.

(a) Authority. 12 U.S.C. 93a, 214a, 214b, 214c, 214d, 1462a, 1463, 1464, and 5412(b)(2)(B).

(b) Licensing requirement. A national bank must give notice to the OCC before converting to a State bank (including a State bank as defined in 12 U.S.C. 214(a)) or a State savings association. A Federal savings association must give notice to the OCC before converting to a State savings association or a State bank. A Federal mutual savings association that plans to convert to a stock State bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) Scope. This section describes the procedures for a national bank seeking to convert to a State bank or a State savings association or for a Federal savings association seeking to convert to a State savings association or a State bank.

(d) Procedures—

(1) National banks. A national bank may convert to a State bank (including a State bank as defined in 12 U.S.C. 214(a)) or a State savings association in accordance with 12 U.S.C. 214a and 214c, without prior OCC approval, subject to compliance with 12 U.S.C. 214d. Termination of a national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the OCC's receipt of the bank's national bank charter in connection with the consummation of the conversion.

(2) Federal savings associations. A Federal savings association may convert to a State savings association or to a State bank, without prior OCC approval, subject to compliance with 12 U.S.C. 1464(i)(6). Termination of a Federal savings association's status as a Federal savings association occurs upon receipt of the Federal savings association's charter in connection with the consummation of the conversion.

(3) Notice of intent.

(i) A national bank that desires to convert to a State bank (including a State bank as defined in 12 U.S.C. 214(a)) or State savings association, or a Federal savings association that desires to convert to a State savings association or a State bank, must submit a notice of intent to convert to the appropriate OCC licensing office. The national bank or Federal savings association must file this notice with the OCC at the time it files a conversion application with the appropriate State authority or the prospective appropriate Federal banking agency. The national bank or Federal savings association also must transmit a copy of the conversion application to the prospective appropriate Federal banking agency if it has not already done so.

(ii) The notice must include:

(A) A copy of the conversion application; and

(B) An analysis demonstrating that the conversion is in compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(4) Consultation. The OCC may consult with the appropriate State authorities or the prospective appropriate Federal banking agency regarding the proposed conversion.

(5) Termination of status. After receipt of the notice, the appropriate OCC licensing office provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings association. . . .

Copyright © 2024 Michael P. Malloy. All rights reserved.

p. 145: In Notes and Comment 2.34, indented paragraph (iv), second line, replace "on basis" *with* "on a mutual basis".

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 3

Branch Banking

p. 169: Replace *the first sentence of note 3.14 with the following*:

The “customer-bank communications terminal” or automated teller machine ("ATM") was debuted June 27, 1967, by Barclays Bank at a branch in Enfield, north London.[7a] As it emerged in the U.S. banking markets in the 1970s, the ATM raised some interesting problems with respect to the definition of "branch" as interpreted by the Supreme Court in *Plant City*.

[7a] On the history of the ATM, see *World's First ATM Machine Turns to Gold on 50th Birthday*, N.Y. Times (June 27, 2017), available at https://www.nytimes.com/reuters/2017/06/27/business/27reuters-atm-anniversary.html?_r=0.

Copyright © 2024 Michael P. Malloy. All rights reserved.

pp. 184-198: Replace note 3.24 and the cases after it with the following:

3.24. Challenges to nondepositor ATM fees. Nondepositor ATM fees have created controversy and have already attracted significant litigation as states, local governments and consumers attempt to thwart initiatives by banks to generate fee income from the use of their ATM networks by nondepositors.[13] Unlike state and local laws that sought to prohibit the imposition of such fees, however, the GLBA originally required ATM operators who imposed a fee for the use of an ATM by a noncustomer to post a notice on the machine and on the screen that a fee will be charged and the amount of the fee. In December 2012, the law was amended to eliminate the requirement that a fee notice be posted on or at automated teller machines, leaving only the requirement for a specific fee disclosure to appear on the screen of that machine or on paper issued from the machine.[13a] The issue may be with us for a while before it is definitively resolved.[13b]

p. 200: *In note 3.27, replace lines 3-4 with the following*:

helpful. The procedural statute indicates that national banks are deemed "citizens of the States in which they are respectively located." 28 U.S.C. § 1348. But where is a national bank "located"? *See, e.g., Firstar*

p. 200: *Add the following at the end of note 3.28*:

Cf. Wells Fargo Bank, N.A. v. WMR e-PIN, LLC, 653 F.3d 702 (8th Cir. 2011) (holding national bank was citizen for diversity jurisdiction purposes only of state in which its main office was located, not where its principal place of business was located, citing *Wachovia Bank*).

[13] *See, e.g., Bank of America v. City & County of San Francisco*, 309 F.3d 551, 559 (9th Cir. 2002) (preempting San Francisco and Santa Monica ordinances prohibiting banks from charging ATM fees).

[13a] Pub. L. No. 112-216, 126 Stat. 1590 (Dec. 20, 2012) (codified at 15 U.S.C. 1693b(d)(3) (B)). In March 2013, the CFPB amended its Regulation E to conform it to the amendment. 78 Fed. Reg. 18,221 (2013) (codified at 12 C.F.R. 12 CFR § 1005.16(b)-(d), pt. 1005, Supp. I).

[13b] *See, e.g., Bank One, Utah v. Guttau*, 190 F.3d 844 (8th Cir. 1999), *cert. denied sub nom. Foster v. Bank One, Utah*, 529 U.S. 1087 (2000) (arguing that exclusion of ATMs from NBA § 36 reference over to state branching laws means preemption from effect of laws like Iowa Electronic Funds Transfer Act); *First Union Nat. Bank v. Burke*, 48 F.Supp.2d 132 (D.Conn. 1999) (preempting enforcement of state cease and desist orders against in-state branches of national banks charging nondepositor customers surcharge fee).

Copyright © 2024 Michael P. Malloy. All rights reserved.

2024 SUPPLEMENT

p. 200: Add the following new note after 3.28:

3.28A. Financial institutions now use social media[27a] in many ways, "including marketing, providing incentives, facilitating applications for new accounts, inviting feedback from the public, and engaging with existing and potential customers."[27b] As anyone who has used any of these media can probably attest, interaction via social media "tends to be both informal and dynamic, and may occur in a less secure environment,"[27c] which confronts financial institutions with unique challenges in terms of managing risk and maintaining security. The Federal Financial Institutions Examination Council (FFIEC) has identified a range of risk factors implicated by social media in this context: "risk of harm to consumers, compliance and legal risks, operational risks, and reputation risks. Increased risk can arise from poor due diligence, oversight, or control on the part of the financial institution."[27d] The FFIEC Guidance is intended to assist financial institutions in identifying and addressing potential risk areas, and to ensure that the institutions are aware of their responsibilities to oversee and control the potential risks within an overall risk management program.

[27a] *Social Media: Consumer Compliance Risk Management Guidance*, issued in final form in December 2013 by the Federal Financial Institutions Examination Council defines the term *social media* to mean

> a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video. Social media can take many forms, including, but not limited to, micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review Web sites and bulletin boards (e.g., Yelp); photo and video sites (e.g., Flickr and YouTube); sites that enable professional networking (e.g., LinkedIn); virtual worlds (e.g., Second Life); and social games (e.g., FarmVille and CityVille).

78 Fed. Reg. 76,297, 76,299 (2013). The key difference between social media and other forms of online communication is that social media are markedly more interactive. *Id*.

[27b] *Id*. at 76,299.

[27c] *Id*.

[27d] *Id*.

Copyright © 2024 Michael P. Malloy. All rights reserved.

p. 203: *Replace the last sentence of note 3.32 with the following*:

. . . Consider 12 U.S.C. § 321, which provides in part as follows:

> [N]othing herein contained shall prevent any State member bank from establishing and operating branches in the United States or any dependency or insular possession thereof or in any foreign country, on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks except that the approval of the Board of Governors of the Federal Reserve System, instead of the Comptroller of the Currency, shall be obtained before any State member bank may hereafter establish any branch and before any State bank hereafter admitted to membership may retain any branch established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated. The approval of the Board shall likewise be obtained before any State member bank may establish any new branch within the limits of any such city, town, or village.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 4

Control Transactions

p. 218: *In the first full paragraph, replace the second line with the following*:

Act was considered too broad, and the 1966 amendment to the definition, which generated the

p. 232: *Replace note 4.24 with the following*:

4.24. Capital standards and savings associations. As amended by the FIRREA, the HOLA directed the Director of the OTS, consistent with the purposes of section 908 of the International Lending Supervision Act of 1983, 12 U.S.C. § 3907, and the capital requirements established thereunder by the federal banking regulators, to require all savings associations to achieve and maintain adequate capital by establishing minimum capital levels and by using other methods as determined to be appropriate by the DOTS. 12 U.S.C. § 1464(s)(1) (A)-(B) (1990). Pursuant to the Dodd-Frank Act, however, the OTS and the DOTS were abolished, and responsibility for savings associations has been transferred to the OCC and the FDIC. In September 2013, the FDIC adopted an interim final rule that revised its risk-based and leverage capital requirements for FDIC-supervised institutions (including insured savings associations) throughout FDIC regulations. 78 Fed. Reg. 55,340 (2013) (codified at 12 C.F.R. pts. 303, 308, 324, 327, 333, 337, 347, 349, 360, 362-365, 390-391). Most recently, the FDIC has begun to consolidate its regulations with respect to savings associations as part of its generally applicable rules. *See, e.g.*, 86 Fed. Reg. 8089 (2021) (removing and reserving 12 C.F.R. §§ 390.100-390.135; revising 12 C.F.R. §§ 303.7(c)(1), 303.15(b), 303.204, 303.205(a), 303.249(a)) (removing transferred OTS regulations regarding application processing procedures of state savings associations; conforming amendments to generally applicable regulations).

p.232: *In note 4.26, line 1, replace "*4.14*" with "*4.16*".*

p. 237: *In note 4.29, line 2, replace "*4.26*" with "*4.28".

Copyright © 2024 Michael P. Malloy. All rights reserved.

BANKING AND FINANCIAL SERVICES LAW

p. 242: In 4.38, replace line 3 with the following:

published. A report has been requested under § 1828(c)(4)(A). What is the approval

pp.268-269: *Delete note 4.50.*

p. 269: In note 4.51, replace line 1 with the following:

4.51. Reread note 4.34, *supra*, and Figure 4.1. Based upon the

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 5

Transactional Rules

pp. 284-298: Replace §§ 3.100 and 32.1-32.6 with the following:

§ 3.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) Regulatory capital components. A national bank's or Federal savings association's regulatory capital components are:

(1) Common equity tier 1 capital;

(2) Additional tier 1 capital; and

(3) Tier 2 capital.

(b) Common equity tier 1 capital. Common equity tier 1 capital is the sum of the common equity tier 1 capital elements in this paragraph (b), minus regulatory adjustments and deductions [such as goodwill and certain intangible assets, in accordance with 12 C.F.R. § 3.22]. The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the national bank or Federal savings association, net of treasury stock, and any capital instruments issued by mutual banking organizations, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the national bank or Federal savings association, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the national bank or Federal savings association;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the national bank or Federal savings association that is proportional with the holder's share of the national bank's or Federal savings association's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of the OCC, and does not contain any term or feature that creates an incentive to redeem;

(iv) The national bank or Federal savings association did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation;

(v) Any cash dividend payments on the instrument are paid out of the national bank's or Federal savings association's net income or retained earnings and are not subject to a limit imposed by the contractual terms governing the instrument.

(vi) The national bank or Federal savings association has full discretion at all times to refrain from paying any dividends and making any other distributions on the instrument

Copyright © 2024 Michael P. Malloy. All rights reserved.

without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the national bank or Federal savings association;

(vii) Dividend payments and any other distributions on the instrument may be paid only after all legal and contractual obligations of the national bank or Federal savings association have been satisfied, including payments due on more senior claims;

(viii) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the national bank or Federal savings association with greater priority in a receivership, insolvency, liquidation, or similar proceeding;

(ix) The paid-in amount is classified as equity under GAAP;

(x) The national bank or Federal savings association, or an entity that the national bank or Federal savings association controls, did not purchase or directly or indirectly fund the purchase of the instrument;

(xi) The instrument is not secured, not covered by a guarantee of the national bank or Federal savings association or of an affiliate of the national bank or Federal savings association, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(xii) The instrument has been issued in accordance with applicable laws and regulations; and

(xiii) The instrument is reported on the national bank's or Federal savings association's regulatory financial statements separately from other capital instruments.

(2) Retained earnings.

(3) Accumulated other comprehensive income (AOCI) as reported under GAAP.

(4) Any common equity tier 1 minority interest, subject to the limitations in § 3.21.

(5) Notwithstanding the criteria for common stock instruments referenced above, a national bank's or Federal savings association's common stock issued and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (b)(1)(iii), paragraph (b)(1)(iv) or paragraph (b)(1)(xi) of this section, provided that any repurchase of the stock is required solely by virtue of ERISA for an instrument of a national bank or Federal savings association that is not publicly-traded. In addition, an instrument issued by a national bank or Federal savings association to its employee stock ownership plan does not violate the criterion in paragraph (b)(1)(x) of this section.

(c) Additional tier 1 capital. Additional tier 1 capital is the sum of additional tier 1 capital elements and any related surplus, minus the regulatory adjustments and deductions in § 3.22. Additional tier 1 capital elements are:

(1) Instruments (plus any related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to depositors, general creditors, and subordinated debt holders of the national bank or Federal savings association in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument is not secured, not covered by a guarantee of the national bank or Federal savings association or of an affiliate of the national bank or Federal savings association, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iv) The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem; and

(v) If callable by its terms, the instrument may be called by the national bank or Federal savings association only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1

Copyright © 2024 Michael P. Malloy. All rights reserved.

capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.). In addition:

(A) The national bank or Federal savings association must receive prior approval from the OCC to exercise a call option on the instrument.

(B) The national bank or Federal savings association does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the national bank or Federal savings association must either: Replace the instrument to be called with an equal amount of instruments that meet the criteria under paragraph (b) of this section or this paragraph (c); or demonstrate to the satisfaction of the OCC that following redemption, the national bank or Federal savings association will continue to hold capital commensurate with its risk.

(vi) Redemption or repurchase of the instrument requires prior approval from the OCC.

(vii) The national bank or Federal savings association has full discretion at all times to cancel dividends or other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the national bank or Federal savings association except in relation to any distributions to holders of common stock or instruments that are pari passu with the instrument.

(viii) Any cash dividend payments on the instrument are paid out of the national bank's or Federal savings association's net income or retained earnings.

(ix) The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the national bank's or Federal savings association's credit quality, but may have a dividend rate that is adjusted periodically independent of the national bank's or Federal savings association's credit quality, in relation to general market interest rates or similar adjustments.

(x) The paid-in amount is classified as equity under GAAP.

(xi) The national bank or Federal savings association, or an entity that the national bank or Federal savings association controls, did not purchase or directly or indirectly fund the purchase of the instrument.

(xii) The instrument does not have any features that would limit or discourage additional issuance of capital by the national bank or Federal savings association, such as provisions that require the national bank or Federal savings association to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.

(xiii) If the instrument is not issued directly by the national bank or Federal savings association or by a subsidiary of the national bank or Federal savings association that is an operating entity, the only asset of the issuing entity is its investment in the capital of the national bank or Federal savings association, and proceeds must be immediately available without limitation to the national bank or Federal savings association or to the national bank's or Federal savings association's top-tier holding company in a form which meets or exceeds all of the other criteria for additional tier 1 capital instruments.

(xiv) For an advanced approaches national bank or Federal savings association, the governing agreement, offering circular, or prospectus of an instrument issued after the date upon which the national bank or Federal savings association becomes subject to this part as set forth in § 3.1(f) must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the national bank or Federal savings association enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Tier 1 minority interest, subject to the limitations in § 3.21, that is not included in the national bank's or Federal savings association's common equity tier 1 capital.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(3)(i) Any and all instruments that qualified as tier 1 capital under the OCC's general risk-based capital rules under appendix A to this part (national banks), 12 CFR part 167 (Federal savings associations) as then in effect, that were issued under the Small Business Jobs Act of 2010 or prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.

(ii) Any preferred stock instruments issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.

(4) Notwithstanding the criteria for additional tier 1 capital instruments referenced above:

(i) An instrument issued by a national bank or Federal savings association and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (c)(1)(iii) of this section, provided that any repurchase is required solely by virtue of ERISA for an instrument of a national bank or Federal savings association that is not publicly-traded. In addition, an instrument issued by a national bank or Federal savings association to its employee stock ownership plan does not violate the criteria in paragraph (c)(1)(v) or paragraph (c)(1)(xi) of this section; and

(ii) An instrument with terms that provide that the instrument may be called earlier than five years upon the occurrence of a rating agency event does not violate the criterion in paragraph (c)(1)(v) of this section provided that the instrument was issued and included in a national bank's or Federal savings association's tier 1 capital prior to January 1, 2014, and that such instrument satisfies all other criteria under this § 3.20(c).

(d) Tier 2 Capital. Tier 2 capital is the sum of tier 2 capital elements and any related surplus, minus regulatory adjustments and deductions in § 3.22. Tier 2 capital elements are:

(1) Instruments (plus related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to depositors and general creditors of the national bank or Federal savings association;

(iii) The instrument is not secured, not covered by a guarantee of the national bank or Federal savings association or of an affiliate of the national bank or Federal savings association, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims;

(iv) The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five years of the life of the instrument, the amount that is eligible to be included in tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) and is excluded from regulatory capital when the remaining maturity is less than one year. In addition, the instrument must not have any terms or features that require, or create significant incentives for, the national bank or Federal savings association to redeem the instrument prior to maturity; and

(v) The instrument, by its terms, may be called by the national bank or Federal savings association only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in tier 2 capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.). In addition:

(A) The national bank or Federal savings association must receive the prior approval of the OCC to exercise a call option on the instrument.

(B) The national bank or Federal savings association does not create at issuance, through action or communication, an expectation the call option will be exercised.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(C) Prior to exercising the call option, or immediately thereafter, the national bank or Federal savings association must either: Replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section; or demonstrate to the satisfaction of the OCC that following redemption, the national bank or Federal savings association would continue to hold an amount of capital that is commensurate with its risk.

(vi) The holder of the instrument must have no contractual right to accelerate payment of principal or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or similar proceeding of the national bank or Federal savings association.

(vii) The instrument has no credit-sensitive feature, such as a dividend or interest rate that is reset periodically based in whole or in part on the national bank's or Federal savings association's credit standing, but may have a dividend rate that is adjusted periodically independent of the national bank's or Federal savings association's credit standing, in relation to general market interest rates or similar adjustments.

(viii) The national bank or Federal savings association, or an entity that the national bank or Federal savings association controls, has not purchased and has not directly or indirectly funded the purchase of the instrument.

(ix) If the instrument is not issued directly by the national bank or Federal savings association or by a subsidiary of the national bank or Federal savings association that is an operating entity, the only asset of the issuing entity is its investment in the capital of the national bank or Federal savings association, and proceeds must be immediately available without limitation to the national bank or Federal savings association or the national bank's or Federal savings association's top-tier holding company in a form that meets or exceeds all the other criteria for tier 2 capital instruments under this section.

(x) Redemption of the instrument prior to maturity or repurchase requires the prior approval of the OCC.

(xi) For an advanced approaches national bank or Federal savings association, the governing agreement, offering circular, or prospectus of an instrument issued after the date on which the advanced approaches national bank or Federal savings association becomes subject to this part under § 3.1(f) must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the national bank or Federal savings association enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Total capital minority interest, subject to the limitations set forth in § 3.21, that is not included in the national bank's or Federal savings association's tier 1 capital.

(3) ALLL [allowance for loan and lease losses] or AACL [adjusted allowances for credit losses, charged against earnings or retained earnings], as applicable, up to 1.25 percent of the national bank's or Federal savings association's standardized total risk-weighted assets not including any amount of the ALLL or AACL, as applicable (and excluding in the case of a market risk national bank or Federal savings association, its standardized market risk-weighted assets).

(4)(i) Any instrument that qualified as tier 2 capital under the OCC's general risk-based capital rules under appendix A to this part, 12 CFR part 167 as then in effect, that were issued under the Small Business Jobs Act of 2010, or prior to October 4, 2010, under the Emergency Economic Stabilization Act of 2008.

(ii) Any debt instruments issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.

(5) For a national bank or Federal savings association that makes an AOCI opt-out election (as defined in paragraph (b)(2) of § 3.22), 45 percent of pretax net unrealized gains

Copyright © 2024 Michael P. Malloy. All rights reserved.

on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

(6) Notwithstanding the criteria for tier 2 capital instruments referenced above, an instrument with terms that provide that the instrument may be called earlier than five years upon the occurrence of a rating agency event does not violate the criterion in paragraph (d)(1)(v) of this section provided that the instrument was issued and included in a national bank's or Federal savings association's tier 1 or tier 2 capital prior to January 1, 2014, and that such instrument satisfies all other criteria under this paragraph (d).

(e) OCC approval of a capital element.

(1) A national bank or Federal savings association must receive OCC prior approval to include a capital element (as listed in this section) in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital unless the element:

(i) Was included in a national bank's or Federal savings association's tier 1 capital or tier 2 capital prior to May 19, 2010 in accordance with the OCC's risk-based capital rules that were effective as of that date and the underlying instrument may continue to be included under the criteria set forth in this section; or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a regulatory capital element the OCC determined may be included in regulatory capital pursuant to paragraph (e)(3) of this section.

(2) When considering whether a national bank or Federal savings association may include a regulatory capital element in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the OCC will consult with the Federal Deposit Insurance Corporation and Federal Reserve Board.

(3) After determining that a regulatory capital element may be included in a national bank's or Federal savings association's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, the OCC will make its decision publicly available, including a brief description of the material terms of the regulatory capital element and the rationale for the determination.

§ 32.1 Authority, purpose and scope.

(a) Authority. This part is issued pursuant to 12 U.S.C. 1 et seq.,12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

(b) Purpose. The purpose of this part is to protect the safety and soundness of national banks and savings associations by preventing excessive loans to one person, or to related persons that are financially dependent, and to promote diversification of loans and equitable access to banking services.

(c) Scope. (1) Except as provided by paragraph (d) of this section, this part applies to all loans and extensions of credit made by national banks, savings associations, and their domestic operating subsidiaries. For purposes of this part, the term "savings association" includes Federal savings as-sociations and state savings associations, as those terms are defined in 12 U.S.C. 1813(b). This part does not apply to loans or extensions of credit made by a national bank, a savings association, and their domestic operating subsidiaries to the bank's or savings association's:

(i) Affiliates, as that term is defined in 12 U.S.C. 371c(b)(1) and (e), as implemented by 12 CFR 223.2(a) (Regulation W);

(ii) The bank's or savings association's operating subsidiaries;

(iii) Edge Act or Agreement Corporation subsidiaries; or

(iv) Any other subsidiary consolidated with the bank or savings association under Generally Accepted Accounting Principles (GAAP).

(2) The lending limits in this part are separate and independent from the investment limits pre-scribed by 12 U.S.C. 24 (Seventh) or 12 U.S.C. 1464(c), as applicable, and 12 CFR parts 1 and 160.30, and a national bank or savings association may make loans or

Copyright © 2024 Michael P. Malloy. All rights reserved.

extensions of credit to one borrower up to the full amount permitted by this part and also hold eligible securities of the same obligor up to the full amount permitted under 12 U.S.C. 24 (Seventh) or 12 U.S.C. 1464(c), as applicable, and 12 CFR part 1 and 12 CFR 160.30.

(3) Loans and extensions of credit to executive officers, directors and principal shareholders of national banks, savings associations, and their related interests are subject to limits prescribed by 12 U.S.C. 375a and 375b in addition to the lending limits established by 12 U.S.C. 84 or 12 U.S.C. 1464(u) as applicable, and this part.

(4) In addition to the foregoing, loans and extensions of credit made by national banks and their domestic operating subsidiaries must be consistent with safe and sound banking practices. . . .

§ 32.2 Definitions.

(a) Appropriate Federal banking agency has the same meaning as in 12 U.S.C. 1813(q).

(b) Borrower means a person who is named as a borrower or debtor in a loan or extension of credit; a person to whom a national bank or savings association has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank or savings association; or any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the "direct benefit" or the "common enterprise" tests set forth in § 32.5.

(c) Capital and surplus means--

(1) A national bank's or savings association's Tier 1 and Tier 2 capital calculated under the risk-based capital standards applicable to the institution as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Report); plus

(2) The balance of a national bank's or savings association's allowance for loan and lease losses not included in the bank's or savings association's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(1) of this section, as reported in the bank's or savings association's Call Report.

(d) Close of business means the time at which a national bank or savings association closes its accounting records for the business day.

(e) Consumer means the user of any products, commodities, goods, or services, whether leased or purchased, but does not include any person who purchases products or commodities for resale or fabrication into goods for sale.

(f) Consumer paper means paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Consumer paper also includes paper covering the lease (where the national bank or savings association is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(g) Contractual commitment to advance funds.

(1) The term includes a national bank's or savings association's obligation to--

(i) Make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank or savings association in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

(ii) Guarantee or act as surety for the benefit of a person;

(iii) Advance funds under a qualifying commitment to lend, as defined in paragraph (t) of this section, and

(iv) Advance funds under a standby letter of credit as defined in paragraph (ee) of this section, a put, or other similar arrangement.

(2) The term does not include commercial letters of credit and similar instruments where the issuing bank or savings association expects the beneficiary to draw on the issuer,

Copyright © 2024 Michael P. Malloy. All rights reserved.

that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.

(h) Control is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons--

(1) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person;

(2) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(3) Has the power to exercise a controlling influence over the management or policies of another person.

(i) Credit derivative has the same meaning as this term has in 12 CFR Part 3, Appendix C, Section 2.

(j) Current market value means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

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

(l) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank or savings association and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $1 million created by the derivative transactions covered by the agreement.

(m) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:

(1) The derivative contract meets the requirements of an eligible guarantee, as defined in 12 CFR part 3, Appendix C, and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives

Copyright © 2024 Michael P. Malloy. All rights reserved.

the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(n) Eligible national bank or eligible savings association means a national bank or saving association that:

(1) Is well capitalized as defined in the prompt corrective action rules applicable to the institution; and

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with the national bank's or savings association's most recent examination or subsequent review, with at least a rating of 2 for asset quality and for management.

(o) Eligible protection provider means:

(1) A sovereign entity (a central government, including the U.S. government; an agency; department; ministry; or central bank);

(2) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(3) A Federal Home Loan Bank;

(4) The Federal Agricultural Mortgage Corporation;

(5) A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(6) A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;

(7) A savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a;

(8) A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq.;

(9) An insurance company that is subject to the supervision of a State insurance regulator;

(10) A foreign banking organization;

(11) A non–U.S.-based securities firm or a non–U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

(12) A qualifying central counterparty;

(p) Financial instrument means stocks, notes, bonds, and debentures traded on a national securities exchange, OTC margin stocks as defined in Regulation U, 12 CFR part 221, commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which national banks or savings associations may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to U.S. dollars. The term “financial instrument” does not include mortgages.

(q) Loans and extensions of credit means a national bank's or savings association's direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds or repayable from specific property pledged by or on behalf of the borrower; and any credit exposure, as determined pursuant to § 32.9, arising from a derivative transaction or a securities financing transaction.

(1) Loans or extensions of credit for purposes of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part include--

(i) A contractual commitment to advance funds, as defined in paragraph (g) of this section;

(ii) A maker or endorser's obligation arising from a national bank's or savings association's discount of commercial paper;

(iii) A national bank's or savings association's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated

Copyright © 2024 Michael P. Malloy. All rights reserved.

period. The amount of the bank's or savings association's loan is the total unpaid balance of the paper owned by the bank or savings association less any applicable dealer reserves retained by the bank or savings association and held by the bank or savings association as collateral security. Where the seller's obligation to repurchase is limited, the bank's or savings association's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A national bank's or savings association's purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;

(iv) An overdraft, whether or not prearranged, but not an intra-day overdraft for which payment is received before the close of business of the national bank or savings association that makes the funds available;

(v) The sale of Federal funds with a maturity of more than one business day, but not Federal funds with a maturity of one day or less or Federal funds sold under a continuing contract; and

(vi) Loans or extensions of credit that have been charged off on the books of the national bank or savings association in whole or in part, unless the loan or extension of credit

(A) Is unenforceable by reason of discharge in bankruptcy;

(B) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or

(C) Is no longer legally enforceable for other reasons, provided that the bank or savings association maintains sufficient records to demonstrate that the loan is unenforceable.

(2) The following items do not constitute loans or extensions of credit for purposes of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part--

(i) Additional funds advanced for the benefit of a borrower by a national bank or savings association for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's or savings association's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(ii) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(iii) Financed sales of a national bank's or savings association's own assets, including Other Real Estate Owned, if the financing does not put the bank or savings association in a worse position than when the bank or savings association held title to the assets;

(iv) A renewal or restructuring of a loan as a new “loan or extension of credit,” following the exercise by a national bank or savings association of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the national bank or savings association to the borrower (except as permitted by § 32.3(b)(5)), or a new borrower replaces the original borrower, or unless the appropriate Federal banking agency determines that a renewal or restructuring was undertaken as a means to evade the bank's or savings association's lending limit;

(v) Amounts paid against uncollected funds in the normal process of collection; and

(vi)(A) That portion of a loan or extension of credit sold as a participation by a national bank or savings association on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the

Copyright © 2024 Michael P. Malloy. All rights reserved.

agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(B) When an originating national bank or savings association funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank or savings association to the borrower. If the portions so attributed to the borrower exceed the originating bank's or savings association's lending limit, the loan may be treated as nonconforming subject to § 32.6, rather than a violation, if:

(1) The originating national bank or savings association had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's or savings association's lending limit;

(2) The participant reconfirmed its participation and the originating national bank or savings association had no knowledge of any information that would permit the participant to withhold its participation; and

(3) The participation was to be funded by close of business of the originating national bank's or savings association's next business day.

(r) Person means an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; limited liability company; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

(s) Qualifying central counterparty has the same meaning as this term has in 12 CFR Part 3, Appendix C, Section 2.

(t) Qualifying commitment to lend means a legally binding written commitment to lend that, when combined with all other outstanding loans and qualifying commitments to a borrower, was within the national bank's or savings association's lending limit when entered into, and has not been disqualified.

(1) In determining whether a commitment is within the national bank's or savings association's lending limit when made, the bank or savings association may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's or savings association's commitment and that would be excluded from the definition of "loan or extension of credit" under paragraph (q)(2)(vi) of this section.

(2) If the national bank or savings association subsequently chooses to make an additional loan and that subsequent loan, together with all outstanding loans and qualifying commitments to a borrower, exceeds the bank's or savings association's applicable lending limit at that time, the bank's or savings association's qualifying commitments to the borrower that exceed the bank's or savings association's lending limit at that time are deemed to be permanently disqualified, beginning with the most recent qualifying commitment and proceeding in reverse chronological order. When a commitment is disqualified, the entire commitment is disqualified and the disqualified commitment is no longer considered a "loan or extension of credit." Advances of funds under a disqualified or non-qualifying commitment may only be made to the extent that the advance, together with all other outstanding loans to the borrower, do not exceed the bank's or savings association's lending limit at the time of the advance, calculated pursuant to § 32.4.

(u) Qualifying master netting agreement has the same meaning as this term has in 12 CFR part 3, Appendix C, Section 2.

(v) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(w) Readily marketable staple means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations.

(1) An article comes within this definition if--

(i) The exact price is easy to determine; and

(ii) The staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral.

(2) Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions existing at the time the loan or extension of credit that is secured by the staples is made.

(x) Residential housing units [means]:

(1) Homes (including a dwelling unit in a multi-family residential property such as a condominium or a cooperative);

(2) Combinations of homes and business property (i.e., a home used in part for business);

(3) Other real estate used for primarily residential purposes other than a home (but which may include homes);

(4) Combinations of such real estate and business property involving only minor business use (i.e., where no more than 20 percent of the total appraised value of the real estate is attributable to the business use);

(5) Farm residences and combinations of farm residences and commercial farm real estate;

(6) Property to be improved by the construction of such structures; or

(7) Leasehold interests in the above real estate.

(y) Residential real estate loan means a loan or extension of credit that is secured by 1–4 family residential real estate.

(z) Sale of Federal funds means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve Banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

(aa) Securities financing transaction means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(bb) Security has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(cc) Loans to small businesses means loans or extensions of credit “secured by nonfarm nonresidential properties” or “commercial and industrial loans” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(dd) Loans or extensions of credit to small farms means “loans secured by farmland” or “loans to finance agricultural production and other loans to farmers” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(ee) Standby letter of credit means any letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or advanced to or for the account of the account party;

(2) To make payment on account of any indebtedness undertaken by the account party; or

(3) To make payment on account of any default by the account party in the performance of an obligation.

Copyright © 2024 Michael P. Malloy. All rights reserved.

§ 32.3 Lending limits.

(a) Combined general limit. A national bank's or savings association's total outstanding loans and extensions of credit to one borrower may not exceed 15 percent of the bank's or savings association's capital and surplus, plus an additional 10 percent of the bank's or savings association's capital and surplus, if the amount that exceeds the bank's or savings association's 15 percent general limit is fully secured by readily marketable collateral, as defined in § 32.2(v). To qualify for the additional 10 percent limit, the bank or savings association must perfect a security interest in the collateral under applicable law and the collateral must have a current market value at all times of at least 100 percent of the amount of the loan or extension of credit that exceeds the bank's or savings association's 15 percent general limit.

(b) Loans subject to special lending limits. The following loans or extensions of credit are subject to the lending limits set forth below. When loans and extensions of credit qualify for more than one special lending limit, the special limits are cumulative.

(1) Loans secured by bills of lading or warehouse receipts covering readily marketable staples.

(i) A national bank's or savings association's loans or extensions of credit to one borrower secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples, as defined in § 32.2(w), may not exceed 35 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. The market value of the staples securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's or savings association's combined general limit.

(ii) Staples that qualify for this special limit must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance if such insurance is customary. Whether a staple is non-perishable must be determined on a case-by-case basis because of differences in handling and storing commodities.

(iii) This special limit applies to a loan or extension of credit arising from a single transaction or secured by the same staples, provided that the duration of the loan or extension of credit is:

(A) Not more than ten months if secured by nonperishable staples; or

(B) Not more than six months if secured by refrigerated or frozen staples.

(iv) The holder of the warehouse receipts, order bills of lading, documents qualifying as documents of title under the Uniform Commercial Code, or other similar documents, must have control and be able to obtain immediate possession of the staple so that the bank or savings association is able to sell the underlying staples and promptly transfer title and possession to a purchaser if default should occur on a loan secured by such documents. The existence of a brief notice period, or similar procedural requirements under applicable law, for the disposal of the collateral will not affect the eligibility of the instruments for this special limit.

(A) Field warehouse receipts are an acceptable form of collateral when issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the staples even though the grain elevator or warehouse is maintained on the premises of the owner of the staples.

(B) Warehouse receipts issued by the borrower-owner that is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or Federal authorities, may be considered eligible collateral under this provision only when the receipts are registered with an independent registrar whose consent is required before the staples may be withdrawn from the warehouse.

(2) Discount of installment consumer paper.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(i) A national bank's or savings association's loans and extensions of credit to one borrower that arise from the discount of negotiable or nonnegotiable installment consumer paper, as defined at § 32.2(f), that carries a full recourse endorsement or unconditional guarantee by the person selling the paper, may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. An unconditional guarantee may be in the form of a repurchase agreement or separate guarantee agreement. A condition reasonably within the power of the bank or savings association to perform, such as the repossession of collateral, will not make conditional an otherwise unconditional guarantee.

(ii) Where the seller of the paper offers only partial recourse to the bank, the lending limits of this section apply to the obligation of the seller to the bank, which is measured by the total amount of paper the seller may be obligated to repurchase or has guaranteed.

(iii) Where the bank or savings association is relying primarily upon the maker of the paper for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the seller of the paper, the lending limits of this section apply only to the maker. The bank or savings association must substantiate its reliance on the maker with--

(A) Records supporting the bank's or savings association's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the bank or savings association or by a third party that is contractually obligated to make those records available for examination purposes; and

(B) A written certification by an officer of the bank or savings association authorized by the bank's or savings association's board of directors or any designee of that officer, that the bank or savings association is relying primarily upon the maker to repay the loan or extension of credit.

(iv) Where paper is purchased in substantial quantities, the records, evaluation, and certification must be in a form appropriate for the class and quantity of paper involved. The bank or savings association may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.

(3) Loans secured by documents covering livestock.

(i) A national bank's or savings association's loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or give a first lien on livestock may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. The market value of the livestock securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's or savings association's combined general limit. For purposes of this subsection, the term “livestock” includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry and fish, whether or not held for resale.

(ii) The bank or savings association must maintain in its files an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate, but in any case not more than 12 months old.

(iii) Under the laws of certain states, persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If a lien that is based on pasturage furnished by the lienor prior to the bank's or savings association's loan or extension of credit is assigned to the bank or savings association by a recordable instrument and protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise, it will qualify under this exception provided the amount of the perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the portion of the loan or extension of credit that exceeds the bank's or savings association's combined general limit. When the amount

Copyright © 2024 Michael P. Malloy. All rights reserved.

due under the grazing contract is dependent upon future performance, the resulting lien does not meet the requirements of the exception.

(4) Loans secured by dairy cattle. A national bank's or savings association's loans and extensions of credit to one borrower that arise from the discount by dealers in dairy cattle of paper given in payment for the cattle may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. To qualify, the paper--

(i) Must carry the full recourse endorsement or unconditional guarantee of the seller; and

(ii) Must be secured by the cattle being sold, pursuant to liens that allow the bank or savings association to maintain a perfected security interest in the cattle under applicable law.

(5) Additional advances to complete project financing pursuant to renewal of a qualifying commitment to lend. A national bank or savings association may renew a qualifying commitment to lend, as defined by § 32.2(t), and complete funding under that commitment if all of the following criteria are met--

(i) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank;

(ii) The completion of funding will enable the borrower to complete the project for which the qualifying commitment to lend was made; and

(iii) The amount of the additional funding does not exceed the unfunded portion of the bank's or savings association's qualifying commitment to lend.

(c) Loans not subject to the lending limits. The following loans or extensions of credit are not subject to the lending limits of 12 U.S.C. 84, or 12 U.S.C. 1464(u), as applicable, or this part.

(1) Loans arising from the discount of commercial or business paper.

(i) Loans or extensions of credit arising from the discount of negotiable commercial or business paper that evidences an obligation to the person negotiating the paper. The paper--

(A) Must be given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or any other business purpose that may reasonably be expected to provide funds for payment of the paper; and

(B) Must bear the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions, that is transferred without recourse, or with limited recourse, must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper, such as insurance provided by the Export–Import Bank.

(ii) A failure to pay principal or interest on commercial or business paper when due does not result in a loan or extension of credit to the maker or endorser of the paper; however, the amount of such paper thereafter must be counted in determining whether additional loans or extensions of credit to the same borrower may be made within the limits of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part.

(2) Bankers' acceptances. A national bank's or savings association's acceptance of drafts eligible for rediscount under 12 U.S.C. 372 and 373 or 12 U.S.C. 1464(c)(1)(M), as applicable, or a national bank's or savings association's purchase of acceptances created by other banks or savings associations that are eligible for rediscount under those sections; but not including--

(i) A national bank's or savings association's acceptance of drafts ineligible for rediscount (which constitutes a loan by the bank or savings association to the customer for whom the acceptance was made, in the amount of the draft);

(ii) A national bank's or savings association's purchase of ineligible acceptances created by other banks or savings associations (which constitutes a loan from the purchasing

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank or savings association to the accepting bank or savings association, in the amount of the purchase price); and

(iii) A national bank's or savings association's purchase of its own acceptances (which constitutes a loan to the bank's or savings association's customer for whom the acceptance was made, in the amount of the purchase price).

(3)(i) Loans secured by U.S. obligations. Loans or extensions of credit, or portions thereof, to the extent fully secured by the current market value of:

(A) Bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by similar obligations fully guaranteed as to principal and interest by the United States;

(B) Loans to the extent guaranteed as to repayment of principal by the full faith and credit of the U.S. government, as set forth in paragraph (c)(4)(ii) of this section.

(ii) To qualify a loan or extension of credit under paragraph (c)(3)(i) of this section, the national bank or savings association must perfect a security interest in the collateral under applicable law.

(4) Loans to or guaranteed by a Federal agency.

(i) Loans or extensions of credit to any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States.

(ii) Loans or extensions of credit, including portions thereof, to the extent secured by unconditional takeout commitments or guarantees of any of the foregoing governmental entities. The commitment or guarantee--

(A) Must be payable in cash or its equivalent within 60 days after demand for payment is made;

(B) Is considered unconditional if the protection afforded the national bank or savings association is not substantially diminished or impaired if loss should result from factors beyond the bank's or savings association's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank or savings association.

(5) Loans to or guaranteed by general obligations of a State or political subdivision.

(i) A loan or extension of credit to a State or political subdivision that constitutes a general obligation of the State or political subdivision, as defined in part 1 of this chapter, and for which the lending national bank or savings association has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the obligation in question, that the loan or extension of credit is a valid and enforceable general obligation of the borrower; and

(ii) A loan or extension of credit, including portions thereof, to the extent guaranteed or secured by a general obligation of a State or political subdivision and for which the lending bank or savings association has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the guarantee or collateral in question, that the guarantee or collateral is a valid and enforceable general obligation of that public body.

(6) Loans secured by segregated deposit accounts. Loans or extensions of credit, including portions thereof, to the extent secured by a segregated deposit account in the lending national bank or savings association, provided a security interest in the deposit has been perfected under applicable law.

(i) Where the deposit is eligible for withdrawal before the secured loan matures, the bank or savings association must establish internal procedures to prevent release of the security without the lending bank's or savings association's prior consent.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(ii) A deposit that is denominated and payable in a currency other than that of the loan or extension of credit that it secures may be eligible for this exception if the currency is freely convertible to U.S. dollars.

(A) This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit.

(B) The lending bank or savings association must establish procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

(7) Loans to financial institutions with the approval of the appropriate Federal banking agency. Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of a financial institution when an emergency situation exists and a national bank or savings association is asked to provide assistance to another financial institution, and the loan is approved by the appropriate Federal banking agency. For purposes of this paragraph, financial institution means a commercial bank, savings bank, trust company, savings association, or credit union.

(8) Loans to the Student Loan Marketing Association. Loans or extensions of credit to the Student Loan Marketing Association.

(9) Loans to industrial development authorities. A loan or extension of credit to an industrial development authority or similar public entity created to construct and lease a plant facility, including a health care facility, to an industrial occupant will be deemed a loan to the lessee, provided that--

(i) The national bank or savings association evaluates the creditworthiness of the industrial occupant before the loan is extended to the authority;

(ii) The authority's liability on the loan is limited solely to whatever interest it has in the particular facility;

(iii) The authority's interest is assigned to the bank or savings association as security for the loan or the industrial occupant issues a promissory note to the bank or savings association that provides a higher order of security than the assignment of a lease; and

(iv) The industrial occupant's lease rentals are assigned and paid directly to the bank or savings association.

(10) Loans to leasing companies. A loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease will be deemed a loan to the lessee, provided that--

(i) The national bank or savings association evaluates the creditworthiness of the lessee before the loan is extended to the leasing corporation;

(ii) The loan is without recourse to the leasing corporation;

(iii) The bank or savings association is given a security interest in the equipment and in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;

(iv) The leasing corporation assigns all of its rights under the lease to the bank or savings association;

(v) The lessee's lease payments are assigned and paid to the bank or savings association; and

(vi) The lease terms are subject to the same limitations that would apply to a national bank or savings association acting as a lessor.

(11) Credit Exposures arising from transactions financing certain government securities. Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in 12 CFR 1.2(j), in the case of national banks, or securities listed in section 5(c)(1)(C), (D), (E), and (F) of HOLA and general obligations of a state or subdivision as listed in section 5(c)(1)(H) of HOLA, 12 U.S.C. 1464(c)(1)(C), (D), (E), (F), and (H), in the case of savings associations.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(12) Intraday credit exposures. Intraday credit exposures arising from a derivative transaction or securities financing transaction.

(d) Special lending limits for savings associations.

(1) $500,000 exception for savings associations. If a savings association's aggregate lending limitation calculated under paragraph (a) of this section is less than $500,000, notwithstanding this limitation in paragraph (a) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed $500,000.

(2) Loans by savings associations to develop domestic residential housing units. (i) Subject to paragraph (d)(2)(ii) of this section, a savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all loans and extensions of credit subject to paragraph (a) of this section, provided that:

(A) The savings association is, and continues to be, in compliance with 12 CFR part 3, part 390, subpart Z, or part 324, as applicable;

(B) Upon application by a savings association under paragraph (d)(2)(iv) of this section, the appropriate Federal banking agency permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(2)(i);

(C) The loans and extensions of credit made under this paragraph (d)(2)(i) to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(D) The loans and extensions of credit made under this paragraph (d)(2)(i) comply with the applicable loan-to-value requirements.

(ii) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(2)(i) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(2)(i) of this section or any condition(s) set forth in an order issued by the appropriate Federal banking agency under paragraphs (d)(2)(i)(B) and (d)(2)(iv) of this section.

(iii) As used in this section, the term "to develop" includes each of the various phases necessary to produce housing units as an end product, such as acquisition, development and construction; development and construction; construction; rehabilitation; and conversion; and the term "domestic" includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands;

(iv) Procedures—(A) Federal savings associations. (1) Application. A Federal savings association must submit an application to, and receive approval from, the appropriate OCC supervisory office before using the higher limit set forth under paragraph (d)(2)(i) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

(i) If applicable, certification that the savings association is an "eligible savings association";

(ii) A demonstration that the savings association meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section;

(iii) A copy of a written resolution by a majority of the savings association's board of directors approving the use of the limits provided in paragraphs (d)(2)(i) of this section, and confirming the terms and conditions for use of this lending authority; and

(iv) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

(2) Expedited review. An application by an eligible savings association is deemed approved as of the 30th day after the application is received by the OCC, unless before that

Copyright © 2024 Michael P. Malloy. All rights reserved.

date the OCC informs the savings association it must obtain prior written approval from the OCC.

(B) State savings associations. A state savings association shall seek approval to use the higher limit set forth under paragraph (d)(2)(i) of this section from its appropriate Federal banking agency, under the rules and procedures established by the appropriate Federal banking agency.

(3) Commercial paper and corporate debt securities. In addition to the amount allowed under the savings association's combined general limit, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by commercial paper or corporate debt securities that are, as of the date of purchase, investment grade.

§ 32.4 Calculation of lending limits.

(a) Calculation date. For purposes of determining compliance with 12 U.S.C. 84, and 12 U.S.C. 1464(u), as applicable, and this part, a national bank or savings association shall determine its lending limit as of the most recent of the following dates:

(1) The last day of the preceding calendar quarter; or

(2) The date on which there is a change in the bank's or savings association's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3 or 12 CFR 165.3, as applicable.

(b) Effective date.

(1) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(1) of this section will be effective as of the earlier of the following dates:

(i) The date on which the bank's or savings association's Call Report is submitted; or

(ii) The date on which the bank's or savings association's Call Report is required to be submitted.

(2) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(2) of this section will be effective on the date that the limit is to be calculated.

(c) More frequent calculations. If the appropriate Federal banking agency determines for safety and soundness reasons that a national bank or savings association should calculate its lending limit more frequently than required by paragraph (a) of this section, the appropriate Federal banking agency may provide written notice to the national bank or savings association directing it to calculate its lending limit at a more frequent interval, and the national bank or savings association shall thereafter calculate its lending limit at that interval until further notice.

§ 32.5 Combination rules.

(a) General rule. Loans or extensions of credit to one borrower will be attributed to another person and each person will be deemed a borrower--

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used; or

(2) When a common enterprise is deemed to exist between the persons.

(b) Direct benefit. The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) Common enterprise. A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will

Copyright © 2024 Michael P. Malloy. All rights reserved.

not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extensions of credit are made--

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a national bank or savings association to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the appropriate Federal banking agency determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(d) Special rule for loans to a corporate group.

(1) Loans or extensions of credit by a national bank or savings association to a corporate group may not exceed 50 percent of the bank's or savings association's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(e) Special rules for loans to partnerships, joint ventures, and associations--

(1) Partnership loans. Loans or extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2) Loans to partners.

(i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

(ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(f) Loans to foreign governments, their agencies, and instrumentalities--

(1) Aggregation. Loans and extensions of credit to foreign governments, their agencies, and instrumentalities will be aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(i) The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support (excluding guarantees by a central government of the borrower's debt) exceeds the borrower's annual revenues from other sources, it will be presumed that the means test has not been satisfied.

(ii) The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.

(2) Documentation. In order to show that the means and purpose tests have been satisfied, a national bank or savings association must, at a minimum, retain in its files the following items:

(i) A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity;

(ii) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less than three;

(iii) Financial statements for each year the loan or extension of credit is outstanding;

(iv) The national bank's or savings association's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

(v) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the national bank or savings association knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(3) Restructured loans--

(i) Non-combination rule. Notwithstanding paragraphs (a) through (e) of this section, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities (i.e., public-sector obligors) that qualified for a separate lending limit under paragraph (f)(1) of this section are consolidated under a central obligor in a qualifying restructuring, such loans will not be aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. Such loans (other than loans originally attributed to the central obligor in their own right) will not be considered obligations of the central obligor and will continue to be attributed to the original public-sector obligor for purposes of the lending limit.

(ii) Qualifying restructuring. Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (f)(3)(i) of this section only if they are restructured in a sovereign debt restructuring approved by the appropriate Federal banking agency, upon request by a national bank or savings association for application of the non combination rule. The factors that the appropriate Federal banking agency will use in making this determination include, but are not limited to, the following:

(A) Whether the restructuring involves a substantial portion of the total commercial bank loans outstanding to the foreign government, its agencies, and instrumentalities;

(B) Whether the restructuring involves a substantial number of the foreign country's external commercial bank creditors;

(C) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management; and

(D) Whether the restructuring includes features of debt or debt-service reduction.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(iii) 50 percent aggregate limit. With respect to any case in which the non-combination process under paragraph (f)(3)(i) of this section applies, a national bank's or savings association's loans and other extensions of credit to a foreign government, its agencies and instrumentalities, (including restructured debt) shall not exceed, in the aggregate, 50 percent of the bank's or savings association's capital and surplus.

§ 32.6 Nonconforming loans and extensions of credit.

(a) A loan or extension of credit, within a national bank's or savings association's legal lending limit when made, will not be deemed a violation but will be treated as nonconforming if the loan or ex-tension of credit is no longer in conformity with the bank's or savings association's lending limit be-cause-

(1) The bank's or savings association's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules have changed;

(2) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value; or

(3) In the case of a credit exposure arising from a transaction identified in § 32.9(a) and measured by the Internal Model Method specified in § 32.9(b)(1)(i) or § 32.9 (c)(1)(i), the credit exposure subject to the lending limits of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, or this part in-creases after execution of the transaction.

(b) A national bank or savings association must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of paragraph (a)(1) or (a)(3) of this section into conformity with the bank's or savings association's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(c) A national bank or savings association must bring a loan that is nonconforming as a result of circumstances described in paragraph (a)(2) of this section into conformity with the bank's or savings association's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's or savings association's control prevent it from taking action.

Copyright © 2024 Michael P. Malloy. All rights reserved.

2024 SUPPLEMENT

p. 299: *In note 5.6, replace the fifth line to read as follows*:

dition, the "appropriate Federal banking agency" (*e.g.*, the OCC for federal savings associations, the FDIC for insured state savings associations) is statutory authority

p. 331: *In note 5.29, second line, replace "5.25" with "5.5".*

p. 344: *In note 5.32, replace the second line with the following*:

involved in this case? Is it at all significant, as the dissent repeatedly stressed, the state

p. 345: *In note 5.35, replace lines 15-17 with the following*:

person." *Id.* There has been some speculation that state officials and

Copyright © 2024 Michael P. Malloy. All rights reserved.

p. 359: Replace Note 5.38 with the following:

Notes and Comments 5.38. The Comptroller's interpretive rule about visitorial powers has since been amended. 76 Fed. Reg. 43,549, 43,565 (2011) (codified at 12 C.F.R. § 7.4000(a)(1), (a)(2)(iv), (b)-(d)); 80 Fed. Reg. 28,470, 28,472 (2015) (codified at 12 C.F.R. § 7.4000). Would the revised rule, excerpted below, survive under *Cuomo*?

§ 7.4000 Visitorial powers with respect to national banks.

(a) General rule.

(1) Under 12 U.S.C. 484, only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks. State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law. However, production of a bank's records (other than non-public OCC information under 12 CFR part 4, subpart C) may be required under normal judicial procedures.

(2) For purposes of this section, visitorial powers include:

(i) Examination of a bank;

(ii) Inspection of a bank's books and records;

(iii) Regulation and supervision of activities authorized or permitted pursuant to federal banking law; and

(iv) Enforcing compliance with any applicable Federal or state laws concerning those activities, including through investigations that seek to ascertain compliance through production of non-public information by the bank, except as otherwise provided in paragraphs (a), (b), and (c) of this section.

(3) Unless otherwise provided by Federal law, the OCC has exclusive visitorial authority with respect to the content and conduct of activities authorized for national banks under Federal law.

(b) Exclusion. In accordance with the decision of the Supreme Court in Cuomo v. Clearing House Assn., L. L. C., 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce an applicable law against a national bank and to seek relief as authorized by such law is not an exercise of visitorial powers under 12 U.S.C. 484.

(c) Exceptions to the general rule. Under 12 U.S.C. 484, the OCC's exclusive visitorial powers are subject to the following exceptions:

(1) Exceptions authorized by Federal law. National banks are subject to such visitorial powers as are provided by Federal law. Examples of laws vesting visitorial power in other governmental entities include laws authorizing state or other Federal officials to:

(i) Inspect the list of shareholders, provided that the official is authorized to assess taxes under state authority (12 U.S.C. 62; this section also authorizes inspection of the shareholder list by shareholders and creditors of a national bank);

(ii) Review, at reasonable times and upon reasonable notice to a bank, the bank's records solely to ensure compliance with applicable state unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws (12 U.S.C. 484(b));

(iii) Verify payroll records for unemployment compensation purposes (26 U.S.C. 3305(c));

(iv) Ascertain the correctness of Federal tax returns (26 U.S.C. 7602);

(v) Enforce the Fair Labor Standards Act (29 U.S.C. 211); and

(vi) Functionally regulate certain activities, as provided under the Gramm–Leach–Bliley Act, Pub.L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) Exception for courts of justice. National banks are subject to such visitorial powers as are vested in the courts of justice. This exception pertains to the powers inherent in the judiciary.

(3) Exception for Congress. National banks are subject to such visitorial powers as shall be, or have been, exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

(d) Report of examination. The report of examination made by an OCC examiner is designated solely for use in the supervision of the bank. The bank's copy of the report is the property of the OCC and is loaned to the bank and any holding company thereof solely for its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in 12 CFR part 4.

5.38A. How should we reconcile the holdings in *Watters* and *Cuomo*? In *Cuomo*, Justice Scalia argues that the two decisions are in harmony – "[*Watters*] is fully in accord with the well established distinction between supervision and law enforcement." This suggests that *Watters* concerned a question of "supervision" – and thus the state statute was preempted, whereas *Cuomo* involved "law enforcement," and state law properly pursued in state courts would not be preempted. The following case seems to pit the two cases against each other, with the majority using *Watters* to preempt a state garnishment statute and the dissent trying to use *Cuomo* to insulate the statute from preemption. Which opinion seems persuasive to you?

Copyright © 2024 Michael P. Malloy. All rights reserved.

p. 365: Add the following before § 3:

Notes and Comments 5.38B. Mortgagors caught up in the financial crisis have received relatively little assistance from government responses to the crisis. Affected mortgagors, faced with a dramatic deterioration in the value of residential real estate and the rising threat of foreclosure, have been left largely to their own devices to fashion whatever remedies or defenses they could from applicable transactional and consumer law, either in federal courts,[45a] or in state courts.[45b] The following excerpt offers an interesting example of the way in which ordinary transactional rules can be put to use in mortgagors' response to a foreclosure. In reviewing this case, consider (a) whether the outcome in the case makes sense; and, (b) whether you could construct a regulation that might achieve the same result as a matter of administrative law, generally applicable to any securitized mortgage that becomes the subject of a foreclosure action.

Deutsche Bank Natl. Trust Co. v. Pelletier

31 A.3d 1235, 2011 ME 110 (2011)

SAUFLEY, C.J.

[The holder of a note and mortgage, part of a "securitized" pool of mortgages, brought a mortgage foreclosure action against the Pelletiers, mortgagors of the property. The trial court granted the mortgagors' motion for summary judgment, and the holder appealed. The Supreme Judicial Court of Maine affirmed and remanded, holding that the mortgagors had a right to rescind the loan transaction, and that remand was warranted for the purpose of determining how the rescission should be effected.]

Deutsche Bank National Trust Company, as trustee in trust for the registered holders of Ameriquest Mortgage Securities Inc., asset-backed pass-through certificates, series 2006–R2, appeals from a summary judgment entered in the District Court (Fort Kent, Soucy, J.) in favor of Donald P. Pelletier and Kim M. Pelletier on the bank's complaint for foreclosure. The court concluded that Deutsche Bank had failed to dispute facts asserted by the Pelletiers demonstrating that they had asserted a right of rescission. Although we affirm the court's determination that the Pelletiers were entitled to rescission, we remand the matter for further proceedings to effectuate that rescission.

I. BACKGROUND

. . . In 2006, the Pelletiers applied to Ameriquest by telephone to refinance their existing mortgage on their residence. They were told that they would get a fixed rate mortgage

---

[45a] *See, e.g.*, Jesinoski v. Countrywide Home Loans, Inc., --- U.S. ---, 135 S. Ct. 790 (2015) (in action by mortgagors against lenders, seeking rescission of their home loan due to alleged violations of Truth in Lending Act (TILA), holding that TILA required only written notice of intent to seek rescission, rather than filing suit, within three-year period for exercising that right), *abrogating* Keiran v. Home Capital, Inc., 720 F.3d 721 (8th Cir. 2013); McFarland v. Wells Fargo Bank, N.A., 810 F.3d 273 (4th Cir. 2016) (holding that West Virginia Consumer Credit and Protection Act (WVCCPA) authorized "unconscionable inducement" claim based on process leading up to contract formation; finding claim independent of any showing of substantive unconscionability).

[45b] *See, e.g.*, Boyle v. Vesuvio Holdings, LLC, — P.3d —, 2016 WL 5956751 (Cal. App. 2016) (reversing dismissal of action challenging nonjudicial foreclosure of property); Emigrant Sav. Bank-Long Island v. Berkowitz, 51 Misc. 3d 765, 25 N.Y.S.3d 862 (N.Y. Sup. Ct. 2016) (holding mortgagor's failure properly to serve notice of appeal following loan servicer's rejection of loss mitigation plan made Consumer Financial Protection Bureau (CFPB) Real Estate Settlement Procedures Act regulations, 12 C.F.R. pt. 1024, inapplicable); Brown v. M & T Bank, 183 So. 3d 1270 (Fla. App. 2016) (holding that dismissal of foreclosure action for lack of standing does not operate as adjudication on merits for purposes of res judicata).

Copyright © 2024 Michael P. Malloy. All rights reserved.

loan for $80,000 to pay off the existing mortgage debt of $46,000 and some other small debts. They were also told that Ameriquest would pay for the appraisal fee. Despite the bank's assertions to the contrary, the Pelletiers did not receive a good-faith estimate, a notice of the three-day right of rescission, or any copies of loan documents before or at the time of the closing, which occurred on January 18, 2006.

The Pelletiers' signatures appear on forms indicating that, before or at the time of closing on the note and mortgage with Ameriquest, they received notices required by the federal and state Truth–in–Lending Acts (TILA and MeTILA), codified at 15 U.S.C.S. §§ 1601–1667f (LexisNexis 2011) and 9–A M.R.S. §§ 8–101 to 8–404 (2010), including the provisions of the Home Ownership and Equity Protection Act of 1994 (HOEPA), 15 U.S.C.S. § 1639;[1] 9–A M.R.S. §§ 8–206–E, 8–206–H to 8–206–J, and by the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C.S. §§ 2601–2617 (LexisNexis 2009). The Pelletiers' unrebutted affidavits offered in support of summary judgment aver, however, that Ameriquest did not, in fact, provide them with these notices or notify them that they had three days to rescind the contract after closing. They also assert by affidavit that they were improperly charged for the appraisal and that the HUD settlement statement exaggerates the value that they received from the bank after closing by approximately $4,000.

Close to two years after the closing, the Pelletiers' payments were increased. They could not afford these new payments and called the bank to see why their payments had gone up. The bank informed the Pelletiers that they had an adjustable rate note.

On October 28, 2008, Deutsche Bank National Trust Company, the asserted current holder of the note and mortgage, filed a complaint for foreclosure and declared due the entire principal plus charges, fees, interest, and escrow advances, for a total of $85,892.78 as of October 27, 2008. The Pelletiers, who were self-represented at the time, filed a motion to dismiss and asserted affirmative defenses through which they sought rescission as a remedy. In support of their motion, they filed an affidavit attaching the Housing and Urban Development settlement statement that Ameriquest produced and the TILA disclosure form, which was signed by both of the Pelletiers.

Deutsche Bank objected to the motion to dismiss. After proceedings that are not relevant here, the court entered a procedural order on August 13, 2010, in which it appropriately notified the parties that the motion to dismiss with affirmative defenses would be treated as an answer generally denying the claim for relief and asserting a right of rescission, and as a motion for summary judgment. . . .

. . . Deutsche Bank . . . submitted an incomplete, unsigned affidavit containing blank spaces for the affiant's name and title, and the date. The bank did not file an opposing statement of material facts pursuant to M.R. Civ. P. 56(h)(2) or move for enlargement of time to file such a statement. Nor did Deutsche Bank ever file a completed affidavit.

---

[1] These statutes were recently amended, but the amendments were not in effect at the relevant time. See Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub.L. No. 111–203, §§ 1096, 1400–1440 (2010).

Copyright © 2024 Michael P. Malloy. All rights reserved.

On this record, with no statement of material facts or evidence having been filed by the bank, the court entered a summary judgment for the Pelletiers on October 19, 2010. The court ruled that, because the bank offered no evidence to oppose the facts offered by the Pelletiers in support of rescission, and because the evidence offered by the Pelletiers established that they had timely notified the bank of their exercise of the rescission right, they were entitled to judgment on their demand for rescission as a matter of law. The court denied the bank's subsequent "motion for articulation," which the court treated as a motion for further findings of fact and conclusions of law, . . . and it determined that the bank's motion to file a late affidavit was moot because no signed affidavit had been filed. The bank appealed.

II. DISCUSSION

Pursuant to TILA,[3] the right of rescission may be exercised "in the case of any consumer credit transaction ... in which a security interest ... is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended." 15 U.S.C.S. § 1635(a); see 9–A M.R.S. § 8–204(1).[4] There is no dispute that the debt at issue here is secured by the Pelletiers' principal dwelling. Although the statute exempts certain residential mortgage transactions entered into "to finance the acquisition or initial construction" of a consumer's dwelling, 15 U.S.C.S. §§ 1602(x), 1635(e)(1); see 9–A M.R.S. §§ 8–103(1–A)(X), 8–204(5)(A), the loan at issue here was designed to refinance the Pelletiers' existing mortgage and pay off other debts.

If proper notice of the right to rescind and other required notices and material disclosures have been given to the consumer, the consumer may exercise the right to rescind only within the three days after the transaction occurs. 15 U.S.C.S. § 1635(a); see 9–A M.R.S. § 8–204(1). If the consumer has not received notices and material disclosures, however, the right to rescind may be exercised after the three-day period has expired, but the right must still be exercised within three years after the consummation of the transaction:

> An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this chapter have not been delivered to the obligor....

15 U.S.C.S. § 1635(f); see 9–A M.R.S. § 8–204(6); see also12 C.F.R. § 226.15(a)(2), (3) (2011). Delivery of notices and material disclosures is presumed unless the fact of delivery is rebutted with evidence. 15 U.S.C.S. § 1635(c); see 9–A M.R.S. § 8–204(3).

---

[3] Although the court did not explicitly state that it was relying on TILA as the basis for the rescission remedy, we infer this basis for rescission on this summary judgment record.

[4] In the 1980s, Maine obtained an exemption from the application of the federal TILA from the Federal Reserve Board by showing that MeTILA's requirements were "substantially similar" to those imposed under the federal law and that there was "adequate provision for enforcement." 15 U.S.C.S. § 1633 (LexisNexis 2011); 9–A M.R.S. § 8–107 (2010); L.D. 213, Statement of Fact (110th Legis.1981); see also12 C.F.R. § 226.29(a) (2011). The federal TILA was amended in some ways after Maine obtained the exemption; no revocation of the existing exemption, and no further explicit exemption, is suggested in the record before us. See 15 U.S.C.S. § 1639 (LexisNexis 2011) (codifying the Home Ownership and Equity Protection Act of 1994, Pub.L. No. 103–325, § 152, 108 Stat. 2160, 2191–94 (1994)). Because the Maine and federal TILA statutes contain identical requirements for rescission, however, we need not determine whether the state or federal statutes apply, and we provide citations to both the federal and state statutes throughout our discussion.

Copyright © 2024 Michael P. Malloy. All rights reserved.

The Pelletiers offered evidence in support of summary judgment indicating that, although they signed documents at Ameriquest's request acknowledging their receipt of the required notices and disclosures, they in fact received no such notices or disclosures. The Pelletiers thereby provided evidence to rebut the statutory presumption of delivery. See 15 U.S.C.S. § 1635(c); see also 9–A M.R.S. § 8–204(3). In the absence of any contrary evidence offered by the bank, the court did not err in accepting the Pelletiers' evidence as true. See M.R. Civ. P. 56(h)(4).[5]

Because the court's order reached only the point of determining that the Pelletiers were entitled to rescission, however, further consideration is necessary to effectuate that rescission. See 15 U.S.C.S. § 1635(b); see also 9–A M.R.S. § 8–204(2). As with the rescission remedy available in equity, see Getchell v. Kirkby, 113 Me. 91, 94, 92 A. 1007, 1008 (1915), the relevant TILA statute contemplates the parties' return to their pre-contract circumstances through the mutual return and tender of funds and property:

> Return of money or property following rescission. When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. *Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value.* Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

15 U.S.C.S. § 1635(b) (emphasis added); see 9–A M.R.S. § 8–204(2).

Although the Pelletiers have not yet tendered to the bank the proceeds of the loan that they received from Ameriquest, the statute specifies that tender is not required until the creditor has performed its obligations under the law. 15 U.S.C.S. § 1635(b). The facts established in this summary judgment record indicate that the creditor—the bank—has not yet performed its obligation to "return to the obligor any money or property given as earnest money, downpayment, or otherwise." Id. Thus, the Pelletiers were not yet required to tender the proceeds to the bank, and the court did not err in imposing the remedy of rescission on summary judgment. Further proceedings are necessary, however, to define the scope of that remedy. Because the parties have not followed the process specified by statute with precision and clarity, the court may "otherwise order[ ]" appropriate procedures to give effect to the remedy of rescission. Id. Accordingly, although we affirm the court's judgment granting the Pelletiers' request for rescission, we remand the matter for the court to determine how this rescission should be effectuated.

---

[5] Because of the bank's failure to contest the facts, we do not disturb the court's determination that the Pelletiers provided notice of their intention to rescind within three years after the closing, in compliance with TILA requirements, by delivering to the bank their motion to dismiss. 15 U.S.C.S. § 1635(f) (LexisNexis 2011); see 9–A M.R.S. § 8–204(6) (2010); see also12 C.F.R. § 226.15(a)(2), (3) (2011). The closing occurred on January 18, 2006, and the Pelletiers sent the bank a copy of their motion to dismiss, which the court accepted as a demand for rescission, on December 26, 2008.

Copyright © 2024 Michael P. Malloy. All rights reserved.

pp.368-384. Replace the excerpts from 12 C.F.R. pt. 204 with the following:

§ 204.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

(a)(1) Deposit means:

(i) The unpaid balance of money or its equivalent received or held by a depository institution in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to an account, including interest credited, or which is evidenced by an instrument on which the depository institution is primarily liable;

(ii) Money received or held by a depository institution, or the credit given for money or its equivalent received or held by the depository institution in the usual course of business for a special or specific purpose, regardless of the legal relationships established thereby, including escrow funds, funds held as security for securities loaned by the depository institution, funds deposited as advance payment on subscriptions to United States government securities, and funds held to meet its acceptances;

(iii) An outstanding teller's check, or an outstanding draft, certified check, cashier's check, money order, or officer's check drawn on the depository institution, issued in the usual course of business for any purpose, including payment for services, dividends or purchases;

(iv) Any due bill or other liability or undertaking on the part of a depository institution to sell or deliver securities to, or purchase securities for the account of, any customer (including another depository institution), involving either the receipt of funds by the depository institution, regardless of the use of the proceeds, or a debit to an account of the customer before the securities are delivered. A deposit arises thereafter, if after three business days from the date of issuance of the obligation, the depository institution does not deliver the securities purchased or does not fully collateralize its obligation with securities similar to the securities purchased. A security is similar if it is of the same type and if it is of comparable maturity to that purchased by the customer;

(v) Any liability of a depository institution's affiliate that is not a depository institution, on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral), with a maturity of less than one and one-half years, to the extent that the proceeds are used to supply or to maintain the availability of funds (other than capital) to the depository institution, except any such obligation that, had it been issued directly by the depository institution, would not constitute a deposit. If an obligation of an affiliate of a depository institution is regarded as a deposit and is used to purchase assets from the depository institution, the maturity of the deposit is determined by the shorter of the maturity of the obligation issued or the remaining maturity of the assets purchased. If the proceeds from an affiliate's obligation are placed in the depository institution in the form of a reservable deposit, no reserves need be maintained against the obligation of the affiliate since reserves are required to be maintained against the deposit issued by the depository institution. However, the maturity of the deposit issued to the affiliate shall be the shorter of the maturity of the affiliate's obligation or the maturity of the deposit;

(vi) Credit balances;

(vii) Any liability of a depository institution on any promissory note, acknowledgment of advance, bankers' acceptance, or similar obligation (written or oral), including mortgage-backed bonds, that is issued or undertaken by a depository institution as a means of obtaining funds, except any such obligation that:

(A) Is issued or undertaken and held for the account of:

(1) An office located in the United States of another depository institution, foreign bank, Edge or Agreement Corporation, or New York Investment (Article XII) Company;

(2) The United States government or an agency thereof; or

Copyright © 2024 Michael P. Malloy. All rights reserved.

(3) The Export–Import Bank of the United States, Minbanc Capital Corporation, the Government Development Bank for Puerto Rico, a Federal Reserve Bank, a Federal Home Loan Bank, or the National Credit Union Administration Central Liquidity Facility;

(B) Arises from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States Government or any agency thereof that the depository institution is obligated to repurchase;

(C) Is not insured by a Federal agency, is subordinated to the claims of depositors, has a weighted average maturity of five years or more, and is issued by a depository institution with the approval of, or under the rules and regulations of, its primary Federal supervisor;

(D) Arises from a borrowing by a depository institution from a dealer in securities, for one business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank or other immediately available funds (commonly referred to as Federal funds), received by such dealer on the date of the loan in connection with clearance of securities transactions; or

(E) Arises from the creation, discount and subsequent sale by a depository institution of its bankers' acceptance of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372).

(viii) Any liability of a depository institution that arises from the creation after June 20, 1983, of a bankers' acceptance that is not of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372) except any such liability held for the account of an entity specified in § 204.2(a)(1)(vii)(A); or

(2) Deposit does not include:

(i) Trust funds received or held by the depository institution that it keeps properly segregated as trust funds and apart from its general assets or which it deposits in another institution to the credit of itself as trustee or other fiduciary. If trust funds are deposited with the commercial department of the depository institution or otherwise mingled with its general assets, a deposit liability of the institution is created;

(ii) An obligation that represents a conditional, contingent or endorser's liability;

(iii) Obligations, the proceeds of which are not used by the depository institution for purposes of making loans, investments, or maintaining liquid assets such as cash or "due from" depository institutions or other similar purposes. An obligation issued for the purpose of raising funds to purchase business premises, equipment, supplies, or similar assets is not a deposit;

(iv) Accounts payable;

(v) Hypothecated deposits created by payments on an installment loan where (A) the amounts received are not used immediately to reduce the unpaid balance due on the loan until the sum of the payments equals the entire amount of loan principal and interest; (B) and where such amounts are irrevocably assigned to the depository institution and cannot be reached by the borrower or creditors of the borrower;

(vi) Dealer reserve and differential accounts that arise from the financing of dealer installment accounts receivable, and which provide that the dealer may not have access to the funds in the account until the installment loans are repaid, as long as the depository institution is not actually (as distinguished from contingently) obligated to make credit or funds available to the dealer;

(vii) A dividend declared by a depository institution for the period intervening between the date of the declaration of the dividend and the date on which it is paid;

(viii) An obligation representing a pass through account, as defined in this section;

(ix) An obligation arising from the retention by the depository institution of no more than a 10 per cent interest in a pool of conventional 1–4 family mortgages that are sold to third parties;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(x) An obligation issued to a State or municipal housing authority under a loan-to-lender program involving the issuance of tax exempt bonds and the subsequent lending of the proceeds to the depository institution for housing finance purposes;

(xi) Shares of a credit union held by the National Credit Union Administration or the National Credit Union Administration Central Liquidity Facility under a statutorily authorized assistance program; and

(xii) Any liability of a United States branch or agency of a foreign bank to another United States branch or agency of the same foreign bank, or the liability of the United States office of an Edge Corporation to another United States office of the same Edge Corporation.

(b)(1) Demand deposit means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. Demand deposits may be in the form of:

(i) Checking accounts;

(ii) Certified, cashier's, teller's, and officer's checks (including such checks issued in payment of dividends);

(iii) Traveler's checks and money orders that are primary obligations of the issuing institution;

(iv) Checks or drafts drawn by, or on behalf of, a non-United States office of a depository institution on an account maintained at any of the institution's United States offices;

(v) Letters of credit sold for cash or its equivalent;

(vi) Withheld taxes, withheld insurance and other withheld funds;

(vii) Time deposits that have matured or time deposits upon which the contractually required notice of withdrawal as given and the notice period has expired and which have not been renewed (either by action of the depositor or automatically under the terms of the deposit agreement); and

(viii) An obligation to pay, on demand or within six days, a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution's customer already has been debited.

(2) The term demand deposit also means deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which the depositor is authorized to make withdrawals or transfers in excess of the withdrawal or transfer limitations specified in paragraph (d)(2) of this section for such an account and the account is not a NOW account, or an ATS account or other account that meets the criteria specified in either paragraph (b)(3)(ii) or (iii) of this section.

(3) Demand deposit does not include:

(i) Any account that is a time deposit or a savings deposit under this part;

(ii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and either—

(A) Is subject to check, draft, negotiable order of withdrawal, share draft, or similar item, such as an account authorized by 12 U.S.C. 1832(a) (NOW account) and a savings deposit described in § 204.2(d)(2), provided that the depositor is eligible to hold a NOW account; or

(B) From which the depositor is authorized to make transfers by preauthorized transfer or telephonic (including data transmission) agreement, order or instruction to another account or to a third party, provided that the depositor is eligible to hold a NOW account;

(iii) Any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in

Copyright © 2024 Michael P. Malloy. All rights reserved.

the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such other account, such as accounts authorized by 12 U.S.C. 371a (automatic transfer account or ATS account), provided that the depositor is eligible to hold an ATS account; or

(iv) IBF time deposits meeting the requirements of § 204.8(a)(2).

(c)(1) Time deposit means:

(i) A deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit. A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal. If such additional early withdrawal penalties are not imposed, the account ceases to be a time deposit. The account may become a savings deposit if it meets the requirements for a saving deposit; otherwise it becomes a transaction account. Time deposit includes funds—

(A) Payable on a specified date not less than seven days after the date of deposit;

(B) Payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) Payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal;

(D) Held in club accounts (such as Christmas club accounts and vacation club accounts that are not maintained as savings deposits) that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within six days from the end of the period; or

(E) Share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations;

(ii) An IBF time deposit meeting the requirements of § 204.8(a)(2); and

(iii) Borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by—

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof, engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.

(2) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, or statement, or by book entry or otherwise.

(d)(1) Savings deposit means a deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. The term savings deposit includes a regular share account at a credit union and a regular account at a savings and loan association.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) The term "savings deposit" also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA), that otherwise meets the requirements in paragraph (d)(1) of this section and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor may be permitted or authorized to make transfers and withdrawals to another account (including a transaction account) of the depositor at the same institution or to a third party, regardless of the number of such transfers and withdrawals or the manner in which such transfers and withdrawals are made.[4]

(3) A deposit may continue to be classified as a savings deposit even if the depository institution exercises its right to require notice of withdrawal.

(4) Savings deposit does not include funds deposited to the credit of the depository institution's own trust department where the funds involved are utilized to cover checks or drafts. Such funds are transaction accounts.

(e) Transaction account means a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, or other similar device for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine (ATM) or a remote service unit, or other electronic device, including by debit card. Transaction account includes:

(1) Demand deposits;

(2) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and that are subject to check, draft, negotiable order of withdrawal, share draft, or other similar item, including accounts described in paragraph (d)(2) of this section (savings deposits) and including accounts authorized by 12 U.S.C. 1832(a) (NOW accounts).

(3) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer or credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such accounts, including accounts authorized by 12 U.S.C. 371a (automatic transfer accounts or ATS accounts).

(4) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and under the terms of which, or by practice of the depository institution, the depositor is permitted or authorized to make withdrawals for the purposes of transferring

---

[4] In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definition of "savings deposit," a depository institution must either:

(a) Prevent withdrawals or transfers of funds from this account that are in excess of the limits established by paragraph (d)(2) of this section, or

(b) Adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the established limits on more than occasional basis. For customers who continue to violate those limits after they have been contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the transfer and draft capacities of the account. An account that authorizes withdrawals or transfers in excess of the permitted number is a transaction account regardless of whether the authorized number of transactions is actually made. For accounts described in paragraph (d)(2) of this section, the institution at its option may use, on a consistent basis, either the date on the check, draft, or similar item, or the date the item is paid in applying the limits imposed by that section.

Copyright © 2024 Michael P. Malloy. All rights reserved.

funds to another account of the depositor at the same institution (including transaction account) or for making payment to a third party, regardless of the number of such transfers and withdrawals and regardless of the manner in which such transfers and withdrawals are made.

(5) Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others or to a deposit account of the depositor.

(6) All deposits other than time deposits, including those accounts that are time deposits in form but that the Board has determined, by rule or order, to be transaction accounts.

(f)(1) Nonpersonal time deposit means:

(i) A time deposit, including an MMDA or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person;

(ii) A time deposit, including an MMDA or any other savings deposit, that represents funds deposited to the credit of a depositor that is not a natural person, other than a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

(iii) A transferable time deposit. A time deposit is transferable unless it contains a specific statement on the certificate, instrument, passbook, statement or other form representing the account that it is not transferable. A time deposit that contains a specific statement that it is not transferable is not regarded as transferable even if the following transactions can be effected: a pledge as collateral for a loan, a transaction that occurs due to circumstances arising from death, incompetency, marriage, divorce, attachment, or otherwise by operation of law or a transfer on the books or records of the institution; and

(iv) A time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in paragraph (a)(1)(vii) of this section that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by:

(A) Any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) Any office located outside the United States of a foreign bank;

(C) A foreign national government, or an agency or instrumentality thereof, engaged principally in activities which are ordinarily performed in the United States by governmental entities;

(D) An international entity of which the United States is a member; or

(E) Any other foreign, international, or supranational entity specifically designated by the Board.

(2) Nonpersonal time deposit does not include nontransferable time deposits to the credit of or in which the entire beneficial interest is held by an individual pursuant to an individual retirement account or Keogh (H.R. 10) plan under 26 U.S.C. 408, 401, or nontransferable time deposits held by an employer as part of an unfunded deferred-compensation plan established pursuant to subtitle D of the Revenue Act of 1978 (Pub.L. 95–600, 92 Stat. 2763), or a 401(k) plan under 26 U.S.C. 401(k).

(g) Natural person means an individual or a sole proprietorship. The term does not mean a corporation owned by an individual, a partnership or other association.

(h) Eurocurrency liabilities means:

(1) For a depository institution or an Edge or Agreement Corporation organized under the laws of the United States, the sum, if positive, of the following:

(i) Net balances due to its non-United States offices and its international banking facilities (IBFs) from its United States offices;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(ii)(A) For a depository institution organized under the laws of the United States, assets (including participations) acquired from its United States offices and held by its non-United States offices, by its IBF, or by non-United States offices of an affiliated Edge or Agreement Corporation; or

(B) For an Edge or Agreement Corporation, assets (including participations) acquired from its United States offices and held by its non-United States offices, by its IBF, by non-United States offices of its U.S. or foreign parent institution, or by non-United States offices of an affiliated Edge or Agreement Corporation; and

(iii) Credit outstanding from its non-United States offices to United States residents (other than assets acquired and net balances due from its United States offices), except credit extended (A) from its non-United States offices in the aggregate amount of $100,000 or less to any United States resident, (B) by a non-United States office that at no time during the computation period had credit outstanding to United States residents exceeding $1 million, (C) to an international banking facility, or (D) to an institution that will be maintaining reserves on such credit pursuant to this part. Credit extended from non-United States offices or from IBFs to a foreign branch, office, subsidiary, affiliate of other foreign establishment (foreign affiliate) controlled by one or more domestic corporations is not regarded as credit extended to a United States resident if the proceeds will be used to finance the operations outside the United States of the borrower or of other foreign affiliates of the controlling domestic corporation(s).

(2) For a United States branch or agency of a foreign bank, the sum, if positive, of the following:

(i) Net balances due to its foreign bank (including offices thereof located outside the United States) and its international banking facility after deducting an amount equal to 8 per cent of the following: the United States branch's or agency's total assets less the sum of (A) cash items in process of collection; (B) unposted debits; (C) demand balances due from depository institutions organized under the laws of the United States and from other foreign banks; (D) balances due from foreign central banks; and (E) positive net balances due from its IBF, its foreign bank, and the foreign bank's United States and non-United States offices; and

(ii) Assets (including participations) acquired from the United States branch or agency (other than assets required to be sold by Federal or State supervisory authorities) and held by its foreign bank (including offices thereof located outside the United States), by its parent holding company, by non-United States offices or an IBF of an affiliated Edge or Agreement Corporation, or by its IBFs.

(i)(1) Cash item in process of collection means:

(i) Checks in the process of collection, drawn on a bank or other depository institution that are payable immediately upon presentation in the United States, including checks forwarded to a Federal Reserve Bank in process of collection and checks on hand that will be presented for payment or forwarded for collection on the following business day;

(ii) Government checks drawn on the Treasury of the United States that are in the process of collection; and

(iii) Such other items in the process of collection, that are payable immediately upon presentation in the United States and that are customarily cleared or collected by depository institutions as cash items, including:

(A) Drafts payable through another depository institution;

(B) Matured bonds and coupons (including bonds and coupons that have been called and are payable on presentation);

(C) Food coupons and certificates;

(D) Postal and other money orders, and traveler's checks;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(E) Amounts credited to deposit accounts in connection with automated payment arrangements where such credits are made one business day prior to the scheduled payment date to insure that funds are available on the payment date;

(F) Commodity or bill of lading drafts payable immediately upon presentation in the United States;

(G) Returned items and unposted debits; and

(H) Broker security drafts.

(2) Cash item in process of collection does not include items handled as noncash collections and credit card sales slips and drafts.

(j) Net transaction accounts means the total amount of a depository institution's transaction accounts less the deductions allowed under the provisions of § 204.3.

(k)(1) Vault cash means United States currency and coin owned and booked as an asset by a depository institution that may, at any time, be used to satisfy claims of that depository institution's depositors and that meets the requirements of paragraph (k)(2)(i) or (k)(2)(ii) of this section.

(2) Vault cash must be either:

(i) Held at a physical location of the depository institution (including the depository institution's proprietary ATMs) from which the institution's depositors may make cash withdrawals; or

(ii) Held at an alternate physical location if—

(A) The depository institution claiming the currency and coin as vault cash at all times retains full rights of ownership in and to the currency and coin held at the alternate physical location;

(B) The depository institution claiming the currency and coin as vault cash at all times books the currency and coin held at the alternate physical location as an asset of the depository institution;

(C) No other depository institution claims the currency and coin held at the alternate physical location as vault cash in satisfaction of that other depository institution's reserve requirements;

(D) The currency and coin held at the alternate physical location is reasonably nearby a location of the depository institution claiming the currency and coin as vault cash at which its depositors may make cash withdrawals (an alternate physical location is considered "reasonably nearby" if the depository institution that claims the currency and coin as vault cash can recall the currency and coin from the alternate physical location by 10 a.m. and, relying solely on ground transportation, receive the currency and coin not later than 4 p.m. on the same calendar day at a location of the depository institution at which its depositors may make cash withdrawals); and

(E) The depository institution claiming the currency and coin as vault cash has in place a written cash delivery plan and written contractual arrangements necessary to implement that plan that demonstrate that the currency and coin can be recalled and received in accordance with the requirements of paragraph (k)(2)(ii)(D) of this section at any time. The depository institution shall provide copies of the written cash delivery plan and written contractual arrangements to the Federal Reserve Bank that holds its account or to the Board upon request.

(3) "Vault cash" includes United States currency and coin in transit to a Federal Reserve Bank or a correspondent depository institution for which the reporting depository institution has not yet received credit, and United States currency and coin in transit from a Federal Reserve Bank or a correspondent depository institution when the reporting depository institution's account at the Federal Reserve or correspondent bank has been charged for such shipment.

(4) Silver and gold coin and other currency and coin whose numismatic or bullion value is substantially in excess of face value is not vault cash for purposes of this part.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(l) Pass-through account means a balance maintained by a depository institution with a correspondent institution under § 204.5(d).

(m)(1) Depository institution means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any bank that is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any savings bank or mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(f), (g));

(iii) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or any credit union that is eligible to apply to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(iv) Any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); and

(v) Any insured institution as defined in section 401 of the National Housing Act (12 U.S.C. 1724(a)) or any institution which is eligible to apply to become an insured institution under section 403 of such Act (12 U.S.C. 1726).

(2) Depository institution does not include international organizations such as the World Bank, the Inter–American Development Bank, and the Asian Development Bank.

(n) Member bank means a depository institution that is a member of the Federal Reserve System.

(o) Foreign bank means any bank or other similar institution organized under the laws of any country other than the United States or organized under the laws of Puerto Rico, Guam, American Samoa, the Virgin Islands, or other territory or possession of the United States.

(p) [Reserved]

(q) Affiliate includes any corporation, association, or other organization:

(1) Of which a depository institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the numbers of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

(2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a depository institution who own or control either a majority of the shares of such depository institution or more than 50 percent of the number of shares voted for the election of directors of such depository institution at the preceding election, or by trustees for the benefit of the shareholders of any such depository institution;

(3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one depository institution; or

(4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a depository institution or more than 50 percent of the number of shares voted for the election of directors, trustees or other persons exercising similar functions of a depository institution at the preceding election, or controls in any manner the election of a majority of the directors, trustees, or other persons exercising similar functions of a depository institution, or for the benefit of whose shareholders or members all or substantially all the capital stock of a depository institution is held by trustees.

(r) United States means the States of the United States and the District of Columbia.

(s) United States resident means (1) any individual residing (at the time of the transaction) in the United States; (2) any corporation, partnership, association or other entity organized in the United States (domestic corporation); and (3) any branch or office located in the United States of any entity that is not organized in the United States.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(t) Any deposit that is payable only at an office located outside the United States means (1) a deposit of a United States resident[9] that is in a denomination of $100,000 or more, and as to which the depositor is entitled, under the agreement with the institution, to demand payment only outside the United States or (2) a deposit of a person who is not a United States resident9 as to which the depositor is entitled, under the agreement with the institution, to demand payment only outside the United States.

(u) Teller's check means a check drawn by a depository institution on another depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, or payable at or through a depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, and which the drawing depository institution engages or is obliged to pay upon dishonor.

(v) to (x) [Reserved by 77 FR 21852]

(y) Eligible institution means—

(1) Any depository institution as described in § 204.1(c) of this part;

(2) Any trust company;

(3) Any corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.); and

(4) Any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978, 12 U.S.C. 3101(b)).

(z) Excess balance means the average balance maintained in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period that exceeds the top of the penalty-free band.

(aa) Excess balance account means an account at a Reserve Bank pursuant to § 204.10(d) of this chapter that is established by one or more eligible institutions through an agent and in which only balances of the participating eligible institutions may at any time be maintained. An excess balance account is not a "pass-through account" for purposes of this part.

(bb) Balance maintained to satisfy a reserve balance requirement means the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period to satisfy a reserve balance requirement of this part.

(cc) Targeted federal funds rate means the federal funds rate established from time to time by the Federal Open Market Committee.

(dd) Term deposit means those funds of an eligible institution that are maintained by that institution for a specified maturity at a Federal Reserve Bank pursuant to section 204.10(e) of this part.

(ee) Reserve balance requirement means the balance that a depository institution is required to maintain on average over a reserve maintenance period in an account at a Federal Reserve Bank if vault cash does not fully satisfy the depository institution's reserve requirement imposed by this part.

(ff) Deficiency means the bottom of the penalty-free band less the average balance maintained in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period.

(gg) Top of the penalty-free band means an amount equal to an institution's reserve balance requirement plus an amount that is the greater of 10 percent of the institution's reserve balance requirement or $50,000. The top of the penalty-free band for a pass-through

[9] A deposit of a foreign branch, office, subsidiary, affiliate or other foreign establishment (foreign affiliate) controlled by one or more domestic corporations is not regarded as a deposit of a United States resident if the funds serve a purpose in connection with its foreign or international business or that of other foreign affiliates of the controlling domestic corporation(s).

Copyright © 2024 Michael P. Malloy. All rights reserved.

correspondent is an amount equal to the aggregate reserve balance requirement of the correspondent (if any) and all of its respondents plus an amount that is the greater of 10 percent of that aggregate reserve balance requirement or $50,000.

(hh) Bottom of the penalty-free band means an amount equal to an institution's reserve balance requirement less an amount that is the greater of 10 percent of the institution's reserve balance requirement or $50,000. The bottom of the penalty-free band for a pass-through correspondent is an amount equal to the aggregate reserve balance requirement of the correspondent (if any) and all of its respondents less an amount that is the greater of 10 percent of that aggregate reserve balance requirement or $50,000. In no case will the penalty-free band be less than zero.

§ 204.3 Reporting and location.

(a) Every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement corporation shall file a report of deposits (or any other form or statement that may be required by the Board or by a Federal Reserve Bank) with the Federal Reserve Bank in the Federal Reserve District in which it is located, regardless of the manner in which it chooses to maintain required reserve balances.

(b) A foreign bank's U.S. branches and agencies and an Edge or Agreement corporation's offices operating within the same State and the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(c) For purposes of this part, the obligations of a majority-owned (50 percent or more) U.S. subsidiary (except an Edge or Agreement corporation) of a depository institution shall be regarded as obligations of the parent depository institution.

(d) A depository institution, a foreign bank, or an Edge or Agreement corporation shall, if possible, assign the low reserve tranche and reserve requirement exemption prescribed in § 204.4(f) to only one office or to a group of offices filing a single aggregated report of deposits. The amount of the reserve requirement exemption allocated to an office or group of offices may not exceed the amount of the low reserve tranche allocated to such office or offices. If the low reserve tranche or reserve requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche or exemption may be assigned to other offices or groups of offices of the same institution until the amount of the tranche (or net transaction accounts) or exemption (or reservable liabilities) is exhausted. The tranche or exemption may be reallocated each year concurrent with implementation of the indexed tranche and exemption, or, if necessary during the course of the year to avoid underutilization of the tranche or exemption, at the beginning of a reserve computation period.

(e) Computation of transaction accounts. Overdrafts in demand deposit or other transaction accounts are not to be treated as negative demand deposits or negative transaction accounts and shall not be netted since overdrafts are properly reflected on an institution's books as assets. However, where a customer maintains multiple transaction accounts with a depository institution, overdrafts in one account pursuant to a bona fide cash management arrangement are permitted to be netted against balances in other related transaction accounts for reserve requirement purposes.

(f) The Board and the Federal Reserve Banks will not hold a pass-through correspondent responsible for guaranteeing the accuracy of the reports of deposits submitted by its respondents.

(g)(1) For purposes of this section, a depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation is located in the Federal Reserve District that contains the location specified in the institution's charter, organizing certificate, license, or articles of incorporation, or as specified by the institution's primary regulator, or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (g)(2) of this section.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) If the location specified in paragraph (g)(1) of this section, in the Board's judgment, is ambiguous, would impede the ability of the Board or the Federal Reserve Banks to perform their functions under the Federal Reserve Act, or would impede the ability of the institution to operate efficiently, the Board will determine the Federal Reserve District in which the institution is located, after consultation with the institution and the relevant Federal Reserve Banks. The relevant Federal Reserve Banks are the Federal Reserve Bank whose District contains the location specified in paragraph (g)(1) of this section and the Federal Reserve Bank in whose District the institution is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the institution, the location of the institution's head office, the locations where the institution performs its business, and the locations that would allow the institution, the Board, and the Federal Reserve Banks to perform their functions efficiently and effectively. . . .

§ 204.4 Computation of required reserves.

(a) In determining the reserve requirement under this part, the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States (including such amounts due from United States branches and agencies of foreign banks and Edge and Agreement corporations) may be deducted from the amount of gross transaction accounts. The amount that may be deducted may not exceed the amount of gross transaction accounts.

(b) United States branches and agencies of a foreign bank may not deduct balances due from another United States branch or agency of the same foreign bank, and United States offices of an Edge or Agreement Corporation may not deduct balances due from another United States office of the same Edge or Agreement Corporation.

(c) Balances "due from other depository institutions" do not include balances due from Federal Reserve Banks, pass-through accounts, or balances (payable in dollars or otherwise) due from banking offices located outside the United States. An institution exercising fiduciary powers may not include in balances "due from other depository institutions" amounts of trust funds deposited with other banks and due to it as a trustee or other fiduciary.

(d) For institutions that file a report of deposits weekly, reserve requirements are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during a 14–day computation period ending every second Monday.

(e) For institutions that file a report of deposits quarterly, reserve requirements are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during the 7–day computation period that begins on the third Tuesday of March, June, September, and December.

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios in table 1 to this paragraph (f) to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Table 1 to Paragraph (f)

Reservable liability	Reserve requirement ratio
Net Transaction Accounts:	
$0 to reserve requirement exemption amount ($36.1 million)	0 percent of amount.
Over reserve requirement exemption amount ($36.1 million) and up to low reserve tranche ($644.0 million)	0 percent of amount.
Over low reserve tranche ($644.0 million)	$ 0 plus 0 percent of amount over $644.0S million
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

§ 204.5 Maintenance of required reserves.

(a)(1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or Agreement corporation shall satisfy reserve requirements by maintaining vault cash and, if vault cash does not fully satisfy the institution's reserve requirement, in the form of a balance maintained

(i) In the institution's account at the Federal Reserve Bank in the Federal Reserve District in which the institution is located, or

(ii) With a pass-through correspondent in accordance with § 204.5(d).

(2) Each individual institution subject to this part is responsible for satisfying its reserve balance requirement, if any, either directly with a Federal Reserve Bank or through a pass-through correspondent.

(b)(1) For institutions that file a report of deposits weekly, the balances maintained to satisfy reserve balance requirements shall be maintained during a 14–day maintenance period that begins on the third Thursday following the end of a given computation period.

(2) For institutions that file a report of deposits quarterly, the balances maintained to satisfy reserve balance requirements shall be maintained during an interval of either six or seven consecutive 14–day maintenance periods, depending on when the interval begins and ends. The interval will begin on the fourth Thursday following the end of each quarterly reporting period if that Thursday is the first day of a 14–day maintenance period. If the fourth Thursday following the end of a quarterly reporting period is not the first day of a 14–day maintenance period, then the interval will begin on the fifth Thursday following the end of the quarterly reporting period. The interval will end on the fourth Wednesday following the end of the subsequent quarterly reporting period if that Wednesday is the last day of a 14–day maintenance period. If the fourth Wednesday following the end of the subsequent quarterly reporting period is not the last day of a 14–day maintenance period, then the interval will conclude on the fifth Wednesday following the end of the subsequent quarterly reporting period.

(c) Cash items forwarded to a Federal Reserve Bank for collection and credit are not included in an institution's balance maintained to satisfy its reserve balance requirement

Copyright © 2024 Michael P. Malloy. All rights reserved.

until the expiration of the time specified in the appropriate time schedule established under Regulation J, "Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire" (12 CFR part 210). If a depository institution draws against items before that time, the charge will be made to its account if the balance is sufficient to pay it; any resulting deficiency in balances maintained to satisfy the institution's reserve balance requirement will be subject to the penalties provided by law and to the deficiency charges provided by this part. However, the Federal Reserve Bank may, at its discretion, refuse to permit the withdrawal or other use of credit given in an account for any time for which the Federal Reserve Bank has not received payment in actually and finally collected funds.

(d)(1) A depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation with a reserve balance requirement ("respondent") may select only one pass-through correspondent under this section, unless otherwise permitted by the Federal Reserve Bank in whose District the respondent is located. Eligible pass-through correspondents are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, and depository institutions, U.S. branches or agencies of foreign banks, and Edge and Agreement corporations that maintain balances to satisfy their own reserve balance requirements which may be zero, in an account at a Federal Reserve Bank. In addition, the Board reserves the right to permit other institutions, on a case-by-case basis, to serve as pass-through correspondents.

(2) Respondents or correspondents may institute, terminate, or change pass-through correspondent agreements by providing all documentation required for the establishment of the new agreement or termination of or change to the existing agreement to the Federal Reserve Banks involved within the time period specified by those Reserve Banks.

(3) Balances maintained to satisfy reserve balance requirements of a correspondent's respondents shall be maintained along with the balances maintained to satisfy a correspondent's reserve balance requirement (if any), in a single commingled account of the correspondent at the Federal Reserve Bank in whose District the correspondent is located. Balances maintained in the correspondent's account are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the balances maintained to satisfy the reserve balance requirement of a respondent.

(4)(i) A pass-through correspondent shall be responsible for maintaining balances to satisfy its own reserve balance requirement (if any) and the reserve balance requirements of all of its respondents. A charge for any deficiency in the correspondent's account will be imposed by the Reserve Bank on the correspondent maintaining the account.

(ii) Each correspondent is required to maintain detailed records for each of its respondents that permit Reserve Banks to determine whether the respondent has provided a sufficient funds to the correspondent to satisfy the reserve balance requirement of the respondent. The correspondent shall maintain such records and make such reports as the Board or Reserve Bank may requires in order to ensure the correspondent's compliance with its responsibilities under this section and shall make them available to the Board or Reserve Bank as required.

(iii) The Federal Reserve Bank may terminate any pass-through agreement under which the correspondent is deficient in its recordkeeping or other responsibilities.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(iv) Interest paid on supplemental reserves (if such reserves are required under § 204.7) held by a respondent will be credited to the account maintained by the correspondent. . . .

§ 204.6 Charges for deficiencies.

(a) Federal Reserve Banks are authorized to assess charges for deficiencies at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. Charges shall be assessed on the basis of daily average deficiencies during each maintenance period.

(b) Reserve Banks may waive the charges for deficiencies based on an evaluation of the circumstances in each individual case.

(c) In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the Federal supervisory authority involved.

(d) Violations of this part may be subject to assessment of civil money penalties by the Board under authority of Section 19(1) of the Federal Reserve Act (12 U.S.C. 505) as implemented in 12 CFR part 263. In addition, the Board and any other Federal financial institution supervisory authority may enforce this part with respect to depository institutions subject to their jurisdiction under authority conferred by law to undertake cease and desist proceedings.

§ 204.7 Supplemental reserve requirement.

(a) Finding by Board. Upon the affirmative vote of at least five members of the Board and after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board, the Board may impose a supplemental reserve requirement on every depository institution of not more than 4 percent of its total transaction accounts. A supplemental reserve requirement may be imposed if:

(1) The sole purpose of the requirement is to increase the amount of reserves maintained to a level essential for the conduct of monetary policy;

(2) The requirement is not imposed for the purpose of reducing the cost burdens resulting from the imposition of basic reserve requirements;

(3) Such requirement is not imposed for the purpose of increasing the amount of balances needed for clearing purposes; and

(4) On the date on which supplemental reserve requirements are imposed, the total amount of basic reserve requirements is not less than the amount of reserves that would be required on transaction accounts and nonpersonal time deposits under the initial reserve ratios established by the Monetary Control Act of 1980 (Pub.L. 96–221) in effect on September 1, 1980.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(b) Term.

(1) If a supplemental reserve requirement has been imposed for a period of one year or more, the Board shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need for continuing such requirement.

(2) Any supplemental reserve requirement shall terminate at the close of the first 90–day period after the requirement is imposed during which the average amount of supplemental reserves required are less than the amount of reserves which would be required if the ratios in effect on September 1, 1980, were applied.

(c) Earnings Participation Account. A depository institution's supplemental reserve requirement shall be maintained by the Federal Reserve Banks in an Earnings Participation Account. Such balances shall receive earnings to be paid by the Federal Reserve Banks during each calendar quarter at a rate not to exceed the rate earned on the securities portfolio of the Federal Reserve System during the previous calendar quarter. Additional rules and regulations maybe prescribed by the Board concerning the payment of earnings on Earnings Participation Accounts by Federal Reserve Banks.

(d) Report to Congress. The Board shall transmit promptly to the Congress a report stating the basis for exercising its authority to require a supplemental reserve under this section.

(e) Reserve requirements. At present, there are no supplemental reserve requirements imposed under this section. . . .

§ 204.9 Emergency reserve requirement.

(a) Finding by Board. The Board may impose, after consulting with the appropriate committees of Congress, additional reserve requirements on depository institutions at any ratio on any liability upon a finding by at least five members of the Board that extraordinary circumstances require such action.

(b) Term. Any action taken under this section shall be valid for a period not exceeding 180 days, and may be extended for further periods of up to 180 days each by affirmative action of at least five members of the Board for each extension.

(c) Reports to Congress. The Board shall transmit promptly to Congress a report of any exercise of its authority under this paragraph and the reasons for the exercise of authority.

(d) Reserve requirements. At present, there are no emergency reserve requirements imposed under this section.

§ 204.10 Payment of interest on balances.

(a) General.

(1) Except as provided in paragraph (c) of this section, interest on balances maintained at Federal Reserve Banks by or on behalf of an eligible institution shall be established by the Board in accordance with this section, at a rate or rates not to exceed the general level of short-term interest rates.

(2) For purposes of this section, the amount of a "balance" in an account maintained by or on behalf of an eligible institution at a Federal Reserve Bank is determined at the close of the Federal Reserve Bank's business day.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(3) For purposes of this section, "short-term interest rates" are rates on obligations with maturities of no more than one year, such as the primary credit rate and rates on term federal funds, term repurchase agreements, commercial paper, term Eurodollar deposits, and other similar instruments.

(4) The payment of interest on balances under this section shall be subject to such other terms and conditions as the Board may prescribe.

(b) Payment of interest. Interest on balances maintained at Federal Reserve Banks by or on behalf of an eligible institution is established as set forth in paragraphs (b)(1) and (2) of this section.

(1) For balances maintained in an eligible institution's master account, interest is the amount equal to the interest on reserve balances rate ("IORB rate") on a day multiplied by the total balances maintained on that day. The IORB rate is 5.4 percent.

(2) For term deposits, interest is:

(i) The amount equal to the principal amount of the term deposit multiplied by a rate specified in advance by the Board, in light of existing short-term market rates, to maintain the federal funds rate at a level consistent with monetary policy objectives; or

(ii) The amount equal to the principal amount of the term deposit multiplied by a rate determined by the auction through which such term deposits are offered.

(3) For purposes of § 204.10(b), a "master account" is the record maintained by a Federal Reserve Bank of the debtor-creditor relationship between the Federal Reserve Bank and a single eligible institution with respect to deposit balances of the eligible institution that are maintained with the Federal Reserve Bank. A "master account" is not a "term deposit," an "excess balance account," a "joint account," or any deposit account maintained with a Federal Reserve Bank governed by an agreement that states the account is not a master account.

(c) Pass-through balances. A pass-through correspondent that is an eligible institution may pass back to its respondent interest paid on balances maintained to satisfy a reserve balance requirement of that respondent. In the case of balances maintained by a pass-through correspondent that is not an eligible institution, a Reserve Bank may pay interest only on the balances maintained to satisfy a reserve balance requirement of one or more respondents up to the top of the penalty-free band, and the correspondent shall pass back to its respondents interest paid on balances in the correspondent's account.

(d) Excess balance accounts.

(1) A Reserve Bank may establish an excess balance account for eligible institutions under the provisions of this paragraph (d). Notwithstanding any other provisions of this part, the balances maintained by eligible institutions in an excess balance account represent a liability of the Reserve Bank solely to those participating eligible institutions.

(2) The participating eligible institutions in an excess balance account shall authorize another institution to act as agent of the participating institutions for purposes of general account management, including but not limited to transferring the balances of participating institutions in and out of the excess balance account. An excess balance account must be established at the Reserve Bank where the agent maintains its master account, unless otherwise determined by the Board. The agent may not commingle its own funds in the excess balance account.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(3) Balances maintained in an excess balance account may not be used for general payments or other activities.

(4) Interest on balances of eligible institutions maintained in an excess balance account is the amount equal to the IORB rate in effect on a day multiplied by the total balances maintained on that day.

(5) A Reserve Bank may establish additional terms and conditions consistent with this part with respect to the operation of an excess balance account, including, but not limited to, terms of and fees for services, conditions under which an institution may act as agent for an account, restrictions on the agent with respect to account management, penalties for noncompliance with this section or any terms and conditions, and account termination.

(e) Term deposits.

(1) A Federal Reserve Bank may accept term deposits from eligible institutions under the provisions of this paragraph (e) subject to such terms and conditions as the Board may establish from time to time, including but not limited to conditions regarding the maturity of the term deposits being offered, maximum and minimum amounts that may be maintained by an eligible institution in a term deposit, the interest rate or rates offered, early withdrawal of term deposits, pledging term deposits as collateral and, if term deposits are offered through an auction mechanism, the size of the offering, maximum and minimum bid amounts, and other relevant terms.

(2) A term deposit will not satisfy any institution's reserve balance requirement.

(3) A term deposit may not be used for general payments or settlement activities.

(f) Procedure for determination of rates. The Board anticipates that notice and public participation with respect to changes in the rate or rates of interest to be paid under this section will generally be impracticable, unnecessary, contrary to the public interest, or otherwise not required in the public interest, and that there will generally be reason and good cause in the public interest why the effective date should not be deferred for 30 days. The reason or reasons in such cases are generally expected to include that such notice, public participation, or deferment of effective date would prevent the action from becoming effective as promptly as necessary in the public interest, would permit speculators or others to reap unfair profits or to interfere with the Board's actions taken with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country, would provoke other consequences contrary to the public interest, would not aid the persons affected, or would otherwise serve no useful purpose.

Copyright © 2024 Michael P. Malloy. All rights reserved.

p.385. Add the following Note before Comment 5.41:

Note

Because the Fed has reduced reserve requirements to 0 percent for all deposit categories, in response to the current economic crisis, you may skip Notes and Comments 5.41-5.43.

pp.385-394: *Replace Comment 5.45, the cases that follow it, and Comments 5.46-5.48 with the following*:

In March 1980, the federal statutory provision with respect to NOW accounts was expanded to authorize such accounts throughout the United States. Pub. L. No. 96-221, § 303, 94 Stat. 146 (1980) (codified at 12 U.S.C. § 1832(a)(1)). This expanded authority was effective December 31, 1980. See 12 U.S.C. § 371a note. The expansion was but one feature of a broader program of product deregulation undertaken by the 1980 legislation and statutes enacted thereafter.[1] In light of recent financial crises, some scholars have argued that policymakers need to consider measures to prevent the impact of cyclical periods of deregulation on future crises.[2]

[1] For a discussion of some of the implementation activities of the Depository Institutions Deregulation Committee (DIDC) in this regard, see DiNuzzo, The Depository Institutions Deregulation Committee: Did it Achieve the Goal?, 101 Banking L.J. 100 (1984). See also Robert O. Edminster, Bank Deregulation and Deposit Reform: Some Hard Questions for Congress, 104 Banking L.J. 42 (1987).

[2] *See, e.g.*, Patricia A. McCoy, Countercyclical Regulation and its Challenges, 47 Ariz. St. L.J. 1181 (2015).

Copyright © 2024 Michael P. Malloy. All rights reserved.

2024 SUPPLEMENT

pp.402-406: *Replace everything from the heading "*Federal Deposit Insurance Corporation*" through the end of § 330.10, with the following*:

12 C.F.R. Part 330
Deposit Insurance Coverage[*]

§ 330.1 Definitions.
For the purposes of this part:
. . .
(o) Standard maximum deposit insurance amount, referred to as the "SMDIA" hereafter, means $250,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)). . . .

§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.
. . .
(d) Mortgage servicing accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative balance paid into the account by the mortgagors, up to the limit of the SMDIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 10, 2008, for all existing and future mortgage servicing accounts. . . .

§ 330.9 Joint ownership accounts.
. . .
(b) Determination of insurance coverage. The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMDIA. (Example: "A & B" have a qualifying joint account with a balance of $150,000; "A & C" have a qualifying joint account with a balance of $200,000; and "A & B & C" have a qualifying joint account with a balance of $375,000. A's combined ownership interest in all qualifying joint accounts would be $300,000 ($75,000 plus $100,000 plus $125,000); therefore, A's interest would be insured in the amount of $250,000 and uninsured in the amount of $50,000. B's combined ownership interest in all qualifying joint accounts would be $200,000 ($75,000 plus $125,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $225,000 ($100,000 plus $125,000); therefore, C's interest would be fully insured. . . .

§ 330.10 Revocable trust accounts.
(a) General rule. Except as provided in paragraph (e) of this section, the funds owned by an individual and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured (from other types of accounts the owner has at the same insured depository institution) in an amount equal to the total number of different

[*] As amended; effective until April 1, 2024.

Copyright © 2024 Michael P. Malloy. All rights reserved.

beneficiaries named in the account(s) multiplied by the SMDIA. This section applies to all accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as payable-on-death accounts, in-trust-for accounts or Totten Trust accounts, and such formal trusts are commonly referred to as living trusts or family trusts. (Example 1: Account Owner "A" has a living trust account with four different beneficiaries named in the trust. A has no other revocable trust accounts at the same FDIC–insured institution. The maximum insurance coverage would be $1,000,000, determined by multiplying 4 times $250,000 (the number of beneficiaries times the SMDIA). (Example 2: Account Owner "A" has a payable-on-death account naming his niece and cousin as beneficiaries, and A also has, at the same FDIC–insured institution, another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be $750,000. This is because the account owner has named only three different beneficiaries in the revocable trust accounts—his niece and cousin in the first, and the same niece and a friend in the second. The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount.) (Example 3: Account Owner "A" establishes a living trust account, with a balance of $300,000, naming his two children "B" and "C" as beneficiaries. A also establishes, at the same FDIC–insured institution, a payable-on-death account, with a balance of $300,000, also naming his children B and C as beneficiaries. The maximum coverage available to A is $500,000, determined by multiplying 2 times $250,000 (the number of different beneficiaries times the SMDIA). A is uninsured in the amount of $100,000. This is because all funds that a depositor holds in both living trust accounts and payable-on-death accounts, at the same FDIC–insured institution and naming the same beneficiaries, are aggregated for insurance purposes and insured to the applicable coverage limits.)

(b) Required intention and naming of beneficiaries.

(1) The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more beneficiaries must be manifested in the "title" of the account using commonly accepted terms such as, but not limited to, "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor. For purposes of this requirement, "title" includes the electronic deposit account records of the institution. (For example, the FDIC would recognize an account as a revocable trust account even if the title of the account signature card does not designate the account as a revocable trust account as long as the institution's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.) The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(2) For informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution.

(c) Definition of beneficiary. For purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended.

(d) Interests of beneficiaries outside the definition of beneficiary in this section. If a beneficiary named in a trust covered by this section does not meet the definition of beneficiary in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they

Copyright © 2024 Michael P. Malloy. All rights reserved.

shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMDIA per owner. (Example: Account Owner "A" establishes a payable-on-death account naming a pet as beneficiary with a balance of $100,000. A also has an individual account at the same FDIC–insured institution with a balance of $175,000. Because the pet is not a "beneficiary," the two accounts are aggregated and treated as a single ownership account. As a result, A is insured in the amount of $250,000, but is uninsured for the remaining $25,000.)

(e) Revocable trust accounts with aggregate balances exceeding five times the SMDIA and naming more than five different beneficiaries. Notwithstanding the general coverage provisions in paragraph (a) of this section, for funds owned by an individual in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMDIA, the maximum revocable trust account coverage for the account owner shall be the greater of either: five times the SMDIA or the aggregate amount of the interests of each different beneficiary named in the trusts, to a limit of the SMDIA per different beneficiary. (Example 1: Account Owner "A" has a living trust with a balance of $1 million and names two friends, "B" and "C" as beneficiaries. At the same FDIC–insured institution, A establishes a payable-on-death account, with a balance of $1 million naming his two cousins, "D" and "E" as beneficiaries. Coverage is determined under the general coverage provisions in paragraph (a) of this section, and not this paragraph (e). This is because all funds that A holds in both living trust accounts and payable-on-death accounts, at the same FDIC–insured institution, are aggregated for insurance purposes. Although A's aggregated balance of $2 million is more than five times the SMDIA, A names only four different beneficiaries, and coverage under this paragraph (e) applies only if there are more than five different beneficiaries. A is insured in the amount of $1 million (4 beneficiaries times the SMDIA), and uninsured for the remaining $1 million.) (Example 2: Account Owner "A" has a living trust account with a balance of $1,500,000. Under the terms of the trust, upon A's death, A's three children are each entitled to $125,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's spouse. In this case, because the balance of the account exceeds $1,250,000 (5 times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust for purposes of determining coverage are: $125,000 for each of the children (totaling $375,000), $15,000 for the friend, $175,000 for the charity, and $250,000 for the spouse (because the spouse's $935,000 is subject to the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $815,000. Thus, the maximum coverage afforded to the account owner would be $1,250,000, the greater of $1,250,000 or $815,000.)

(f) Co-owned revocable trust accounts.

(1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMDIA, subject to the limitation imposed in paragraph (e) of this section. (Example 1: A and B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same FDIC–insured institution.

Copyright © 2024 Michael P. Malloy. All rights reserved.

The maximum coverage afforded to A and B would be $1,500,000, determined by multiplying the number of owners (2) times the SMDIA ($250,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of $750,000 and B would be entitled to revocable trust coverage of $750,000.) (Example 2: A and B, two individuals, establish a payable-on-death account naming their two children, two cousins, and a charity as beneficiaries. The balance in the account is $1,750,000. Neither A nor B has any other revocable trust accounts at the same FDIC–insured institution. The maximum coverage would be determined (under paragraph (a) of this section) by multiplying the number of account owners (2) times the number of different beneficiaries (5) times $250,000, totaling $2,500,000. Because the account balance ($1,750,000) is less than the maximum coverage amount ($2,500,000), the account would be fully insured.) (Example 3: A and B, two individuals, establish a living trust account with a balance of $3.75 million. Under the terms of the trust, upon the death of both A and B, each of their three children is entitled to $600,000, B's cousin is entitled to $380,000, A's friend is entitled to $70,000, and the remaining amount ($1,500,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each co-owned account owner, would be the greater of $1,250,000 or the aggregate amount (as to each co-owner) of the interest of each different beneficiary named in the trust, to a limit of $250,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner A are: $750,000 for the children (each child's interest attributable to A, $300,000, is subject to the $250,000–per-beneficiary limitation), $190,000 for the cousin, $35,000 for the friend, and $250,000 for the charity (the charity's interest attributable to A, $750,000, is subject to the $250,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage totals $1,225,000. Thus, the maximum coverage afforded to account co-owner A would be $1,250,000, which is the greater of $1,250,000 or the aggregate of all the beneficial interests attributable to A (limited to $250,000 per beneficiary), which totaled slightly less at $1,225,000. Because B has equal ownership interest in the trust, the same analysis and coverage determination also would apply to B. Thus, of the total account balance of $3.75 million, $2.5 million would be insured and $1.25 million would be uninsured.)

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a co-owned revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under § 330.9 and shall not be insured under the provisions of this section. (Example: If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement (under paragraph (a) of this section) that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.)

(g) For deposit accounts held in connection with a living trust that provides for a life-estate interest for designated beneficiaries, the FDIC shall value each such life estate interest as the SMDIA for purposes of determining the insurance coverage available to the account owner under paragraph (e) of this section. (Example: Account Owner “A” has a living trust account with a balance of $1,500,000. Under the terms of the trust, A provides a life estate interest for his spouse. Moreover, A's three children are each entitled to

Copyright © 2024 Michael P. Malloy. All rights reserved.

$275,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's granddaughter. In this case, because the balance of the account exceeds $1,250,000 ((5) five times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: $250,000 for the spouse's life estate, $750,000 for the children (because each child's $275,000 is subject to the $250,000 per-beneficiary limitation), $15,000 for the friend, $175,000 for the charity, and $250,000 for the granddaughter (because the granddaughter's $310,000 remainder is limited by the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $1,440,000. Thus, the maximum coverage afforded to the account owner would be $1,440,000, the greater of $1,250,000 or $1,440,000.)

(h) Revocable trusts that become irrevocable trusts. Notwithstanding the provisions in section 330.13 on the insurance coverage of irrevocable trust accounts, if a revocable trust account converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners, the trust account shall continue to be insured under the provisions of this section. (Example: Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.)

(i) This section shall apply to all existing and future revocable trust accounts and all existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

Copyright © 2024 Michael P. Malloy. All rights reserved.

pp. 419-421: *Replace §§ 5.37 and 7.1000 with the following*:

§ 5.37 Investment in national bank or Federal savings association premises.

(a) Authority. 12 U.S.C. 29, 93a, 371d, 1464(c)(2), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

(b) Scope. This section addresses a national bank's or Federal savings association's investment in banking premises and other premises-related investments, loans, or indebtedness. This section also sets forth the quantitative investment limitations and procedures governing the OCC's review and approval of an application by a national bank or Federal savings association to invest in these premises.

(c) Definitions. The following definitions apply for purposes of this section.

(1) Banking premises includes:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by a national bank or Federal savings association, its respective branches, or its consolidated subsidiaries;

(ii) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(iii) Remodeling costs to existing premises;

(iv) Real estate acquired and intended, in good faith, for use in future expansion; or

(v) Parking facilities that are used by customers or employees of the national bank or Federal savings association.

(2) Capital stock means, for national banks and Federal stock savings associations, the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired. With respect to Federal mutual savings associations, "capital stock" should be read to mean the amount of the association's retained earnings.

(d) Procedure—(1) Premises application—(i) When required. A national bank or Federal savings association must submit an application to the appropriate OCC supervisory office to invest in banking premises, or in the stock, bonds, debentures, or other such obligations of any corporation, partnership, or similar entity (e.g., a limited liability company) holding the premises of the national bank or Federal savings association, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank or Federal savings association, as defined in 12 U.S.C. 221a or 12 U.S.C. 1462, respectively, will exceed the amount of the capital stock of the national bank or Federal savings association, or, in the case of a Federal mutual savings association the amount of retained earnings.

(ii) Contents of premises application. The application must include:

(A) A description of the national bank's or Federal savings association's present investment in banking premises;

(B) The investment in banking premises that the national bank or Federal savings association intends to make, and the business reason for making the investment; and

(C) The amount by which the national bank's or Federal savings association's aggregate investment will exceed the amount of the national bank's or Federal stock savings association's capital stock, or, in the case of a Federal mutual savings association, the amount of retained earnings.

(2) Approval of premises application. An application from a national bank or Federal savings association to invest in banking premises or in certain banking premises-related investments, loans or indebtedness, as described in paragraph (d)(1)(i) of this section, is deemed approved as of the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank or Federal savings association prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or

Copyright © 2024 Michael P. Malloy. All rights reserved.

policy issue. An approval for a specified amount under this section remains valid up to that amount until the OCC notifies the national bank or Federal savings association otherwise.

(3) Premises notice process—(i) General rule. Notwithstanding paragraph (d)(1)(i) of this section, a national bank or Federal savings association that is rated 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS) may make an aggregate investment in banking premises up to 150 percent of the national bank's or Federal savings association's capital and surplus without the OCC's prior approval, provided that the national bank or Federal savings association is well capitalized and will continue to be well capitalized after the investment or loan is made. However, the national bank or Federal savings association must notify the appropriate OCC supervisory office in writing of the investment within 30 days after the investment or loan is made. The written notice must include a description of the national bank's or Federal savings association's investment or loan.

(ii) Exception. If a Federal savings association that would otherwise be eligible for the premises notice process described in paragraph (d)(3)(i) of this section proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary, the Federal savings association would not be eligible for the premises notice process and would be required to comply with the provisions of § 5.59 in the case of a service corporation, or § 5.38 in the case of an operating subsidiary.

(4) Service corporation. A Federal savings association that invests in banking premises through a service corporation is not subject to the premises application and premises notice requirements of paragraph (d) of this section; however, it must include this investment when calculating the quantitative limitations in paragraph (d) of this section, and must comply with § 5.59. . . .

§ 7.1024 National bank or Federal savings association ownership of property.

(a) Investment in real estate necessary for the transaction of business—

(1) In general. A national bank or Federal savings association may invest in real estate that is necessary for the transaction of its business.

(2) Type of real estate. Real estate investments permissible under this section include:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(ii) Real estate acquired and intended, in good faith, for use in future expansion;

(iii) Parking facilities that are used by customers or employees of the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(iv) Residential property for the use of officers or employees of the national bank or Federal savings association who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(v) Property for the use of national bank or Federal savings association officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a deductible business expense for Federal tax purposes.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(3) Permissible means of holding.

(i) A national bank or Federal savings association may acquire and hold real estate under this paragraph (a) by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. The national bank or Federal savings association may hold this real estate directly or through one or more subsidiaries. The national bank or Federal savings association may organize a banking premises subsidiary as a corporation, partnership, or similar entity (e.g., a limited liability company).

(ii) A Federal savings association also may acquire and hold banking premises through a service corporation in accordance with 12 CFR 5.59.

(b) Fixed assets. A national bank or Federal savings association may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(c) Investment in banking premises—

(1) Investment limitation. Twelve CFR 5.37(d)(1)(i) and (d)(3)(i) provide quantitative investment limitations that govern when OCC approval is required for a national bank or Federal savings association to invest in banking premises.

(2) Premises approval.

(i) A national bank or Federal savings association must seek approval from the OCC in accordance with 12 CFR 5.37(d).

(ii) A Federal savings association that invests in banking premises through a service corporation must comply with the quantitative limitations in 12 CFR 5.37(d) and, to the extent applicable, 12 CFR 5.59.

(3) Option to purchase. An unexercised option to purchase banking premises or stock in a corporation holding banking premises is not an investment in banking premises. However, a national bank or Federal savings association seeking to exercise such an option must comply with the requirements in 12 CFR 5.37(d).

(d) Future national bank or Federal savings association expansion. A national bank or Federal savings association normally should use real estate acquired for future national bank or Federal savings association expansion within five years. After holding such real estate for one year, the national bank or Federal savings association must state, by resolution of its board of directors or an appropriately authorized bank or savings association official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by OCC examiners.

(e) Transition. If, on May 18, 2015, a Federal savings association holds an investment in real estate, fixed assets, banking premises, or other real property that complies with the legal requirements in effect prior to May 18, 2015, but would violate any provision of this section or § 5.37, the savings association may continue to hold such investment in accordance with the prior legal requirements. However, a Federal savings association that holds such an investment may not modify, expand or improve this investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

Copyright © 2024 Michael P. Malloy. All rights reserved.

2024 SUPPLEMENT

pp. 422-423: *Replace the excerpts from §§ 5.20 and 5.26 with the following*:

§ 5.20 Organizing a national bank or Federal savings association.

. . .

(*l*) Special purpose institutions—

(1) In general. Special purpose institutions. A filer for a national bank or Federal savings association charter that will limit its activities to fiduciary activities, credit card operations, or another special purpose must adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. A filer for a national bank or Federal savings association charter that will have a community development focus must also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. A national bank that seeks to invest in a bank or savings association with a community development focus must comply with applicable requirements of 12 CFR part 24. A Federal savings association that seeks to invest in a bank or savings association with a community development focus must comply with § 160.36 or any other applicable requirements.

(2) Changes in charter purpose. An existing national bank or Federal savings association whose activities are limited to a special purpose that desires to change to another special purpose, to add another special purpose, or to no longer be limited to a special purpose charter must submit an application and obtain prior OCC approval under § 5.53. An existing national bank or Federal savings association whose activities are not limited that desires to limit its activities and become a special purpose institution must submit an application and obtain prior OCC approval under § 5.53.

§ 5.26 Fiduciary powers of national banks and Federal savings associations.

(a) Authority. 12 U.S.C. 92a, 1462a, 1463, 1464(n), and 5412(b)(2)(B).

(b) Licensing requirements. A national bank or Federal savings association must submit an application and obtain prior approval from, or in certain circumstances file a notice with, the OCC in order to exercise fiduciary powers. No approval or notice is required in the following circumstances:

(1) Where two or more national banks consolidate or merge, and any of the national banks has, prior to the consolidation or merger, received OCC approval to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting national bank may exercise fiduciary powers in the same manner and to the same extent as the national bank to which approval was originally granted;

(2) Where two or more Federal savings associations consolidate or merge, and any of the Federal savings associations has, prior to the consolidation or merger, received approval from the OCC or the OTS to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting Federal savings association may exercise fiduciary powers in the same manner and to the same extent as the Federal savings association to which approval was originally granted;

(3) Where a national bank with prior OCC approval to exercise fiduciary powers is the resulting bank in a merger or consolidation with a State bank, State savings association, or Federal savings association and the national bank will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted; and

(4) Where a Federal savings association with prior approval from the OCC or the OTS to exercise fiduciary powers is the resulting savings association in a merger or consolidation with a State bank, State savings association, or national bank and the Federal savings association will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted.

(c) Scope. This section sets forth the procedures governing OCC review and approval of an application, and in certain cases the filing of a notice, by a national bank or Federal

Copyright © 2024 Michael P. Malloy. All rights reserved.

savings association to exercise fiduciary powers. Fiduciary activities of national banks are subject to the provisions of 12 CFR part 9. Fiduciary activities of Federal savings associations are subject to the provisions of 12 CFR part 150.

(d) Policy. The exercise of fiduciary powers is primarily a management decision of the national bank or Federal savings association. The OCC generally permits a national bank or Federal savings association to exercise fiduciary powers if the bank or savings association is operating in a satisfactory manner, the proposed activities comply with applicable statutes and regulations, and the bank or savings association retains qualified fiduciary management.

(e) Procedure—

(1) In general. The following institutions must obtain approval from the OCC in order to exercise fiduciary powers:

(i) A national bank or Federal savings association without fiduciary powers:

(ii) A national bank without fiduciary powers that desires to exercise fiduciary powers as the resulting bank after merging with a State bank, State savings association, or Federal savings association with fiduciary powers or a Federal savings association without fiduciary powers that desires to exercise fiduciary powers as the resulting savings association after merging with a State bank, State savings association or national bank with fiduciary powers;

(iii) A national bank that results from the conversion of a State bank or a State or Federal savings association that was exercising fiduciary powers prior to the conversion or a Federal savings association that results from a conversion of a State or national bank or a State savings association that was exercising fiduciary powers prior to the conversion; and

(iv) A national bank or Federal savings association that has received approval from the OCC to exercise limited fiduciary powers that desires to exercise full fiduciary powers.

(2) Application.

(i) Except as provided in paragraph (e)(2)(ii) of this section, a national bank or Federal savings association that desires to exercise fiduciary powers must submit to the OCC an application requesting approval. The application must contain:

(A) A statement requesting full or limited powers (specifying which powers);

(B) A statement that the capital and surplus of the national bank or Federal savings association is not less than the capital and surplus required by State law of State banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) Sufficient biographical information on proposed senior trust management personnel, as identified by the OCC, to enable the OCC to assess their qualifications, including, if requested by the OCC, legible fingerprints and the Interagency Biographical and Financial Report, available at www.occ.gov;

(D) A description of the locations where the national bank or Federal savings association will conduct fiduciary activities;

(E) If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable Federal or State law, including citations to applicable law; and

(F) Any other information necessary to enable the OCC to sufficiently assess the factors described in paragraph (e)(2)(iii) of this section.

(ii) If approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, the filer covered under paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this section may include a request for approval of fiduciary powers, including the information required by paragraph (e)(2)(i) of this section, as part of its other application. The OCC does not require a separate application requesting approval to exercise fiduciary powers under these circumstances.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(iii) When reviewing any application filed under this section, the OCC considers factors such as the following:

(A) The financial condition of the national bank or Federal savings association;

(B) The adequacy of the national bank's or Federal savings association's capital and surplus and whether it is sufficient under the circumstances and not less than the capital and surplus required by State law or State banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) The character and ability of proposed trust management, including qualifications, experience, and competency. The OCC must approve any trust management change the bank or savings association makes prior to commencing trust activities;

(D) The adequacy of the proposed business plan, if applicable;

(E) The needs of the community to be served; and

(F) Any other factors or circumstances that the OCC considers proper.

(3) Expedited review. An application by an eligible bank or eligible savings association to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank or savings association prior to that date that the filing has been removed from expedited review, or the expedited review process is extended, under § 5.13(a)(2).

(4) Permit. Approval of an application under this section constitutes a permit under 12 U.S.C. 92a for national banks and 12 U.S.C. 1464(n) for Federal savings associations to conduct the fiduciary powers requested in the application.

(5) Notice required. A national bank or Federal savings association that has ceased to conduct previously approved fiduciary powers for 18 consecutive months must provide the OCC with a notice describing the nature and manner of the activities proposed to be conducted and containing the information required by paragraph (e)(2)(i) of this section 60 days prior to commencing any fiduciary activity.

(6) Notice of fiduciary activities in additional States.

(i) Except as provided in paragraphs (e)(6)(iii) through (iv) of this section, a national bank or Federal savings association with existing OCC approval to exercise fiduciary powers must provide written notice to the OCC no later than 10 days after it begins to engage in any of the activities specified in § 9.7(d) of this chapter in a State in addition to the State or States described in the application for fiduciary powers that the OCC has approved.

(ii) A notice submitted pursuant to paragraph (e)(6)(i) of this section must identify the new State or States involved, identify the fiduciary activities to be conducted, and describe the extent to which the activities differ materially from the fiduciary activities the national bank or Federal savings association previously conducted.

(iii) No notice under paragraph (e)(6)(i) of this section is required if the national bank or Federal savings association provides the information required by paragraph (e)(6)(ii) of this section through other means, such as a merger application.

(iv) No notice is required if the national bank or Federal savings association is conducting only activities ancillary to its fiduciary business through a trust representative office or otherwise.

(7) Exceptions to rules of general applicability. Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(8) Expiration of approval. Approval expires if a national bank or Federal savings association does not commence fiduciary activities within 18 months from the date of approval, unless the OCC grants an extension of time.

Copyright © 2024 Michael P. Malloy. All rights reserved.

p. 432: *Replace § 9.13(a) with the following*:

(a) Control of fiduciary assets. A national bank shall place assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees designated for that purpose by the board of directors. A national bank may maintain the investments of a fiduciary account off-premises, if consistent with applicable law and if the bank maintains adequate safeguards and controls. A bank that is deemed a fiduciary based solely on its capacity as investment advisor, as that capacity is defined in § 9.101(a), and has no other fiduciary capacity as enumerated in § 9.2(e) is not required to serve as custodian when offering those fiduciary services.

p.432: *Replace § 9.14(a) with the following*:

(a) In general. If state law requires corporations acting in a fiduciary capacity to deposit securities with state authorities for the protection of private or court trusts, then before a national bank acts as a private or court-appointed trustee in that state, it shall make a similar deposit with state authorities. If the state authorities refuse to accept the deposit, the bank shall deposit the securities with the Federal Reserve Bank or Federal Home Loan Bank of the district in which the national bank is located, to be held for the protection of private or court trusts to the same extent as if the securities had been deposited with state authorities. . . .

pp. 434-436: *Delete note 5.74 and the regulatory excerpts that follow it.*

Copyright © 2024 Michael P. Malloy. All rights reserved.

2024 SUPPLEMENT

pp. 484-486: *Beginning with the first full paragraph on p.484, replace the rest of § 7 with the following*:

The GLBA encouraged the states to establish uniform or reciprocal requirements for the licensing of insurance agents.[30] Significant progress was made on licensing over the following years.[31] However, the progress lagged, and in January 2015 Congress enacted the National Association of Registered Agents and Brokers Reform Act of 2015, as Title II of the Terrorism Risk Insurance Program Reauthorization Act of 2015.[32] It established the National Association of Registered Agents and Brokers (NARAB) as a nonprofit corporation[33] with the purpose of providing "a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without [otherwise] affecting the laws, rules, and regulations, and preserving the rights of [any] State."[34] Membership in the NARAB authorizes an insurance producer,[35] as a matter of federal law, "to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities."[36]

While it is an independent institution, NARAB is required by statute to submit to the President[37] (through the Department of the Treasury) and to the states (including state insurance regulators), and to publish on its website, all proposed bylaws and standards, any proposed amendment to its bylaws or standards, and "a concise general statement of the basis and purpose of [any] such proposal."[38] Further, at the close of each fiscal year, NARAB is required to submit to the President, through the Department of the Treasury, and to the states, including state insurance regulators, and to publish on its website, "a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by [the act], during such fiscal year."[39]

---

[30] GLBA, § 321, 113 Stat. at 1422 (codified at former 15 U.S.C. § 6751).

[31] *See* U.S. Government Accountability Office, *Insurance Reciprocity and Uniformity: NAIC and State Regulators Have Made Progress in Producer Licensing, Product Approval, and Market Conduct Regulation, but Challenges Remain* (GAO-09-372, Apr. 6, 2009), *available at* 2009 WL 1262871.

[32] Pub. L. No. 114-1, Jan. 12, 2015, §§ 201-202, 129 Stat 3 (2015) (codified at 15 U.S.C. §§ 6751 et seq.).

[33] 15 U.S.C. § 6751. For the powers of the association, see *id*. § 6755. On the NARAB Board of Directors, which has the authority to govern and supervise all activities of the association, see *id*. § 6754. The act required NARAB to adopt procedures for the adoption of bylaws and standards similar to procedures under the 'Administrative Procedure Act. *Id*. § 6755.

[34] *Id*. § 6752. Inconsistent state action is to that extent explicitly preempted. *Id*. § 6760. On membership by insurance producers licensed in their respective home states, see *id*. § 6753.

[35] For these purposes, the term *insurance producer* is defined to mean "any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance." *Id*. § 6764(5). The term *insurance* is defined to mean "any product, other than title insurance or bail bonds, defined or regulated as insurance by the appropriate State insurance regulatory authority." *Id*. § 6764(4).

[36] *Id*. § 6751(c)(1)(A).

[37] On presidential oversight of NARAB, see *id*. § 6759.

[38] *Id*. § 6755(a)(2).

[39] *Id*. § 6755(a).

Copyright © 2024 Michael P. Malloy. All rights reserved.

p.497. Replace § 9.18(b)(1) with the following:

(b) Requirements. A national bank administering a collective investment fund authorized under paragraph (a) of this section shall comply with the following requirements:

(1) Written plan. The bank shall establish and maintain each collective investment fund in accordance with a written plan (Plan) approved by a resolution of the bank's board of directors or by a committee authorized by the board. The bank shall make a copy of the Plan available either for public inspection at its main office during all banking hours or on its Web site and shall provide a written or electronic copy of the Plan to any person who requests it. The Plan must contain appropriate provisions, not inconsistent with this part, regarding the manner in which the bank will operate the fund, including provisions relating to:

Copyright © 2024 Michael P. Malloy. All rights reserved.

pp.497-498. Replace § 9.18(b)(4) with the following:

(4) Valuation—

(i) Frequency of valuation. A bank administering a collective investment fund shall determine the value of the fund's readily marketable assets at least once every three months. A bank shall determine the value of the fund's assets that are not readily marketable at least once a year.

(ii) General method of valuation. Except as provided in paragraph (b)(4)(iii) of this section, a bank shall value each fund asset at mark-to-market value as of the date set for valuation, unless the bank cannot readily ascertain mark-to-market value, in which case the bank shall use a fair value determined in good faith.

(iii) Short-term investment funds (STIFs) method of valuation. A bank may value a STIF's assets on a cost basis, rather than mark-to-market value as provided in paragraph (b)(4)(ii) of this section, for purposes of admissions and withdrawals, if the Plan includes appropriate provisions, consistent with this part, requiring the STIF to:

(A) Operate with a stable net asset value of $1.00 per participating interest as a primary fund objective;

(B) Maintain a dollar-weighted average portfolio maturity of 60 days or less and a dollar-weighted average portfolio life maturity of 120 days or less as determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a–7 for money market mutual funds (17 CFR 270.2a–7);

(C) Accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity;

(D) Hold the STIF's assets until maturity under usual circumstances;

(E) Adopt portfolio and issuer qualitative standards and concentration restrictions;

(F) Adopt liquidity standards that include provisions to address contingency funding needs;

(G) Adopt shadow pricing procedures that:

(1) Require the bank to calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost price per participating interest, at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant; and

(2) Require the bank, in the event the difference calculated pursuant to this subparagraph exceeds $0.005 per participating interest, to take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF;

(H) Adopt procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest that shall provide for:

(1) The periodic stress testing, at least on a calendar month basis and at such intervals as an independent risk manager or a committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management determines appropriate and reasonable in light of current market conditions;

(2) Stress testing based upon hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in participant account withdrawals, a down-

Copyright © 2024 Michael P. Malloy. All rights reserved.

grade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the STIF has selected for overnight interest rates and commercial paper and other types of securities held by the STIF;

(3) A stress testing report on the results of such testing to be provided to the independent risk manager or the committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management that shall include: the date(s) on which the testing was performed; the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market net asset value calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its net asset value per participating interest calculated using amortized cost to exceed $0.005; and an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year; and

(4) Reporting adverse stress testing results to the bank's senior risk management that is independent from the STIF's investment management.

(I) Adopt procedures that require a bank to disclose to STIF participants and to the OCC's Asset Management Group, Credit & Market Risk Division, within five business days after each calendar month-end, the fund's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost net asset values both with and without capital support agreements; the dollar-weighted average portfolio maturity; the dollar-weighted average portfolio life maturity of the STIF as of the last business day of the prior calendar month; and for each security held by the STIF as of the last business day of the prior calendar month:

(1) The name of the issuer;

(2) The category of investment;

(3) The Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier;

(4) The principal amount;

(5) The maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(6) The final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(7) The coupon or yield; and

(8) The amortized cost value;

(J) Adopt procedures that require a bank that administers a STIF to notify the OCC's Asset Management Group, Credit & Market Risk Division, prior to or within one business day thereafter of the following:

(1) Any difference exceeding $0.0025 between the net asset value and the mark-to-market value of a STIF participating interest as calculated using the method set forth in paragraph (b)(4)(iii)(G)(1) of this section;

(2) When a STIF has re-priced its net asset value below $0.995 per participating interest;

(3) Any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(4) Any delays or suspensions in honoring STIF participating interest withdrawal requests;

(5) Any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; or

(6) In those situations when a bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable net asset value per participating interest;

(K) Adopt procedures that in the event a STIF has re-priced its net asset value below $0.995 per participating interest, the bank administering the STIF shall calculate, admit, and withdraw the STIF's participating interests at a price based on the mark-to-market net asset value; and

(L) Adopt procedures that, in the event a bank suspends or limits withdrawals and initiates liquidation of the STIF as a result of redemptions, require the bank to:

(1) Determine that the extent of the difference between the STIF's amortized cost per participating interest and its mark-to-market net asset value per participating interest may result in material dilution of participating interests or other unfair results to participating accounts;

(2) Formally approve the liquidation of the STIF; and

(3) Facilitate the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

(iv) Reservation of authority. Notwithstanding paragraph (b)(4)(iii)(B) of this section, during periods of market stress negatively affecting, on a temporary basis, the ability of banks to operate STIFs in compliance with the requirements of the paragraph:

(A) The OCC may issue an administrative order specifying, for purposes of paragraph (b)(4)(iii)(B) of this section, temporary revisions to the length of the dollar-weighted average portfolio maturity requirement, the length of dollar-weighted average portfolio life maturity, and the manner of determining such limits;

(B) A bank seeking to comply with paragraph (b)(4)(iii)(B) will be deemed to be in compliance with that paragraph's requirements by complying with the limits or other revisions, and any applicable conditions, described in the administrative order; and

(C) The OCC will publish the administrative order on www.occ.gov and through other methods, as appropriate.

Copyright © 2024 Michael P. Malloy. All rights reserved.

p. 498. Replace § 9.19(b)(5)(iii) with the following:

(iii) Prior notice period for withdrawals from funds with assets not readily marketable—

(A) A bank administering a collective investment fund described in paragraph (a)(2) of this section that is invested primarily in real estate or other assets that are not readily marketable may require a prior notice period, not to exceed one year, for withdrawals.

p.500. Replace § 9.18(c)(2) with the following:

(2) Mini-funds. In a fund maintained by the bank for the collective investment of cash balances received or held by a bank in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act, that the bank considers too small to be invested separately to advantage. The total assets in the fund must not exceed $1,500,000 and the number of participating accounts must not exceed 100. The OCC shall adjust this $1,500,000 threshold amount on January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1, rounded to the nearest $100 increment, and make this adjusted amount available to the public.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 6

Holding Company Activities

p. 541: *Replace note 6.7 with the following*:

6.7. *Impact of Dodd-Frank*. The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA)[17] impacts the scope of holding company activities, among other things, particularly as to securities activities. In February 2011, the Fed adopted an amendment to its regulations[18] that, *inter alia*, implemented a two-year period during which "banking entities"[19] must bring their activities and investments into compliance with the prohibitions and restrictions on proprietary trading and relationships with hedge funds and private

[17] Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at scattered sections of 2, 5, 7, 11, 12, 15, 18, 20, 22, 26, 28, 31, 42, 44 U.S.C.) (DFA). *See generally* S. Kenneth Lee, Note and Comment, *Section 622 of the Dodd-Frank Act: Self-Defeating Liability Concentration Limits*, 20 N.C. Banking Inst. 339, 350–352 (2016) (discussing regulation of BHC activities); Samuel N. Weinstein, *When Systemic Risk Meets Antitrust: Dodd-Frank's Impact on Competitive Markets in the Wake of an Economic Crisis*, 21 Stan. J.L. Bus. & Fin. 286, 313-314 (2016) (discussing effect of 12 U.S.C. § 1843 on competition); Douglas Landy & Rebecca Smith, *Inequitable: Investments in Non-Financial Companies Under the Volcker Rule*, 131 Banking L.J. 301 (2014) (discussing impact of DFA and implementation of DFA § 619).

[18] 76 Fed. Reg. 8265 (2011) (codified at 12 C.F.R. §§ 225.1(c)(11), 225.180-225.182; reorganizing existing 12 C.F.R. § 225.200 as Subpart L).

[19] The term *banking entity* is defined in 12 U.S.C. § 1851(h)(1) to include any company that controls an insured depository institution.

Copyright © 2024 Michael P. Malloy. All rights reserved.

equity funds[19a] imposed by Dodd-Frank Act § 619[19b] – the so-called "Volcker Rule." Section 619 generally prohibits banking entities from engaging in proprietary trading or from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund. The amendment also provides that "nonbank financial companies" supervised by the Fed – like systemically significant investment firms – that engage in such activities or have such investments are subject to additional capital requirements, quantitative limits, or other restrictions.

6.7A. *Possible Revisions of the Dodd-Frank Act*. Following the election of Donald Trump in November 2016, efforts to amend or eliminate many provisions of the Dodd-Frank Act emerged, but little of this resulted in any changes. *See* notes 1.72-1.74, *supra* (discussing post-Dodd-Frank Act developments).

6.7B. *Economic Growth, Regulatory Relief, and Consumer Protection Act* (*EGRRCPA*). In May 2018, the EGRRCPA[19c] was enacted. Title IV of the Act[19d] is intended to ease regulatory burdens for smaller BHCs. For example, the minimum amount of assets that would trigger enhanced supervision and regulation as a "systemically significant financial institution" has been raised to $250 billion from $50 billion.[19e]

[19a] 12 C.F.R. § 225.181. See 12 U.S.C. § 1851(h)(2) (defining hedge fund and private equity fund for purposes of Dodd-Frank Act provisions). Basically,

> [a] hedge fund is an investment fund, usually organized as a private investment partnership, open to a limited number of investors and requiring a very large initial minimum investment committed to the fund for a relatively long period, typically at least one year. The fund's investment strategies are usually very aggressive, making use of leveraged and derivative trading in targeted securities in order to increase the rate of return when the securities perform well. (This also means, of course, that losses can be exacerbated if the securities perform poorly.) A private equity fund is an investment fund that specializes in investments not quoted on public exchanges. The fund typically makes an investment directly into an existing private company or it may buy up a public company and take it private, "delisting" it from public exchanges in the process. Participants in a private equity fund are typically high-end investors (institutions and sophisticated, wealthy individuals) who commit a relatively large amount to the fund for a long period of time.

1 MICHAEL P. MALLOY, BANKING LAW AND REGULATION § 1C.10[J] (2d ed., Wolters Kluwer, 2011 & Cum. Supps.) (footnotes omitted).

[19b] 12 U.S.C. § 1851. This conformance period generally extends two years after the date on which the prohibitions become effective – July 12, 2012 – or, in the case of a nonbank financial company supervised by the Fed, two years after the company is designated for supervision by the Fed, if that period is later. *See generally* 76 Fed. Reg. at 8266-8267 (discussing conformance period).

[19c] Pub. L. No. 115-174, 132 Stat. 1296 (May 24, 2018) (codified at scattered sections of 12, 15, 20, 38, 42, 50 U.S.C.).

[19d] EGRRCPA, tit. IV, 132 Stat at 1356-1360.

[19e] EGRRCPA § 401(a), 132 Stat. at 1356-1358 (codified at 12 U.S.C. § 5365(a)). *But cf. id.* § 401(f), 132 Stat. at 1359 (codified at 12 U.S.C. § 5365 Note) (providing that any bank holding company, regardless of asset size, identified by the Fed as a *global systemically important BHC* "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" § 401 and other specified sections).

Copyright © 2024 Michael P. Malloy. All rights reserved.

*p.542. In the fourth line of § 225.2(r)(2)(ii), change "*capitalized.*" to read "*capitalized. . . .*"*

p.542. Add the following after § 225.2(r)(2)(ii):

(4) Notwithstanding paragraphs (r)(1) through (3) of this section:

(i) A bank holding company that is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . is well capitalized if it satisfies the requirements of paragraph (r)(1)(iii) of this section.

(ii) A depository institution that is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . is well capitalized.

*p.546. At the end of § 225.22(d)(8)(iv), delete "*and*".*

*p.546. At the end of § 225.22(d)(8)(v), replace "*paragraph.*" with the following*:

paragraph (d); and

(vi) Qualifying community banking organizations. For purposes of paragraph (d)(8)(ii) of this section, a lending company or industrial bank that is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . , or is a subsidiary of such a qualifying community banking organization, has risk-weighted assets equal to:

(A) Its average total consolidated assets . . . as most recently reported to its primary banking supervisor . . .; or

(B) Its total assets, if the company or industrial bank does not report such average total consolidated assets.

Copyright © 2024 Michael P. Malloy. All rights reserved.

p.547. Replace § 225.23(a)(1)(iii) with the following:

(iii) If the proposal involves an acquisition of a going concern:

(A) If the acquiring bank holding company is not a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . :

(1) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consol-idated pro forma balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transac¬tion, and the total revenue and net income of the company to be acquired; or

(2) If the bank holding company has consolidated assets of less than $3 billion or more, a pro forma parent-on¬ly balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be ac¬quired;

(B) If the acquiring bank holding company is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . , an abbreviated consolidated pro forma balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma leverage ratio for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(C) For each insured depository institution (that is not a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . .) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis;[c] and

(D) For each insured depository institution that is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . whose Tier 1 capital . . . or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a pro forma basis;

Copyright © 2024 Michael P. Malloy. All rights reserved.

pp. 548-549. Replace § 225.23(c)(5) with the following:

(5) Size of acquisition–

(i) In general—(A) Limited growth. Except as provided in paragraphs (c)(5)(ii) and (iii) of this section, the sum of aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. . . .

(B) Consideration paid. Except as provided in paragraph (c)(5)(iii) of this section, the gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company; and

(C) Individual size limitation. Except as provided in paragraph (c)(5)(iii) of this section, the total risk-weighted assets to be acquired do not exceed $7.5 billion;

(ii) Small bank holding companies. Paragraph (c)(5)(i)(A) of this section shall not apply if, immed-iately following consummation of the proposed transac¬tion, the consolidated risk-weighted assets of the acquiring bank holding company are less than $300 million;

(iii) Qualifying community banking organizations. Paragraphs (c)(5)(i)(A) through (C) of this section shall not apply if:

(A) The acquiring bank holding company is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . ; and

(B) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets . . . of the acquiring bank holding company as last reported to the Board;

(C) The gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the Tier 1 capital . . . of the acquiring bank holding company; and

(D) The total assets to be acquired do not exceed $7.5 billion;

p.549. Replace § 225.24(a)(2)(iv)(B) with the following:

(B) Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter (or, in the case of a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . ; and

Copyright © 2024 Michael P. Malloy. All rights reserved.

p.550. Replace § 225.24(a)(2)(vi) with the following:

(vi)(A) For each insured depository institution (that is not a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . .) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis;[d] and

(B) For each insured depository institution that is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . whose Tier 1 capital . . . or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a pro forma basis;[d] and

p.569. After § 225.87(b)(4)(iii), add the following:

(iv) For purposes of this paragraph (b)(4), a financial holding company that is a qualifying community banking organization . . . that is subject to the community bank leverage ratio framework . . . calculates its Tier 1 capital . . . in accordance with § 217.12(b) of this chapter.

[d] *See* note a, *supra*.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 7

Securities Regulation

p. 613: Add the following at the end of the chapter:

Notes and Comments 7.36. Review 12 U.S.C. § 1851, the codified version of DFA § 619, particularly § 1851(a)-(b), (d), (h). To what extent can a "banking entity" engage in securities activities under this section? What about a "nonbank financial company"? Which agencies are supposed to administer and enforce this section? For which kind of entities is each agency responsible?

7.37. Implementing the provisions of the DFA, and especially restrictive provisions like the Volcker rule, proved to be a very contentious and often tedious process.[170] In November 2011, the OCC, Fed, FDIC, and SEC proposed rules implementing DFA § 619.[171] Comments on the proposed rules were originally due January 13, 2012.[172] Final rules implementing § 619 were eventually issued in January 2014, effective April 1, 2014.[173] However, sections 203 and 204 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA)[174] amended the BHCA by modifying the definition of "banking entity" to exclude certain community banks and their affiliates from the restrictions and by permitting an investment adviser that is a banking entity to share a name with a hedge fund or private equity fund that the banking entity organizes and offers under certain circumstances. In July 2019, the agencies issued revised regulations implementing these changes.[175]

---

[170] See, e.g., 76 Fed. Reg. 25,274 (2011) (to be codified at 17 C.F.R. ch. I) (reopening and extending comment periods for proposed CFTC rules implementing DFA).

[171] 76 Fed. Reg. 68,846 (2011) (to be codified at 12 C.F.R. pts. 44 (OCC proposed rule), 248 (Fed proposed rule), 351 (FDIC proposed rule); 17 C.F.R. pt. 255 (SEC proposed rule)).

[172] 76 Fed. Reg. at 68,846. On January 3, 2012, the agencies extended the comment period until February 13, 2012, due to the complexity of the issues. 77 Fed. Reg. 23 (2012).

[173] 79 Fed. Reg. 5536 (2014) (codified at 12 C.F.R. pts. 44 (OCC rule), 248 (Fed rule), 351 (FDIC rule), 255 (SEC rule)).

[174] Public Law 115-174, 132 Stat. 1296, 1309-1310 (2018) (codified at 12 U.S.C. §§ 1851(d)(1)(G)(vi), 1851(h)(1)).

[175] *Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds*, 84 Fed. Reg. 35,008 (2019) (codified at 12 C.F.R. pts. 44 (OCC rules), 248 (Fed rules), 351 (FDIC rules), 17 C.F.R. pts. 75 (CFTC rules), 255 (SEC rules)).

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 8

Resolution of Institution Failures

---

p.616: *In note 8.1, line 3, delete "*, 91*".*

Copyright © 2024 Michael P. Malloy. All rights reserved.

p.630: Add the following after Note 8.19:

8.19A. *New Applications of Bank Regulation to Attorneys*. The creation of the Consumer Financial Protection Bureau ("CFPB") by the Consumer Financial Protection Act provisions of the Dodd-Frank Act.[11a] expanded the application of federal bank regulation directly to attorneys. To what extent does this change the compliance risks of a bank regulatory legal practice? Consider the following excerpt in answering the question.

Thomas B. Pahl & Evan R. Zullow, Update on Federal Regulation of Attorneys Under Financial Services Laws

67 BUS. LAW. 617 (2012)

The CFPB generally has jurisdiction over any "covered person," and the CFPA defines this term expansively to include any "person that engages in offering or providing a consumer financial product or service" and any affiliate of such person who acts as a service provider.[6] A "financial product or service," for purposes of the CFPA, generally includes "extending credit and servicing loans," extending or brokering certain leases, "providing real estate settlement services," "engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds," "selling, providing, or issuing stored value or payment instruments," "providing check cashing, check collection, or check guaranty services," processing payments or financial data, "providing financial advisory services," providing consumer reporting services, and collecting debts.[7] A "consumer financial product or service," in turn, is a financial product or service that is "offered or provided for use by consumers primarily for personal, family, or household purposes," or extending credit, servicing loans, providing real estate settlement services, engaging in consumer reporting, or collecting the debts of consumers "in connection with a consumer financial product or service."[8] These broad definitions in the CFPB's organic statute could encompass many common activities of attorneys. For example, attorneys often hold client funds in trust during representation--"acting as a custodian of funds"--thereby subjecting them to the CFPB's oversight, regulation, and enforcement.

Congress was concerned that "the breadth of the authority being given to the [CFPB]" and the "complexities of the practice of law" would create an overlap between CFPB regulation and state court regulation of the conduct of attorneys.[9] To avoid this result, Congress excluded from the CFPB's authority many activities of attorneys. Section 1027(e)(1) of the CFPA expressly prohibits the CFPB from exercising "any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law."[10] The congressional sponsor of this exclusion explained that the CFPB, in promulgating rules to determine what activities of attorneys constitute the "practice of law," should develop

---

[11a] Dodd-Frank Act, Pub. L. No. 111-203, §§ 1001-1100H, 124 Stat. 1376, 1955-2133 (2010) [hereinafter CFPA].

[6] **Error! Main Document Only.**CFPA, . . . § 1002(6), 124 Stat. at 1956 (codified at 12 U.S.C. § 5481(6).

[7] **Error! Main Document Only.***Id*. § 1002(15), 124 Stat. at 1957-58 (codified at 12 U.S.C. § 5481(15).

[8] **Error! Main Document Only.***Id*. § 1002(5), 124 Stat. at 1956 (codified at 12 U.S.C. § 5481(5).

[9] **Error! Main Document Only.**156 Cong. Rec. E1347, E1348 (July 15, 2010) (statement of House Judiciary Committee Chairman John Conyers) [hereinafter Conyers Statement].

[10] **Error! Main Document Only.**CFPA, . . . § 1027(e)(1), 124 Stat. at 1999 (codified at 12 U.S.C. § 5517(e)(1) (Supp. IV 2010)).

Copyright © 2024 Michael P. Malloy. All rights reserved.

standards "consistent with the views and practices of the State supreme court or State bar in question as to what activities it regards as part of the practice of law and oversees on that basis."[11] In short, the CFPA generally precludes the CFPB from regulating the activities of attorneys in connection with consumer financial products or services if those activities are part of the "practice of law," as states have traditionally defined that term.

Significantly, Congress did not completely exempt attorneys from the CFPB's jurisdiction. Sections 1027(e)(2) and (e)(3) of the CFPA, in particular, include two important limitations on the scope of its attorney exclusion.[12] First, section 1027(e)(2)(A) specifies that the CFPB retains jurisdiction over attorney activities that are not the "practice of law," such as the advertising and marketing of mortgage loans by a person who also happens to have a law license.[13] Section 1027(e)(2)(B), in addition, ensures that the attorney exemption does not apply to certain activities attorneys perform if their clients are not consumers. For example, section 1027(e)(2)(B) does not prevent the CFPB from exercising authority over an attorney who on behalf of a creditor engages in certain debt collection activities over which the CFPB would otherwise have jurisdiction. The attorney in these circumstances is providing legal advice or services to the creditor, not to a consumer.

Second, section 1027(e)(3) of the CFPA provides that, notwithstanding the attorney exclusion, the CFPB may continue to exercise authority "with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or authorities transferred [to the CFPB] under subtitle F or H."[14] This provision preserves the status quo as to the federal government's authority over attorneys pursuant to existing laws and regulations that are transferred to the CFPB.[15] The CFPB, for instance, can regulate and take law enforcement action against an attorney whose conduct in providing mortgage assistance relief services ("MARS") violates the MARS Rule to the same extent as the Federal Trade Commission ("FTC") could have prior to the designated transfer date.[16]

Notes and Comments 8.19B. The CFPB's aggressive enforcement action against attorneys eventually precipitated a major constitutional challenge to the authority and existence of the agency. In reviewing the following case, consider what the current authority of the CFPB is in this regard

Seila Law LLC v. Consumer Financial Protection Bureau

591 U.S. ---, 140 S.Ct. 2183 (2020)|

CHIEF JUSTICE ROBERTS delivered the opinion of the Court with respect to Parts I, II, and III.

---

[11] **Error! Main Document Only.**Conyers Statement, *supra* note 9, at E1349.

[12] **Error! Main Document Only.**CFPA, . . . § 1027(e)(2)-(3), 124 Stat. at 1999 (codified at 12 U.S.C. § 5517(e)(2)-(3).

[13] **Error! Main Document Only.**Conyers Statement, *supra* note 9, at E1349.

[14] **Error! Main Document Only.**The "enumerated consumer laws" include many consumer financial services statutes that existed at the time that the Dodd-Frank Act was passed, including, for example, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Truth in Lending Act. CFPA, . . . § 1002(12), 124 Stat. at 1957 (codified at 12 U.S.C. § 5481(12).

[15] **Error! Main Document Only.**Conyers Statement, *supra* note 9, at E1349.

[16] **Error! Main Document Only.***See* Mortgage Assistance Relief Services, 75 Fed. Reg. 75092 (Dec. 1, 2010) (to be codified at 16 C.F.R. pt. 322) [hereinafter MARS Rule]. . . . The FTC promulgated its MARS Rule pursuant to the Omnibus Appropriations Act of 2009, an "enumerated consumer law" for the purposes of the Dodd-Frank Act. CFPA, . . . § 1002(12), 124 Stat. at 1957 (codified at 12 U.S.C. § 5481(12).

Copyright © 2024 Michael P. Malloy. All rights reserved.

In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau (CFPB), an independent regulatory agency tasked with ensuring that consumer debt products are safe and transparent. In organizing the CFPB, Congress deviated from the structure of nearly every other independent administrative agency in our history. Instead of placing the agency under the leadership of a board with multiple members, Congress provided that the CFPB would be led by a single Director, who serves for a longer term than the President and cannot be removed by the President except for inefficiency, neglect, or malfeasance. The CFPB Director has no boss, peers, or voters to report to. Yet the Director wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U. S. economy. The question before us is whether this arrangement violates the Constitution's separation of powers.

Under our Constitution, the "executive Power"—all of it—is "vested in a President," who must "take Care that the Laws be faithfully executed." Art. II, § 1, cl. 1; *id.*, § 3. Because no single person could fulfill that responsibility alone, the Framers expected that the President would rely on subordinate officers for assistance. Ten years ago, in *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, 130 S.Ct. 3138, 177 L.Ed.2d 706 (2010), we reiterated that, "as a general matter," the Constitution gives the President "the authority to remove those who assist him in carrying out his duties," *id.*, at 513–514, 130 S.Ct. 3138. "Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else." *Id.*, at 514, 130 S.Ct. 3138.

The President's power to remove—and thus supervise—those who wield executive power on his behalf follows from the text of Article II, was settled by the First Congress, and was confirmed in the landmark decision *Myers v. United States*, 272 U.S. 52, 47 S.Ct. 21, 71 L.Ed. 160 (1926). Our precedents have recognized only two exceptions to the President's unrestricted removal power. In *Humphrey's Executor* v. *United States*, 295 U.S. 602, 55 S.Ct. 869, 79 L.Ed. 1611 (1935), we held that Congress could create expert agencies led by a *group* of principal officers removable by the President only for good cause. And in *United States v. Perkins*, 116 U.S. 483, 6 S.Ct. 449, 29 L.Ed. 700 (1886), and *Morrison v. Olson*, 487 U.S. 654, 108 S.Ct. 2597, 101 L.Ed.2d 569 (1988), we held that Congress could provide tenure protections to certain *inferior* officers with narrowly defined duties.

We are now asked to extend these precedents to a new configuration: an independent agency that wields significant executive power and is run by a single individual who cannot be removed by the President unless certain statutory criteria are met. We decline to take that step. While we need not and do not revisit our prior decisions allowing certain limitations on the President's removal power, there are compelling reasons not to extend those precedents to the novel context of an independent agency led by a single Director. Such an agency lacks a foundation in historical practice and clashes with constitutional structure by concentrating power in a unilateral actor insulated from Presidential control.

We therefore hold that the structure of the CFPB violates the separation of powers. We go on to hold that the CFPB Director's removal protection is severable from the other statutory provisions bearing on the CFPB's authority. The agency may therefore continue to operate, but its Director, in light of our decision, must be removable by the President at will.

I

A

In the summer of 2007, then-Professor Elizabeth Warren called for the creation of a new, independent federal agency focused on regulating consumer financial products. Warren, Unsafe at Any Rate, Democracy (Summer 2007). Professor Warren believed the financial products marketed to ordinary American households—credit cards, student loans, mortgages, and the like—had grown increasingly unsafe due to a "regulatory jumble" that

Copyright © 2024 Michael P. Malloy. All rights reserved.

paid too much attention to banks and too little to consumers. *Ibid.* To remedy the lack of "coherent, consumer-oriented" financial regulation, she proposed "concentrat[ing] the review of financial products in a single location"—an independent agency modeled after the multimember Consumer Product Safety Commission. *Ibid.*

That proposal soon met its moment. Within months of Professor Warren's writing, the subprime mortgage market collapsed, precipitating a financial crisis that wiped out over $10 trillion in American household wealth and cost millions of Americans their jobs, their retirements, and their homes. In the aftermath, the Obama administration embraced Professor Warren's recommendation. Through the Treasury Department, the administration encouraged Congress to establish an agency with a mandate to ensure that "consumer protection regulations" in the financial sector "are written fairly and enforced vigorously." Dept. of Treasury, Financial Regulatory Reform: A New Foundation 55 (2009). Like Professor Warren, the administration envisioned a traditional independent agency, run by a multimember board with a "diverse set of viewpoints and experiences." *Id.*, at 58.

In 2010, Congress acted on these proposals and created the Consumer Financial Protection Bureau (CFPB) as an independent financial regulator within the Federal Reserve System. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), 124 Stat. 1376. Congress tasked the CFPB with "implement[ing]" and "enforc[ing]" a large body of financial consumer protection laws to "ensur[e] that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U. S. C. § 5511(a). Congress transferred the administration of 18 existing federal statutes to the CFPB, including the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Truth in Lending Act. See §§ 5512(a), 5481(12), (14). In addition, Congress enacted a new prohibition on "any unfair, deceptive, or abusive act or practice" by certain participants in the consumer-finance sector. § 5536(a)(1)(B). Congress authorized the CFPB to implement that broad standard (and the 18 pre-existing statutes placed under the agency's purview) through binding regulations. §§ 5531(a)–(b), 5581(a)(1)(A), (b).

Congress also vested the CFPB with potent enforcement powers. The agency has the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court. §§ 5562, 5564(a), (f). To remedy violations of federal consumer financial law, the CFPB may seek restitution, disgorgement, and injunctive relief, as well as civil penalties of up to $1,000,000 (inflation adjusted) for each day that a violation occurs. §§ 5565(a), (c)(2); 12 CFR § 1083.1(a), Table (2019). Since its inception, the CFPB has obtained over $11 billion in relief for over 25 million consumers, including a $1 billion penalty against a single bank in 2018. See CFPB, Financial Report of the Consumer Financial Protection Bureau, Fiscal Year 2015, p. 3; CFPB, Bureau of Consumer Financial Protection Announces Settlement With Wells Fargo for Auto-Loan Administration and Mortgage Practices (Apr. 20, 2018).

The CFPB's rulemaking and enforcement powers are coupled with extensive adjudicatory authority. The agency may conduct administrative proceedings to "ensure or enforce compliance with" the statutes and regulations it administers. 12 U. S. C. § 5563(a). When the CFPB acts as an adjudicator, it has "jurisdiction to grant any appropriate legal or equitable relief." § 5565(a)(1). The "hearing officer" who presides over the proceedings may issue subpoenas, order depositions, and resolve any motions filed by the parties. 12 CFR § 1081.104(b). At the close of the proceedings, the hearing officer issues a "recommended decision," and the CFPB Director considers that recommendation and "issue[s] a final decision and order." §§ 1081.400(d), 1081.402(b); see also § 1081.405.

Congress's design for the CFPB differed from the proposals of Professor Warren and the Obama administration in one critical respect. Rather than create a traditional independent agency headed by a multimember board or commission, Congress elected to place the

Copyright © 2024 Michael P. Malloy. All rights reserved.

CFPB under the leadership of a single Director. 12 U. S. C. § 5491(b)(1). The CFPB Director is appointed by the President with the advice and consent of the Senate. § 5491(b)(2). The Director serves for a term of five years, during which the President may remove the Director from office only for "inefficiency, neglect of duty, or malfeasance in office." §§ 5491(c)(1), (3).

Unlike most other agencies, the CFPB does not rely on the annual appropriations process for funding. Instead, the CFPB receives funding directly from the Federal Reserve, which is itself funded outside the appropriations process through bank assessments. Each year, the CFPB requests an amount that the Director deems "reasonably necessary to carry out" the agency's duties, and the Federal Reserve grants that request so long as it does not exceed 12% of the total operating expenses of the Federal Reserve (inflation adjusted). §§ 5497(a)(1), (2)(A)(iii), 2(B). In recent years, the CFPB's annual budget has exceeded half a billion dollars. See CFPB, Fiscal Year 2019: Ann. Performance Plan and Rep., p. 7.

B

Seila Law LLC is a California-based law firm that provides debt-related legal services to clients. In 2017, the CFPB issued a civil investigative demand to Seila Law to determine whether the firm had "engag[ed] in unlawful acts or practices in the advertising, marketing, or sale of debt relief services." 2017 WL 6536586, *1 (C.D. Cal., Aug. 25, 2017). See also 12 U. S. C. § 5562(c)(1) (authorizing the agency to issue such demands to persons who "may have any information[ ] relevant to a violation" of one of the laws enforced by the CFPB). The demand (essentially a subpoena) directed Seila Law to produce information and documents related to its business practices.

Seila Law asked the CFPB to set aside the demand, objecting that the agency's leadership by a single Director removable only for cause violated the separation of powers. The CFPB declined to address that claim and directed Seila Law to comply with the demand.

When Seila Law refused, the CFPB filed a petition to enforce the demand in the District Court. See § 5562(e)(1) (creating cause of action for that purpose). In response, Seila Law renewed its defense that the demand was invalid and must be set aside because the CFPB's structure violated the Constitution. The District Court disagreed and ordered Seila Law to comply with the demand (with one modification not relevant here).

The Court of Appeals affirmed. 923 F.3d 680 (C.A.9 2019). The Court observed that the "arguments for and against" the constitutionality of the CFPB's structure had already been "thoroughly canvassed" in majority, concurring, and dissenting opinions by the en banc Court of Appeals for the District of Columbia Circuit in *PHH Corp.* v. *CFPB*, 881 F.3d 75 (2018), which had rejected a challenge similar to the one presented here. 923 F.3d at 682. The Court saw "no need to re-plow the same ground." *Ibid.* Instead, it provided a brief explanation for why it agreed with the *PHH* Court's core holding. The Court took as its starting point *Humphrey's Executor*, which had approved for-cause removal protection for the Commissioners of the Federal Trade Commission (FTC). In applying that precedent, the Court recognized that the CFPB wields "substantially more executive power than the FTC did back in 1935" and that the CFPB's leadership by a single Director (as opposed to a multimember commission) presented a "structural difference" that some jurists had found "dispositive." 923 F.3d at 683–684. But the Court felt bound to disregard those differences in light of our decision in *Morrison*, which permitted a single individual (an independent counsel) to exercise a core executive power (prosecuting criminal offenses) despite being insulated from removal except for cause. Because the Court found *Humphrey's Executor* and *Morrison* "controlling," it affirmed the District Court's order requiring compliance with the demand. 923 F.3d at 684.

We granted certiorari to address the constitutionality of the CFPB's structure. . . . We also requested argument on an additional question: whether, if the CFPB's structure violates the separation of powers, the CFPB Director's removal protection can be severed from the rest of the Dodd-Frank Act.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Because the Government agrees with petitioner on the merits of the constitutional question, we appointed Paul Clement to defend the judgment below as *amicus curiae*. He has ably discharged his responsibilities.

II

We first consider three threshold arguments raised by the appointed *amicus* for why we may not or should not reach the merits. Each is unavailing. [The Court first rejected a standing argument that the demand was not "traceable" to any constitutional defect because two of the three CFPB directors who in turn have been enforcing the demand were removable by the President at will, because those two were *acting* directors. It also rejected a related argument that a litigant challenging an executive act on the basis of presidential removal power must show that the challenged act would not have been taken if the responsible official had been subject to the President's control. Second, it rejected a ripeness argument that the constitutionality of an officer's removal restriction is only relevant in the context of a contested removal. Third, the Court rejected an argument that there was no "case or controversy" because the parties agreed on the merits of the constitutional question and the case therefore lacked "adverseness."]

III

We hold that the CFPB's leadership by a single individual removable only for inefficiency, neglect, or malfeasance violates the separation of powers.

A

Article II provides that "[t]he executive Power shall be vested in a President," who must "take Care that the Laws be faithfully executed." Art. II, § 1, cl. 1; *id.*, § 3. The entire "executive Power" belongs to the President alone. But because it would be "impossib[le]" for "one man" to "perform all the great business of the State," the Constitution assumes that lesser executive officers will "assist the supreme Magistrate in discharging the duties of his trust." 30 Writings of George Washington 334 (J. Fitzpatrick ed. 1939).

These lesser officers must remain accountable to the President, whose authority they wield. As Madison explained, "[I]f any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws." 1 Annals of Cong. 463 (1789). That power, in turn, generally includes the ability to remove executive officials, for it is "only the authority that can remove" such officials that they "must fear and, in the performance of [their] functions, obey." *Bowsher*, 478 U.S., at 726, 106 S.Ct. 3181 (internal quotation marks omitted).

The President's removal power has long been confirmed by history and precedent. It "was discussed extensively in Congress when the first executive departments were created" in 1789. *Free Enterprise Fund*, 561 U.S., at 492, 130 S.Ct. 3138. "The view that 'prevailed, as most consonant to the text of the Constitution' and 'to the requisite responsibility and harmony in the Executive Department,' was that the executive power included a power to oversee executive officers through removal." *Ibid.* (quoting Letter from James Madison to Thomas Jefferson (June 30, 1789), 16 Documentary History of the First Federal Congress 893 (2004)). The First Congress's recognition of the President's removal power in 1789 "provides contemporaneous and weighty evidence of the Constitution's meaning," *Bowsher*, 478 U.S., at 723, 106 S.Ct. 3181 (internal quotation marks omitted), and has long been the "settled and well understood construction of the Constitution," *Ex parte Hennen*, 13 Pet. 230, 259, 10 L.Ed. 138 (1839).

The Court recognized the President's prerogative to remove executive officials in *Myers v. United States*, 272 U.S. 52, 47 S.Ct. 21, 71 L.Ed. 160. Chief Justice Taft, writing for the Court, conducted an exhaustive examination of the First Congress's determination in 1789, the views of the Framers and their contemporaries, historical practice, and our precedents up until that point. He concluded that Article II "grants to the President" the "general administrative control of those executing the laws, including the power of appointment *and*

Copyright © 2024 Michael P. Malloy. All rights reserved.

removal of executive officers." *Id.*, at 163–164, 47 S.Ct. 21 (emphasis added). Just as the President's "selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible." *Id.*, at 117, 47 S.Ct. 21. "[T]o hold otherwise," the Court reasoned, "would make it impossible for the President ... to take care that the laws be faithfully executed." *Id.*, at 164, 47 S.Ct. 21.

We recently reiterated the President's general removal power in *Free Enterprise Fund*. "Since 1789," we recapped, "the Constitution has been understood to empower the President to keep these officers accountable—by removing them from office, if necessary." 561 U.S., at 483, 130 S.Ct. 3138. Although we had previously sustained congressional limits on that power in certain circumstances, we declined to extend those limits to "a new situation not yet encountered by the Court"—an official insulated by *two* layers of for-cause removal protection. *Id.,* at 483, 514, 130 S.Ct. 3138. In the face of that novel impediment to the President's oversight of the Executive Branch, we adhered to the general rule that the President possesses "the authority to remove those who assist him in carrying out his duties." *Id.,* at 513–514, 130 S.Ct. 3138.

Free Enterprise Fund left in place two exceptions to the President's unrestricted removal power. First, in *Humphrey's Executor*, decided less than a decade after *Myers*, the Court upheld a statute that protected the Commissioners of the FTC from removal except for "inefficiency, neglect of duty, or malfeasance in office." 295 U.S. at 620, 55 S.Ct. 869 (quoting 15 U. S. C. § 41). In reaching that conclusion, the Court stressed that Congress's ability to impose such removal restrictions "will depend upon the character of the office." 295 U.S. at 631, 55 S.Ct. 869. . . .

The Court identified several organizational features that helped explain its characterization of the FTC as non-executive. Composed of five members—no more than three from the same political party—the Board was designed to be "non-partisan" and to "act with entire impartiality." *Id.*, at 624, 55 S.Ct. 869; see *id.*, at 619–620, 55 S.Ct. 869. The FTC's duties were "neither political nor executive," but instead called for "the trained judgment of a body of experts" "informed by experience." *Id.*, at 624, 55 S.Ct. 869 (internal quotation marks omitted). And the Commissioners' staggered, seven-year terms enabled the agency to accumulate technical expertise and avoid a "complete change" in leadership "at any one time." *Ibid*. . . .

While recognizing an exception for multimember bodies with "quasi-judicial" or "quasi-legislative" functions, *Humphrey's Executor* reaffirmed the core holding of *Myers* that the President has "unrestrictable power ... to remove purely executive officers." 295 U.S. at 632, 55 S.Ct. 869. The Court acknowledged that between purely executive officers on the one hand, and officers that closely resembled the FTC Commissioners on the other, there existed "a field of doubt" that the Court left "for future consideration." *Ibid.*

We have recognized a second exception for *inferior* officers in two cases, *United States* v. *Perkins* and *Morrison* v. *Olson*.[3] In *Perkins*, we upheld tenure protections for a naval cadet-engineer. 116 U.S. at 485, 6 S.Ct. 449. And, in *Morrison*, we upheld a provision granting good-cause tenure protection to an independent counsel appointed to investigate and prosecute particular alleged crimes by high-ranking Government officials. 487

[3] Article II distinguishes between two kinds of officers—principal officers (who must be appointed by the President with the advice and consent of the Senate) and inferior officers (whose appointment Congress may vest in the President, courts, or heads of Departments). § 2, cl. 2. While "[o]ur cases have not set forth an exclusive criterion for distinguishing between principal and inferior officers," we have in the past examined factors such as the nature, scope, and duration of an officer's duties. *Edmond v. United States*, 520 U.S. 651, 661, 117 S.Ct. 1573, 137 L.Ed.2d 917 (1997). More recently, we have focused on whether the officer's work is "directed and supervised" by a principal officer. *Id*., at 663, 117 S.Ct. 1573.

Copyright © 2024 Michael P. Malloy. All rights reserved.

U.S. at 662–663, 696–697, 108 S.Ct. 2597. Backing away from the reliance in *Humphrey's Executor* on the concepts of "quasi-legislative" and "quasi-judicial" power, we viewed the ultimate question as whether a removal restriction is of "such a nature that [it] impede[s] the President's ability to perform his constitutional duty." 487 U.S. at 691, 108 S.Ct. 2597. Although the independent counsel was a single person and performed "law enforcement functions that typically have been undertaken by officials within the Executive Branch," we concluded that the removal protections did not unduly interfere with the functioning of the Executive Branch because "the independent counsel [was] an inferior officer under the Appointments Clause, with limited jurisdiction and tenure and lacking policymaking or significant administrative authority." *Ibid.*

These two exceptions—one for multimember expert agencies that do not wield substantial executive power, and one for inferior officers with limited duties and no policymaking or administrative authority—"represent what up to now have been the outermost constitutional limits of permissible congressional restrictions on the President's removal power." *PHH*, 881 F.3d at 196 (Kavanaugh, J., dissenting) (internal quotation marks omitted).

B

Neither *Humphrey's Executor* nor *Morrison* resolves whether the CFPB Director's insulation from removal is constitutional. . . . Unlike the New Deal-era FTC upheld [in *Humphrey's Executor*], the CFPB is led by a single Director who cannot be described as a "body of experts" and cannot be considered "non-partisan" in the same sense as a group of officials drawn from both sides of the aisle. 295 U.S. at 624, 55 S.Ct. 869. Moreover, while the staggered terms of the FTC Commissioners prevented complete turnovers in agency leadership and guaranteed that there would always be some Commissioners who had accrued significant expertise, the CFPB's single-Director structure and five-year term guarantee abrupt shifts in agency leadership and with it the loss of accumulated expertise.

In addition, the CFPB Director is hardly a mere legislative or judicial aid. Instead of making reports and recommendations to Congress, as the 1935 FTC did, the Director possesses the authority to promulgate binding rules fleshing out 19 federal statutes, including a broad prohibition on unfair and deceptive practices in a major segment of the U. S. economy. And instead of submitting recommended dispositions to an Article III court, the Director may unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications. Finally, the Director's enforcement authority includes the power to seek daunting monetary penalties against private parties on behalf of the United States in federal court—a quintessentially executive power not considered in *Humphrey's Executor*. . . .

The logic of *Morrison* also does not apply. Everyone agrees the CFPB Director is not an inferior officer, and her duties are far from limited. Unlike the independent counsel, who lacked policymaking or administrative authority, the Director has the sole responsibility to administer 19 separate consumer-protection statutes that cover everything from credit cards and car payments to mortgages and student loans. It is true that the independent counsel in *Morrison* was empowered to initiate criminal investigations and prosecutions, and in that respect wielded core executive power. But that power, while significant, was trained inward to high-ranking Governmental actors identified by others, and was confined to a specified matter in which the Department of Justice had a potential conflict of interest. By contrast, the CFPB Director has the authority to bring the coercive power of the state to bear on millions of private citizens and businesses, imposing even billion-dollar penalties through administrative adjudications and civil actions. . . .

C

The question instead is whether to extend those precedents to the "new situation" before us, namely an independent agency led by a single Director and vested with significant executive power. *Free Enterprise Fund*, 561 U.S., at 483, 130 S.Ct. 3138. We decline to

Copyright © 2024 Michael P. Malloy. All rights reserved.

do so. Such an agency has no basis in history and no place in our constitutional structure.
1
. . .

After years of litigating the agency's constitutionality, the Courts of Appeals, parties, and *amici* have identified "only a handful of isolated" incidents in which Congress has provided good-cause tenure to principal officers who wield power alone rather than as members of a board or commission. . . . "[T]hese few scattered examples"—four to be exact—shed little light. *NLRB v. Noel Canning*, 573 U.S. 513, 538, 134 S.Ct. 2550, 189 L.Ed.2d 538 (2014).

First, the CFPB's defenders point to the Comptroller of the Currency, who enjoyed removal protection for *one year* during the Civil War. That example has rightly been dismissed as an aberration. It was "adopted without discussion" during the heat of the Civil War and abandoned before it could be "tested by executive or judicial inquiry." *Myers*, 272 U.S., at 165, 47 S.Ct. 21. (At the time, the Comptroller may also have been an inferior officer, given that he labored "under the general direction of the Secretary of the Treasury." Ch. 58, 12 Stat. 665.) . . .

Second, the supporters of the CFPB point to the Office of the Special Counsel (OSC), which has been headed by a single officer since 1978. . . . But this first enduring single-leader office, created nearly 200 years after the Constitution was ratified, drew a contemporaneous constitutional objection from the Office of Legal Counsel under President Carter and a subsequent veto on constitutional grounds by President Reagan. . . .[7] In any event, the OSC exercises only limited jurisdiction to enforce certain rules governing Federal Government employers and employees. See 5 U. S. C. § 1212. It does not bind private parties at all or wield regulatory authority comparable to the CFPB.

Third, the CFPB's defenders note that the Social Security Administration (SSA) has been run by a single Administrator since 1994. That example, too, is comparatively recent and controversial. President Clinton questioned the constitutionality of the SSA's new single-Director structure upon signing it into law. . . . In addition, unlike the CFPB, the SSA lacks the authority to bring enforcement actions against private parties. Its role is largely limited to adjudicating claims for Social Security benefits.

The only remaining example is the Federal Housing Finance Agency (FHFA), created in 2008 to assume responsibility for Fannie Mae and Freddie Mac. That agency is essentially a companion of the CFPB, established in response to the same financial crisis. . . . It regulates primarily Government-sponsored enterprises, not purely private actors. And its single-Director structure is a source of ongoing controversy. Indeed, it was recently held unconstitutional by the Fifth Circuit, sitting en banc. See *Collins v. Mnuchin*, 938 F.3d 553, 587–588 (2019).[a]

With the exception of the one-year blip for the Comptroller of the Currency, these isolated examples are modern and contested. And they do not involve regulatory or enforcement authority remotely comparable to that exercised by the CFPB. The CFPB's single-Director structure is an innovation with no foothold in history or tradition. . . .

---

[7] An Act similar to the one vetoed by President Reagan was eventually signed by President George H. W. Bush after extensive negotiations and compromises with Congress. See Public Papers of the Presidents, George H. W. Bush, Vol. I, Apr. 10, 1989, p. 391 (1990).

[a] The for-cause removal provision of the FHFA has since been held unconstitutional by the Supreme Court in *Collins v. Yellen*, --- U.S. ---, 141 S.Ct. 1761 (2020). The Supreme Court held *inter alia* that the for-cause removal restriction for the single director of the FHFA violated constitutional separation of powers, and remanded the case for further proceedings "to determine what remedy, if any, the shareholders are entitled to receive on their constitutional claim." *Id*. at 1770. However, the Court also held that the actions taken by FHFA, when it was headed by an acting director, were not void. *Id*. at 1787.

Copyright © 2024 Michael P. Malloy. All rights reserved.

2

In addition to being a historical anomaly, the CFPB's single-Director configuration is incompatible with our constitutional structure. Aside from the sole exception of the Presidency, that structure scrupulously avoids concentrating power in the hands of any single individual. . . .

. . . Most prominently, the Framers bifurcated the federal legislative power into two Chambers: the House of Representatives and the Senate, each composed of multiple Members and Senators. Art. I, §§ 2, 3.

The Executive Branch is a stark departure from all this division. The Framers viewed the legislative power as a special threat to individual liberty, so they divided that power to ensure that "differences of opinion" and the "jarrings of parties" would "promote deliberation and circumspection" and "check excesses in the majority." See The Federalist No. 70, at 475 (A. Hamilton); see also *id*., No. 51, at 350. By contrast, the Framers thought it necessary to secure the authority of the Executive so that he could carry out his unique responsibilities. See *id*., No. 70, at 475–478. As Madison put it, while "the weight of the legislative authority requires that it should be ... divided, the weakness of the executive may require, on the other hand, that it should be fortified." *Id*., No. 51, at 350.

The Framers deemed an energetic executive essential to "the protection of the community against foreign attacks," "the steady administration of the laws," "the protection of property," and "the security of liberty." *Id*., No. 70, at 471. Accordingly, they chose not to bog the Executive down with the "habitual feebleness and dilatoriness" that comes with a "diversity of views and opinions." *Id.*, at 476. Instead, they gave the Executive the "[d]ecision, activity, secrecy, and dispatch" that "characterise the proceedings of one man." *Id.*, at 472. . . .

The resulting constitutional strategy is straightforward: divide power everywhere except for the Presidency, and render the President directly accountable to the people through regular elections. In that scheme, individual executive officials will still wield significant authority, but that authority remains subject to the ongoing supervision and control of the elected President. Through the President's oversight, "the chain of dependence [is] preserved," so that "the lowest officers, the middle grade, and the highest" all "depend, as they ought, on the President, and the President on the community." 1 Annals of Cong. 499 (J. Madison).

The CFPB's single-Director structure contravenes this carefully calibrated system by vesting significant governmental power in the hands of a single individual accountable to no one. The Director is neither elected by the people nor meaningfully controlled (through the threat of removal) by someone who is. The Director does not even depend on Congress for annual appropriations. See The Federalist No. 58, at 394 (J. Madison) (describing the "power over the purse" as the "most compleat and effectual weapon" in representing the interests of the people). Yet the Director may *unilaterally*, without meaningful supervision, issue final regulations, oversee adjudications, set enforcement priorities, initiate prosecutions, and determine what penalties to impose on private parties. With no colleagues to persuade, and no boss or electorate looking over her shoulder, the Director may dictate and enforce policy for a vital segment of the economy affecting millions of Americans.

The CFPB Director's insulation from removal by an accountable President is enough to render the agency's structure unconstitutional. But several other features of the CFPB combine to make the Director's removal protection even more problematic. In addition to lacking the most direct method of presidential control—removal at will—the agency's unique structure also forecloses certain indirect methods of Presidential control.

Because the CFPB is headed by a single Director with a five-year term, some Presidents may not have any opportunity to shape its leadership and thereby influence its activities. A President elected in 2020 would likely not appoint a CFPB Director until 2023, and a President elected in 2028 may *never* appoint one. That means an unlucky President might

Copyright © 2024 Michael P. Malloy. All rights reserved.

get elected on a consumer-protection platform and enter office only to find herself saddled with a holdover Director from a competing political party who is dead set *against* that agenda. To make matters worse, the agency's single-Director structure means the President will not have the opportunity to appoint any other leaders—such as a chair or fellow members of a Commission or Board—who can serve as a check on the Director's authority and help bring the agency in line with the President's preferred policies.

The CFPB's receipt of funds outside the appropriations process further aggravates the agency's threat to Presidential control. The President normally has the opportunity to recommend or veto spending bills that affect the operation of administrative agencies. See Art. I, § 7, cl. 2; Art. II, § 3. And, for the past century, the President has annually submitted a proposed budget to Congress for approval. See Budget and Accounting Act, 1921, ch. 18, § 201, 42 Stat. 20. Presidents frequently use these budgetary tools "to influence the policies of independent agencies." *PHH*, 881 F.3d at 147 (Henderson, J., dissenting) (citing Pasachoff, The President's Budget as a Source of Agency Policy Control, 125 Yale L. J. 2182, 2191, 2203–2204 (2016)). But no similar opportunity exists for the President to influence the CFPB Director. Instead, the Director receives over $500 million per year to fund the agency's chosen priorities. And the Director receives that money from the Federal Reserve, which is itself funded outside of the annual appropriations process. This financial freedom makes it even more likely that the agency will "slip from the Executive's control, and thus from that of the people." *Free Enterprise Fund*, 561 U.S., at 499, 130 S.Ct. 3138.
. . .

IV

Having concluded that the CFPB's leadership by a single independent Director violates the separation of powers, we now turn to the appropriate remedy. We directed the parties to brief and argue whether the Director's removal protection was severable from the other provisions of the Dodd-Frank Act that establish the CFPB. If so, then the CFPB may continue to exist and operate notwithstanding Congress's unconstitutional attempt to insulate the agency's Director from removal by the President. There is a live controversy between the parties on that question, and resolving it is a necessary step in determining petitioner's entitlement to its requested relief. . . .

. . . If the removal restriction is not severable, then we must grant the relief requested, promptly rejecting the demand outright. If, on the other hand, the removal restriction is severable, we must instead remand for the Government to press its ratification arguments in further proceedings. Unlike the lingering ratification issue, severability presents a pure question of law that has been fully briefed and argued by the parties. We therefore proceed to address it. . . .

It has long been settled that "one section of a statute may be repugnant to the Constitution without rendering the whole act void." *Loeb v. Columbia Township Trustees*, 179 U.S. 472, 490, 21 S.Ct. 174, 45 L.Ed. 280 (1900) (quoting *Treasurer of Fayette Cty. v. People's & Drovers' Bank*, 47 Ohio St. 503, 523, 25 N.E. 697, 702 (1890)). Because a "statute bad in part is not necessarily void in its entirety," "[p]rovisions within the legislative power may stand if separable from the bad." *Dorchy v. Kansas*, 264 U.S. 286, 289–290, 44 S.Ct. 323, 68 L.Ed. 686 (1924).

"Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem, severing any problematic portions while leaving the remainder intact." *Free Enterprise Fund*, 561 U.S., at 508, 130 S.Ct. 3138 (internal quotation marks omitted). Even in the absence of a severability clause, the "traditional" rule is that "the unconstitutional provision must be severed unless the statute created in its absence is legislation that Congress would not have enacted." *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 685, 107 S.Ct. 1476, 94 L.Ed.2d 661 (1987). When Congress has expressly provided a severability clause, our task is simplified. We will presume "that Congress did not intend

Copyright © 2024 Michael P. Malloy. All rights reserved.

the validity of the statute in question to depend on the validity of the constitutionally offensive provision ... unless there is strong evidence that Congress intended otherwise." *Id.,* at 686, 107 S.Ct. 1476.

The only constitutional defect we have identified in the CFPB's structure is the Director's insulation from removal. If the Director were removable at will by the President, the constitutional violation would disappear. We must therefore decide whether the removal provision can be severed from the other statutory provisions relating to the CFPB's powers and responsibilities.

In *Free Enterprise Fund*, we found a set of unconstitutional removal provisions severable even in the absence of an express severability clause because the surviving provisions were capable of "functioning independently" and "nothing in the statute's text or historical context [made] it evident that Congress, faced with the limitations imposed by the Constitution, would have preferred no Board at all to a Board whose members are removable at will." 561 U.S., at 509, 130 S.Ct. 3138 (internal quotation marks omitted).

So too here. The provisions of the Dodd-Frank Act bearing on the CFPB's structure and duties remain fully operative without the offending tenure restriction. Those provisions are capable of functioning independently, and there is nothing in the text or history of the Dodd-Frank Act that demonstrates Congress would have preferred *no* CFPB to a CFPB supervised by the President. Quite the opposite. Unlike the Sarbanes-Oxley Act at issue in *Free Enterprise Fund*, the Dodd-Frank Act contains an express severability clause. There is no need to wonder what Congress would have wanted if "any provision of this Act" is "held to be unconstitutional" because it has told us: "the remainder of this Act" should "not be affected." 12 U. S. C. § 5302. . . .

. . . Petitioner assumes that, if we eliminate the CFPB, regulatory and enforcement authority over the statutes it administers would simply revert back to the handful of independent agencies previously responsible for them. See *id.*, at 46. But, as the Solicitor General and House of Representatives explain, that shift would trigger a major regulatory disruption and would leave appreciable damage to Congress's work in the consumer-finance arena. . . . One of the agencies whose regulatory authority was transferred to the CFPB no longer exists. See 12 U. S. C. §§ 5412–5413 (Office of Thrift Supervision). The others do not have the staff or appropriations to absorb the CFPB's 1,500-employee, 500-million-dollar operations. And none has the authority to administer the Dodd-Frank Act's new prohibition on unfair and deceptive practices in the consumer-finance sector. Given these consequences, it is far from evident that Congress would have preferred no CFPB to a CFPB led by a Director removable at will by the President. . . .

As in every severability case, there may be means of remedying the defect in the CFPB's structure that the Court lacks the authority to provide. Our severability analysis does not foreclose Congress from pursuing alternative responses to the problem—for example, converting the CFPB into a multimember agency. The Court's only instrument, however, is a blunt one. We have "the negative power to disregard an unconstitutional enactment," *Massachusetts v. Mellon*, 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923); see *Marbury v. Madison*, 1 Cranch 137, 178, 2 L.Ed. 60 (1803), but we cannot rewrite Congress's work by creating offices, terms, and the like. "[S]uch editorial freedom ... belongs to the Legislature, not the Judiciary." *Free Enterprise Fund*, 561 U.S., at 510, 130 S.Ct. 3138.

Because we find the Director's removal protection severable from the other provisions of Dodd-Frank that establish the CFPB, we remand for the Court of Appeals to consider whether the civil investigative demand was validly ratified. . . .

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring in part and dissenting in part.

The Court's decision today takes a restrained approach on the merits by limiting

Copyright © 2024 Michael P. Malloy. All rights reserved.

Humphrey's Executor v. *United States*, 295 U.S. 602, 55 S.Ct. 869, 79 L.Ed. 1611 (1935), rather than overruling it. At the same time, the Court takes an aggressive approach on severability by severing a provision when it is not necessary to do so. I would do the opposite.

Because the Court takes a step in the right direction by limiting *Humphrey's Executor* to "multimember expert agencies that *do not wield substantial executive power*," *ante*, at 2219 (emphasis added), I join Parts I, II, and III of its opinion. I respectfully dissent from the Court's severability analysis, however, because I do not believe that we should address severability in this case. . . .

JUSTICE KAGAN, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, concurring in the judgment with respect to severability and dissenting in part.

Throughout the Nation's history, this Court has left most decisions about how to structure the Executive Branch to Congress and the President, acting through legislation they both agree to. In particular, the Court has commonly allowed those two branches to create zones of administrative independence by limiting the President's power to remove agency heads. The Federal Reserve Board. The Federal Trade Commission (FTC). The National Labor Relations Board. Statute after statute establishing such entities instructs the President that he may not discharge their directors except for cause—most often phrased as inefficiency, neglect of duty, or malfeasance in office. Those statutes, whose language the Court has repeatedly approved, provide the model for the removal restriction before us today. If precedent were any guide, that provision would have survived its encounter with this Court—and so would the intended independence of the Consumer Financial Protection Bureau (CFPB).

Our Constitution and history demand that result. The text of the Constitution allows these common for-cause removal limits. Nothing in it speaks of removal. And it grants Congress authority to organize all the institutions of American governance, provided only that those arrangements allow the President to perform his own constitutionally assigned duties. Still more, the Framers' choice to give the political branches wide discretion over administrative offices has played out through American history in ways that have settled the constitutional meaning. From the first, Congress debated and enacted measures to create spheres of administration—especially of financial affairs—detached from direct presidential control. As the years passed, and governance became ever more complicated, Congress continued to adopt and adapt such measures—confident it had latitude to do so under a Constitution meant to "endure for ages to come." *McCulloch v. Maryland*, 4 Wheat. 316, 415, 4 L.Ed. 579 (1819) (approving the Second Bank of the United States). Not every innovation in governance—not every experiment in administrative independence—has proved successful. And debates about the prudence of limiting the President's control over regulatory agencies, including through his removal power, have never abated. . . . But the Constitution—both as originally drafted and as practiced—mostly leaves disagreements about administrative structure to Congress and the President, who have the knowledge and experience needed to address them. Within broad bounds, it keeps the courts—who do not—out of the picture.

The Court today fails to respect its proper role. It recognizes that this Court has approved limits on the President's removal power over heads of agencies much like the CFPB. Agencies possessing similar powers, agencies charged with similar missions, agencies created for similar reasons. The majority's explanation is that the heads of those agencies fall within an "exception"—one for multimember bodies and another for inferior officers—to a "general rule" of unrestricted presidential removal power. *Ante,* at 2197 – 2198. And the majority says the CFPB Director does not. That account, though, is wrong in every respect. The majority's general rule does not exist. Its exceptions, likewise, are

Copyright © 2024 Michael P. Malloy. All rights reserved.

made up for the occasion—gerrymandered so the CFPB falls outside them. And the distinction doing most of the majority's work—between multimember bodies and single directors—does not respond to the constitutional values at stake. If a removal provision violates the separation of powers, it is because the measure so deprives the President of control over an official as to impede his own constitutional functions. But with or without a for-cause removal provision, the President has at least as much control over an individual as over a commission—and possibly more. That means the constitutional concern is, if anything, ameliorated when the agency has a single head. Unwittingly, the majority shows why courts should stay their hand in these matters. "Compared to Congress and the President, the Judiciary possesses an inferior understanding of the realities of administration" and the way "political power[] operates." *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, 523, 130 S.Ct. 3138, 177 L.Ed.2d 706 (2010) (Breyer, J., dissenting). . . .

Notes and Comments 8.19C. What is the scope of judicial review when a regulatory agency takes enforcement action against an institution affiliated party? Consider the following case.

DeNaples v. Office of the Comptroller of the Currency

706 F.3d 481 (D.C.Cir. 2013)

BROWN, Circuit Judge:

I

At the time of the events that generated this case, DeNaples wielded significant influence over three financial institutions. He served as chairman and as a director of First National Community Bank ("First National") in Pennsylvania and its parent bank holding company First National Community Bancorp ("Bancorp"). He also owned a large number of shares in Bancorp and an unrelated bank holding company in Connecticut, Urban Financial Group, Inc. ("Urban"). DeNaples does not dispute that these positions made him an "institution-affiliated party" of First National, Bancorp, and Urban, as defined by FDIA. *See* 12 U.S.C. § 1813(u).

For a while, DeNaples also owned the Mount Airy Casino in Pennsylvania. In 2008, however, the local district attorney charged him with perjury, alleging he had lied to the Pennsylvania Gaming Control Board about his relationships with suspected members of the mob when applying for the casino's gaming license. The Gaming Board promptly suspended DeNaples' gaming license and prohibited him from controlling and managing the casino. OCC followed suit, suspending DeNaples from serving as an officer of First National and prohibiting him from further participation in the affairs of any depository institution until the charges were resolved. *See* 12 U.S.C. § 1818(g).

In April 2009, DeNaples entered an Agreement for Withdrawal of Charges ("Agreement") under which the district attorney would withdraw all pending criminal charges if DeNaples would divest his financial and operational interests in the casino, permit the public release of a report about procedural irregularities in the underlying grand jury proceeding, pay the costs of prosecution, waive all legal claims against the state and its agents arising from the perjury investigation and prosecution, and file written quarterly reports with the district attorney describing the status of both his compliance with the Agreement and any proceedings before the Gaming Board. The Agreement further provided that the district attorney could reinstate the charges if DeNaples breached its terms in any material way. The district attorney subsequently withdrew the charges and entered a disposition of *nolle prosequi.*

Copyright © 2024 Michael P. Malloy. All rights reserved.

Unfortunately for DeNaples, things did not end there. Though the district attorney's office advised OCC that the Agreement did not constitute a pretrial diversion or similar program under state law, OCC nevertheless notified DeNaples that it considered the Agreement to be such a program and that it triggered § 19[, 12 U.S.C. § 1829]. The Board did the same.

DeNaples did not agree with the agencies' interpretations of § 19, so he neither resigned his positions with First National and Bancorp nor divested his shares of Bancorp and Urban. The agencies accordingly issued Notices of Charges and ordered hearings to determine whether they should issue cease-and-desist orders under 12 U.S.C. § 1818(b). The ALJ assigned to the case issued a consolidated decision rejecting DeNaples' arguments that the agencies were not statutorily authorized to issue the cease-and-desist orders and that the Agreement did not constitute a § 19 "pretrial diversion or similar program." Seeking to avoid the consequences of the ALJ's recommendations, DeNaples entered into a "superseding addendum" to the Agreement with the Pennsylvania district attorney acknowledging the parties negotiated and executed the Agreement with the understanding that "the criminal charges against Mr. DeNaples would under no circumstances be disposed of in a manner that would constitute, or that could be construed as constituting, Mr. DeNaples' entry into a pretrial diversion or similar program"; he also successfully sought expunction of all records of the charges, including the Agreement. But to no avail. Both OCC and the Board generally adopted the ALJ's recommendations and, in the spring of 2012, issued the dreaded cease-and-desist orders, requiring DeNaples to stop violating § 19 and to terminate his relationships with First National, Bancorp, and Urban. DeNaples then filed these petitions for review.

II

DeNaples argues that the agencies' cease-and-desist orders exceeded their statutory authority under FDIA § 8(b), which empowers OCC and the Board to initiate cease-and-desist proceedings against an institution-affiliated party who is violating or has violated a law. *See* 12 U.S.C. § 1818(b). The provision is hardly a model of clarity, but the parties' dispute allows us to avoid wandering FDIA's linguistic labyrinth: DeNaples challenges only the agencies' use of their cease-and-desist powers to remove him from office when FDIA provides specific removal mechanisms in § 8(e) and (g). Subsection (e) empowers the agencies to remove institution-affiliated parties from office or prohibit them from participating in the affairs of depository institutions if and only if the appropriate agency can establish misconduct, culpability, and a statutorily-defined effect. *Proffitt v. FDIC,* 200 F.3d 855, 862 (D.C.Cir.2000). Subsection (g), meanwhile, authorizes removal and prohibition when there is a conviction or a "pretrial diversion or other similar program" in connection with certain crimes, but agencies may invoke this authority only if the individual's continued participation in the institution's affairs threatens public confidence in the institution or the interests of the depositors. 12 U.S.C. § 1818(g)(1). DeNaples insists the agencies may remove institution-affiliated parties from office only through one of these two mechanisms. We review *de novo* the agencies' interpretation of their cease-and-desist authority, *see Grant Thornton, LLP v. Office of the Comptroller of the Currency,* 514 F.3d 1328, 1331 (D.C.Cir.2008), and affirm.

DeNaples swims against the current because he asks us to restrict what the statute apparently authorizes. DeNaples concedes he is an "institution-affiliated party" and never disputes that § 19 is a "law," so assuming the agencies properly determined that DeNaples triggered the § 19 prohibition, DeNaples continues to violate it while he maintains his relationships with First National, Bancorp, and Urban without the requisite agency consent. We take no position on whether § 8(b) generally authorizes removal and prohibition orders, *see Kaplan v. U.S. Office of Thrift Supervision,* 104 F.3d 417, 420 & n. 1 (D.C.Cir.1997),

Copyright © 2024 Michael P. Malloy. All rights reserved.

and indeed, the agencies tell us it does not. But this is a case where an individual's relationship with the financial institution in question is itself the legal violation, a unique enforcement scenario, and on such facts, an agency cease-and-desist order is not rendered improper because it entails the individual's removal and prohibition.

We are mindful of the obligation both to recognize the agencies' "broad authority," *Golden Pac. Bancorp v. Clarke,* 837 F.2d 509, 512 (D.C.Cir.1988), and to preserve the statute's "remedial safeguards," *Oberstar v. FDIC,* 987 F.2d 494, 502 (8th Cir.1993). Section 8, after all, balances the need to protect financial institutions and the economy against concerns of fairness and the need to protect against the possibility of abuse. But we are also mindful of the "fundamental principle that where Congress has entrusted an administrative agency with the responsibility of selecting the means of achieving the statutory policy the relation of remedy to policy is peculiarly a matter for administrative competence." *Kornman v. SEC,* 592 F.3d 173, 186 (D.C.Cir.2010) (ellipsis and internal quotation marks omitted). And so it is here. Whatever the arguments against an agency's general use of cease-and-desist authority to remove officers, . . . they have less force when the agency uses the power to enforce § 19. Subsection (e)'s misconduct, culpability, and effect requirements may have no analogue in § 19, but § 19 serves the same function as a proxy for Congress's judgment that certain predicate facts are immediately disqualifying; and there is no call to fear unbridled agency action when the agency action does no more than enact congressional will. Likewise, though a single set of predicate facts might trigger both subsection (g) and § 19—suggesting that a cease-and-desist order could be an end-run around the limits Congress imposed on the agencies' prohibition authority—the benefits and detriments are pretty evenly matched: subsection (g) requires only a postdeprivation hearing, 12 U.S.C. § 1818 (g)(3), while subsection (b) requires predeprivation procedures, *id.* § 1818(b)(1),[3] thus enabling the agencies to pick the enforcement mechanism "best-suited to a given situation in light of the balance between supervisory exigency and due process concerns." Resp't's Br. at 46; *see FDIC v. Mallen,* 486 U.S. 230, 236 n. 7, 246 n. 12, 108 S.Ct. 1780, 100 L.Ed.2d 265 (1988) (explaining that § 19 suspension or removal "does not moot a § 1818(g) suspension" because "[i]n certain respects, the § 1818 (g) suspension is broader in scope than the § 1829 suspension, thus giving ... the § 1818(g) suspension at least a marginal effect").

That there is overlap among the various enforcement provisions is not surprising. Congress sought to give the agencies "more effective regulatory powers to deal with crises in financial institutions." *Mallen,* 486 U.S. at 232, 108 S.Ct. 1780. In doing so, Congress could reasonably hand the agencies a palette sufficiently sophisticated to capture the full spectrum of enforcement possibility. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank,* —— U.S. ——, 132 S.Ct. 2065, 2072, 182 L.Ed.2d 967 (2012) (explaining that the interpretive canon that the specific governs the general is "not an absolute rule," only a "strong indication of statutory meaning that can be overcome by textual indications that point in the other direction").

III

. . .

We have repeatedly pointed to the agencies' joint administrative authority under FDIA to justify refusing deference to their interpretations. *See, e.g., Grant Thornton, LLP,* 514 F.3d at 1331; *Proffitt,* 200 F.3d at 860, 863 n. 7; *Rapaport v. U.S. Dep't of Treasury, Office of Thrift Supervision,* 59 F.3d 212, 216–17 (D.C.Cir.1995); *Wachtel v. Office of Thrift Supervision,* 982 F.2d 581, 585 (D.C.Cir.1993). We have never addressed § 19, but we will not change course now.

Section 19 vests the Board with exclusive authority to allow persons who would oth-

Copyright © 2024 Michael P. Malloy. All rights reserved.

erwise be excluded to participate in the affairs of bank and savings and loan holding companies. *See* 12 U.S.C. § 1829(d)-(e). But that does not mean the Board has exclusive *enforcement* authority over § 19 violations. *See, e.g., United States v. Carter,* 652 F.3d 894, 897 (8th Cir.2011) (affirming district court's sentencing declaration under 12 U.S.C. § 1829 that convicted defendant "shall not obtain employment in an institution insured by the FDIC"). As this case illustrates, a single individual may be subject to enforcement action by multiple agencies, and were we to defer to the Board's interpretation here, we "would lay the groundwork for a regulatory regime in which either the same statute is interpreted differently by the several agencies or the one agency that happens to reach the courthouse first is allowed to fix the meaning of the text for all." *Rapaport,* 59 F.3d at 216–17. We have no reason to think Congress intended such "peculiar corollaries." *Id.* at 217. . . .

IV

DeNaples argues he did not violate § 19 because he never entered into a "pretrial diversion or similar program" and because the record of his prosecution has been expunged. We agree the agencies need to reevaluate both issues.

A

In determining that the Agreement constituted a "pretrial diversion or similar program," both agencies claimed they considered the "ordinary meaning" of the phrase and concluded it extends to any diversion from prosecution in exchange for an agreement to abide by particular conditions. As OCC put it, the provision is triggered any time an individual is "diverted from prosecution by agreeing to certain conditions"—that is, by any "*quid pro quo* for the prosecutor's withdrawal of charges." The Board, in turn, offered a tighter definition, concluding the provision turns on whether the agreement provides for both a "suspension or eventual dismissal of charges or criminal prosecution" and a "voluntary agreement by the accused to treatment, rehabilitation, restitution or other noncriminal or nonpunitive alternatives," but it ultimately applied an approach much closer to OCC's, determining that the Agreement fell within the statutory ambit because "the District Attorney withdrew criminal perjury charges against Respondent conditioned on Respondent agreeing to certain noncriminal alternatives." Neither approach works. The agencies properly sought the ordinary meaning of the statutory phrase, *see Taniguchi v. Kan Pac. Saipan, Ltd.,* —— U.S. ——, 132 S.Ct. 1997, 2002, 182 L.Ed.2d 903 (2012), but despite their efforts, they did not find it. . . .

The statutory expansion of the pretrial diversion concept through the "or similar program" language does not, as the agencies suggested at oral argument, disconnect "pretrial diversion" from the term "program"; it expands the category to encompass programs that do not necessarily constitute pretrial diversion. . . . But whatever the contours of the programs that trigger § 19, the ultimate effect of the "or similar program" language is not to turn the statute from a scalpel into a chainsaw; it simply ensures that competition among the various definitions of "pretrial diversion" does not short-circuit the statute.

To be clear, we do not establish a set of necessary or sufficient criteria for the term "pretrial diversion" or for the types of programs that are "similar" to pretrial diversion programs: the concepts are not amenable to that sort of precision. But the statutory text dictates a set of parameters the agencies may not exceed. The Board's definition—invoking "treatment, rehabilitation, restitution"—acknowledges these parameters, and the agencies' counsel confirmed them at oral argument when he applied the *ejusdem generis* canon of

Copyright © 2024 Michael P. Malloy. All rights reserved.

interpretation[5] to that definition and conceded that a defendant's agreement not to sue the state for malicious prosecution, to be reaffirmed every year for five years, would not fall within the Board's catch-all category of "other noncriminal or nonpunitive alternatives." We agree with this approach. Adherence to the parameters dictated by the text, generally referenced by the Board's definition, and confirmed by the agencies' counsel at oral argument is particularly important because § 19 violations may trigger steep criminal penalties: the nature of that trigger must be clear. The agencies' approaches must accordingly be consistent with the nature of pretrial diversion; clarity demands no less. We therefore remand for both agencies to reconsider whether DeNaples' Agreement constitutes a "pretrial diversion or similar program." . . .

B

DeNaples rests his entire expunction argument on an FDIC policy statement excluding "completely expunged" convictions from the scope of § 19. FDIC Statement of Policy on FDIA Section 19, 63 Fed. Reg. 66,177, 66,180, 66,184 (Dec. 1, 1998) ("FDIC Policy Statement"). An expunction is complete, FDIC explained, when "the records of conviction are not accessible by any party, including law enforcement, even by court order." Clarification of Statement of Policy for Section 19 of the Federal Deposit Insurance Act, 76 Fed. Reg. 28,031, 28,032 (May 13, 2011). According to DeNaples, because no one—including law enforcement, state licensing authorities, or other governmental officials—is permitted access to the record of his prosecution, even by court order, § 19 does not apply.

In the cease-and-desist proceedings, the agencies rejected the FDIC policy as irrelevant. OCC punted on the issue, explaining that the expunction is relevant only to an FDIC waiver decision and declaring that the Agreement had legal force under Pennsylvania law for a period before it was expunged, so DeNaples in fact violated the statute at some point. The Board, meanwhile, stated that it is not bound by the FDIC policy, and even if the policy applied, its treatment of expunged convictions does not govern an expunged prosecution; this makes sense, the Board reasoned, because § 19 addresses the historical fact of an agreement to enter a pretrial diversion or similar program, which expunction does not affect.

According to DeNaples, however, OCC and the Board in fact adopted the FDIC policy, rendering their refusals to follow that policy arbitrary and capricious. . . .

Synthesizing the various agencies' positions, we are apparently left with a scheme that, in practice, operates as follows. *First,* FDIC takes the position that individuals whose pretrial diversion agreements have been completely expunged need not apply for a § 19 waiver because the statute exempts them. *Second,* OCC relied on FDIC's policy statement when it initiated its enforcement against DeNaples, but it nevertheless believes that, notwithstanding a subsequent expunction, the pre-expunction period is sufficient to trigger § 19 and, therefore, its waiver scheme—even though the agency administering that waiver scheme does not recognize the need for a waiver application. *Third,* the Board disclaims the relevance of the FDIC policy statement with respect to bank holding companies, but it adopted an equivalent approach with respect to savings and loan holding companies even though § 19 provides no clear textual basis for treating the two types of institutions differently. Perhaps, as the Board now explains, the interim final rule simply preserved the status quo set by the Office of Thrift Supervision when it regulated savings and loan holding companies, but that does not change the consequence of the interim final rule. *Fourth,* both OCC and the Board adopted FDIC's position on expunged convictions in the course of administering a different statute. Different statutes, of course, reflect different policy goals

[5] "A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." BLACK'S LAW DICTIONARY 594 (9th ed. 2009).

Copyright © 2024 Michael P. Malloy. All rights reserved.

and seek to achieve different real-world results, so an agency might reasonably take different approaches to similar issues in different statutes, but the effect in this context is bizarre.

This is untenable. Discerning the effect of an expunged conviction under § 19, let alone an expunged pretrial diversion arrangement, is like trying to draw a two-dimensional shape on the surface of a grapefruit. As we have explained, the operation of a statute that may result in the type of severe criminal penalties imposed by § 19 must be clearer. On remand, we expect the agencies to sort out their respective positions. . . .

V

Because the agencies applied an improper definition of "pretrial diversion or similar program" and failed to adequately justify their positions on DeNaples' expunction, we grant DeNaples' petitions for review in part, vacate the agencies' orders, and remand for the agencies to determine whether the Agreement falls within the parameters we now identify. In its current form, the agencies' scattergun approach is too unpredictable. We deny DeNaples' petitions in all other respects.

Copyright © 2024 Michael P. Malloy. All rights reserved.

2022 SUPPLEMENT

*p.630. Change "***8.20.***" to read "***Notes and Comments 8.20.***"*

*p.642. Change "***4.19.***" to read "***4.23*".

p.643. In footnote 13, correct the sixth line to read as follows:

amendment). . . .

p.645. Correct the heading preceding the last paragraph to read:

Appointment of Conservator or Receiver

p.689. Correct footnote 25 to read as follows:

25. *Id*. (codified at 12 U.S.C. § 1441a(a)(6)(G)).

p.690: Replace 8.51-8.53 with the following:

Notes and Comments 8.51. In the post-FIRREA world of failing savings associations, both the FDIC and the OTS had roles to play. See 12 U.S.C. §§ 1464(d)(1)(A), 1813(q)(4), 1818 (1990) (providing enforcement authority for OTS). Pursuant to the Dodd-Frank Act, the OTS was abolished and its regulatory authority distributed among the OCC (primarily for federal savings associations), the FDIC (for supervision of state savings associations), and the Fed (for savings and loan holding companies). *See* Note 1.43, *supra* (discussing effect of Dodd-Frank Act); Note 8.78, and pp. 736-738, *infra* (discussing impact of Dodd-Frank Act).

8.52. What authority does the OCC have with respect to conservatorship and receivership of failing federal savings associations? What about the FDIC? *See* 12 U.S.C. §§ 1464(d)(2)(A)-(B), (3)(A)-(B), 1821(c)(2), (6)(A)-(B).

8.53. What authority does the OCC have with respect to conservatorship and receivership of failing state-chartered savings associations? What about the FDIC? *See* 12 U.S.C. §§ 1464(d)(2), (3), 1821(c)(3).

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Chapter 9

International Financial Services Policy

p. 741: *Add the following at the end of § 2.a*:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA),[12a] the U.S. statutory response to the financial crisis enacted in July 2010, contains some modest provisions to encourage international policy coordination.[12b] Unfortunately, it is short on specific guidance for regulators.[12c]

p. 746: *Replace lines 4-5 with the following*:

construct a credible post-meltdown replacement – popularly known as Basel III.[52] These efforts have struggled for success, and are now giving way to "Basel IV," an effort to make capital supervision more effective and efficient in a post-meltdown environment.[52a]

[12a] Pub. L. No. 111-203, 124 Stat. 1376 (2010). For discussion of the overall impact of the DFA, *see* 1 MALLOY, *supra*, § 1C.10.

[12b] *See, e.g.*, 12 U.S.C. § 12 U.S.C. 5323(i) (requiring "consult[ation] with appropriate foreign regulatory authorities, to the extent appropriate"); *id*. § 5373(c) (requiring Fed and Treasury Secretary to "consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies").

[12c] *See* 3 MALLOY, *supra*, § 15.06[B] (discussing effect of DFA on international policy).

[52] *See* notes 7.24-7.25, *supra* (discussing Basel III).

[52a] *See, e.g.*, 3 MICHAEL P. MALLOY, BANKING LAW AND REGULATION § 15.02[C][1][c] (2d ed., Wolters Kluwer, 2011 & Cum, Supps.) (discussing difficulties surrounding post-crisis capital supervision).

Copyright © 2024 Michael P. Malloy. All rights reserved.

p.759. After the first line on the page, add the following new subsection:

f. Russian Invasion of Ukraine*

The invasion of Ukraine by Russian armed forces in February 2022 triggered, among other responses, the imposition of economic sanctions on the Government of Russia, its officials, and many Russian nationals. An earlier order, Executive Order No. 14,024,[151a] issued in 2021 under the authority of, *inter alia,* the Immigration and Nationality Act §§ 212(f), 215(a)[151b] and the International Emergency Economic Powers Act (IEEPA),[151c] had blocked certain property of the Russian Government, its leaders, officials, and senior executive officers or directors of specified companies and institutions involved in Russian interference with the 2020 U.S. elections through

> efforts to undermine the conduct of free and fair democratic elections and democratic institutions in the United States and its allies and partners; to engage in and facilitate malicious cyber-enabled activities against the United States and its allies and partners; to foster and use transnational corruption to influence foreign governments; to pursue extraterritorial activities targeting dissidents or journalists; to undermine security in countries and regions important to United States national security.[151d]

Thereafter, a continuing series of executive orders and proclamations were issued, imposing sanctions in response to the extended invasion of Ukraine by Russia.[151e] These presidential actions were followed by a continuing string of implementing regulatory measures,[151f] along with a stream of specific designations of Russian officials, affiliates,

---

* This subsection is based upon 3 MICHAEL P. MALLOY, BANKING LAW AND REGULATION § 15.05[D] (2d ed., Wolters Kluwer, 2011 & Cum. Supps.).

[151a] 86 Fed. Reg. 20,249 (2021).

[151b] 8 U.S.C. §§ 1182(f), 1185(a).

[151c] 50 U.S.C. §§ 1701 *et seq.*

[151d] 86 Fed. Reg. 20,249, 20,249 (2021).

[151e] *See, e.g.,* Ex. Order No. 14,065, 87 Fed. Reg. 10,293 (Feb. 21, 2022) (blocking property of certain persons and prohibiting transactions with respect to continued Russian invasion of Ukraine); Ex. Order No. 14,066, 87 Fed. Reg. 13,625 (Mar. 8, 2022) (prohibiting certain imports and new investments in response to Russian invasion of Ukraine; expanding scope of national emergency declared in Ex. Order No. 14,024); Ex. Order No. 14,068, 87 Fed. Reg. 14,381 (Mar. 11, 2022) (prohibiting certain imports, exports, and new investment with respect to continued Russian aggression); Pres. Proc. No. 10,420, 87 Fed. Reg. 38,875 (2022) (increasing duties on certain articles from Russian Federation); Ex. Order No. 14,114, 88 Fed. Reg. 89,271 (2023) (taking additional steps with respect to the Russian Federation's harmful activities).

[151f] Implementing regulations of Treasury's Office of Foreign Assets Control (OFAC) follow two different threads. The first consists of sanctions based upon Executive Order No. 14,024. *See, e.g.,* 86 Fed. Reg. 35,867 (2021) (publishing Russian Harmful Foreign Activities Directive 1, blocking property with respect to specified harmful foreign activities of Government of Russian Federation); 87 Fed. Reg. 11,297 (2022) (codified at 31 C.F.R. pt. 587) (publishing Russian Harmful Foreign Activities Sanctions Regulations (RHFASR)); 87 Fed. Reg. 32,303, 32,304-32,307 (2022) (codified at 31 C.F.R. pt. 587) (publishing Directives 1A, 2, 3, 4 under Executive Order 14,024); 87 Fed. Reg. 32,999 (2022) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General Licenses 7A, 26A, 31, 32); 87 Fed. Reg. 34,169 (2022) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General Licenses 25A, 33, 34, 35); 87 Fed. Reg. 47,344 (2022) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General Licenses 39-43); 87 Fed. Reg. 47,347 (2022) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General Licenses 45-46); 87 Fed. Reg. 47,348 (2022) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General Licenses 13 and 13A); 87 Fed. Reg. 76,930 (2022) (codified at

Copyright © 2024 Michael P. Malloy. All rights reserved.

31 C.F.R. pt. 587) (publishing RHFASR General License 13C, authorizing U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications); 87 Fed. Reg. 76,930 (2022) (second release; codified at 31 C.F.R. pt. 587) (RHFASR General License 54, authorizing all transactions ordinarily incident and necessary to the purchase or receipt of any debt or equity securities of VEON Ltd., provided that such debt or equity securities were issued prior to June 6, 2022); 88 Fed. Reg. 13,316 (2023) (codified at 31 C.F.R. pt. 587) (publishing general licenses 56A, 57A authorizing certain transactions otherwise prohibited by RHFASR); 88 Fed. Reg. 34,748 (2023) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General License 8G); 88 Fed. Reg. 36,648 (2023) (publishing Directive 4 (as amended) under Executive Order 14024; concerning prohibitions related to transactions involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation); 88 Fed. Reg. 40,095 (2023) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General License 69); 88 Fed. Reg. 52,038 (2023) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General Licenses 70, 71); 88 Fed. Reg. 67,089 (2023) (publishing RHFASR General Licenses 55A, 72).

The second thread consists of sanctions based primarily upon executive orders responding to the Russian invasion of Ukraine. *See, e.g.,* 86 Fed. Reg. 37,904 (2021) (codified at 31 C.F.R. pt. 589) (publishing Ukraine-Related Web General License 14 and subsequent iterations); 86 Fed. Reg. 37,907 (2021) (codified at 31 C.F.R. pt. 589) (publishing Ukraine-Related Web General License 12 and subsequent iterations of license); 86 Fed. Reg. 40,310 (2021) (codified at 31 C.F.R. pt. 589) (publishing Ukraine-Related Web General License 15 and subsequent iterations); 86 Fed. Reg. 40,316 (2021) (codified at 31 C.F.R. pt. 589) (publishing Ukraine-Related Web General License 13 and subsequent iterations); 86 Fed. Reg. 59,615 (2021) (codified at 31 C.F.R. pt. 589) (publishing Ukraine-Related Web General License 16 and subsequent iterations); 87 Fed. Reg. 26,094 (2022) (codified at 31 C.F.R. pt. 589) (changing title of Ukraine-Related Sanctions Regulations to the Ukraine-/Russia-Related Sanctions Regulations (URRSR); replacing 2014 abbreviated Ukraine-related sanctions regulations with more comprehensive set of regulations); 87 Fed. Reg. 32,081 (2022) (codified at 31 C.F.R. pt. 589) (publishing URRSR Web General Licenses 13Q, 13R); 87 Fed. Reg. 32,082 (2022) (codified at 31 C.F.R. pt. 589) (publishing URRSR Web General Licenses 15K, 15L); 87 Fed. Reg. 32,500 (2022) (updating URRSR list of medical supplies generally licensed for exportation or re-exportation to Crimea region of Ukraine). *See also* 87 Fed. Reg. 32,303 (2022) (codified 31 C.F.R. pt. 587) (publishing financial services sectoral determination under Executive Order 14,024); 87 Fed. Reg. 32,307 (2022) (determining sectors and services subject to RHFASR, 31 C.F.R. pt. 587); 87 Fed. Reg. 76,931 (2022) (codified at 31 C.F.R. pt. 587) (determining that certain prohibitions of Ex. Order No. 14,071 apply to specified services related to maritime transport of crude oil of Russian Federation origin; publishing RHFASR General Licenses 55-57, authorizing certain transactions involving maritime transport of crude oil); 88 Fed. Reg. 89,574 (2023) (codified at 31 C.F.R. pt. 587) (publishing RHFASR General License 78); 89 Fed. Reg. 2880 (2024) (codified at 31 C.F.R. pt. 587) (publishing RHFASRs General Licenses 81-85).

For implementing regulations of the Commerce Department's Bureau of Industry and Security, *see, e.g.,* 87 Fed. Reg. 12,226 (2022) (codified at 15 C.F.R. pts. 734, 738, 740, 742, 744, 746, 772) (implementing sanctions against Russia under Export Administration Regulations (EARs)); 87 Fed. Reg. 13,048 (2022) (codified at 15 C.F.R. pts. 734, 736, 738, 740, 742, 744, 746) (imposing sanctions against Belarus under EARs); 87 Fed. Reg. 13,141 (2022) (codified at 15 C.F.R. pt. 744) (imposing further sanctions against Russia with addition of certain entities to Entity List); 87 Fed. Reg. 14,785 (2022) (codified at 15 C.F.R. pts. 738, 746) (imposing sanctions on "luxury goods" destined for Russia and Belarus and for Russian and Belarusian oligarchs and "malign actors" under EARs); 87 Fed. Reg. 34,131 (2022) (codified at 15 C.F.R. pts. 734, 740, 744, 746, 766) (revising Russia and Belarus sanctions and related provisions); 87 Fed. Reg. 38,920 (2022) (codified 15 C.F.R. pt. 744) (adding 36 entities under 41 entries to the Entity List, including entities located in Russia); 88 Fed. Reg. 12,150 (2023) (codified at 15 C.F.R. §§ 734.9(f)(1)(i)(B), (f)(1)(ii)(B), (f)(2), (j), pt. 734 Supp. 2, 746.7(a)(1), pt. 746 Supp. 3, Supp.7) (imposing new export control measures on Iran to address use of Iranian unmanned aerial vehicles by Russia in war against Ukraine); 88 Fed. Reg. 12,175 (2023) (codified at 15 C.F.R. §§ 744.7(a), (b)(1)-(2), 746.5(b), 746.8(b), 746.10(a), (b), pt. 746 Supp. 2, Supp. 3, Supp. 4, Supp. 5, Supp. 6) (implementing additional sanctions against Russia and Belarus and refining existing controls); 89 Fed. Reg. 4804 (2024) (codified at 15 CFR 15 C.F.R. §

Copyright © 2024 Michael P. Malloy. All rights reserved.

and property that have been subjected to prohibitions.[151g] In addition, in February 2022, the State Department imposed sanctions on KVT-RUS and identified one vessel, the Fortuna, as blocked property,[151h] pursuant to §§ 232 and 235 of the Countering America's Adversaries Through Sanctions Act (CAATSA)[151i] and § 7503 of the Protecting Europe's Energy Security Act (PEESA).[151j]

734.4((a)(6)(ii), pt. 734 Supp. 2, §§ 746.5(a), (b)(2)(i)-(vi), (c), 746.6(a)(5), 746.8(a), (c), 746.10(a)(3), (b)-(c), pt. 746 Supps. 2, 4-7) (implementing additional sanctions against Russia and Belarus; refining existing controls; revising restrictions on Iran supply of unmanned aerial vehicles to Russia).

[151g] For designations under Ex. Order 14,024, *see*, *e.g.*, 87 Fed. Reg. 11,818 (2022); 87 Fed. Reg. 12,215 (2022) (adding Vladimir Putin and Sergei Lavrov to Specially Designated Nationals and Blocked Persons List (SDN List)); 87 Fed. Reg. 12,216 (2022). For other Russia-related designations, *see*, *e.g.*, 87 Fed. Reg. 11,810 (2022); 87 Fed. Reg. 13,793 (2022); 87 Fed. Reg. 16,085 (2022); In June 2022, the SDN List was substantially revised and updated. *See* 87 Fed. Reg. 34,378 (2022) (publishing updates to 740 entries on OFAC SDN List, Non-SDN Menu-Based Sanctions List, and Sectoral Sanctions Identifications List). Many individuals and institutions continue to be added to the list up to the present. *See*, *e.g.*, 89 Fed. Reg. 8490 (2024) (adding 11 individuals and 156 entities whose property and interests in property were blocked pursuant to Ex. Order No. 14024; updating information on five persons currently blocked).

[151h] *See* Notice of Department of State Sanctions Actions, 87 Fed. Reg. 26,385 (2022).

[151i] Pub. L. No. 115-44, Aug. 2, 2017, §§ 232, 235, 131 Stat. 886, 917, 919-921 (2017) (codified at 22 U.S.C. §§ 9526, 9529).

[151j] Pub. L. No. 116-92, Dec. 20, 2019, § 7503, 133 Stat. 1198, 2300-2304 (2019), *as amended,* Pub. L. No. 116-283, Jan. 1, 2021, § 1242, 134 Stat 3388, 3945-3947 (2021) (codified at 22 U.S.C. § 9526 note).

Copyright © 2024 Michael P. Malloy. All rights reserved.

Selected Bibliography

pp. 761-787. Add the following references at appropriate points throughout the Selected Bibliography:

1. The Regulated Environment for Financial Services

Adams, Comment, *Good News for Low-Income Americans: In the Battle of Credit Unions Against Banks, Credit Unions Score a Point*, 52 U. PAC. L. REV. 161 (2020).

Allen, *Putting the "Financial Stability" in Financial Stability Oversight Council*, 76 OHIO ST. L.J. 1087 (2015).

Bailey, *A Defense of the Doctrine of Preemption: Revealing the Fallacy that Federal Preemption Contributed to the Financial Crisis*, 16 U. PA. J. CONST. L. 1041 (2014).

Baradaran, *Regulation by Hypothetical*, 67 VAND. L. REV. 1247 (2014).

Bradley, *The Design of Agency Interactions*, 111 COLUM. L. REV. 745 (2011).

Bransen, Comment, *Three Ring Circus: Collins' Impact on Congressional Authority and the Federal Bureaucracy,* 54 U. PAC. L. REV. 359 (2023).

Di Lucido, *et al*., *Fenceposts Without a Fence*, 76 VANDERBILT L. REV. 1215 (2023).

Donelson & Zaring, *Requiem for a Regulator: The Office of Thrift Supervision's Performance During the Financial Crisis*, 89 N.C. L. REV. 1777 (2011).

Guseva, *Destructive Collectivism: Dodd-Frank Coordination and Clearinghouses*, 37 CARDOZO L. REV. 1693 (2016).

Havard, *Doin' Banks*, 5 U. PA. J. L. & PUB. AFF. 317 (2020).

Hirota, Comment, *Tomayto, Tomahto: The Cunning New Face of Payday Lending*, 52 U. PAC. L. REV. 185 (2020).

Johnson, Ramirez, & Shelby, *Diversifying to Mitigate Risk: Can Dodd-Frank Section 342 Help Stabilize the Financial Sector*? 73 WASH. & LEE L. REV. 1795 (2016).

Jones, *Beyond The Hype: A Practical Approach To Cryptoreg*, 25 VA. J. LAW & TECH. 175 (2022).

Kroll, *Welcome to the universe of flex-hybrid exams*, ABA Banking Journal, May 5, 2022, *available at* https://bankingjournal.aba.com/2022/05/welcome-to-the-universe-of-flex-hybrid-exams/.

Malloy, *The Community Reinvestment Act and the Unbanked: No Stake to Hold Onto*, 53 U. PAC. L. REV. 1 (2021).

Malloy, *Distance Banking: Pandemic Responses of a Regulated Industry*, *in* DAVID A. FRENKEL & ANNA CHRONOPOULOU (eds.), AN ANTHOLOGY OF LAW 15 (Athens Institute for Education and Research, 2020).

Copyright © 2024 Michael P. Malloy. All rights reserved.

Malloy, *Risk Management in Financial Services*, *in* DAVID A. FRENKEL & ANNA CHRONOPOULOU (eds.), BUSINESS, ECONOMICS AND MERCANTILE LAW: SELECTED ISSUES 11 (Athens Institute for Education and Research, 2016).
Malloy, *There are no Bitcoins, only Bit Payers*, in DAVID A. FRENKEL (ed.), SELECTED ISSUES IN PUBLIC PRIVATE LAW 13 (Athens Inst. For Education & Research: 2015).
Malloy & Lovett, BANKING AND FINANCIAL INSTITUTIONS LAW IN A NUTSHELL (9th ed. 2019).
Marsh, *Reforming the Regulation of Community Banks after Dodd-Frank*, 90 IND. L.J. 179 (2015).
Middlebrook & Hughes, *Virtual Uncertainty: Developments In The Law Of Electronic Payments And Financial Services*, 69 BUS. LAW. 263 (2013).
Odinet, *Predatory Fintech and the Politics of Banking*, 106 IOWA L. REV. 1739 (2021).
Sitaraman & Dobkin, *The Choice Between Single Director Agencies and Multimember Commissions*, 71 ADMIN. L. REV. 719 (2019).

2. Entry Rules

Zaring, *Modernizing the Bank Charter*, 61 WM. & MARY L. REV. 1397 (2020).

* * *

4. Control Transactions

Greenlee & Knestout, *Acquisition of Control of a State Member Bank, Bank Holding Company, or Savings and Loan Holding Company Pursuant to the Change In Bank Control Act*, 38 REV. BANKING & FIN. L. 209 (2018).

5. Transactional Rules

Jones, *Beyond The Hype: A Practical Approach To Cryptoreg*, 25 VA. J. LAW & TECH. 175 (2022).
Malloy, *Housing Policy and the Core Principles for Effective Banking Supervision*, 6 VITAL SPACES 4 (2013).
Malloy, *There are no Bitcoins, only Bit Payers*, in DAVID A. FRENKEL (ed.), SELECTED ISSUES IN PUBLIC PRIVATE LAW 13 (Athens Inst. For Education & Research: 2015).
Gerding, *Bank Regulation and Securitization: How the Law Improved Transmission Lines Between Real Estate and Banking Crises*, 50 GA. L. REV. 89 (2015).
Roisman, *Protecting Homeowners from Non-Judicial Foreclosure of Mortgages Held by Fannie Mae and Freddie Mac*, 43 REAL EST. L.J. 125 (2014).
Zells, Note, *The Post-2008 Lending Environment and the Need for Raising the Credit Union Member Business Lending Cap*, 6 WM. & MARY BUS. L. REV. 739 (2015).

* * *

Copyright © 2024 Michael P. Malloy. All rights reserved.

7. Securities Regulation

Bartlett, *Making Banks Transparent*, 65 VAND. L. REV. 293 (2012).
Bradley, *The Design of Agency Interactions*, 111 COLUM. L. REV. 745 (2011).
Dombalagian, *The Expressive Synergies of the Volcker Rule*, 54 B.C. L. REV. 469 (2013).
Gerding, *Bank Regulation and Securitization: How the Law Improved Transmission Lines Between Real Estate and Banking Crises*, 50 GA. L. REV. 89 (2015).
Goyfman, Comment, *Let's Be Frank: Are the Proposed US Rules Based on Basel III an Adequate Response to the Financial Debacle*? 36 FORDHAM INT'L L.J. 1062 (2013).
Guseva, *Destructive Collectivism: Dodd-Frank Coordination and Clearinghouses*, 37 CARDOZO L. REV. 1693 (2016).
Krippel, Note, *Regulatory Overhaul of the OTC Derivatives Market: The Costs, Risks and Politics*, 6 OHIO ST. ENTREP. BUS. L.J. 269 (2011).
Merkley & Levin, *The Dodd-Frank Act Restrictions on Proprietary Trading and Conflicts of Interest: New Tools to Address Evolving Threats*, 48 HARV. J. ON LEGIS. 515 (2011).

8. Resolution of Institution Failures

Allen, *Putting the "Financial Stability" in Financial Stability Oversight Council*, 76 OHIO ST. L.J. 1087 (2015).
Bailey, *A Defense of the Doctrine of Preemption: Revealing the Fallacy that Federal Preemption Contributed to the Financial Crisis*, 16 U. PA. J. CONST. L. 1041 (2014).
Boyack, *Lessons in Price Stability from the U.S. Real Estate Market Collapse*, 2010 MICH. ST. L. REV. 925 (2010).
Dallas, *Short-Termism, the Financial Crisis, and Corporate Governance*, 37 J. CORP. L. 265 (2012).
Donelson & Zaring, *Requiem for a Regulator: The Office of Thrift Supervision's Performance During the Financial Crisis*, 89 N.C. L. REV. 1777 (2011).
Ellis, Dow & Safavian, *Use of FIRREA to Impose Liability in the Wake of the Global Financial Crisis: A New Weapon in the Arsenal to Prevent Financial Fraud*, 18 U. PA. J. BUS. L. 119 (2015).
Gerding, *Bank Regulation and Securitization: How the Law Improved Transmission Lines Between Real Estate and Banking Crises*, 50 GA. L. REV. 89 (2015).
Guseva, *Destructive Collectivism: Dodd-Frank Coordination and Clearinghouses*, 37 CARDOZO L. REV. 1693 (2016).
Johnson, Ramirez, & Shelby, *Diversifying to Mitigate Risk: Can Dodd-Frank Section 342 Help Stabilize the Financial Sector*? 73 WASH. & LEE L. REV. 1795 (2016).
Judge, *The First Year: The Role of a Modern Lender of Last Resort*, 116 COLUM. L. REV. 843 (2016).
Karmel, *An Orderly Liquidation Authority Is Not the Solution To Too-Big-To-Fail*, 6 BROOK. J. CORP. FIN. & COM. L. 1 (2011).
Malloy, *Governing Foolishness: A Comparative Analysis of Executive Compensation Rules*, in DAVID A. FRENKEL (ed.), ECONOMY AND COMMERCIAL LAW–SELECTED ISSUES 31 (Athens Institute for Education and Research 2013).
Malloy, *Housing Market Deterioration in the Wake of the U.S. Subprime Mortgage Market Meltdown: Disturbing Metrics Point to Linkage Between Housing Policy and Financial Services Policy*, 4 VITAL SPACES 8 (2011).

Copyright © 2024 Michael P. Malloy. All rights reserved.

Malloy, *Risk Management in Financial Services*, *in* DAVID A. FRENKEL & ANNA CHRONOPOULOU (eds.), BUSINESS, ECONOMICS AND MERCANTILE LAW: SELECTED ISSUES 11-24 (Athens Institute for Education and Research, 2016).

Roisman, *Protecting Homeowners from Non-Judicial Foreclosure of Mortgages Held by Fannie Mae and Freddie Mac*, 43 REAL EST. L.J. 125 (2014).

Ryznar, Sensenbrenner, & Jacobs, *Implementing Dodd-Frank Act Stress Testing*, 14 DEPAUL BUS. & COM. L.J. 323 (2016).

9. International Financial Services Policy

Alford, *The Operation of Supervisory Colleges in EU Banking Supervision: A Case Study of Soft Law Becoming Hard Law*, 54 INT'L LAW. 83 (2021).

Atik, *EU Implementation of Basel III in the Shadow of Euro Crisis*, 33 REV. BANKING & FIN. L. 283 (2013).

Avgouleas, *Rationales and Designs to Implement an Institutional Big Bang in the Governance of Global Finance*, 36 SEATTLE U. L. REV. 321 (2013).

Cho & Kelly, *Promises and Perils of New Global Governance: A Case of the G20*, 12 CHI. J. INT'L L. 491 (2012).

Ellis, Dow & Safavian, *Use of FIRREA to Impose Liability in the Wake of the Global Financial Crisis: A New Weapon in the Arsenal to Prevent Financial Fraud*, 18 U. PA. J. BUS. L. 119 (2015).

Goyfman, Comment, *Let's Be Frank: Are the Proposed US Rules Based on Basel III an Adequate Response to the Financial Debacle*? 36 FORDHAM INT'L L.J. 1062 (2013).

Gregory, Note, *Lax Tax: The Threat of Secrecy Jurisdictions and What the International Community Should Do About It*, 20 TRANSNAT'L L. & CONTEMP. PROBS. 859 (2012).

Howard & Jonas, *"Under Pressure"*: *Basel III's Capital Adequacy Requirements Squeeze Broker-Dealer Returns on Equity, Increase Need for the Imposition of Uniform Fiduciary Duties*, 7 J. MARSHALL L.J. 1 (2013).

Lastra, *Banking Union and Single Market: Conflict or Companionship*? 36 FORDHAM INT'L L.J. 1190 (2013).

Lovett, *Transnational Finance Regulation and the Global Economy*, 20 TUL. J. INT'L & COMP. L. 43 (2011).

Malloy, *Contracts and Economic Sanctions*, 53 U. PAC. L. REV. 617 (2022).

Malloy, *Core Principles for Effective Banking Supervision: New Concepts and Challenges*, in DAVID A. FRENKEL (ed.), SELECTED LEGAL ISSUES IN ECONOMICS 11 (Athens Institute for Education and Research, 2014).

Malloy, *The Emerging Regime of International Financial Services Regulation*, 46 N.C. J. INT'L L. 439 (2021).

Malloy, *Governing Foolishness: A Comparative Analysis of Executive Compensation Rules*, in DAVID A. FRENKEL (ed.), ECONOMY AND COMMERCIAL LAW–SELECTED ISSUES 31 (Athens Institute for Education and Research 2013).

Malloy, *Negotiating in a Ditch: Institutional Implications of the Sovereign Debt Crisis*, 28 CONN. J. INT'L L. 1 (2012).

Malloy, *The International Financial Crisis and Nation-Based "Prudential Regulation,"* in DAVID A. FRENKEL (ed.), FINANCIAL CRISIS, GLOBALISATION AND REGULATORY REFORM (Athens Institute for Education and Research: 2012).

Malloy, *Russia-Ukraine Economic Sanctions: Legal Responses to a Crisis*, in DAVID A. FRENKEL (ed.), ANTHOLOGY OF LAW 15 (Athens Inst. for Educ. & Res., 2023).

Copyright © 2024 Michael P. Malloy. All rights reserved.

2024 SUPPLEMENT

Malloy, *Zone Defense: The Euro Zone and the Crisis in Financial Services Markets* in DAVID A. FRENKEL (ed.), FINANCIAL CRISIS, GLOBALISATION AND REGULATORY REFORM (Athens Institute for Education and Research, 2012).

Takehara, Comment, *Financial Reform in the European Union: Establishing the Common Technical Rulebook*, 26 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 531 (2013).

Tuninetti, Note, *Limiting the Scope of the Foreign Sovereign Immunities Act after Zivotofsky II*, 57 HARV. INT'L L.J. 215 (2016).

UN Economic Commission for Europe, *Policy Framework for Sustainable Real Estate Markets* (rev. 2019).

Zells, Note, *The Post-2008 Lending Environment and the Need for Raising the Credit Union Member Business Lending Cap*, 6 WM. & MARY BUS. L. REV. 739 (2015).

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Excerpts from United States Code
Current as of 30 November 2023

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Excerpts from

United States Code

Current as of 30 November 2023

TITLE 12. BANKS AND BANKING

CHAPTER 2--NATIONAL BANKS

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

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

§22. Organization certificate

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

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

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

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

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

Fifth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this chap-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ter.

§23. Acknowledgment and filing of certificate

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

§24. Corporate powers of associations

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

First. To adopt and use a corporate seal.

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

Third. To make contracts.

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

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

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

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of title 62 of the Revised Statutes. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: Provided, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. . . . As used in this section the term "investment securities" shall mean marketable obligations, evidencing indebted-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as herein after provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. . . . In addition to the provisions in this paragraph for dealing in, underwriting, or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).

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

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

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

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

§24a. Financial subsidiaries of national banks

(a) Authorization to Conduct in Subsidiaries Certain Activities That Are Financial in Nature.--

(1) In General.--Subject to paragraph (2), a national bank may control a finan-

Copyright © 2024 Michael P. Malloy. All rights reserved.

cial subsidiary, or hold an interest in a financial subsidiary.

(2) Conditions and Requirements.--A national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, only if--

(A) the financial subsidiary engages only in--

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

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

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

(i) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (except to the extent permitted under section 302 or 303(c) of the Gramm-Leach-Bliley Act [15 U.S.C. §§ 6712, 6713(c)]) or providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986;

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

(iii) any activity permitted in subparagraph (H) or (I) of section 4(k)(4) of the Bank Holding Company Act of 1956 [12.S.C. § 1843(k)(4)(H), (I)], except activities described in section 4(k)(4)(H) that may be permitted in accordance with section 122 of the Gramm-Leach-Bliley Act;

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

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

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

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

(E) except as provided in paragraph (4), the national bank meets standards of credit-worthiness established by the Comptroller of the Currency or other requirement set forth in paragraph (3); and

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

(3) Requirement.--

(A) In general

A national bank meets the requirements of this paragraph if--

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

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

(B) Consolidated Total Assets.--For purposes of this paragraph, the size of an insured bank shall be determined on the basis of the consolidated total assets of the bank as of the end of each calendar year.

(4) Financial Agency Subsidiary.--The requirement in paragraph (2)(E) shall not apply with respect to the ownership or control of a financial subsidiary that engages in activities described in subsection (b)(1) solely as agent and not directly or indirectly as principal.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(5) Regulations Required.–Before the end of the 270-day period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, the Comptroller of the Currency shall, by regulation, prescribe procedures to implement this section.

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

(7) Coordination with Section 4(*l*)(2) of the Bank Holding Company Act of 1956.--Section 4(*l*)(2) of the Bank Holding Company Act of 1956 [12 U.S.C. § 1843(*l*)(2)] applies to a national bank that controls a financial subsidiary in the manner provided in that section.

(b) Activities That Are Financial in Nature.--

(1) Financial Activities.--

(A) In General.--An activity shall be financial in nature or incidental to such financial activity only if--

(i) such activity has been defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to section 4(k)(4) of the Bank Holding Company Act of 1956 [12 U.S.C. § 1843(k)(4)]; or

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

(B) Coordination Between the Board and the Secretary of the Treasury.--

(i) Proposals Raised Before the Secretary of the Treasury.--

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

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

(ii) Proposals Raised by the Board.--

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

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

(2) Factors to Be Considered.--In determining whether an activity is financial in nature or incidental to a financial activity, the Secretary shall take into account--

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

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

Copyright © 2024 Michael P. Malloy. All rights reserved.

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

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

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

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

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

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

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

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

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

(c) Capital Deduction.--

(1) Capital Deduction Required.--In determining compliance with applicable capital standards--

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

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

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

(d) Safeguards for the Bank.--A national bank that establishes or maintains a financial subsidiary shall assure that--

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

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

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

(e) Provisions Applicable to National Banks That Fail to Continue to Meet Certain Requirements.--

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

(2) Agreement to Correct Conditions.--Not later than 45 days after the date of receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank shall execute an agreement with the Comptroller of the Currency and any relevant insured depository institution affiliate shall execute an agreement with its appropriate Federal banking agency to comply with the requirements of subsection (a)(2)(C) and subsection (d).

(3) Imposition of Conditions.--Until the conditions described in a notice under paragraph (1) are corrected--

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

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

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

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

(f) Failure to meet standards of credit-worthiness.--

(1) In General.--A national bank that does not continue to meet standards of credit-worthiness established by the Comptroller of the Currency or other requirement of subsection (a)(2)(E) after acquiring or establishing a financial subsidiary shall not, directly or through a subsidiary,purchase or acquire any additional equity capital of any financial subsidiary until the bank meets such requirements.

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

(g) Definitions.--For purposes of this section, the following definitions shall apply:

(1) Affiliate, Company, Control, and Subsidiary.--The terms 'affiliate', 'company', 'control', and 'subsidiary" have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. § 1841].

(2) Appropriate Federal Banking Agency, Depository Institution, Insured Bank, and Insured Depository Institution.--The terms 'appropriate Federal banking agency', 'depository institution', 'insured bank', and 'insured depository institution' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813].

(3) Financial Subsidiary.--The term 'financial subsidiary' means any company that is controlled by 1 or more insured depository institutions other than a subsidiary that--

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

(B) a national bank is specifically authorized by the express terms of a Federal statute (other than this section),

Copyright © 2024 Michael P. Malloy. All rights reserved.

and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act or the Bank Service Company Act.

(4) Eligible Debt.--The term 'eligible debt' means unsecured long-term debt that--

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

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

(5) Well Capitalized.--The term 'well capitalized' has the meaning given the term in section 38 of the Federal Deposit Insurance Act.

(6) Well Managed.--The term 'well managed' means--

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

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

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

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

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

(a) Definitions

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

(1) National bank

The term “national bank” includes--

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

(B) any Federal branch established in accordance with the International Banking Act of 1978.

(2) State consumer financial laws

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

(3) Other definitions

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

(b) Preemption standard

(1) In general

State consumer financial laws are preempted, only if--

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

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

(C) the State consumer financial law is preempted by a provision of Federal

Copyright © 2024 Michael P. Malloy. All rights reserved.

law other than title 62 of the Revised Statutes.

(2) Savings clause

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

(3) Case-by-case basis

(A) Definition

As used in this section the term "case-by-case basis" refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

(B) Consultation

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

(4) Rule of construction

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

(5) Standards of review

(A) Preemption

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

(B) Savings clause

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

(6) Comptroller determination not delegable

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

(c) Substantial evidence

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

(d) Periodic review of preemption determinations

(1) In general

The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination,

Copyright © 2024 Michael P. Malloy. All rights reserved.

the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 43 of this title.

(2) Reports to Congress

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

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

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

(f) Preservation of powers related to charging interest

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

(g) Transparency of OCC preemption determinations

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

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

(1) Definitions

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

(2) Rule of construction

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

(i) Visitorial powers

(1) In general

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

(j) Enforcement actions

The ability of the Comptroller of the

Copyright © 2024 Michael P. Malloy. All rights reserved.

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

§26. Comptroller to determine if association can commence business

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

§27. Certificate of authority to commence banking

(a) If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter. A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.

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

(2) Any national banking association chartered pursuant to paragraph (1) shall

Copyright © 2024 Michael P. Malloy. All rights reserved.

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

§29. Power to hold real property

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

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

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

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

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

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

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

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

§30. Change of name or location

(a) Name change

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

(b) Location change

Any national banking association, upon written notice to the Comptroller of the Currency, may change the location of its main office to any authorized branch location within the limits of the city, town, or village in which it is situated, or, with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval

Copyright © 2024 Michael P. Malloy. All rights reserved.

from the Comptroller of the Currency, to any other location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits.

(c) Coordination with section 36 of this title

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

(d) Retention of 'Federal' in Name of Converted Federal Savings Association.--

(1) In General.--Notwithstanding subsection (a) or any other provision of law, any depository institution, the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Gramm-Leach-Bliley Act may retain the term 'Federal' in the name of such institution if such institution remains an insured depository institution.

(2) Definitions.--For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.

§35. Organization of State banks as national banking associations

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the word "national": Provided, however, That said conversion shall not be in contravention of the State law. . . .

The Comptroller of the Currency may, in his discretion and subject to such conditions as he may prescribe, permit such converting bank to retain and carry at a value determined by the Comptroller such of the assets of such converting bank as do not conform to the legal requirements relative to assets acquired and held by national banking associations.

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

§36. Branch banks

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

(a) Lawful and continuous operation

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

Copyright © 2024 Michael P. Malloy. All rights reserved.

branch.

(b) Converted State banks

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

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

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

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

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

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

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

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

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

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

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

(c) New branches

A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State

Copyright © 2024 Michael P. Malloy. All rights reserved.

may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: Provided, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.

(d) Branches resulting from interstate merger transactions

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

(e) Exclusive authority for additional branches

(1) In general

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

(2) Retention of branches

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

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

(B) the branch resulted from--

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

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

(f) Law applicable to interstate branching operations

(1) Law applicable to national bank branches

(A) In general

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

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

(ii) when the Comptroller of the Currency determines that the application

Copyright © 2024 Michael P. Malloy. All rights reserved.

of such State laws would have a discriminatory effect on the branch in comparison with the effect the application of such State laws would have with respect to branches of a bank chartered by the host State.

(B) Enforcement of applicable State laws

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

(2) Treatment of branch as bank

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

(3) Rule of construction

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

(C) Review and report on actions by Comptroller

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

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

(1) In general

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

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

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

(2) Conditions on establishment and operation of interstate branch

(A) Establishment

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

(B) Operation

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

(3) Definitions

The following definitions shall apply for purposes of this section:

(A) De novo branch

The term "de novo branch" means a branch of a national bank which--

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

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

Copyright © 2024 Michael P. Malloy. All rights reserved.

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

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

(B) Home State

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

(C) Host State

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

(h) *Repealed.* Pub.L. 104-208, s 2204, Sept. 30, 1996, 110 Stat. 3009-405.

(i) Prior approval of branch locations

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

(j) Branch defined

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

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

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

(*l*) State bank and bank defined

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

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

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

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank is located, or in a newspaper published nearest thereto), to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

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

Any national banking association may, with the approval of the Comptroller of the Currency, and by a vote of shareholders owning two-thirds of the stock of such associations, increase its capital stock to any sum approved by the said comptroller, but no increase in capital shall be valid until the whole amount of such increase is 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 increase in capital stock and his approval thereof, and that it has been duly paid in as part of the capital of such association: Provided, however, That a national banking association may, with the approval of the Comptroller of the Currency, and by the vote of shareholders owning two-thirds of the stock of such association, increase its capital stock by the declaration of a stock dividend, provided that the surplus of said association, after the approval of the increase, shall be at least equal to 20 per centum of the capital stock as increased. . . .

§71. Election

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

§71a. Number of directors; penalties

After one year from June 16, 1933, notwithstanding any other provision of law, the board of directors, board of trustees, or other similar governing body of every national banking association and of every State bank or trust company which is a member of the Federal Reserve System shall consist of not less than five nor more than twenty-five members, except that the Comptroller of the Currency may, by regulation or order, exempt a national bank from the 25-member limit established by this section. . . .

§72. Qualifications

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

Copyright © 2024 Michael P. Malloy. All rights reserved.

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

§81. Place of business

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

§83. Loans by bank on its own stock

(a) General Prohibition.--No national bank shall make any loan or discount on the security of the shares of its own capital stock.

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

§84. Lending limits (a) Total loans and extensions of credit

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

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

(b) Definitions

For the purposes of this section--

(1) the term "loans and extensions of credit" shall include--

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

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

(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction be-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tween the national banking association and the person;

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

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

(c) Exceptions

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

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

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

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

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

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

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

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

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

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

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

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

(d) Authority of Comptroller of the Currency

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

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

§85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidence of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under state laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political

Copyright © 2024 Michael P. Malloy. All rights reserved.

subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

§86. Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by section 85 of this title, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: Provided, That such action is commenced within two years from the time the usurious transaction occurred.

§91. Transfers by bank and other acts in contemplation of insolvency

All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court.

§92. Acting as insurance agent or broker

In addition to the powers now vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent: Provided, however, That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: And provided further, That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

§92a. Trust powers

(a) Authority of Comptroller of the

Copyright © 2024 Michael P. Malloy. All rights reserved.

Currency

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

(b) Grant and exercise of powers deemed not in contravention of State or local law

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this section.

(c) Segregation of fiduciary and general assets; separate books and records; access of State banking authorities to reports of examinations, books, records, and assets

National banks exercising any or all of the powers enumerat[ed] in this section shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. The State banking authorities may have access to reports of examination made by the Comptroller of the Currency insofar as such reports relate to the trust department of such bank, but nothing in this section shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank.

(d) Prohibited operations; separate investment account; collateral for certain funds used in conduct of business

No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Comptroller of the Currency. . . .

(h) Loans of trust funds to officers and employees prohibited; penalties

It shall be unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

(i) Considerations determinative of grant or denial of applications; minimum capital and surplus for issuance of permit

In passing upon applications for permission to exercise the powers enumerated in this section, the Comptroller of the Currency may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to him proper, and may grant or refuse the application accordingly: Provided, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust

Copyright © 2024 Michael P. Malloy. All rights reserved.

companies, and corporations exercising such powers. . . .

§93. Violations of provisions of chapter

(a) Forfeiture of franchise; personal liability of directors

If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district or Territorial court of the United States in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation.

(b) Civil money penalty

(1) First tier

Any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, violates any provision of this chapter or any of the provisions of section 92a of this title, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(2) Second tier

Notwithstanding paragraph (1), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, commits any violation described in paragraph (1) which--

(A)(i) commits any violation described in any paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such association; or

(iii) breaches any fiduciary duty;

(B) 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 association; 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.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who--

(A) knowingly--

(i) commits any violation described in paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of such association; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such association 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 paragraph (4) for each day during which such violation, practice, or breach continues.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

Copyright © 2024 Michael P. Malloy. All rights reserved.

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is--

(A) in the case of any person other than a national banking association, an amount [not to] exceed $1,000,000; and

(B) in the case of a national banking association, an amount not to exceed the lesser of--

(i) $1,000,000; or

(ii) 1 percent of the total assets of such association. . . .

(c) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such an association (including a separation caused by the closing of such an association) shall not affect the jurisdiction and authority of the Comptroller of the Currency to issue any notice and proceed under this section against any such party, if such notice 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 association (whether such date occurs before, on, or after August 9, 1989).

§161. Reports to Comptroller of the Currency

(a) Reports of condition; forms; contents; date of making; publication

Every association shall make reports of condition to the Comptroller of the Currency in accordance with the Federal Deposit Insurance Act [12 U.S.C. § 1811 *et seq*.]. The Comptroller of the Currency may call for additional reports of condition, in such form and containing such information as he may prescribe, on dates to be fixed by him, and may call for special reports from any particular association whenever in his judgment the same are necessary for his use in the performance of his supervisory duties. Each report of condition shall contain a declaration by the president, a vice president, the cashier, or by any other officer designated by the board of directors of the bank to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of the report of condition shall be attested by the signatures of at least three of the directors of the bank other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. Each report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified by the Comptroller, and shall be transmitted to the Comptroller within the period of time specified by the Comptroller. Special reports called for by the Comptroller need contain only such information as is specified by the Comptroller in his request therefor, and publication of such reports need be made only if directed by the Comptroller. . . .

(c) Reports of affiliates; form; contents; date of making; publication; penalties

Each national banking association shall obtain from each of its affiliates other than member banks and furnish to the Comptroller of the Currency not less than four reports during each year, in such form as the Comptroller may prescribe, verified by the oath or affirmation of the president or such other officer as may be designated by the board of directors of such affiliate to verify such reports, disclosing the information hereinafter provided for as of dates identical with those for which the Comptroller shall during such year require the reports of the condition of the association. Each such

Copyright © 2024 Michael P. Malloy. All rights reserved.

report of an affiliate shall be transmitted to the Comptroller at the same time as the corresponding report of the association, except that the Comptroller may, in his discretion, extend such time for good cause shown. Each such report shall contain such information as in the judgment of the Comptroller of the Currency shall be necessary to disclose fully the relations between such affiliate and such bank and to enable the Comptroller to inform himself as to the effect of such relations upon the affairs of such bank. The Comptroller shall also have power to call for additional reports with respect to any such affiliate whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of the conditions of the association with which it is affiliated. Such additional reports shall be transmitted to the Comptroller of the Currency in such form as he may prescribe.

§181. Voluntary dissolution; appointment and removal of liquidating agent or committee; examination

Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock. If the liquidation is to be effected in whole or in part through the sale of any of its assets to and the assumption of its deposit liabilities by another bank, the purchase and sale agreement must also be approved by its shareholders owning two-thirds of its stock unless an emergency exists and the Comptroller of the Currency specifically waives such requirement for shareholder approval.

The shareholders shall designate one or more persons to act as liquidating agent or committee, who shall conduct the liquidation in accordance with law and under the supervision of the board of directors, who shall require a suitable bond to be given by said agent or committee. The liquidating agent or committee shall render annual reports to the Comptroller of the Currency on the 31st day of December of each year showing the progress of said liquidation until the same is completed. The liquidating agent or committee shall also make an annual report to a meeting of the shareholders to be held on the date fixed in the articles of association for the annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent or committee and appoint one or more others in place thereof. A special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank and at said meeting the shareholders may, by vote of the majority of the stock, remove the liquidating agent or committee. The Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied, and the expense of making such examinations shall be assessed against such bank in the same manner as in the case of examinations made pursuant to subchapter XV of chapter 3 of this title.

§182. Notice of intent to dissolve

Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association, by its president or cashier, to the Comptroller of the Currency, and publication thereof to be made for a period of two months in every issue of a newspaper published in the city or town in which the association is located, or if no newspaper is there published, then in the newspaper published nearest thereto, that the association is closing up its af-

Copyright © 2024 Michael P. Malloy. All rights reserved.

fairs, and notifying its creditors to present their claims against the association for payment.

§191. Appointment of Receiver for a National Bank

(a) In general.--The Comptroller of the Currency may, without prior notice or hearings, appoint a receiver for any national bank (and such receiver shall be the Federal Deposit Insurance Corporation if the national bank is an insured bank (as defined in section 1813(h) of this title)) if the Comptroller determines, in the Comptroller's discretion, that--

(1) 1 or more of the grounds specified in section 1821(c)(5) of this title exist; or

(2) the association's board of directors consists of fewer than 5 members.

(b) JUDICIAL REVIEW.--If the Comptroller of the Currency appoints a receiver under subsection (a), the national bank may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller of the Currency to remove the receiver, and the court shall, upon the merits, dismiss such action or direct the Comptroller of the Currency to remove the receiver.

§192. Default in payment of circulating notes

On becoming satisfied, as specified in sections 131 and 132 of this title, that any association is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings.

Provided, That the Comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited: Provided, That no security in the form of deposit of United States bonds, or otherwise, shall be required in the case of such parts of the deposits as are insured under section 12B of the Federal Reserve Act, as amended. Such depositary shall pay upon such money interest at such rate as the Comptroller may prescribe, not less, however, than 2 per centum per annum upon the average monthly amount of such deposits.

§193. Notice to present claims

The Comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same, and to make legal proof thereof.

Copyright © 2024 Michael P. Malloy. All rights reserved.

§194. Dividends on adjusted claims; distribution of assets

From time to time, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held.

§197. Shareholders' meeting; continuance of receivership; appointment of agent; winding up business; distribution of assets

(a) Whenever any national banking association shall have been or shall be placed in the hands of a receiver, as provided in section fifty-two hundred and thirty-four [12 U.S.C. §192] and other sections of the Revised Statutes of the United States and section 1821(c) of this title, and when, as provided in section 194 of this title, there has been paid to each and every creditor of such association whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership, the Comptroller of the Currency or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the bank, shall call a meeting of the shareholders of the association by giving notice thereof for thirty days in a newspaper published in the town, city, or county where the business of the association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto. At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of the association, or whether an agent shall be elected for that purpose, and in so determining the shareholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock in number of shares shall be necessary to determine whether the receiver shall be continued, or whether an agent shall be elected. In case such majority shall determine that the receiver shall be continued, the receiver shall thereupon proceed with the execution of the trust, and shall sell, dispose of, or otherwise collect the assets of the association, and shall possess all the powers and authority, and be subject to all the duties and liabilities originally conferred or imposed upon such receiver so far as they remain applicable. In case such meeting shall, by the vote of a majority of the stock in number of shares, determine that an agent shall be elected, the meeting shall thereupon proceed to elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the person who shall receive votes representing at least a majority of stock in number of shares shall be declared the agent for the purposes hereinafter provided; and when such agent shall have executed a bond to the shareholders conditioned for the payment and discharge in full or, to the extent possible from the remaining assets of the association, of each and every claim that may thereafter be proved and allowed by and before a competent court and for the faithful performance of his duties, in the penalty fixed by the shareholders at such meeting, with a surety or sureties to be approved by the district court of the United States for the district where the business of the association was carried

Copyright © 2024 Michael P. Malloy. All rights reserved.

on, and shall have filed such bond in the office of the clerk of such court, the Comptroller and the receiver, or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the bank, shall thereupon transfer and deliver to such agent all the uncollected or other assets of the association then remaining in the hands or subject to the order and control of the Comptroller and such receiver, or either of them, or the Federal Deposit Insurance Corporation; and for this purpose the Comptroller and such receiver, or the Federal Deposit Insurance Corporation, as the case may be, are severally empowered and directed to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; and upon the execution and delivery of such instrument to such agent the Comptroller and such receiver or the Federal Deposit Insurance Corporation shall by virtue of this Act be discharged from any and all liabilities to the association and to each and all the creditors and shareholders thereof. . . .

§197a. Resumption of business by closed bank on consent of depositors

In any case in which, in the opinion of the Comptroller of the Currency, it would be to the advantage of the depositors and unsecured creditors of any national banking association whose business has been closed, for such association to resume business upon the retention by the association, for a reasonable period to be prescribed by the Comptroller, of all or any part of its deposits, the Comptroller is authorized, in his discretion, to permit the association to resume business if depositors and unsecured creditors of the association representing at least 75 per centum of its total deposit and unsecured credit liabilities consent in writing to such retention of deposits. Nothing in this section shall be construed to affect in any manner any powers of the Comptroller under the provisions of law in force on June 16, 1933, with respect to the reorganization of national banking associations.

§198. Purchase by receiver of property of bank; request to Comptroller

Whenever the receiver of any national bank duly appointed by the Comptroller of the Currency, and who shall have duly qualified and entered upon the discharge of his trust, shall find it in his opinion necessary, in order to fully protect and benefit his said trust, to the extent of any and all equities that such trust may have in any property, real or personal, by reason of any bond, mortgage, assignment, or other proper legal claim attaching thereto, and which said property is to be sold under any execution, decree of foreclosure, or proper order of any court of jurisdiction, he may certify the facts in the case, together with his opinion as to the value of the property to be sold, and the value of the equity his said trust may have in the same, to the Comptroller of the Currency, together with a request for the right and authority to use and employ so much of the money of said trust as may be necessary to purchase such property at such sale.

§199. Approval of request

Such request, if approved by the Comptroller of the Currency, shall be, together with the certificate of facts in the case, and his recommendation as to the amount of money which, in his judgment, should be so used and employed, submitted to the Secretary of the Treasury, and if the same shall likewise be approved by him, the request shall be by the Comptroller of the Currency allowed, and notice

Copyright © 2024 Michael P. Malloy. All rights reserved.

thereof, with copies of the request, certificate of facts, and indorsement of approvals, shall be filed with the Treasurer of the United States.

§202. Definitions

As used in this subchapter, the term "bank" means any national banking association or any other financial institution chartered or licensed under Federal law and subject to the supervision of the Comptroller of the Currency, and operating under the supervision of the Comptroller of the Currency; the term "voluntary dissolution and liquidation" means a transaction pursuant to section 181 of this title that involves the assumption of the bank's insured deposit liabilities and the sale of the bank, or of control of the bank, as a going concern; and the term "State" means any State, Territory, or possession of the United States, and the Canal Zone.

§203. Appointment of conservator

(a) Appointment

The Comptroller of the Currency may, without prior notice or hearings, appoint a conservator (which may be the Federal Deposit Insurance Corporation) to the possession and control of a bank whenever the Comptroller of the Currency determines that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act [12 U.S.C. §1821(c)(5)] exist.

(b) Judicial review

(1) In general

Not later than 20 days after the initial appointment of a conservator pursuant to this section, the bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller to terminate the appointment of the conservator, and the court, upon the merits, shall dismiss such action or shall direct the Comptroller to terminate the appointment of such conservator. The Comptroller's decision to appoint a conservator pursuant to this section shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) Stay

The conservator may request that any judicial action or proceeding to which the conservator or the bank is or may become a party be stayed for a period of up to 45 days after the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

(3) Actions and orders

Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of a conservator. A court, upon application by the Comptroller, shall have jurisdiction to enforce an order of the Comptroller relating to--

(A) the conservatorship and the bank in conservatorship, or

(B) restraining or affecting the exercise of powers or functions of a conservator.

(c) Additional grounds for appointment

In addition to the foregoing provisions, the Comptroller may appoint a conservator for a bank if--

(1) the bank, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment, or

(2) the Federal Deposit Insurance Corporation terminates the bank's status as an insured bank.

The appointment of a conservator pursuant to this subsection shall not be subject to review.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(d) Exclusive authority

The Comptroller shall have exclusive power and jurisdiction to appoint a conservator for a bank. Whenever the Comptroller appoints a conservator for any bank, the Comptroller may appoint the Federal Deposit Insurance Corporation conservator for such bank. The Federal Deposit Insurance Corporation, as such conservator, shall have all the powers granted under the Federal Deposit Insurance Act [12 U.S.C. § 1811 et seq.], and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators of banks under this Act and any other provision of law. The Comptroller may also appoint another person as conservator, who shall be subject to the provisions of this Act.

(e) Replacement of conservator

The Comptroller may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the bank's right under subsection (b) of this section to obtain judicial review of the Comptroller's original decision to appoint a conservator.

§205. Termination of conservatorship

(a) General rule

At any time the Comptroller becomes satisfied that it may safely be done and that it would be in the public interest, the Comptroller (with the agreement of the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation has been appointed conservator) may--

(1) terminate the conservatorship and permit the involved bank to resume the transaction of its business subject to such terms, conditions, and limitations as the Comptroller may prescribe; or

(2) terminate the conservatorship upon a sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation of the involved bank.

(b) Other grounds for termination

The Comptroller also may terminate the conservatorship upon the appointment of a receiver pursuant to section 191 of this title. . . .

§206. Conservator; powers and duties

(a) General powers

A conservator shall have all the powers of the shareholders, directors, and officers of the bank and may operate the bank in its own name unless the Comptroller in the order of appointment limits the conservator's authority.

(b) Subject to rules of Comptroller

The conservator shall be subject to such rules, regulations, and orders as the Comptroller from time to time deems appropriate; and, except as otherwise specifically provided in such rules, regulations, or orders or in section 209 of this title, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to directors, officers, or employees of a national bank.

(c) Payment of depositors and creditors

The Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors such amounts as in the opinion of the Comptroller may safely be used for that purpose. All depositors and creditors who are similarly situated shall be treated in the same manner.

(d) Compensation of conservator and employees

The conservator and professional employees appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for

Copyright © 2024 Michael P. Malloy. All rights reserved.

similar services, except that the Comptroller of the Currency may authorize payment at higher rates (but not in excess of rates prevailing in the private sector), if the Comptroller determines that paying such higher rates is necessary in order to recruit and retain competent personnel. ...

§214. Definitions

(a) As used in this subchapter and section 321 of this title the term "State bank" means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, any Territory of the United States, Puerto Rico, or the Virgin Islands, or which is operating under the Code of Law for the District of Columbia.

(b) For purposes of merger or consolidation under this subchapter and section 321 of this title the term "national banking association" means one or more national banking associations, and the term "State bank" means one or more State banks.

§214a. Procedure for conversion, merger, or consolidation; vote of stockholders

A national banking association may, by vote of the holders of at least two-thirds of each class of its capital stock, convert into, or merge or consolidate with, a State bank in the same State in which the national banking association is located, under a State charter. . . .

(b) Rights of dissenting stockholders

A shareholder of a national banking association who votes against the conversion, merger, or consolidation, or who has given notice in writing to the bank at or prior to such meeting that he dissents from the plan, shall be entitled to receive in cash the value of the shares held by him, if and when the conversion, merger, or consolidation is consummated, upon written request made to the resulting State bank at any time before thirty days after the date of consummation of such conversion, merger, or consolidation, accompanied by the surrender of his stock certificates. The value of such shares shall be determined as of the date on which the shareholders' meeting was held authorizing the conversion, merger, or consolidation, by a committee of three persons, one to be selected by majority vote of the dissenting shareholders entitled to receive the value of their shares, one by the directors of the resulting State bank, and the third by the two so chosen. The valuation agreed upon by any two of three appraisers thus chosen shall govern; but, if the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment as provided herein, such shareholder may within five days after being notified of the appraised value of his shares appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant. If, within ninety days from the date of consummation of the conversion, merger, or consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party, cause an appraisal to be made, which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal, or the appraisal as the case may be, shall be paid by the resulting State bank. The plan of conversion, merger, or consolidation shall provide the manner of disposing of the shares of the resulting State bank not taken by the dissenting shareholders of the national banking association. . . .

Copyright © 2024 Michael P. Malloy. All rights reserved.

§214c. Conversions in contravention of State law

No conversion of a national banking association into a State bank or its merger or consolidation with a State bank shall take place under this subchapter and section 321 of this title in contravention of the law of the State in which the national banking association is located; and no such conversion, merger, or consolidation shall take place under said sections unless under the law of the State in which such national banking association is located State banks may without approval by any State authority convert into and merge or consolidate with national banking associations under limitations or conditions no more restrictive than those contained in section 214a of this title with respect to the conversion of a national bank into, or merger or consolidation of a national bank with, a State bank under State charter.

§ 214d. Prohibition on conversion

A national banking association may not convert to a State bank or State savings association during any period in which the national banking association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Comptroller of the Currency with respect to a significant supervisory matter.

§215. Consolidation of banks within the same State

(a) In general

Any national bank or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national banking associations located in the same State under the charter of a national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of such State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or bank is located, or, if there is no such newspaper, then in the paper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank.

(b) Liability of consolidated association; capital stock; dissenting shareholders

The consolidated association shall be liable for all liabilities of the respective consolidating banks or associations. The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national bank in the place in which it is located: Provided, That if such consolidation shall be voted for at such meetings by the necessary majorities of the shareholders of each association and State

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller, any shareholder of any of the associations or State banks so consolidated who has voted against such consolidation at the meeting of the association or bank of which he is a stockholder, or who has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him when such consolidation is approved by the Comptroller upon written request made to the consolidated association at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates.

(c) Valuation of shares

The value of the shares of any dissenting shareholder shall be ascertained, as of the effective date of the consolidation, by an appraisal made by a committee of three persons, composed of (1) one selected by the vote of the holders of the majority of the stock, the owners of which are entitled to payment in cash; (2) one selected by the directors of the consolidated banking association; and (3) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to the value of the shares of the appellant.

(d) Appraisal by Comptroller; expenses of consolidated association; sale and resale of shares; State appraisal and consolidation law

If, within ninety days from the date of consummation of the consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the consolidated banking association. The value of the shares ascertained shall be promptly paid to the dissenting shareholders by the consolidated banking association. Within thirty days after payment has been made to all dissenting shareholders as provided for in this section the shares of stock of the consolidated banking association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the consolidated banking association at an advertised public auction, unless some other method of sale is approved by the Comptroller, and the consolidated banking association shall have the right to purchase any of such shares at such public auction, if it is the highest bidder therefor, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price not less than par as its board of directors by resolution may determine. If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders the excess in such sale price shall be paid to such shareholders. The appraisal of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases, rather than as provided in this section, if such provision is made in the State law; and no such consolidation shall be in contravention of the law of the State under which such bank is incorporated. . . .

(f) Removal as fiduciary; discrimination

Copyright © 2024 Michael P. Malloy. All rights reserved.

Where any consolidating bank or banking association, at the time of the consolidation, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, or receiver, or in any other fiduciary capacity, the consolidated national banking association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such consolidating bank or banking association prior to the consolidation. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove the consolidated national banking association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any consolidated national banking association be removed solely because of the fact that it is a national banking association.

(g) Issuance of stock by consolidated association; preemptive rights

Stock of the consolidated national banking association may be issued as provided by the terms of the consolidation agreement, free from any preemptive rights of the shareholders of the respective consolidating banks.

§215a. Merger of national banks or State banks into national banks

(a) Approval of Comptroller, board and shareholders; merger agreement; notice; capital stock; liability of receiving association

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national banking association located within the same State, under the charter of the receiving association. . . .

(b) Dissenting shareholders

If a merger shall be voted for at the called meetings by the necessary majorities of the shareholders of each association or State bank participating in the plan of merger, and thereafter the merger shall be approved by the Comptroller, any shareholder of any association or State bank to be merged into the receiving association who has voted against such merger at the meeting of the association or bank of which he is a stockholder, or has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of merger, shall be entitled to receive the value of the shares so held by him when such merger shall be approved by the Comptroller upon written request made to the receiving association at any time before thirty days after the date of consummation of the merger, accompanied by the surrender of his stock certificates.

(c) Valuation of shares

The value of the shares of any dissenting shareholder shall be ascertained, as of the effective date of the merger, by an appraisal made by a committee of three persons, composed of (1) one selected by the vote of the holders of the majority of the stock, the owners of which are entitled to payment in cash; (2) one selected by the directors of the receiving association; and (3) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to the value of the shares of the appellant.

(d) Application to shareholders of

Copyright © 2024 Michael P. Malloy. All rights reserved.

merging associations: appraisal by Comptroller; expenses of receiving association; sale and resale of shares; State appraisal and merger law

If, within ninety days from the date of consummation of the merger, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the receiving association. The value of the shares ascertained shall be promptly paid to the dissenting shareholders by the receiving association. The shares of stock of the receiving association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the receiving association at an advertised public auction, and the receiving association shall have the right to purchase any of such shares at such public auction, if it is the highest bidder therefor, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price not less than par as its board of directors by resolution may determine. If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders, the excess in such sale price shall be paid to such dissenting shareholders. The appraisal of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases, rather than as provided in this section, if such provision is made in the State law; and no such merger shall be in contravention of the law of the State under which such bank is incorporated. The provisions of this subsection shall apply only to shareholders of (and stock owned by them in) a bank or association being merged into the receiving association. . . .

(f) Removal as fiduciary; discrimination

Where any merging bank or banking association, at the time of the merger, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, or receiver, or in any other fiduciary capacity, the receiving association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such merging bank or banking association prior to the merger. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove the receiving association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any receiving association be removed solely because of the fact that it is a national banking association.

(g) Issuance of stock by receiving association; preemptive rights

Stock of the receiving association may be issued as provided by the terms of the merger agreement, free from any preemptive rights of the shareholders of the respective merging banks.

§215a-1. Interstate consolidations and mergers

(a) In general

A national bank may engage in a consolidation or merger under this subchapter with an out-of-State bank if the consolidation or merger is approved pursuant to section 1831u of this title.

(b) Scope of application

Subsection (a) of this section shall not apply with respect to any consolidation or merger before June 1, 1997, un-

Copyright © 2024 Michael P. Malloy. All rights reserved.

less the home State of each bank involved in the transaction has in effect a law described in section 1831u(a)(3) of this title.

(c) Definitions

The terms "home State" and "out-of-State bank" have the same meaning as in section 1831u(f) of this title.

§215a-2. Expedited Procedures for Certain Reorganizations

(a) In General.--A national bank may, with the approval of the Comptroller, pursuant to rules and regulations promulgated by the Comptroller, and upon the affirmative vote of the shareholders of such bank owning at least two-thirds of its capital stock outstanding, reorganize so as to become a subsidiary of a bank holding company or of a company that will, upon consummation of such reorganization, become a bank holding company.

(b) Reorganization Plan.--A reorganization authorized under subsection (a) shall be carried out in accordance with a reorganization plan that--

(1) specifies the manner in which the reorganization shall be carried out;

(2) is approved by a majority of the entire board of directors of the national bank;

(3) specifies--

(A) the amount of cash or securities of the bank holding company, or both, or other consideration to be paid to the shareholders of the reorganizing bank in exchange for their shares of stock of the bank;

(B) the date as of which the rights of each shareholder to participate in such exchange will be determined; and

(C) the manner in which the exchange will be carried out; and

(4) is submitted to the shareholders of the reorganizing bank at a meeting to be held on the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 3 [§ 214a].

(c) Rights of Dissenting Shareholders.--If, pursuant to this section, a reorganization plan has been approved by the shareholders and the Comptroller, any shareholder of the bank who has voted against the reorganization at the meeting referred to in subsection (b)(4), or has given notice in writing at or prior to that meeting to the presiding officer that the shareholder dissents from the reorganization plan, shall be entitled to receive the value of his or her shares, as provided by section 3 for the merger of a national bank.

(d) Effect of Reorganization.--The corporate existence of a national bank that reorganizes in accordance with this section shall not be deemed to have been affected in any way by reason of such reorganization.

(e) Approval under the Bank Holding Company Act.--This section does not affect in any way the applicability of the Bank Holding Company Act of 1956 to a transaction described in subsection (a).

§215a-3. Mergers and Consolidations with Subsidiaries and Nonbank Affiliates

(a) In General.--Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.

(b) Scope.--Nothing in this section shall be construed--

(1) to affect the applicability of section 18(c) of the Federal Deposit Insurance Act [§ 1828(c)]; or

(2) to grant a national bank any power or authority that is not permissible for a national bank under other applicable provisions of law.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(c) Regulations.--The Comptroller shall promulgate regulations to implement this section.

§215b. Definitions

As used in this subchapter, the term--

(1) "State bank" means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, or which is operating under the Code of Law for the District of Columbia;

(2) "State" means the several States and Territories, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(3) "Comptroller" means the Comptroller of the Currency; and

(4) "Receiving association" means the national banking association into which one or more national banking associations or one or more State banks, located within the same State, merge.

§215c. Mergers, consolidations, and other acquisitions authorized

(a) In general

Subject to sections 1815(d)(3) and 1828(c) of this title and all other applicable laws, any national bank may acquire or be acquired by any insured depository institution.

(b) Expedited approval of acquisitions

(1) In general

Any application by a national bank to acquire or be acquired by another insured depository institution which is required to be filed with the Comptroller of the Currency under any applicable law or regulation shall be approved or disapproved in writing by the agency before the end of the 60-day period beginning on the date such application is filed with the agency.

(2) Extensions of period

The period for approval or disapproval referred to in paragraph (1) may be extended for an additional 30-day period if the Comptroller of the Currency determines that--

(A) an applicant has not furnished all of the information required to be submitted; or

(B) in the Comptroller's judgment, any material information submitted is substantially inaccurate or incomplete.

(c) Rule of construction

No provision of this section shall be construed as authorizing a national bank or a subsidiary of a national bank to engage in any activity not otherwise authorized under this chapter or any other law governing the powers of national banks.

(d) Acquire defined

For purposes of this section, the term "acquire" means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

CHAPTER 3--FEDERAL RESERVE SYSTEM

§221. Definitions

Wherever the word "bank" is used in this chapter, the word shall be held to include State bank, banking association, and trust company, except where national

Copyright © 2024 Michael P. Malloy. All rights reserved.

banks or Federal reserve banks are specifically referred to.

The terms "national bank" and "national banking association" used in this chapter shall be held to be synonymous and interchangeable. The term "member bank" shall be held to mean any national bank, State bank, or bank or trust company which has become a member of one of the Federal reserve banks. The term "board" shall be held to mean Board of Governors of the Federal Reserve System; the term "district" shall be held to mean Federal reserve district; the term "reserve bank" shall be held to mean Federal reserve bank; the term "the continental United States" means the States of the United States and the District of Columbia. For purposes of this Act, a State bank includes any bank which is operating under the Code of Law for the District of Columbia. . . .

§221a. Additional definitions

As used in this chapter--

(a) The terms "banks", "national bank", "national banking association", "member bank", "board", "district", and "reserve bank" shall have the meanings assigned to them in section 221 of this title.

(b) Except where otherwise specifically provided, the term "affiliate" shall include any corporation, business trust, association, or other similar organization--

(1) Of which a member bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 per centum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a member bank who own or control either a majority of the shares of such bank or more than 50 per centum of the number of shares voted for the election of directors of such bank at the preceding election, or by trustees for the benefit of the shareholders of any such bank; or

(3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one member bank; or

(4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank or more than 50 per centum of the number of shares voted for the election of directors of a member bank at the preceding election, or controls in any manner the election of a majority of the directors of a member bank, or for the benefit of whose shareholders or members all or substantially all the capital stock of a member bank is held by trustees.

§222. Federal reserve districts; membership of national banks

. . . Every national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve bank of its district in accordance with the provisions of this chapter and shall thereupon be an insured bank under the Federal Deposit Insurance Act [12 U.S.C. §1811 et seq.], and failure to do so shall subject such bank to the penalty provided by section 501a of this title.

§248. Enumerated powers

The Board of Governors of the Fed-

Copyright © 2024 Michael P. Malloy. All rights reserved.

eral Reserve System shall be authorized and empowered:

(a) Examination of accounts and affairs of banks; publication of weekly statements; reports of liabilities and assets of depository institutions; covered institutions

(1) To examine at its discretion the accounts, books, and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. ...

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under sections 461, 463, 464, 465, and 466 of this title exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State savings associations that are insured depository institutions (as defined in section 1813 of this title), State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) the Comptroller of the Currency in the case of any Federal savings association which is an insured depository institution (as defined in section 1813 of this title) or which is a member as defined in section 1422 of this title, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class. . . .

(n) Board's authority to examine depository institutions and affiliates

To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this chapter.

(o) Authority to appoint conservator or receiver

The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 1821(c)(9) of this title. . . .

§250. Independence of financial regulatory agencies

No officer or agency of the United States shall have any authority to require the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Director of the Federal Housing Finance Agency, or the National Credit Union Administration to submit legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress if such recommendations, testimony, or comments to the Congress include a statement indicating that the

Copyright © 2024 Michael P. Malloy. All rights reserved.

views expressed therein are those of the agency submitting them and do not necessarily represent the views of the President.

§ 321. Application for membership

Any bank incorporated by special law of any State, operating under the Code of Law for the District of Columbia, or organized under the general laws of any State or of the United States . . . desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal Reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this chapter and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal Reserve bank.

Upon the conversion of a national bank into a State bank, or the merger or consolidation of a national bank with a State bank which is not a member of the Federal Reserve System, the resulting or continuing State bank may be admitted to membership in the Federal Reserve System by the Board of Governors of the Federal Reserve System in accordance with the provisions of this section, but, otherwise, the Federal Reserve bank stock owned by the national bank shall be canceled and paid for. . . . Upon the merger or consolidation of a national bank with a State member bank under a State charter, the membership of the State bank in the Federal Reserve System shall continue. ...

§324. Laws applicable on becoming members

All banks admitted to membership under authority of this section shall be required to comply with the reserve and capital requirements of this chapter, to conform to those provisions of law imposed on national banks which prohibit such banks from lending on or purchasing their own stock and which relate to the withdrawal or impairment of their capital stock, and to conform to the provisions of sections 56 and 60(b) of this title with respect to the payment of dividends. . . .

§325. Examinations

As a condition of membership such banks shall likewise be subject to examinations made by direction of the Board of Governors of the Federal Reserve System or of the Federal reserve bank by examiners selected or approved by the Board of Governors of the Federal Reserve System.

§371. Real estate loans

(a) Authorization to make real estate loans; orders, rules, and regulations of Comptroller of the Currency

Any national banking association may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to section 1828(o) of this title and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order. . . .

Copyright © 2024 Michael P. Malloy. All rights reserved.

§371b-2. Interbank liabilities

(a) Purpose

The purpose of this section is to limit the risks that the failure of a large depository institution (whether or not that institution is an insured depository institution) would pose to insured depository institutions.

(b) Aggregate limits on insured depository institutions' exposure to other depository institutions

The Board shall, by regulation or order, prescribe standards that have the effect of limiting the risks posed by an insured depository institution's exposure to any other depository institution.

(c) Exposure defined

(1) In general

For purposes of subsection (b) of this section, an insured depository institution's "exposure" to another depository institution means--

(A) all extensions of credit to the other depository institution, regardless of name or description, including--

(i) all deposits at the other depository institution;

(ii) all purchases of securities or other assets from the other depository institution subject to an agreement to repurchase; and

(iii) all guarantees, acceptances, or letters of credit (including endorsements or standby letters of credit) on behalf of the other depository institution;

(B) all purchases of or investments in securities issued by the other depository institution;

(C) all securities issued by the other depository institution accepted as collateral for an extension of credit to any person; and

(D) all similar transactions that the Board by regulation determines to be exposure for purposes of this section.

(2) Exemptions

The Board may, at its discretion, by regulation or order, exempt transactions from the definition of "exposure" if it finds the exemptions to be in the public interest and consistent with the purpose of this section.

(3) Attribution rule

For purposes of this section, any transaction by an insured depository institution with any person is a transaction with another depository institution to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that other depository institution.

(d) Insured depository institution

For purposes of this section, the term "insured depository institution" has the same meaning as in section 1813 of this title.

(e) Rulemaking authority; enforcement

The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purpose of this section. The appropriate Federal banking agency shall enforce compliance with those regulations under section 1818 of this title.

§371c. Banking affiliates

(a) Restrictions on transactions with affiliates

(1) A member bank and its subsidiaries may engage in a covered transaction with an affiliate only if--

(A) in the case of any affiliate, the aggregate amount of covered transactions of the member bank and its subsidiaries will not exceed 10 per centum of the capital stock and surplus of the member bank; and

(B) in the case of all affiliates, the aggregate amount of covered transactions of the member bank and its subsidiaries will not exceed 20 per centum of the capital stock and surplus of the member bank.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) For the purpose of this section, any transaction by a member bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(3) A member bank and its subsidiaries may not purchase a low-quality asset from an affiliate unless the bank or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase such asset prior to the time such asset was acquired by the affiliate.

(4) Any covered transactions and any transactions exempt under subsection (d) of this section between a member bank and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

(b) Definitions

For the purpose of this section--

(1) the term "affiliate" with respect to a member bank means--

(A) any company that controls the member bank and any other company that is controlled by the company that controls the member bank;

(B) a bank subsidiary of the member bank;

(C) any company--

(i) that is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the member bank or any company that controls the member bank; or

(ii) in which a majority of its directors or trustees constitute a majority of the persons holding any such office with the member bank or any company that controls the member bank;

(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and

(E) any company that the board determines by regulation or order to have a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary; and

(2) the following shall not be considered to be an affiliate:

(A) any company, other than a bank, that is a subsidiary of a member bank, unless a determination is made under paragraph (1)(E) not to exclude such subsidiary company from the definition of affiliate;

(B) any company engaged solely in holding the premises of the member bank;

(C) any company engaged solely in conducting a safe deposit business;

(D) any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(E) any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights or the effective date of this Act, whichever date is later, subject, upon application, to authorization by the Board for good cause shown of extensions of time for not more than one year at a time, but such extensions in the aggregate shall not exceed three years;

(3)(A) a company or shareholder shall be deemed to have control over another company if--

(i) such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(ii) such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(iii) the Board determines, after notice and opportunity for hearing, that such company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company; and

(B) notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (1)(C) of this subsection or if the company owning or controlling such shares is a business trust;

(4) the term "subsidiary" with respect to a specified company means a company that is controlled by such specified company;

(5) the term "bank" includes a State bank, national bank, banking association, and trust company;

(6) the term "company" means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "member bank" and a "bank";

(7) the term "covered transaction" means with respect to an affiliate of a member bank--

(A) a loan or extension of credit to the affiliate, including a purchase of assets subject to an agreement to repurchase;

(B) a purchase of or an investment in securities issued by the affiliate;

(C) a purchase of assets from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Board by order or regulation;

(D) the acceptance of securities or other debt obligations issued by the affiliate as collateral security for a loan or extension of credit to any person or company;

(E) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate;

(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate; or

(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate;

(8) the term "aggregate amount of covered transactions" means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions;

(9) the term "securities" means stocks, bonds, debentures, notes, or other similar obligations; and

(10) the term "low-quality asset" means an asset that falls in any one or more of the following categories:

(A) an asset classified as "substandard", "doubtful", or "loss" or treated as "other loans especially mentioned" in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(B) an asset in a nonaccrual status;

(C) an asset on which principal or interest payments are more than thirty days past due; or

(D) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(11) Rebuttable Presumption of Control of Portfolio Companies.--In addition to paragraph (3), a company or

Copyright © 2024 Michael P. Malloy. All rights reserved.

shareholder shall be presumed to control any other company if the company or shareholder, directly or indirectly, or acting through 1 or more other persons, owns or controls 15 percent or more of the equity capital of the other company pursuant to subparagraph (H) or (I) of section 4(k)(4) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)(4)] or rules adopted under section 122 of the Gramm-Leach-Bliley Act, if any, unless the company or shareholder provides information acceptable to the Board to rebut this presumption of control.

(c) Collateral for certain transactions with affiliates

(1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a member bank or its subsidiary, and any credit exposure of a member bank or a subsidiary to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, shall be secured at all times by collateral having a market value equal to--

(A) 100 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure, if the collateral is composed of--

(i) obligations of the United states or its agencies;

(ii) obligations fully guaranteed by the United States or its agencies as to principal and interest;

(iii) notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iv) a segregated, earmarked deposit account with the member bank;

(B) 110 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure if the collateral is composed of obligations of any State or political subdivision of any State;

(C) 120 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure if the collateral is composed of other debt instruments, including receivables; or

(D) 130 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure if the collateral is composed of stock, leases, or other real or personal property.

(2) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate, or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction.

(3) The securities or other debt obligations issued by an affiliate of the member bank shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to, that affiliate or any other affiliate of the member bank.

(4) The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

(d) Exemptions

The provisions of this section, except paragraph (a)(4) of this section, shall not be applicable to--

(1) any transaction, subject to the prohibition contained in subsection (a)(3) of this section, with a bank--

(A) which controls 80 per centum or more of the voting shares of the member bank;

(B) in which the member bank controls 80 per centum or more of the voting

Copyright © 2024 Michael P. Malloy. All rights reserved.

shares; or

(C) in which 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the member bank;

(2) making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Board may prescribe by regulation or order;

(3) giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(4) making a loan or extension of credit to, issuing a guarantee, acceptance, or letter of credit on behalf of, or having credit exposure resulting from a securities borrowing or lending transaction, or derivative transaction to, an affiliate that is fully secured by--

(A) obligations of the United States or its agencies;

(B) obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(C) a segregated, earmarked deposit account with the member bank;

(5) purchasing securities issued by any company of the kinds described in section 1843(c)(1) of this title;

(6) purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in subsection (a)(3) of this section, purchasing loans on a nonrecourse basis from affiliated banks; and

(7) purchasing from an affiliate a loan or extension of credit that was originated by the member bank and sold to the affiliate subject to a repurchase agreement or with recourse.

(e) Rules Relating to Banks with Financial Subsidiaries.--

(1) Financial Subsidiary Defined.--For purposes of this section and section 23B, the term 'financial subsidiary' means any company that is a subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States [12 U.S.C. § 24a].

(2) Financial Subsidiary Treated as an Affiliate.--For purposes of applying this section and section 23B [12 U.S.C. § 371c-1], and notwithstanding subsection (b)(2) of this section or section 23B(d)(1), a financial subsidiary of a bank--

(A) shall be deemed to be an affiliate of the bank; and

(B) shall not be deemed to be a subsidiary of the bank.

(3) Anti-evasion Provision.--For purposes of this section and section 23B--

(A) any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank shall be considered to be a purchase of or investment in such securities by the bank; and

(B) any extension of credit by an affiliate of a bank to a financial subsidiary of the bank shall be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of this Act and the Gramm-Leach-Bliley Act....

§371c-1. Restrictions on transactions with affiliates

(a) In general

(1) Terms

A member bank and its subsidiaries may engage in any of the transactions described in paragraph (2) only--

(A) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving

Copyright © 2024 Michael P. Malloy. All rights reserved.

other nonaffiliated companies, or

(B) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

(2) Transactions covered

Paragraph (1) applies to the following:

(A) Any covered transaction with an affiliate.

(B) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

(C) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

(D) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person.

(E) Any transaction or series of transactions with a third party--

(i) if an affiliate has a financial interest in the third party, or

(ii) if an affiliate is a participant in such transaction or series of transactions.

(3) Transactions that benefit an affiliate

For the purpose of this subsection, any transaction by a member bank or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

(b) Prohibited transactions

(1) In general

A member bank or its subsidiary--

(A) shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted--

(i) under the instrument creating the fiduciary relationship,

(ii) by court order, or

(iii) by law of the jurisdiction governing the fiduciary relationship; and

(B) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.

(2) Exception

Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank based on a determination that the purchase is a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities. ...

(d) Definitions

For the purpose of this section--

(1) the term "affiliate" has the meaning given to such term in section 371c of this title (but does not include any company described in [sub]section (b)(2) of such section or any bank);

(2) the terms "bank", "subsidiary", "person", and "security" (other than security as used in subsection (b) of this section) have the meanings given to such terms in section 371c of this title; and

(3) the term "covered transaction" has the meaning given to such term in section 371c of this title (but does not include any transaction which is exempt from such definition under subsection (d) of such section). . . .

§371d. Investment in bank premises or stock of corporation holding premises

(a) Conditions of investment

No national bank or State member bank shall invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or make loans to or upon the security of any such corporation--

Copyright © 2024 Michael P. Malloy. All rights reserved.

(1) unless the bank receives the prior approval of the Comptroller of the Currency (with respect to a national bank) or the Board (with respect to a State member bank);

(2) unless the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to the amount of the capital stock of such bank; or

(3) unless --

(A) the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the capital and surplus of the bank; and

(B) the bank --

(i) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of the most recent examination of such bank;

(ii) is well capitalized and will continue to be well capitalized after the investment or loan; and

(iii) provides notification to the Comptroller of the Currency (with respect to a national bank) or to the Board (with respect to a State member bank) not later than 30 days after making the investment or loan.

(b) Definitions

For purposes of this section --

(1) the term "affiliate" has the same meaning as in section 2 of the Banking Act of 1933; and

(2) the term "well capitalized" has the same meaning as in section 1831o(b) of this title.

§372. Bankers' acceptances

(a) Institutions; drafts and bills of exchange; types

Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 3105 of this title (hereinafter in this section referred to as "institutions"), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace--

(i) which grow out of transactions involving the importation or exportation of goods;

(ii) which grow out of transactions involving the domestic shipment of goods; or

(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(b) Ratio limit of bills to unimpaired capital stock and surplus

Except as provided in subsection (c) of this section, no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subsection (h) of this section.

(c) Authorization for special ratio limit; foreign banks

The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subsection (h) of this section.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(d) Ratio limit for domestic transactions

Notwithstanding subsections (b) and (c) of this section, with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this section.

(e) Ratio limit for single entity; foreign banks; security

No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subsection (h) of this section, unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(f) Exception for participation agreements

With respect to an institution which issues an acceptance, the limitations contained in this section shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution. . . .

§375a. Loans to executive officers of banks

(1) General prohibition; authorization for extension of credit; conditions for credit

Except as authorized under this section, no member bank may extend credit in any manner to any of its own executive officers. No executive officer of any member bank may become indebted to that member bank except by means of an extension of credit which the bank is authorized to make under this section. Any extension of credit under this section shall be promptly reported to the board of directors of the bank, and may be made only if--

(A) the bank would be authorized to make it to borrowers other than its officers;

(B) it is on terms not more favorable than those afforded other borrowers;

(C) the officer has submitted a detailed current financial statement; and

(D) it is on condition that it shall become due and payable on demand of the bank at any time when the officer is indebted to any other bank or banks on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3), and (4) in an aggregate amount greater than the amount of credit of the same category that could be extended to him by the bank of which he is an officer.

(2) Mortgage loans

A member bank may make a loan to any executive officer of the bank if, at the time the loan is made--

(A) it is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence, and

(B) no other loan by the bank to the officer under authority of this paragraph is outstanding.

(3) Educational loans

A member bank may make extensions of credit to any executive officer of the bank to finance the education of the children of the officer.

(4) General limitation on amount of credit

Copyright © 2024 Michael P. Malloy. All rights reserved.

A member bank may make extensions of credit not otherwise specifically authorized under this section to any executive officer of the bank, in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency.

(5) Partnership loans

Except to the extent permitted under paragraph (4), a member bank may not extend credit to a partnership in which one or more of its executive officers are partners having either individually or together a majority interest. For the purposes of paragraph (4), the full amount of any credit so extended shall be considered to have been extended to each officer of the bank who is a member of the partnership.

(6) Endorsement or guarantee of loans or assets; protective indebtedness

This section does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it. . . .

§375b. Extensions of credit to executive officers, directors, and principal shareholders of member banks

(1) In general

No member bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), (5), and (6).

(2) Preferential terms prohibited

(A) In general

A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit --

(i) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank;

(ii) does not involve more than the normal risk of repayment or present other unfavorable features; and

(iii) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(B) Exception

Nothing in this paragraph shall prohibit any extension of credit made pursuant to a benefit or compensation program --

(i) that is widely available to employees of the member bank; and

(ii) that does not give preference to any officer, director, or principal shareholder of the member bank, or to any related interest of such person, over other employees of the member bank.

(3) Prior approval required

A member bank may extend credit to a person described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by regulation of the appropriate Federal banking agency (as defined in section 1813 of this title) only if --

(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

(B) the interested party has abstained from participating, directly or indirectly,

Copyright © 2024 Michael P. Malloy. All rights reserved.

in the deliberations or voting on the extension of credit.

(4) Aggregate limit on extensions of credit to any executive officer, director, or principal shareholder

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 84 of this title. For purposes of this paragraph, section 84 of this title shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

(5) Aggregate limit on extensions of credit to all executive officers, directors, and principal shareholders

(A) In general

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

(B) More stringent limit authorized

The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

(C) Board may make exceptions for certain banks

The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than $100,000,000 in deposits if the Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.

(6) Overdrafts by executive officers and directors prohibited

(A) In general

If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

(B) Exceptions

Subparagraph (A) does not prohibit a member bank from paying funds in accordance with --

(i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; or

(ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

(7) Prohibition on knowingly receiving unauthorized extension of credit

No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this section.

(8) Executive officer, director, or principal shareholder of certain affiliates treated as executive officer, director, or principal shareholder of member bank

(A) In general

For purposes of this section, any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(B) Exception

The Board may, by regulation, make exceptions to subparagraph (A) for any executive officer or director of a subsidiary of a company that controls the member bank if --

(i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and

(ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company).

(9) Definitions

For purposes of this section:

(A) Company

(i) In general

Except as provided in clause (ii), the term "company" means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

(ii) Exceptions

The term "company" does not include --

(I) an insured depository institution (as defined in section 1813 of this title); or

(II) a corporation the majority of the shares of which are owned by the United States or by any State.

(B) Control

A person controls a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons --

(i) owns, controls, or has the power to vote 25 percent or more of any class of the company's voting securities;

(ii) controls in any manner the election of a majority of the company's directors; or

(iii) has the power to exercise a controlling influence over the company's management or policies.

(C) Executive officer

A person is an "executive officer" of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

(D) Extension of credit

(i) In general

A member bank extends credit to a person by--

(I) making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which the person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank; or

(II) having credit exposure to the person arising from a derivative transaction (as defined in section 84(b) of this title), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.

(ii) Exceptions

The Board may, by regulation, make exceptions to clause (i) for transactions that the Board determines pose minimal risk.

(E) Member bank

The term "member bank" includes any subsidiary of a member bank.

(F) Principal shareholder

The term "principal shareholder" --

(i) means any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company; and

(ii) does not include a company of which a member bank is a subsidiary.

(G) Related interest

A "related interest" of a person is --

(i) any company controlled by that person; and

Copyright © 2024 Michael P. Malloy. All rights reserved.

(ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(H) Subsidiary

The term "subsidiary" has the same meaning as in section 1841 of this title.

(10) Board's rulemaking authority

The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this section.

§376. Rate of interest paid to directors, etc.

No member bank shall pay to any director, officer, attorney, or employee a greater rate of interest on the deposits of such director, officer, attorney, or employee than that paid to other depositors on similar deposits with such member bank.

§378. Dealers in securities engaging in banking business; individuals or associations engaging in banking business; examinations and reports; penalties

(a) After the expiration of one year after June 16, 1933, it shall be unlawful--

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor: Provided, That the provisions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing, and selling investment securities, or issuing securities, to the extent permitted to national banking associations by the provisions of section 24 of this title: Provided further, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligations evidencing loans on real estate; or

(2) For any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever with others than his or its officers, agents or employees, in the business of receiving deposits subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization (A) shall be incorporated under, and authorized to engage in such business by, the laws of the United States or of any State, Territory, or District, and subjected, by the laws of the United States, or of the State, Territory, or District wherein located, to examination and regulation, or (B) shall be permitted by the United States, any State, territory, or district to engage in such business and shall be subjected by the laws of the United States, or such State, territory, or district to examination and regulations or, (C) shall submit to periodic examination by the banking authority of the State, Territory, or District where such business is carried on and shall make and publish periodic reports of its condition, exhibiting in detail

Copyright © 2024 Michael P. Malloy. All rights reserved.

its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and under the same conditions as required by the law of such State, Territory, or District in the case of incorporated banking institutions engaged in such business in the same locality.

(b) Whoever shall willfully violate any of the provisions of this section shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both, and any officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organization who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both.

§461. Reserve requirements

(a) Establishment of applicable definitions, payment of interest, obligations as deposits, and regulations

The Board is authorized for the purposes of this section to define the terms used in this section to determine what shall be deemed a payment of interest, to determine what types of obligations, whether issued directly by a member bank or indirectly by an affiliate of a member bank or by other means, and, regardless of the use of the proceeds, shall be deemed a deposit, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this section and to prevent evasions thereof.

(b) Additional definitions; required amounts of reserves maintained against transaction accounts; waiver of ratio limits in extraordinary circumstances; supplemental reserves; reserves related to foreign obligations or assets; exemption for certain deposits; discount and borrowing; transitional adjustments; additional exemptions and waivers

(1) The following definitions and rules apply to this subsection, subsection (c) of this section, and sections 248-1, 248a, 342, 360, and 412 of this title.

(A) The term "depository institution" means--

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. §1813] or any bank which is eligible to make application to become an insured bank under section 5 of such Act [12 U.S.C. §1815];

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. §1813] or any bank which is eligible to make application to become an insured bank under section 5 of such Act [12 U.S.C. §1815];

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. §1813] or any bank which is eligible to make application to become an insured bank under section 5 of such Act [12 U.S.C. §1815];

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act [12 U.S.C. §1752] or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act [12 U.S.C. §1781];

(v) any member as defined in section 2 of the Federal Home Loan Bank Act [12 U.S.C. §1422];

(vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act) [12 U.S.C. §1813] which is an insured depository institution (as defined in such Act) [12 U.S.C. §1811 et seq.] or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act [12 U.S.C. §1811 et seq.]; and

(vii) for the purpose of sections 248-1, 342 to 347, 347c, 347d, and 372 of this title, any association or entity which is wholly owned by or which consists only of institutions referred to in clauses (i) through (vi).

Copyright © 2024 Michael P. Malloy. All rights reserved.

(B) The term "bank" means any insured or noninsured bank, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. §1813], other than a mutual savings bank or a savings bank as defined in such section.

(C) The term "transaction account" means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(D) The term "nonpersonal time deposits" means a transferable time deposit or account or a time deposit or account representing funds deposited to the credit of, or in which any beneficial interest is held by, a depositor who is not a natural person.

(E) The term "reservable liabilities" means transaction accounts, nonpersonal time deposits, and all net balances, loans, assets, and obligations which are, or may be, subject to reserve requirements under paragraph (5).

(F) In order to prevent evasions of the reserve requirements imposed by this subsection, after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the National Credit Union Administration Board, the Board of Governors of the Federal Reserve System is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.

(2)(A) Each depository institution shall maintain reserves against its transaction accounts as the Board may prescribe by regulation solely for the purpose of implementing monetary policy--

(i) in a ratio of not greater than 3 percent (and which may be zero) for that portion of its total transaction accounts of $25,000,000 or less, subject to subparagraph (C); and

(ii) in the ratio of 12 per centum, or in such other ratio as the Board may prescribe not greater than 14 per centum (and which may be zero), for that portion of its total transaction accounts in excess of $25,000,000, subject to subparagraph (C).

(B) Each depository institution shall maintain reserves against its nonpersonal time deposits in the ratio of 3 per centum, or in such other ratio not greater than 9 per centum and not less than zero per centum as the Board may prescribe by regulation solely for the purpose of implementing monetary policy.

(C) Beginning in 1981, not later than December 31 of each year the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount which is contained in subparagraph (A) or which was last determined pursuant to this subparagraph for the purpose of such subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total transaction accounts of all depository institutions. The increase in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the preceding calendar year from the amount of such accounts on June 30 of the calendar year involved. In the case of any such 12-month period in which there has been a decrease in the total transaction accounts of all depository institutions, the Board shall issue such a regulation decreasing for the next succeeding calendar year such dollar amount

Copyright © 2024 Michael P. Malloy. All rights reserved.

by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage decrease in the total transaction accounts of all depository institutions. The decrease in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the calendar year involved from the amount of such accounts on June 30 of the previous calendar year.

(D) Any reserve requirement imposed under this subsection shall be uniformly applied to all transaction accounts at all depository institutions. Reserve requirements imposed under this subsection shall be uniformly applied to nonpersonal time deposits at all depository institutions, except that such requirements may vary by the maturity of such deposits.

(3) Upon a finding by at least 5 members of the Board that extraordinary circumstances require such action, the Board, after consultation with the appropriate committees of the Congress, may impose, with respect to any liability of depository institutions, reserve requirements outside the limitations as to ratios and as to types of liabilities otherwise prescribed by paragraph (2) for a period not exceeding 180 days, and for further periods not exceeding 180 days each by affirmative action by at least 5 members of the Board in each instance. The Board shall promptly transmit to the Congress a report of any exercise of its authority under this paragraph and the reasons for such exercise of authority.

(4)(A) The Board may, upon the affirmative vote of not less than 5 members, impose a supplemental reserve requirement on every depository institution of not more than 4 per centum of its total transaction accounts. Such supplemental reserve requirement may be imposed only if--

(i) the sole purpose of such requirement is to increase the amount of reserves maintained to a level essential for the conduct of monetary policy;

(ii) such requirement is not imposed for the purpose of reducing the cost burdens resulting from the imposition of the reserve requirements pursuant to paragraph (2);

(iii) such requirement is not imposed for the purpose of increasing the amount of balances needed for clearing purposes; and

(iv) on the date on which the supplemental reserve requirement is imposed, except as provided in paragraph (11), the total amount of reserves required pursuant to paragraph (2) is not less than the amount of reserves that would be required if the initial ratios specified in paragraph (2) were in effect.

(B) The Board may require the supplemental reserve authorized under subparagraph (A) only after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the National Credit Union Administration Board. The Board shall promptly transmit to the Congress a report with respect to any exercise of its authority to require supplemental reserves under subparagraph (A) and such report shall state the basis for the determination to exercise such authority.

(C) If a supplemental reserve under subparagraph (A) has been required of depository institutions for a period of one year or more, the Board shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need, if any, for continuing the supplemental reserve.

(D) Any supplemental reserve imposed under subparagraph (A) shall terminate at the close of the first 90-day period after such requirement is imposed during which the average amount of reserves required under paragraph (2) are

Copyright © 2024 Michael P. Malloy. All rights reserved.

less than the amount of reserves which would be required during such period if the initial ratios specified in paragraph (2) were in effect.

(5) Foreign branches, subsidiaries, and international banking facilities of nonmember depository institutions shall maintain reserves to the same extent required by the Board of foreign branches, subsidiaries, and international banking facilities of member banks. In addition to any reserves otherwise required to be maintained pursuant to this subsection, any depository institution shall maintain reserves in such ratios as the Board may prescribe against--

(A) net balances owed by domestic offices of such depository institution in the United States to its directly related foreign offices and to foreign offices of nonrelated depository institutions;

(B) loans to United States residents made by overseas offices of such depository institution if such depository institution has one or more offices in the United States; and

(C) assets (including participations) held by foreign offices of a depository institution in the United States which were acquired from its domestic offices.

(6) The requirements imposed under paragraph (2) shall not apply to deposits payable only outside the States of the United States and the District of Columbia, except that nothing in this subsection limits the authority of the Board to impose conditions and requirements on member banks under section 25 of this Act [12 U.S.C. §601 et seq.] or the authority of the Board under section 3105 of this title.

(7) Any depository institution in which transaction accounts or nonpersonal time deposits are held shall be entitled to the same discount and borrowing privileges as member banks. In the administration of discount and borrowing privileges, the Board and the Federal Reserve banks shall take into consideration the special needs of savings and other depository institutions for access to discount and borrowing facilities consistent with their long-term asset portfolios and the sensitivity of such institutions to trends in the national money markets.

(8)(A) Any depository institution required to maintain reserves under this subsection which was engaged in business on July 1, 1979, but was not a member of the Federal Reserve System on or after that date, shall maintain reserves against its deposits during the first twelve-month period following the effective date of this paragraph in amounts equal to one-eighth of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to one-fourth of those otherwise required, during the third such twelve-month period in amounts equal to three-eighths of those otherwise required, during the fourth twelve-month period in amounts equal to one-half of those otherwise required, and during the fifth twelve-month period in amounts equal to five-eighths of those otherwise required, during the sixth twelve-month period in amounts equal to three-fourths of those otherwise required, and during the seventh twelve-month period in amounts equal to seven- eighths of those otherwise required. This subparagraph does not apply to any category of deposits or accounts which are first authorized pursuant to Federal law in any State after April 1, 1980.

(B) With respect to any bank which was a member of the Federal Reserve System during the entire period beginning on July 1, 1979, and ending on the effective date of the Monetary Control Act of 1980, the amount of required reserves imposed pursuant to this subsection on and after the effective date of such Act that exceeds the amount of reserves which would have been required of such bank if the reserve ratios in effect during the

Copyright © 2024 Michael P. Malloy. All rights reserved.

reserve computation period immediately preceding such effective date were applied may, at the discretion of the Board and in accordance with such rules and regulations as it may adopt, be reduced by 75 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 25 per centum during the third year.

(C)(i) With respect to any bank which is a member of the Federal Reserve System on the effective date of the Monetary Control Act of 1980, the amount of reserves which would have been required of such bank if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied that exceeds the amount of required reserves imposed pursuant to this subsection shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(ii) If a bank becomes a member bank during the four-year period beginning on the effective date of the Monetary Control Act of 1980, and if the amount of reserves which would have been required of such bank, determined as if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied, and as if such bank had been a member during such period, exceeds the amount of reserves required pursuant to this subsection, the amount of reserves required to be maintained by such bank beginning on the date on which such bank becomes a member of the Federal Reserve System shall be the amount of reserves which would have been required of such bank if it had been a member on the day before such effective date, except that the amount of such excess shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(D)(i) Any bank which was a member bank on July 1, 1979, and which withdrew from membership in the Federal Reserve System during the period beginning July 1, 1979, and ending on March 31, 1980, shall maintain reserves during the first twelve-month period beginning on the date of enactment of this clause in amounts equal to one-half of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to two-thirds of those otherwise required, and during the third such twelve-month period in amounts equal to five-sixths of those otherwise required.

(ii) Any bank which withdraws from membership in the Federal Reserve System after March 31, 1980, shall maintain reserves in the same amount as member banks are required to maintain under this subsection, pursuant to subparagraphs (B) and (C)(i).

(E) This subparagraph applies to any depository institution that, on August 1, 1978, (i) was engaged in business as a depository institution in a State outside the continental limits of the United States, and (ii) was not a member of the Federal Reserve System at any time on or after such date. Such a depository institution shall not be required to maintain reserves against its deposits held or maintained at its offices located in a State outside the continental limits of the United States until the first day of the sixth calendar year which begins after the effective date of the Monetary Control Act of 1980. Such a depository institution shall maintain reserves against such deposits during the sixth calendar year which begins after such effective date in an amount equal to one-eighth of that otherwise required by

Copyright © 2024 Michael P. Malloy. All rights reserved.

paragraph (2), during the seventh such year in an amount equal to one-fourth of that otherwise required, during the eighth such year in an amount equal to three-eighths of that otherwise required, during the ninth such year in an amount equal to one- half of that otherwise required, during the tenth such year in an amount equal to five-eighths of that otherwise required, during the eleventh such year in an amount equal to three-fourths of that otherwise required, and during the twelfth such year in an amount equal to seven-eighths of that otherwise required.

(9) This subsection shall not apply with respect to any financial institution which--

(A) is organized solely to do business with other financial institutions;

(B) is owned primarily by the financial institutions with which it does business; and

(C) does not do business with the general public.

(10) In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Board shall waive the reserve requirement, or waive the penalty for failing to satisfy a reserve requirement, imposed pursuant to this subsection for the depository institution involved when requested by the Federal supervisory authority involved.

(11)(A)(i) Notwithstanding the reserve requirement ratios established under paragraphs (2) and (5) of this subsection, a reserve ratio of zero per centum shall apply to any combination of reservable liabilities, which do not exceed $2,000,000 (as adjusted under subparagraph (B)), of each depository institution.

(ii) Each depository institution may designate, in accordance with such rules and regulations as the Board shall prescribe, the types and amounts of reservable liabilities to which the reserve ratio of zero per centum shall apply, except that transaction accounts which are designated to be subject to a reserve ratio of zero per centum shall be accounts which would otherwise be subject to a reserve ratio of 3 per centum under paragraph (2).

(iii) The Board shall minimize the reporting necessary to determine whether depository institutions have total reservable liabilities of less than $2,000,000 (as adjusted under subparagraph (B)). Consistent with the Board's responsibility to monitor and control monetary and credit aggregates, depository institutions which have reserve requirements under this subsection equal to zero per centum shall be subject to less overall reporting requirements than depository institutions which have a reserve requirement under this subsection that exceeds zero per centum.

(B)(i) Beginning in 1982, not later than December 31 of each year, the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount specified in subparagraph (A), as previously adjusted under this subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total reservable liabilities of all depository institutions.

(ii) The increase in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the preceding calendar year from the amount of total reservable liabilities on June 30 of the calendar year involved. In the case of any such twelve-month period in which there has been a decrease in the total reservable liabilities of all depository institutions, no adjustment shall be made. A decrease in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the calendar year involved from the amount of total reservable liabilities on June 30

Copyright © 2024 Michael P. Malloy. All rights reserved.

of the previous calendar year.

(12) EARNINGS ON BALANCES.--

(A) IN GENERAL.--Balances maintained at a Federal Reserve bank by or on behalf of a depository institution may receive earnings to be paid by the Federal Reserve bank at least once each calendar quarter, at a rate or rates not to exceed the general level of short-term interest rates.

(B) REGULATIONS RELATING TO PAYMENTS AND DISTRIBUTIONS.--The Board may prescribe regulations concerning--

(i) the payment of earnings in accordance with this paragraph;

(ii) the distribution of such earnings to the depository institutions which maintain balances at such banks, or on whose behalf such balances are maintained; and

(iii) the responsibilities of depository institutions, Federal Home Loan Banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings attributable to balances maintained, in accordance with subsection (c)(1)(A), in a Federal Reserve bank by any such entity on behalf of depository institutions.

(C) DEPOSITORY INSTITUTIONS DEFINED.--For purposes of this paragraph, the term 'depository institution', in addition to the institutions described in paragraph (1)(A), includes any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978). . . .

§481. Appointment of examiners; examination of member banks, State banks, and trust companies; reports

The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every national bank as often as the Comptroller of the Currency shall deem necessary. . . .

The examiner making the examination of any affiliate of a national bank shall have power to make a thorough examination of all the affairs of the affiliate. . . .

§503. Liability of directors and officers of member banks

If the directors or officers of any member bank shall knowingly violate or permit any of the agents, officers, or directors of any member bank to violate any of the provisions of sections 375, 375a, 375b, and 376 of this title or regulations of the board made under authority thereof, or any of the provisions of sections 212, 213, 214, 215, 655, 1005, 1014, 1906, or 1909 of Title 18, every director and officer participating in or assenting to such violation shall be held liable in his personal and individual capacity for all damages which the member bank, its shareholders, or any other persons shall have sustained in consequence of such violation.

§504. Civil money penalty

(a) First tier

Any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who, violates any provision of section 371c, 371c-1, 375, 375a, 375b, 376 or 503 of this title, or any regulation issued pursuant thereto, 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 subsection (a) of

Copyright © 2024 Michael P. Malloy. All rights reserved.

this section, any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who

(1)(A) commits any violation described in subsection (a) of this section;

(B) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

(C) breaches any fiduciary duty;

(2) which violation, practice, or breach--

(A) is part of a pattern of misconduct;

(B) causes or is likely to cause more than a minimal loss to such member bank; or

(C) 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 subsections (a) and (b) of this section, any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who--

(1) knowingly--

(A) commits any violation described in subsection (a) of this section;

(B) engages in any unsafe or unsound practice in conducting the affairs of such credit union; or

(C) breaches any fiduciary duty; and

(2) knowingly or recklessly causes a substantial loss to such credit union 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 subsection (d) of this section for each day during which such violation, practice, or breach continues.

(d) Maximum amounts of penalties for any violation described in subsection (c)

The maximum daily amount of any civil penalty which may be assessed pursuant to subsection (c) of this section for any violation, practice, or breach described in such subsection is--

(1) in the case of any person other than a member bank, an amount to not exceed $1,000,000; and

(2) in the case of a member bank, an amount not to exceed the lesser of--

(A) $1,000,000; or

(B) 1 percent of the total assets of such member bank. . . .

(m) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a member bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice 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 bank (whether such date occurs before, on, or after August 9, 1989).

§505. Civil money penalty

(1) First tier

Any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who, violates any provision of this section, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(2) Second tier

Copyright © 2024 Michael P. Malloy. All rights reserved.

Notwithstanding paragraph (1), any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who--

(A)(i) commits any violation described in paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

(iii) breaches any fiduciary duty;

(B) 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 member bank; 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.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any member bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such member bank who--

(A) knowingly--

(i) commits any violation described in paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of such member bank; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such member bank 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 paragraph (4) for each day during which such violation, practice, or breach continues.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is--

(A) in the case of any person other than a member bank, an amount not to exceed $1,000,000; and

(B) in the case of a member bank, an amount not to exceed the lesser of--

(i) $1,000,000; or

(ii) 1 percent of the total assets of such member bank. . . .

CHAPTER 12 -- FEDERAL SAVINGS ASSOCIATIONS

§1462. Definitions

For purposes of this chapter--

(1) Corporation

The term "Corporation" means the Federal Deposit Insurance Corporation.

(2) Savings association

The term "savings association" means a savings association, as defined in section 1813 of this title, the deposits of which are insured by the Corporation.

(3) Federal savings association

The term "Federal savings association" means a Federal savings association or a Federal savings bank chartered under section 1464 of this title.

(4) National bank

The term "national bank" has the

Copyright © 2024 Michael P. Malloy. All rights reserved.

same meaning as in section 1813 of this title.

(5) Federal banking agencies

The term "Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

(6) State

The term "State" has the same meaning as in section 1813 of this title.

(7) Affiliate

The term "affiliate" means any person that controls, is controlled by, or is under common control with, a savings association, except as provided in section 1467a of this title.

(8) Board

The term "Board", other than in the context of the Board of Directors of the Corporation, means the Board of Governors of the Federal Reserve System.

(9) Comptroller

The term "Comptroller" means the Comptroller of the Currency.

(10) Appropriate Federal banking agency

The term "appropriate Federal banking agency" has the same meaning as in section 1813(q) of this title.

(11) Functionally regulated subsidiary

The term "functionally regulated subsidiary" has the same meaning as in section 1844(c)(5) of this title.

§1463. Supervision of savings associations

(a) Savings associations

(1) Examination and safe and sound operation

(A) Federal savings associations

The Comptroller shall provide for the examination and safe and sound operation of Federal savings associations.

(B) State savings associations

The Corporation shall provide for the examination and safe and sound operation of State savings associations.

(2) Regulations for savings associations

The Comptroller may prescribe regulations with respect to savings associations, as the Comptroller determines to be appropriate to carry out the purposes of this chapter. . . .

(c) Stringency of standards

The regulations of the Comptroller and the policies of the Comptroller and the Corporation governing the safe and sound operation of savings associations, including regulations and policies governing asset classification and appraisals, shall be no less stringent than those established by the Comptroller for national banks. . . .

(g) Preemption of State usury laws

(1) Notwithstanding any State law, a savings association may charge interest on any extension of credit at a rate of not more than 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which such savings association is located or at the rate allowed by the laws of the State in which such savings association is located, whichever is greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such savings association would be permitted to charge in the absence of this subsection, the receiving or charging a greater rate of interest than that prescribed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the extension of credit carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than 2 years after the date of such payment, an amount equal to twice the amount of the interest paid from the savings association taking

Copyright © 2024 Michael P. Malloy. All rights reserved.

or receiving such interest. . . .

§1464. Federal savings associations

(a) In general

In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Comptroller of the Currency is authorized, under such regulations as the Comptroller of the Currency may prescribe --

(1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

(2) to issue charters therefor,

giving primary consideration of the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.

(b) Deposits and related powers

(1) Deposit accounts

(A) Subject to the terms of its charter and regulations of the Comptroller of the Currency, a Federal savings association may --

(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as "accounts"); and

(ii) issue passbooks, certificates, or other evidence of accounts.

(B) A Federal savings association may not permit any overdraft (including an intraday overdraft) on behalf of an affiliate, or incur any such overdraft in such savings association's account at a Federal reserve bank or Federal home loan bank on behalf of an affiliate.

All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Comptroller of the Currency, be members of the savings association, and shall have such voting rights and such other rights as are thereby provided.

(C) A Federal savings association may require not less than 14 days notice prior to payment of savings accounts if the charter of the savings association or the regulations of the Comptroller of the Currency so provide.

(D) If a Federal savings association does not pay all withdrawals in full (subject to the right of the association, where applicable, to require notice), the payment of withdrawals from accounts shall be subject to such rules and procedures as may be prescribed by the savings association's charter or by regulation of the Comptroller of the Currency. Except as authorized in writing by the Comptroller of the Currency, any Federal savings association that fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition.

(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Comptroller of the Currency may by regulation provide.

(F) A Federal savings association may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Comptroller of the Currency.

(2) Other liabilities

To such extent as the Comptroller of the Currency may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Comptroller of the Currency and may issue such notes, bonds, deben-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tures, or other obligations, or other securities, including capital stock. . . .

(4) Mutual capital certificates

In accordance with regulations issued by the Comptroller of the Currency, mutual capital certificates may be issued and sold directly to subscribers or through underwriters. Such certificates may be included in calculating capital for the purpose of subsection (t) of this section to the extent permitted by the Comptroller of the Currency. The issuance of certificates under this paragraph does not constitute a change of control or ownership under this chapter or any other law unless there is in fact a change in control or reorganization. Regulations relating to the issuance and sale of mutual capital certificates shall provide that such certificates --

(A) are subordinate to all savings accounts, savings certificates, and debt obligations;

(B) constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

(C) are entitled to the payment of dividends; and

(D) may have a fixed or variable dividend rate.

(5) [Redesignated (4).]

(c) Loans and investments

To the extent specified in regulations of the Appropriate Federal banking agency, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

(1) Loans or investments without percentage of assets limitation

Without limitation as a percentage of assets, the following are permitted:

(A) Account loans

Loans on the security of its savings accounts and loans specifically related to transaction accounts.

(B) Residential real property loans

Loans on the security of liens upon residential real property.

(C) United States government securities

Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

(D) Federal home loan bank and Federal National Mortgage Association securities

Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

(E) Federal Home Loan Mortgage Corporation instruments

Investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. §§ 1454, 1455].

(F) Other Government securities

Investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. A savings association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act [12 U.S.C. § 1721(g)].

(G) Deposits

Investments in accounts of any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813].

(H) State securities

Investments in obligations issued by any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision). A Federal savings associa-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tion may not invest more than 10 percent of its capital in obligations of any one issuer, exclusive of investments in general obligations of any issuer.

(I) Purchase of insured loans

Purchase of loans secured by liens on improved real estate which are insured or guaranteed under the National Housing Act [12 U.S.C. § 1701 et seq.], the Servicemen's Readjustment Act of 1944, or chapter 37 of Title 38.

(J) Home improvement and manufactured home loans

Loans made to repair, equip, alter, or improve any residential real property, and loans made for manufactured home financing.

(K) Insured loans to finance the purchase of fee simple

Loans insured under section 240 of the National Housing Act [12 U.S.C. § 1715z-5].

(L) Loans to financial institutions, brokers, and dealers

Loans to --

(i) financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or

(ii) any broker or dealer registered with the Securities and Exchange Commission, which are secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

(M) Liquidity Investments.--Investments (other than equity investments), identified by the Appropriate Federal banking agency, for liquidity purposes, including cash, funds on deposit at a Federal reserve bank or a Federal home loan bank, or bankers' acceptances.

(N) Investment in the National Housing Partnership Corporation, partnerships, and joint ventures

Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968 [42 U.S.C. §§ 3931 *et seq.*], and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act [42 U.S.C. § 3937(a), (c)].

(O) Certain HUD insured or guaranteed investments

Loans that are secured by mortgages --

(i) insured under title X of the National Housing Act [12 U.S.C. §§ 1749aa *et seq.*], or

(ii) guaranteed under title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. §§ 3901 *et seq.*], under part B of the National Urban Policy and New Community Development Act of 1970 [42 U.S.C. §§ 4511 *et seq.*], or under section 802 of the Housing and Community Development Act of 1974 [42 U.S.C. § 1440].

(P) State housing corporation investments

Obligations of and loans to any State housing corporation, if --

(i) such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act [12 U.S.C. §§ 1701 *et seq.*], and

(ii) in the event of default, the holder of the obligations or loans has the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act [12 U.S.C. §§ 1701 *et seq.*].

(Q) Investment companies

A Federal savings association may invest in, redeem, or hold shares or certificates issued by any open-end management investment company which --

(i) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 [15

Copyright © 2024 Michael P. Malloy. All rights reserved.

U.S.C. §§ 80a-1 *et seq.*], and

(ii) the portfolio of which is restricted by such management company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in.

(R) Mortgage-backed securities

Investments in securities that --

(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 [15 U.S.C. § 77d(5)]; or

(ii) are mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934 [15 U.S.C. § 78c(a)(41)]),

subject to such regulations as the Appropriate Federal banking agency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

(S) Small business related securities

Investments in small business related securities (as defined in section 78c(a)(53) of Title 15), subject to such regulations as the Appropriate Federal banking agency may prescribe, including regulations concerning the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both.

(T) Credit card loans

Loans made through credit cards or credit card accounts.

(U) Educational loans

Loans made for the payment of educational expenses.

(2) Loans or investments limited to a percentage of assets or capital

The following loans or investments are permitted, but only to the extent specified:

(A) Commercial and other loans

Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans made under this subparagraph may not exceed 20 percent of the total assets of the Federal savings association, and amounts in excess of 10 percent of such total assets may be used under this subparagraph only for small business loans, as that term is defined by the Appropriate Federal banking agency.

(B) Nonresidential real property loans

(i) In general

Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed 400 percent of the Federal savings association's capital, as determined under subsection (t) of this section.

(ii) Exception

The Director may permit a savings association to exceed the limitation set forth in clause (i) if the Director determines that the increased authority --

(I) poses no significant risk to the safe and sound operation of the association, and

(II) is consistent with prudent operating practices.

(iii) Monitoring

If the Director permits any increased authority pursuant to clause (ii), the Director shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations.

(C) Investments in personal property

Investments in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale. Investments under this subparagraph may not exceed 10 percent of the assets of the Federal savings association.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(D) Consumer loans and certain securities

A Federal savings association may make loans for personal, family, or household purposes, including loans reasonably incident to providing such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Director. Loans and other investments under this subparagraph may not exceed 35 percent of the assets of the Federal savings association, except that amounts in excess of 30 percent of the assets may be invested only in loans which are made by the association directly to the original obligor and with respect to which the association does not pay any finder, referral, or other fee, directly or indirectly, to any third party.

(3) Loans or investments limited to 5 percent of assets

The following loans or investments are permitted, but not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

(A) Community development investments

Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974 [42 U.S.C. §§ 5301 *et seq*.]. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association.

(B) Nonconforming loans

Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection.

(C) Construction loans without security

Loans --

(i) the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate; and

(ii) with respect to which the association --

(I) relies substantially on the borrower's general credit standing and projected future income for repayment, without other security; or

(II) relies on other assurances for repayment, including a guarantee or similar obligation of a third party.

The aggregate amount of such investments shall not exceed the greater of the Federal savings association's capital or 5 percent of its assets.

(D) Redesignated (C)

(4) Other loans and investments

The following additional loans and other investments to the extent authorized below:

(A) Business development credit corporations

A Federal savings association that is in compliance with the capital standards prescribed under subsection (t) of this section may invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associations chartered by such State are authorized. The aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the association's total outstanding loans or $250,000, whichever is less.

(B) Service corporations

Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is

Copyright © 2024 Michael P. Malloy. All rights reserved.

available for purchase only by savings associations of such State and by Federal associations having their home offices in such State. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

(C) Foreign assistance investments

Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 [22 U.S.C. § 2181] or loans having the benefit of any guarantee under section 224 of such Act [22 U.S.C. § 2184], or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans guaranteed under section 221 or 222 of such Act [22 U.S.C. §§ 2181, 2182]. Investments under this subparagraph shall not exceed 1 percent of the Federal savings association's assets.

(D) Small business investment companies

A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958 [15 U.S.C. § 681(d)] for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such savings association.

(E) Bankers' banks

A Federal savings association may purchase for its own account shares of stock of a bankers' bank, described in Paragraph Seventh of section 24 of this title or in section 27(b) of this title, on the same terms and conditions as a national bank may purchase such shares. ...

(d) Regulatory authority

(1) In general

(A) Enforcement

The appropriate Federal banking agency shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818], and regulations prescribed hereunder. In enforcing any provision of this section, regulations prescribed under this section, or any other law or regulation, or in any other action, suit, or proceeding to which the appropriate Federal banking agency is a party or in which the appropriate Federal banking agency is interested, and in the administration of conservatorships and receiverships, the appropriate Federal banking agency may act in the name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency. . . .

(2) Conservatorships and receiverships

(A) Grounds for appointing conservator or receiver for insured savings association

The appropriate Federal banking agency may appoint a conservator or receiver for any insured savings association if the appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency, that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act [12 U.S.C. § 1821(c)(5)] exists.

(B) Power of appointment; judicial review

The appropriate Federal banking agency shall have exclusive power and

Copyright © 2024 Michael P. Malloy. All rights reserved.

jurisdiction to appoint a conservator or receiver for a Federal savings association. If, in the opinion of the appropriate Federal banking agency, a ground for the appointment of a conservator or receiver for a savings association exists, the appropriate Federal banking agency is authorized to appoint ex parte and without notice a conservator or receiver for the savings association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the appropriate Federal banking agency to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the appropriate Federal banking agency to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(C) Replacement

The appropriate Federal banking agency may, without any prior notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this subparagraph shall be removal of the conservator or receiver in office at the time of such removal.

(D) Court action

Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver or, except at the request of the appropriate Federal banking agency, to restrain or affect the exercise of powers or functions of a conservator or receiver.

(E) Powers

(i) In general

A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Director.

(ii) FDIC as conservator or receiver

Except as provided in section 21A of the Federal Home Loan Bank Act [12 U.S.C. § 1441a], the appropriate Federal banking agency, at the discretion of the appropriate Federal banking agency, may appoint the Federal Deposit Insurance Corporation as conservator for a savings association. The appropriate Federal banking agency shall appoint only the Federal Deposit Insurance Corporation as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association. The conservator or receiver so appointed shall, as such, have power to buy at its own sale. The Federal Deposit Insurance Corporation, as such conservator or receiver, shall have all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act [12 U.S.C. §§ 1811 *et seq.*], and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this chapter and any other provisions of law. . . .

(F) Disclosure requirement for those acting on behalf of conservator

A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of a savings association pursuant to this section shall fully disclose to all parties with

Copyright © 2024 Michael P. Malloy. All rights reserved.

which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.

(3) Regulations

(A) In general

The Comptroller may prescribe regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Comptroller may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership.

(B) FDIC as conservator or receiver

In any case where the Federal Deposit Insurance Corporation is the conservator or receiver, any regulations prescribed by the Comptroller shall be consistent with any regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act [12 U.S.C. § 1811 *et seq.*].

(e) Character and responsibility

A charter may be granted only--

(1) to persons of good character and responsibility,

(2) if in the judgment of the Comptroller a necessity exists for such an institution in the community to be served,

(3) if there is a reasonable probability of its usefulness and success, and

(4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

(f) Federal Home Loan Bank Membership.--After the end of the 6-month period beginning on the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.

(g) [Repealed.] . . .

(i) Conversions

(1) In general

Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Comptroller shall prescribe. Thereafter such Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this chapter.

(2) Authority of Comptroller

(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Comptroller.

(B) Any aggrieved person may obtain review of a final action of the Comptroller which approves or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of section 1467a(j) of this title within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Comptroller, whichever is later.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(C) Any Federal savings association may change its designation from a Federal savings association to a Federal savings bank, or the reverse.

(3) Conversion to State association

(A) Any Federal savings association may convert itself into a savings association or savings bank organized pursuant to the laws of the State in which the principal office of such Federal savings association is located if--

(i) the State permits the conversion of any savings association or savings bank of such State into a Federal savings association;

(ii) such conversion of a Federal savings association into such a State savings association is determined--

(I) upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event upon a vote of less than 51 percent of all the votes cast at such meeting. . .

(4) Savings bank activities

(A) To the extent authorized by the Director, but subject to section 18(m)(3) of the Federal Deposit Insurance Act [12 U.S.C. § 1828(m)(3)]--

(i) any Federal savings bank chartered as such prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and

(ii) any Federal savings bank in existence on August 9, 1989, and formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was authorized to do so as a mutual savings bank under State law.

(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfather rights hereunder.

(5) CONVERSION TO NATIONAL OR STATE BANK.--

(A) IN GENERAL.--Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller for each national bank, and with the approval of the appropriate State bank supervisor and the appropriate Federal banking agency for each State bank, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States subject to subparagraph (B).

(B) CONDITIONS OF CONVERSION.--The authority in subparagraph (A) shall apply only if each resulting national or State bank--

(i) will meet all financial, management, and capital requirements applicable to the resulting national or State bank; and

(ii) if more than 1 national or State bank results from a conversion under this subparagraph, has received approval from the Federal Deposit Insurance Corporation under section 5(a) of the Federal Deposit Insurance Act.

(C) NO MERGER APPLICATION UNDER FDIA REQUIRED.--No application under section 18(c) of the Federal Deposit Insurance Act shall be required for a conversion under this paragraph.

(D) DEFINITIONS.--For purposes

Copyright © 2024 Michael P. Malloy. All rights reserved.

of this paragraph, the terms 'State bank' and 'State bank supervisor' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(j) [Repealed.] . . .

(m) Branching

(1) In general

(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.

(2) Definition

For purposes of this subsection the term "branch" means any office, place of business, or facility, other than the principal office as defined by the Director, of a savings association at which accounts are opened or payments are received or withdrawals are made, or any other office, place of business, or facility of a savings association defined by the Director as a branch within the meaning of such sentence.

(n) Trusts

(1) Permits

The Director may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Director, service corporations may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities. . . .

(7) Certain loans prohibited

It shall be unlawful for any Federal savings association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than 5 years, or may be both fined and imprisoned, in the discretion of the court.

(8) Factors to be considered

In reviewing applications for permission to exercise the powers enumerated in this section, the Director may consider--

(A) the amount of capital of the applying Federal savings association,

(B) whether or not such capital is sufficient under the circumstances of the case,

(C) the needs of the community to be served, and

(D) any other facts and circumstances that seem to it proper.

The Director may grant or refuse the application accordingly, except that no permit shall be issued to any association having capital less than the capital required by State law of State banks, trust companies, and corporations exercising such powers. . . .

(o) Conversion of State savings banks

(1) Subject to the provisions of this subsection and under regulations of the Comptroller, the Comptroller may authorize the conversion of a State-chartered savings bank that is a Deposit Insurance Fund member into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution. . . .

Copyright © 2024 Michael P. Malloy. All rights reserved.

(p) Conversions

(1) Notwithstanding any other provision of law, and consistent with the purposes of this chapter, the Comptroller may authorize (or in the case of a Federal savings association, require) the conversion of any mutual savings association or Federal mutual savings bank that is insured by the Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the regulations of the Comptroller.

(2) Authorizations under this subsection may be made only--

(A) if the Comptroller has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association,

(B) when the Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act [12 U.S.C. § 1823], or

(C) to assist an institution in receivership.

(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this chapter, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

(q) Tying arrangements

(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement --

(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of paragraph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

(3) Any person injured by a violation of paragraph (1) may bring an action in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or in any other

Copyright © 2024 Michael P. Malloy. All rights reserved.

court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained, and the cost of suit, including a reasonable attorney's fee. Any such action shall be brought within 4 years from the date of the occurrence of the violation.

(4) Nothing contained in this subsection affects in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Director under this subsection shall in any manner constitute a defense to such action.

(5) For purposes of this subsection, the term "loan" includes obligations and extensions or advances of credit.

(6) Exceptions

The Director may, by regulation or order, permit such exceptions to the prohibitions of this subsection as the Board, in consultation with the Comptroller and the Corporation, considers will not be contrary to the purposes of this subsection and which conform to exceptions granted by the Board pursuant to section 1972(b) of this title.

(r) Out-of-State branches

(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of Title 26 or meets the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, or qualifies as a qualified thrift lender, as determined under section 1467a(m) of this title. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under section 7701(a)(19) of Title 26 or as a qualified thrift lender, as determined under section 1467a(m) of this title, as applicable.

(2) The limitations of paragraph (1) shall not apply if--

(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(k)];

(B) the branch was authorized for the Federal savings association prior to October 15, 1982;

(C) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the association was a savings association or savings bank chartered by the State in which its home office is located; or

(D) the branch was operated lawfully as a branch under State law prior to the association's conversion to a Federal charter.

(3) The Comptroller of the Currency, for good cause shown, may allow Federal savings associations up to 2 years to comply with the requirements of this subsection.

(s) Minimum capital requirements

(1) In general

Consistent with the purposes of section 3907 of this title and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 3902(1) of this title), the Comptroller of the Currency shall require all savings associations to achieve and maintain adequate capital by--

(A) establishing minimum levels of capital for savings associations; and

(B) using such other methods as the

Copyright © 2024 Michael P. Malloy. All rights reserved.

Comptroller of the Currency determines to be appropriate.

(2) Minimum capital levels may be determined by Comptroller of the Currency case-by-case

The Comptroller of the Currency may, consistent with subsection (t) of this section, establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Comptroller of the Currency determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

(3) Unsafe or unsound practice

In the discretion of the appropriate Federal banking agency, the appropriate Federal banking agency may treat the failure of any savings association to maintain capital at or above the minimum level required by the Director under this subsection, or subsection (t) of this section as an unsafe or unsound practice.

(4) Directive to increase capital

(A) Plan may be required

In addition to any other action authorized by law, including paragraph (3), the appropriate Federal banking agency may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the appropriate Federal banking agency to submit and adhere to a plan for increasing capital which is acceptable to the appropriate Federal banking agency.

(B) Enforcement of plan

Any directive issued and plan approved under subparagraph (A) shall be enforceable under section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818] to the same extent and in the same manner as an outstanding order which was issued under section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818] and has become final.

(5) Plan taken into account in other proceedings

The Appropriate Federal banking agency may--

(A) consider a savings association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the approval of the appropriate Federal banking agency for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association's progress in meeting the minimum level of capital required by the Appropriate Federal banking agency; and

(B) disapprove any proposal referred to in subparagraph (A) if the Appropriate Federal banking agency determines that the proposal would adversely affect the ability of the association to comply with such plan.

(t) Capital standards

(1) In general

(A) Requirement for standards to be prescribed

The Appropriate Federal banking agency shall, by regulation, prescribe and maintain uniformly applicable capital standards for savings associations. Those standards shall include--

(i) a leverage limit;

(ii) a tangible capital requirement; and

(iii) a risk-based capital requirement.

(B) Compliance

A savings association is not in compliance with capital standards for purposes of this subsection unless it complies with all capital standards prescribed under this paragraph.

(C) Stringency

The standards prescribed under this paragraph shall be no less stringent than the capital standards applicable to national banks.

(2) Content of standards

(A) Leverage limit

The leverage limit prescribed under

Copyright © 2024 Michael P. Malloy. All rights reserved.

paragraph (1) shall require a savings association to maintain core capital in an amount not less than 3 percent of the savings association's total assets.

(B) Tangible capital requirement

The tangible capital requirement prescribed under paragraph (1) shall require a savings association to maintain tangible capital in an amount not less than 1.5 percent of the savings association's total assets.

(C) Risk-based capital requirement

Notwithstanding paragraph (1)(C), the risk-based capital requirement prescribed under paragraph (1) may deviate from the risk-based capital standards applicable to national banks to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks. . . .

(9) Definitions

For purposes of this subsection--

(A) Core capital

Unless the Comptroller prescribes a more stringent definition, the term "core capital" means core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets.

(B) Tangible capital

The term "tangible capital" means core capital minus any intangible assets (as intangible assets are defined by the Comptroller for national banks).

(C) Total assets

The term "total assets" means total assets (as total assets are defined by the Comptroller of the Currency for national banks) adjusted in the same manner as total assets would be adjusted in determining compliance with the leverage limit applicable to national banks if the savings association were a national bank. . . .

(u) Limits on loans to one borrower

(1) In general

Section 84 of this title shall apply to savings associations in the same manner and to the same extent as it applies to national banks.

(2) Special rules

(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

(i) For any purpose, not to exceed $500,000.

(ii) To develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, if--

(I) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t) of this section;

(II) the appropriate Federal banking agency, by order, permits the savings association to avail itself of the higher limit provided by this clause;

(III) loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(IV) such loans comply with all applicable loan-to-value requirements.

(B) A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed 50 percent of the savings association's unimpaired capital and unimpaired surplus.

(3) Authority to impose more stringent restrictions

The Comptroller of the Currency may impose more stringent restrictions on a savings association's loans to one borrower if the Comptroller of the Currency determines that such restrictions are nec-

Copyright © 2024 Michael P. Malloy. All rights reserved.

essary to protect the safety and soundness of the savings association. ...

(x) HOME STATE CITIZENSHIP.--In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.

§1467a. Regulation of holding companies

(a) Definitions

(1) In general

As used in this section, unless the context otherwise requires--

(A) Savings association

The term "savings association" includes a savings bank or cooperative bank which is deemed by the appropriate Federal banking agency to be a savings association under subsection (l) of this section.

(B) Uninsured institution

The term "uninsured institution" means any depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(C) Company

The term "company" means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an instrumentality of the United States or any State.

(D) Savings and loan holding company

(i) In general

Except as provided in clause (ii), the term "savings and loan holding company" means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company.

(ii) Exclusion

The term “savings and loan holding company” does not include--

(I) a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association);

(II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(III) a company described in subsection (c)(9)(C) solely by virtue of such company's control of an intermediate holding company established pursuant to section 1467b of this title.

(E) Multiple savings and loan holding company

The term "multiple savings and loan holding company" means any savings and loan holding company which directly or indirectly controls 2 or more savings associations.

(F) Diversified savings and loan holding company

The term "diversified savings and loan holding company" means any savings and loan holding company whose subsidiary savings association and related activities as permitted under paragraph (2) of subsection (c) of this section represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year, as determined in accordance with regulations issued by the appropriate Federal banking agency.

(G) Subsidiary

The term "subsidiary" has the same

Copyright © 2024 Michael P. Malloy. All rights reserved.

meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813].

(H) Affiliate

The term "affiliate" of a savings association means any person which controls, is controlled by, or is under common control with, such savings association.

(I) Bank holding company

The terms "bank holding company" and "bank" have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. § 1841].

(J) Acquire

The term "acquire" has the meaning given to such term in section 13(f)(8) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(f)(8)].

(2) Control

For purposes of this section, a person shall be deemed to have control of--

(A) a savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(B) any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(C) a trust if the person is a trustee thereof; or

(D) a savings association or any other company if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

(3) Exclusions

Notwithstanding any other provision of this subsection, the term "savings and loan holding company" does not include--

(A) any company by virtue of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Board) as will permit the sale thereof on a reasonable basis; and

(B) any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.

(4) Special rule relating to qualified stock issuance

No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if such purchase is approved by the Board under subsection (q)(1)(D) of this section, unless the acquiring savings and loan holding com-

Copyright © 2024 Michael P. Malloy. All rights reserved.

pany, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) Registration and examination

(1) In general

Within 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Board on forms prescribed by the Board, which shall include such information, under oath or otherwise, with respect to the financial condition, ownership, operations, management, and intercompany relationships of such holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this section. Upon application, the Board may extend the time within which a savings and loan holding company shall register and file the requisite information. . . .

(c) Holding company activities

(1) Prohibited activities

Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall--

(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

(B) commence any business activity, other than the activities described in paragraph (2); or

(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

(2) Exempt activities

The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following business activities of any savings and loan holding company or any subsidiary (of such company) which is not a savings association:

(A) Furnishing or performing management services for a savings association subsidiary of such company.

(B) Conducting an insurance agency or escrow business.

(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

(E) Acting as trustee under deed of trust.

(F) Any other activity--

(i) which the Board, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956 [12 U.S.C. § 1843(c)], unless the Board, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

(G) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if the purchase of such stock by such savings and loan holding company is approved by the Board pursuant to subsection (q)(1)(D) of this section.

(H) Any activity that is permissible for a financial holding company (as such term is defined under section 2(p) of the Bank Holding Company Act of 1956 (12

Copyright © 2024 Michael P. Malloy. All rights reserved.

U.S.C. 1841(p)) to conduct under section 4(k) of the Bank Holding Company Act of 1956 if--

(i) the savings and loan holding company meets all of the criteria to qualify as a financial holding company, and complies with all of the requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company; and

(ii) the savings and loan holding company conducts the activity in accordance with the same terms, conditions, and requirements that apply to the conduct of such activity by a bank holding company under the Bank Holding Company Act of 1956 and the Board's regulations and interpretations under such Act.

(3) Certain limitations on activities not applicable to certain holding companies

Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls--

(A) only 1 savings association, if the savings association subsidiary of such company is a qualified thrift lender (as determined under subsection (m) of this section); or

(B) more than 1 savings association, if--

(i) all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company--

(I) pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(c) or (k)] or section 408(m) of the National Housing Act [12 U.S.C. § 1730a(m)]; or

(II) pursuant to an acquisition in which assistance was continued to a savings association under section 13(i) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(i)]; and

(ii) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under subsection (m) of this section).

(4) Prior approval of certain new activities required

(A) In general

No savings and loan holding company and no subsidiary which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Board.

(B) Factors to be considered

In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not a savings association, the Board shall consider--

(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices);

(ii) the managerial resources of the companies involved; and

(iii) the adequacy of the financial resources, including capital, of the companies involved.

(C) Board may differentiate between new and ongoing activities

In prescribing any regulation or

Copyright © 2024 Michael P. Malloy. All rights reserved.

considering any application under this paragraph, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

(D) Approval or disapproval by order

The approval or disapproval of any application under this paragraph by the Board shall be made in an order issued by the Board containing the reasons for such approval or disapproval.

(5) Grace period to achieve compliance

If any savings association referred to in paragraph (3) fails to maintain the status of such association as a qualified thrift lender, the Board may allow, for good cause shown, any company that controls such association (or any subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations contained in paragraph (1)(C). . . .

(7) Foreign savings and loan holding company

Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not a savings association), which controls a single savings association on August 10, 1987, shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.

(8) Exemption for bank holding companies

Except for paragraph (1)(A), this subsection shall not apply to any company that is treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 [12 U.S.C. § 1843], or any of its subsidiaries.

(9) Prevention of New Affiliations Between S&l Holding Companies and Commercial Firms.--

(A) In General.-- Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted--

(i) under paragraph (1)(C) or (2) of this subsection; or

(ii) for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. § 1843(k)].

(B) Prevention of New Commercial Affiliations.--Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

(C) Preservation of Authority of Existing Unitary S&l Holding Companies.--Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on May 4, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office on or before that date, and that--

(i) meets and continues to meet the requirements of paragraph (3); and

(ii) continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office on or before that date, or the successor to such savings association.

(D) Corporate Reorganizations Permitted.--This paragraph does not prevent a transaction that--

(i) involves solely a company under common control with a savings and loan

Copyright © 2024 Michael P. Malloy. All rights reserved.

holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

(ii) involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

(E) Authority to Prevent Evasions.--The Board may issue interpretations, regulations, or orders that the Board determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

(F) Preservation of Authority for Family Trusts.--Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if--

(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999; and

(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999.

(d) Transactions with affiliates

Transactions between any subsidiary savings association of a savings and loan holding company and any affiliate (of such savings association subsidiary) shall be subject to the limitations and prohibitions specified in section 1468 of this title.

(e) Acquisitions

(1) In general

It shall be unlawful for --

(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions --

(i) to acquire, except with the prior written approval of the Board, the control of a savings association or a savings and loan holding company, or to retain the control of such an association or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

(ii) to acquire, except with the prior written approval of the Board, by the process of merger, consolidation, or purchase of assets, another savings association or a savings and loan holding company, or all or substantially all of the assets of any such association or holding company;

(iii) to acquire, by purchase or otherwise, or to retain, except with the prior written approval of the Board, more than 5 percent of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or in the case of a multiple savings and loan holding company (other than a company described in subsection (c)(8) of this section), to acquire or retain, and the Board may not authorize acquisition or retention of, more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than the activities

Copyright © 2024 Michael P. Malloy. All rights reserved.

specified in subsection (c)(2) of this section. This clause shall not apply to shares of a savings association or of a savings and loan holding company --

(I) held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(III) held in an account solely for trading purposes;

(IV) over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(V) acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VI) acquired under section 408(m) of the National Housing Act [12 U.S.C. § 1730a(m)] or section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(k)];

(VII) held by any insurance company, as defined in section 80a-2 of Title 15, except as provided in paragraph (6); or

(VIII) acquired pursuant to a qualified stock issuance if such purchase is approved by the Board under subsection (q)(1)(D) of this section;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), and (VI)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association or savings and loan holding company; or

(iv) to acquire the control of an uninsured institution, or to retain for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Board may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Board finds such extension is warranted and is not detrimental to the public interest; and

(B) any other company, without the prior written approval of the Board, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of "savings and loan holding company" under subsection (a) of this section, (ii) acquired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons, or (iii) acquired by a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company. The Board shall approve an acquisition of a savings association under this subparagraph unless the Board finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the Deposit Insurance Fund, and shall render a decision within 90 days after submission to the Board of the complete record on the application.

Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers,

Copyright © 2024 Michael P. Malloy. All rights reserved.

directors, and principal shareholders of the company or association.

(2) Factors to be considered

The Director shall not approve any acquisition under subparagraph (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B) of paragraph (1) of this subsection, any acquisition of stock in connection with a qualified stock issuance, any acquisition under paragraph (4)(A), or any transaction under section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(k)], except in accordance with this paragraph. In every case, the Director shall take into consideration the financial and managerial resources and future prospects of the company and association involved, the effect of the acquisition on the association, the insurance risk to the Deposit Insurance Fund, and the convenience and needs of the community to be served, and shall render a decision within 90 days after submission to the Director of the complete record on the application. Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(k)], the Director shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Director shall not approve any proposed acquisition--

(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States,

(B) the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served,

(C) if the company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as the Director determines to be appropriate to determine and enforce compliance with this chapter,

(D) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country, or

(E) in the case of an application by a savings and loan holding company to acquire an insured depository institution, if--

(i) the home State of the insured depository institution is a State other than the home State of the savings and loan holding company;

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States; and

(iii) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).

(3) Interstate acquisitions

Copyright © 2024 Michael P. Malloy. All rights reserved.

No acquisition shall be approved by the Director under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless--

(A) such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 13(k) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(k)];

(B) such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

(C) the statutes of the State in which the savings association to be acquired is located permit a savings association chartered by such State to be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located or by a holding company that controls such a State chartered savings association, and such statutes specifically authorize such an acquisition by language to that effect and not merely by implication.

(4) Acquisitions by certain individuals

(A) In general

Notwithstanding subsection (h)(2) of this section, any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, may acquire control of any savings association not a subsidiary of such savings and loan holding company with the prior written approval of the Director.

(B) Treatment of certain holding companies

If any individual referred to in subparagraph (A) controls more than 1 savings and loan holding company or more than 1 savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in subsection (c) of this section to the same extent such limitations apply to multiple savings and loan holding companies, unless all or all but 1 of the savings associations (including any institution deemed to be a savings association under subsection (1) of this section) controlled directly or indirectly by such individual was acquired pursuant to an acquisition described in subclause (I) or (II) of subsection (c)(3)(B)(i) of this section.

(5) Acquisitions pursuant to certain security interests

This subsection and subsection (c)(2) of this section do not apply to any savings and loan holding company which acquired the control of a savings association or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business. It shall be unlawful for any such company to retain such control for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one- year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and would not be detrimental to the public interest.

(6) Shares held by insurance affiliates

Shares described in clause (iii)(VII) of paragraph (1)(A) shall not be excluded for purposes of clause (iii) of such paragraph if--

(A) all shares held under such clause

Copyright © 2024 Michael P. Malloy. All rights reserved.

(iii)(VII) by all insurance company affiliates of such savings association or savings and loan holding company in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(7) Definitions

For purposes of paragraph (2)(E)--

(A) the terms "default", "in danger of default", and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) the term "home State" means--

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

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

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

(iv) with respect to a savings and loan holding company, the State in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became a savings and loan holding company. . . .

(h) Prohibited acts

It shall be unlawful for--

(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association;

(2) any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, to acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Board pursuant to subsection (e)(4) of this section; or

(3) any individual, except with the prior approval of the Board, to serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust. . . .

(j) Judicial review

Any party aggrieved by an order of the Board under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board 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 be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided

Copyright © 2024 Michael P. Malloy. All rights reserved.

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.

(k) Savings clause

Nothing contained in this section, other than any transaction approved under subsection (e)(2) of this section or section 13 of the Federal Deposit Insurance Act [12 U.S.C. § 1823], shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any act, action, or conduct in violation of the antitrust laws.

(*l*) Treatment of FDIC insured State savings banks and cooperative banks as savings associations

(1) In general

Notwithstanding any other provision of law, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act [12 U.S.C. § 1813(g)]) and a cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act [12 U.S.C. § 1813(h)] upon application shall be deemed to be a savings association for the purpose of this section, if the Board determines that such bank is a qualified thrift lender (as determined under subsection (m) of this section).

(2) Failure to maintain qualified thrift lender status

If any savings bank which is deemed to be a savings association under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Board, bank may not thereafter be a qualified thrift lender for a period of 5 years.

(m) Qualified thrift lender test

(1) In general

Except as provided in paragraphs (2) and (7), any savings association is a qualified thrift lender if --

(A) the savings association qualifies as a domestic building and loan association, as such term is defined in section 7701(a)(19) of Title 26; or

(B)(i) the savings association's qualified thrift investments equal or exceed 65 percent of the savings association's portfolio assets; and

(ii) the savings association's qualified thrift investments continue to equal or exceed 65 percent of the savings association's portfolio assets on a monthly average basis in 9 out of every 12 months.

(2) Exceptions granted by appropriate Federal banking agency

Notwithstanding paragraph (1), the appropriate Federal banking agency may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the appropriate Federal banking agency deems necessary if--

(A) the appropriate Federal banking agency determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

(B) the appropriate Federal banking agency determines that--

(i) the grant of any such exception will significantly facilitate an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act [12 U.S.C. § 1823(c), (k)];

(ii) the acquired association will comply with the transition requirements of paragraph (7)(B), as if the date of the exemption were the starting date for the transition period described in that paragraph; and

(iii) the appropriate Federal banking agency determines that the exemption will

Copyright © 2024 Michael P. Malloy. All rights reserved.

not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of this subsection.

(3) Failure to become and remain a qualified thrift lender

(A) In general

A savings association that fails to become or remain a qualified thrift lender shall immediately be subject to the restrictions under subparagraph (B).

(B) Restrictions applicable to savings associations that are not qualified thrift lenders

(i) Restrictions effective immediately

The following restrictions shall apply to a savings association beginning on the date on which the savings association should have become or ceases to be a qualified thrift lender:

(I) Activities

The savings association shall not make any new investment (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

(II) Branching

The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this subclause, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender.

(III) Dividends

The savings association may not pay dividends, except for dividends that--

(aa) would be permissible for a national bank;

(bb) are necessary to meet obligations of a company that controls such savings association; and

(cc) are specifically approved by the Comptroller of the Currency and the Board after a written request submitted to the Comptroller of the Currency and the Board by the savings association not later than 30 days before the date of the proposed payment.

(IV) Regulatory authority

A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 1464 of this title and subject to actions authorized by section 1464(d) of this title.

(ii) Additional Restrictions Effective after 3 Years.--Beginning 3 years after the date on which a savings association should have become a qualified thrift lender, or the date on which the savings association ceases to be a qualified thrift lender, as applicable, the savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity, unless that investment or activity--

(I) would be permissible for the savings association if it were a national bank; and

(II) is permissible for the savings association as a savings association.

(C) Holding company regulation

Any company that controls a savings association that is subject to any provision of subparagraph (B) shall, within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. § 1841 *et seq.*], section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818], and other statutes applicable to bank holding companies, in the same manner and to the same extent

Copyright © 2024 Michael P. Malloy. All rights reserved.

as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956 [12 U.S.C. §§ 1841 *et seq.*].

(D) Requalification

A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (B) or (C) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender. If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of subparagraphs (B) and (C) as if all the periods described in subparagraphs (B)(ii) and (C) had expired. ...

(F) Exemption for certain Federal savings associations

This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on August 9, 1989--

(i) that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law; or

(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

(G) No circumvention of exit moratorium

Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 5(d) of the Federal Deposit Insurance Act [12 U.S.C. § 1815(d)].

(4) Definitions

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

(A) Actual thrift investment percentage

The term "actual thrift investment percentage" means the percentage determined by dividing --

(i) the amount of a savings association's qualified thrift investments, by

(ii) the amount of the savings association's portfolio assets.

(B) Portfolio assets

The term "portfolio assets" means, with respect to any savings association, the total assets of the savings association, minus the sum of --

(i) goodwill and other intangible assets;

(ii) the value of property used by the savings association to conduct its business; and

(iii) liquid assets of the type required to be maintained under section 1465 of this title, as in effect on the day before December 27, 2000, in an amount not exceeding the amount equal to 20 percent of the savings association's total assets.

(C) Qualified thrift investments

(i) In general

The term "qualified thrift investments" means, with respect to any savings association, the assets of the savings association that are described in clauses (ii) and (iii).

(ii) Assets includible without limit

The following assets are described in this clause for purposes of clause (i):

(I) The aggregate amount of loans held by the savings association that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing.

(II) Home-equity loans.

(III) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing.

(IV) Existing obligations of deposit insurance agencies

Copyright © 2024 Michael P. Malloy. All rights reserved.

Direct or indirect obligations of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations.

(V) New obligations of deposit insurance agencies

Obligations of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the FSLIC Resolution Fund, and the Resolution Trust Corporation issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations.

(VI) Shares of stock issued by any Federal home loan bank.

(VII) Loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts.

(iii) Assets includible subject to percentage restriction

The following assets are described in this clause for purposes of clause (i):

(I) 50 percent of the dollar amount of the residential mortgage loans originated by such savings association and sold within 90 days of origination.

(II) Investments in the capital stock or obligations of, and any other security issued by, any service corporation if such service corporation derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential real estate or manufactured housing.

(III) 200 percent of the dollar amount of loans and investments made to acquire, develop, and construct 1- to 4-family residences the purchase price of which is or is guaranteed to be not greater than 60 percent of the median value of comparable newly constructed 1- to 4-family residences within the local community in which such real estate is located, except that not more than 25 percent of the amount included under this subclause may consist of commercial properties related to the development if those properties are directly related to providing services to residents of the development.

(IV) 200 percent of the dollar amount of loans for the acquisition or improvement of residential real property, churches, schools, and nursing homes located within, and loans for any other purpose to any small businesses located within any area which has been identified by the Director, in connection with any review or examination of community reinvestment practices, as a geographic area or neighborhood in which the credit needs of the low- and moderate-income residents of such area or neighborhood are not being adequately met.

(V) Loans for the purchase or construction of churches, schools, nursing homes, and hospitals, other than those qualifying under clause (IV), and loans for the improvement and upkeep of such properties.

(VI) Loans for personal, family, or household purposes (other than loans for personal, family, or household purposes described in clause (ii)(VII)).

(VII) Shares of stock issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(iv) Percentage restriction applicable to certain assets

The aggregate amount of the assets described in clause (iii) which may be taken into account in determining the amount of the qualified thrift investments of any savings association shall not exceed the amount which is equal to 20 percent of a savings association's portfolio assets.

(v) The term "qualified thrift invest-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ments" excludes

(I) except for home equity loans, that portion of any loan or investment that is used for any purpose other than those expressly qualifying under any subparagraph of clause (ii) or (iii); or

(II) goodwill or any other intangible asset.

(D) Credit card

The Director shall issue such regulations as may be necessary to define the term "credit card".

(E) Small business

The Director shall issue such regulations as may be necessary to define the term "small business".

(5) Consistent accounting required

(A) In determining the amount of a savings association's portfolio assets, the assets of any subsidiary of the savings association shall be consolidated with the assets of the savings association if--

(i) Assets of the subsidiary are consolidated with the assets of the savings association in determining the savings association's qualified thrift investments; or

(ii) Residential mortgage loans originated by the subsidiary are included pursuant to paragraph (4)(C)(iii)(I) in determining the savings association's qualified thrift investments.

(B) In determining the amount of a savings association's portfolio assets and qualified thrift investments, consistent accounting principles shall be applied.

(6) Special rules for Puerto Rico and Virgin Islands savings associations

(A) Puerto Rico savings associations

With respect to any savings association headquartered and operating primarily in Puerto Rico--

(i) the term "qualified thrift investments" includes, in addition to the items specified in paragraph (4)--

(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Commonwealth of Puerto Rico; and

(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Commonwealth of Puerto Rico; and

(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate--

(I) which is located within the Commonwealth of Puerto Rico; and

(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Commonwealth of Puerto Rico, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

(B) Virgin Islands savings associations

With respect to any savings association headquartered and operating primarily in the Virgin Islands--

(i) the term "qualified thrift investments" includes, in addition to the items specified in paragraph (4)--

(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Virgin Islands; and

(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Virgin Islands; and

(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate--

(I) which is located within the Virgin Islands; and

(II) the value of which (at the time of

Copyright © 2024 Michael P. Malloy. All rights reserved.

acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Virgin Islands, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled. ...

(n) Tying restrictions

A savings and loan holding company and any of its affiliates shall be subject to section 1464(q) of this title and regulations prescribed under such section, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated savings association as if such company or affiliate were a savings association.

(o) Mutual holding companies

(1) In general

A savings association operating in mutual form may reorganize so as to become a holding company by--

(A) chartering an interim savings association, the stock of which is to be wholly owned, except as otherwise provided in this section, by the mutual association; and

(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings association.

(2) Directors and certain account holders' approval of plan required

A reorganization is not authorized under this subsection unless--

(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings association; and

(B) in the case of an association in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the association's charter and bylaws.

(3) Notice to the Board; disapproval period

(A) Notice required

At least 60 days prior to taking any action described in paragraph (1), a savings association seeking to establish a mutual holding company shall provide written notice to the Board. The notice shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(B) Transaction allowed if not disapproved

Unless the Board within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the savings association providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

(C) Grounds for disapproval

The Board may disapprove any proposed holding company formation only if--

(i) such disapproval is necessary to prevent unsafe or unsound practices;

(ii) the financial or management resources of the savings association involved warrant disapproval;

(iii) the savings association fails to furnish the information required under subparagraph (A); or

(iv) the savings association fails to comply with the requirement of paragraph (2). . . .

(4) Ownership

(A) In general

Persons having ownership rights in the mutual association pursuant to section 1464(b)(1)(B) of this title or State law shall have the same ownership rights with respect to the mutual holding company.

(B) Holders of certain accounts

Holders of savings, demand or other accounts of--

Copyright © 2024 Michael P. Malloy. All rights reserved.

(i) a savings association chartered as part of a transaction described in paragraph (1); or

(ii) a mutual savings association acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

(5) Permitted activities

A mutual holding company may engage only in the following activities:

(A) Investing in the stock of a savings association.

(B) Acquiring a mutual association through the merger of such association into a savings association subsidiary of such holding company or an interim savings association subsidiary of such holding company.

(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

(D) Investing in a corporation the capital stock of which is available for purchase by a savings association under Federal law or under the law of any State where the subsidiary savings association or associations have their home offices.

(E) Engaging in the activities described in subsection (c)(2) of this section or (c)(9)(A)(ii).

(6) Limitations on certain activities of acquired holding companies

(A) New activities

If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

(B) Grace period for divesting prohibited assets or discontinuing prohibited activities

Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall--

(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5). . . .

(s) Mergers, consolidations, and other acquisitions authorized

(1) In general

Subject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act [12 U.S.C. §§ 1815(d)(3), 1828(c)] and all other applicable laws, any Federal savings association may acquire or be acquired by any insured depository institution.

(2) Expedited approval of acquisitions

(A) In general

Any application by a savings association to acquire or be acquired by another insured depository institution which is required to be filed with the appropriate Federal banking agency for the savings association under any applicable law or regulation shall be approved or disapproved in writing by the appropriate Federal banking agency for the savings association before the end of the 60-day period beginning on the date such application is filed with the agency.

(B) Extension of period

The period for approval or disapproval referred to in subparagraph (A) may be extended for an additional 30-day period if the appropriate Federal banking agency for the savings association determines that--

(i) an applicant has not furnished all of the information required to be submitted; or

(ii) in the judgment of the appropriate Federal banking agency for the sav-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ings association, any material information submitted is substantially inaccurate or incomplete.

(3) Acquire defined

For purposes of this subsection, the term "acquire" means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution. . . .

(t) Exemption for bank holding companies

This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956, or any company controlled by such bank holding company. . . .

§ 1467b. Intermediate holding companies

(a) Definition

For purposes of this section:

(1) Financial activities

The term "financial activities" means activities described in clauses (i) and (ii) of section 1467a(c)(9)(A) of this title.

(2) Grandfathered unitary savings and loan holding company

The term "grandfathered unitary savings and loan holding company" means a company described in section 1467a(c)(9)(C) of this title.

(3) Internal financial activities

The term "internal financial activities" includes--

(A) internal financial activities conducted by a grandfathered savings and loan holding company or any affiliate; and

(B) internal treasury, investment, and employee benefit functions.

(b) Requirement

(1) In general

(A) Activities other than financial activities

If a grandfathered unitary savings and loan holding company conducts activities other than financial activities, the Board may require such company to establish and conduct all or a portion of such financial activities in or through an intermediate holding company, which shall be a savings and loan holding company, established pursuant to regulations of the Board, not later than 90 days (or such longer period as the Board may deem appropriate) after the transfer date.

(B) Other activities

Notwithstanding subparagraph (A), the Board shall require a grandfathered unitary savings and loan holding company to establish an intermediate holding company if the Board makes a determination that the establishment of such intermediate holding company is necessary--

(i) to appropriately supervise activities that are determined to be financial activities; or

(ii) to ensure that supervision by the Board does not extend to the activities of such company that are not financial activities.

(2) Internal financial activities

(A) Treatment of internal financial activities

For purposes of this subsection, the internal financial activities of a grandfathered unitary savings and loan holding company shall not be required to be placed in an intermediate holding company.

(B) Grandfathered activities

A grandfathered unitary savings and loan holding company may continue to engage in an internal financial activity, subject to review by the Board to determine whether engaging in such activity presents undue risk to the grandfathered unitary savings and loan holding company or to the financial stability of the United States, if--

Copyright © 2024 Michael P. Malloy. All rights reserved.

(i) the grandfathered unitary savings and loan holding company engaged in the activity during the year before July 21, 2010; and

(ii) at least 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to the grandfathered unitary savings and loan holding company.

(3) Source of strength

A grandfathered unitary savings and loan holding 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, may from time to time, examine and require reports under oath from a grandfathered unitary savings and loan holding 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 as required under paragraph (3) and enforcing compliance with such requirement.

(5) Limited parent company enforcement

(A) In general

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

(B) Application of other Act

Any violation of this subsection by a grandfathered unitary savings and loan holding company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act 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 or any other Federal agency under any other provision of law.

(c) Regulations

The Board--

(1) shall promulgate regulations to establish the criteria for determining whether to require a grandfathered unitary savings and loan holding company 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 parent of such company and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between the intermediate holding company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of the intermediate holding 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.

(d) Rules of construction

(1) Activities

Nothing in this section shall be construed to require a grandfathered unitary savings and loan holding company to conform its activities to permissible activities.

(2) Permissible corporate reorganization

The formation of an intermediate

Copyright © 2024 Michael P. Malloy. All rights reserved.

holding company as required in subsection (b) shall be presumed to be a permissible corporate reorganization as described in section 1467a(c)(9)(D) of this title.

§1468. Transactions with affiliates; extensions of credit to executive officers, directors, and principal shareholders

(a) Affiliate transactions

(1) In general

Sections 23A and 23B of the Federal Reserve Act [12 U.S.C. §§ 371c, 371c-1] shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act), except that--

(A) no loan or other extension of credit may be made to any affiliate unless that affiliate is engaged only in activities described in section 1467a(c)(2)(F)(i) of this title; and

(B) no savings association may enter into any transaction described in section 23A(b)(7)(B) of the Federal Reserve Act [12 U.S.C. § 371c(b)(7)(B)] with any affiliate other than with respect to shares of a subsidiary.

(2) Sister bank exemption made available to savings associations

(A) Savings associations controlled by bank holding companies

Every savings association more than 80 percent of the voting stock of which is owned by a company described in section 1467a(c)(8) of this title shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act [12 U.S.C. §§ 371c(d)(1), 371c-1], if every savings association and bank controlled by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.

(B) Savings associations generally

Effective on and after January 1, 1995, every savings association shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act [12 U.S.C. §§ 371c(d)(1), 371c-1].

(C) [Repealed.]

(3) Affiliates described

Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act [12 U.S.C. §§ 371c, 371c-1]) of any savings association if such savings association were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of paragraph (1).

(4) Additional restrictions authorized

The appropriate Federal banking agency may impose such additional restrictions on any transaction between any savings association and any affiliate of such savings association as the appropriate Federal banking agency determines to be necessary to protect the safety and soundness of the savings association.

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

(1) In general

Subsections (g) and (h) of section 22 of the Federal Reserve Act [12 U.S.C. §§ 375a, 375b] shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act).

(2) Additional restrictions authorized

The appropriate Federal banking agency may impose such additional restrictions on loans or extensions of credit to any director or executive officer of any savings association, or any person who directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a savings association, as the appropriate Federal banking agency determines to be

Copyright © 2024 Michael P. Malloy. All rights reserved.

necessary to protect the safety and soundness of the savings association. ...

(d) Exemptions

(1) Federal savings associations

The Comptroller of the Currency may, by order, exempt a transaction of a Federal savings association from the requirements of this section if--

(A) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

(B) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subparagraph (A), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(2) State savings association

The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State savings association from the requirements of this section if the Board and the Federal Deposit Insurance Corporation jointly find that--

(A) the exemption is in the public interest and consistent with the purposes of this section; and

(B) the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

CHAPTER 14--FEDERAL CREDIT UNIONS

SUBCHAPTER I--GENERAL PROVISIONS

§1752. Definitions

As used in this chapter--

(1) the term "Federal credit union" means a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes;

(2) the term "Chairman" means the Chairman of the National Credit Union Administration Board;

(3) the term "Administration" means the National Credit Union Administration;

(4) the term "Board" means the National Credit Union Administration Board;

(5) The terms "member account" and "account" mean a share, share certificate, or share draft account of a member of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member, and, in the case of a credit union serving predominantly low-income members (as defined by the Board), such terms (when referring to the account of a nonmember served by such credit union) mean a share, share certificate, or share draft account of such nonmember which is of a type approved by the Board and evidences money or its equivalent received or held by such credit union in the usual course of business and for which it has given or is obligated to give credit to the account of such nonmember, and such terms mean share, share certificate, or share draft account of nonmember credit unions and nonmember units of Federal,

Copyright © 2024 Michael P. Malloy. All rights reserved.

State, or local governments and political subdivisions thereof enumerated in section 1787 of this title, and such terms mean custodial accounts established for loans sold in whole or in part pursuant to section 1757(13) of this title: Provided, that for purposes of insured State credit unions, reference in this paragraph to "share", "share certificate", or "share draft", accounts includes, as determined by the Board, the equivalent of such accounts under State law;

(6) The terms "State credit union" and "Statechartered credit union" mean a credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions;

(7) The term "insured credit union" means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter, and the term "noninsured credit union" means any credit union the member accounts of which are not so insured;

(8) The term "Fund" means the National Credit Union Share Insurance Fund; and

(9) The term "branch" includes any branch credit union, branch office, branch agency, additional office, or any branch place of business located in any State of the United States, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, at which member accounts are established or money lent. The term "branch" also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States.

§1752a. National Credit Union Administration

(a) Establishment; management under National Credit Union Administration Board

There is established in the executive branch of the Government an independent agency to be known as the National Credit Union Administration. The Administration shall be under the management of a National Credit Union Administration Board.

(b) Membership and Appointment of Board.--

(1) In General. --

The Board shall consist of three members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the Board, the President shall designate the Chairman. Not more than two members of the Board shall be members of the same political party.

(2) Appointment Criteria.--

(A) Experience in Financial Services. -- In considering appointments to the Board under paragraph (1), the President shall give consideration to individuals who, by virtue of their education, training, or experience relating to a broad range of financial services, financial services regulation, or financial policy, are especially qualified to serve on the Board.

(B) Limit on Appointment of Credit Union Officers. -- Not more than one member of the Board may be appointed to the Board from among individuals who, at the time of the appointment, are, or have recently been, involved with any insured credit union as a committee member, director, officer, employee, or other

Copyright © 2024 Michael P. Malloy. All rights reserved.

institution-affiliated party.

(c) Term of office

The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, initially appointed shall expire one upon the expiration of two years after the date of appointment, and the other upon the expiration of four years after the date of appointment. Board members shall not be appointed to succeed themselves except the initial members appointed for less than a six-year term may be reappointed for a full six-year term and future members appointed to fill unexpired terms may be reappointed for a full six-year term. Any Board member may continue to serve as such after the expiration of said member's term until a successor has qualified.

(d) Management of Administration vested in Board; adoption of rules; quorum; report to President and Congress

The management of the Administration shall be vested in the Board. The Board shall adopt such rules as it sees fit for the transaction of its business and shall keep permanent and complete records and minutes of its acts and proceedings. A majority of the Board shall constitute a quorum. Not later than April 1 of each calendar year, and at such other times as the Congress shall determine, the Board shall make a report to the President and to the Congress. Such a report shall summarize the operations of the Administration and set forth such information as is necessary for the Congress to review the financial program approved by the Board.

(e) Functions of Chairman

The Chairman of the Board shall be the spokesman for the Board and shall represent the Board and the National Credit Union Administration in its official relations with other branches of the Government. The Chairman shall determine each Board member's area of responsibility and shall review such assignments biennially. It shall be the Chairman's responsibility to direct the implementation of the adopted policies and regulations of the Board. . . .

§1753. Federal credit union organization

Any seven or more natural persons who desire to form a Federal credit union shall each subscribe either individually or collectively before some officer competent to administer oaths an organization certificate in duplicate which shall specifically state--

(1) the name of the association;

(2) the location of the proposed Federal credit union and the territory in which it will operate;

(3) the names and addresses of the subscribers to the certificate and the number of shares subscribed by each;

(4) the initial par value of the shares;

(5) the proposed field of membership, specified in detail;

(6) the term of the existence of the corporation, which may be perpetual; and

(7) the fact that the certificate is made to enable such persons to avail themselves of the advantages of this chapter.

Such organization certificate may also contain any provisions approved by the Board for the management of the business of the association and for the conduct of its affairs and relative to the powers of its directors, officers, or stockholders.

§1754. Approval of organization certificate

The organization certificate shall be presented to the Board for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this

Copyright © 2024 Michael P. Malloy. All rights reserved.

chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed Federal credit union. Upon approval of such organization certificate by the Board it shall be the charter of the corporation, and one of the originals thereof shall be delivered to the corporation after the payment of the fee required therefor. Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all of the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.

§1756. Reports and examinations

Federal credit unions shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board.

§1757. Powers

A Federal credit union shall have succession in its corporate name during its existence and shall have power--

(1) to make contracts;

(2) to sue and be sued;

(3) to adopt and use a common seal and alter the same at pleasure;

(4) to purchase, hold, and dispose of property necessary or incidental to its operations;

(5) to make loans, the maturities of which shall not exceed 15 years except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: Provided, That --

(i) a residential real estate loan on a one-to-four-family dwelling, including an individual cooperative unit, that is or will be the principal residence of a credit union member, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years or such other limits as shall be set by the National Credit Union Administration Board (except that a loan on an individual cooperative unit shall be adequately secured as defined by the Board), subject to the rules and regulations of the Board;

(ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed 15 years or any longer term which the Board may allow;

(iii) a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds $20,000 plus pledged shares, be approved by the board of directors;

(v) loans to other members for which

Copyright © 2024 Michael P. Malloy. All rights reserved.

directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds $20,000;

(vi) the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges, except that the Board may establish --

(I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding six-month period and that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth; and

(II) a higher interest rate ceiling for Agent members of the Central Liquidity Facility in carrying out the provisions of subchapter III of this chapter for such periods as the Board may authorize;

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back from the credit union taking or receiving the same, in an action in the nature of an action of debt, the entire amount of interest paid; but such action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty, except that on a first or second mortgage loan a Federal credit union may require that any partial prepayments (I) be made on the date monthly installments are due, and (II) be in the amount of that part of one or more monthly installments which would be applicable to principal;

(ix) loans shall be paid or amortized in accordance with rules and regulations prescribed by the Board after taking into account the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit unions, and such other factors as the Board deems relevant;

(x) loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus.

(B) A self-replenishing line of credit to a borrower may be established to a stated maximum amount on certain terms and conditions which may be different from the terms and conditions established for another borrower.

(C) Loans to other credit unions shall be approved by the board of directors.

(D) Loans to credit union organizations shall be approved by the board of directors and shall not exceed 1 per centum of the paid-in and unimpaired capital and surplus of the credit union. A credit union organization means any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.

(E) Participation loans with other credit unions, credit union organizations,

Copyright © 2024 Michael P. Malloy. All rights reserved.

or financial organizations shall be in accordance with written policies of the board of directors: Provided, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan;

(6) to receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian tribal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title and in the manner so prescribed, from the Central Liquidity Facility, and from nonmembers in the case of credit unions serving predominately low-income members (as defined by the Board) payments, representing equity, on--

(A) shares which may be issued at varying dividend rates;

(B) share certificates which may be issued at varying dividend rates and maturities; and

(C) share draft accounts authorized under section 1785(f) of this title;

subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Board;

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Housing Finance Board, or any corporation designated in section 9101(3) of Title 31 as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title; or in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 1721(g) of this title; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: Provided, however, That such authority

Copyright © 2024 Michael P. Malloy. All rights reserved.

does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this chapter; (J) in the capital stock of the National Credit Union Central Liquidity Facility; (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer);

(8) to make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the Board and provided such banks are correspondents of banks described in this paragraph;

(9) to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of title III of this chapter, 50 per centum of its paid-in and unimpaired capital and surplus: Provided, That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital;

(10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the Federal credit union;

(11) to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him;

(12) in accordance with regulations prescribed by the Board--

(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

(B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee;

(13) in accordance with rules and regulations prescribed by the Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union at such prices as may be agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union;

(14) to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union

Copyright © 2024 Michael P. Malloy. All rights reserved.

and to assume the liabilities of the selling credit union and those of its members subject to regulations of the Board;

(15) to invest in securities that--

(A) are offered and sold pursuant to section 77d(5) of Title 15;

(B) are mortgage related securities (as that term is defined in section 78c(a)(41) of Title 15), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both; or

(C) are small business related securities (as defined in section 78c(a)(53) of Title 15), subject to such regulations as the Board may prescribe, including regulations prescribing the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both;

(16) subject to such regulations as the Board may prescribe, to provide technical assistance to credit unions in Poland and Hungary; and

(17) to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

§1757a. Limitation on member business loans

(a) In General. -- On and after the date of enactment of this section, no insured credit union may make any member business loan that would result in a total amount of such loans outstanding at that credit union at any one time equal to more than the lesser of--

(1) 1.75 times the actual net worth of the credit union; or

(2) 1.75 times the minimum net worth required under section 216(c)-(1)(A) for a credit union to be well capitalized.

(b) Exceptions.--Subsection (a) does not apply in the case of--

(1) an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, as determined by the Board; or

(2) an insured credit union that--

(A) serves predominantly low-income members, as defined by the Board; or

(B) is a community development financial institution, as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994.

(c) Definitions. -- As used in this section--

(1) the term 'member business loan'--

(A) means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose; and

(B) does not include an extension of credit.--

(i) that is fully secured by a lien on a 1- to 4-family dwelling;

(ii) that is fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(iii) that is described in subparagraph (A), if it was made to a borrower or an associated member that has a total of all such extensions of credit in an amount equal to less than $50,000;

(iv) the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the Federal Government or of a State, or any political subdivision thereof; or

(v) that is granted by a corporate credit union (as that term is defined by the Board) to another credit union.

(2) the term 'net worth'--

(A) with respect to any insured credit

Copyright © 2024 Michael P. Malloy. All rights reserved.

union, means the credit union's retained earnings balance, as determined under generally accepted accounting principles; and

(B) with respect to a credit union that serves predominantly low-income members, as defined by the Board, includes secondary capital accounts that are--

(i) uninsured; and

(ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund; and

(3) the term 'associated member' means any member having a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

(d) Effect on Existing Loans. -- An insured credit union that has, on the date of enactment of this section, a total amount of outstanding member business loans that exceeds the amount permitted under subsection (a) shall, not later than 3 years after that date of enactment, reduce the total amount of outstanding member business loans to an amount that is not greater than the amount permitted under subsection (a).

(e) Consultation and Cooperation with State Credit Union Supervisors. -- In implementing this section, the Board shall consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions.

§1758. Bylaws

In order to simplify the organization of Federal credit unions the Board shall from time to time cause to be prepared a form of organization certificate and a form of bylaws, consistent with this chapter, which shall be used by Federal credit union incorporators, and shall be supplied to them on request. At the time of presenting the organization certificate the incorporators shall also submit proposed bylaws to the Board for its approval.

§1759. Membership

(a) In General. -- Subject to subsection (b), Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Board, as may be elected to membership and as such shall each, subscribe to at least one share of its stock and pay the initial installment thereon and a uniform entrance fee if required by the board of directors. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

(b) Membership Field. -- Subject to the other provisions of this section, the membership of any Federal credit union shall be limited to the membership described in one of the following categories:

(1) Single Common-bond Credit Union. -- One group that has a common bond of occupation or association.

(2) Multiple Common-bond Credit Union. -- More than one group --

(A) each of which has (within the group) a common bond of occupation or association; and

(B) the number of members, each of which (at the time the group is first included within the field of membership of a credit union described in this paragraph) does not exceed any numerical limitation applicable under subsection (d).

(3) Community Credit Union. -- Persons or organizations within a well-defined local community, neighborhood, or rural district.

(c) Exceptions. --

Copyright © 2024 Michael P. Malloy. All rights reserved.

(1) Grandfathered Members and Groups. --

(A) In General. -- Notwithstanding subsection (b) --

(i) any person or organization that is a member of any Federal credit union as of the date of enactment of the Credit Union Membership Access Act may remain a member of the credit union after that date of enactment; and

(ii) a member of any group whose members constituted a portion of the membership of any Federal credit union as of that date of enactment shall continue to be eligible to become a member of that credit union, by virtue of membership in that group, after that date of enactment.

(B) Successors. -- If the common bond of any group referred to in subparagraph (A) is defined by any particular organization or business entity, subparagraph (A) shall continue to apply with respect to any successor to the organization or entity.

(2) Exception for Underserved Areas. -- Notwithstanding subsection (b), in the case of a Federal credit union, the field of membership category of which is described in subsection (b)(2), the Board may allow the membership of the credit union to include any person or organization within a local community, neighborhood, or rural district if--

(A) the Board determines that the local community, neighborhood, or rural district--

(i) is an 'investment area', as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 [12 U.S.C. 4703(16)], and meets such additional requirements as the Board may impose; and

(ii) is underserved, based on data of the Board and the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), by other depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); and

(B) the credit union establishes and maintains an office or facility in the local community, neighborhood, or rural district at which credit union services are available.

(d) Multiple Common-bond Credit Union Group Requirements. --

(1) Numerical Limitation. -- Except as provided in paragraph (2), only a group with fewer than 3,000 members shall be eligible to be included in the field of membership category of a credit union described in subsection (b)(2).

(2) Exceptions. -- In the case of any Federal credit union, the field of membership category of which is described in subsection (b)(2), the numerical limitation in paragraph (1) of this subsection shall not apply with respect to--

(A) any group that the Board determines, in writing and in accordance with the guidelines and regulations issued under paragraph (3), could not feasibly or reasonably establish a new single common-bond credit union, the field of membership category of which is described in subsection (b)(1) because--

(i) the group lacks sufficient volunteer and other resources to support the efficient and effective operation of a credit union;

(ii) the group does not meet the criteria that the Board has determined to be important for the likelihood of success in establishing and managing a new credit union, including demographic characteristics such as geographical location of members, diversity of ages and income levels, and other factors that may affect the financial viability and stability of a credit union; or

(iii) the group would be unlikely to operate a safe and sound credit union;

(B) any group transferred from another credit union--

(i) in connection with a merger or

Copyright © 2024 Michael P. Malloy. All rights reserved.

consolidation recommended by the Board or any appropriate State credit union supervisor based on safety and soundness concerns with respect to that other credit union; or

(ii) by the Board in the Board's capacity as conservator or liquidating agent with respect to that other credit union; or

(C) any group transferred in connection with a voluntary merger, having received conditional approval by the Administration of the merger application prior to October 25, 1996, but not having consummated the merger prior to October 25, 1996, if the merger is consummated not later than 180 days after the date of enactment of the Credit Union Membership Access Act.

(3) Regulations and Guidelines. -- The Board shall issue guidelines or regulations, after notice and opportunity for comment, setting forth the criteria that the Board will apply in determining under this subsection whether or not an additional group may be included within the field of membership category of an existing credit union described in subsection (b)(2).

(e) Additional Membership Eligibility Provisions.--

(1) Membership Eligibility Limited to Immediate Family or Household Members. -- No individual shall be eligible for membership in a credit union on the basis of the relationship of the individual to another person who is eligible for membership in the credit union, unless the individual is a member of the immediate family or household (as those terms are defined by the Board, by regulation) of the other person.

(2) Retention of Membership. -- Except as provided in section 118, once a person becomes a member of a credit union in accordance with this title, that person or organization may remain a member of that credit union until the person or organization chooses to withdraw from the membership of the credit union.

(f) Criteria for Approval of Expansion of Multiple Common-Bond Credit Unions.--

(1) In General. -- The Board shall--

(A) encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union; and

(B) if the formation of a separate credit union by the group is not practicable or consistent with the standards referred to in subparagraph (A), require the inclusion of the group in the field of membership of a credit union that is within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.

(2) Approval Criteria. -- The Board may not approve any application by a Federal credit union, the field of membership category of which is described in subsection (b)(2) to include any additional group within the field of membership of the credit union (or an application by a Federal credit union described in subsection (b)(1) to include an additional group and become a credit union described in subsection (b)(2)), unless the Board determines, in writing, that--

(A) the credit union has not engaged in any unsafe or unsound practice (as defined in section 206(b)) that is material during the 1-year period preceding the date of filing of the application;

(B) the credit union is adequately capitalized;

(C) the credit union has the administrative capability to serve the proposed membership group and the financial resources to meet the need for additional

Copyright © 2024 Michael P. Malloy. All rights reserved.

staff and assets to serve the new membership group;

(D) any potential harm that the expansion of the field of membership of the credit union may have on any other insured credit union and its members is clearly outweighed in the public interest by the probable beneficial effect of the expansion in meeting the convenience and needs of the members of the group proposed to be included in the field of membership; and

(E) the credit union has met such additional requirements as the Board may prescribe, by regulation.

(g) Regulations Required for Community Credit Unions.--

(1) Definition of Well-defined Local Community, Neighborhood, or Rural District. -- The Board shall prescribe, by regulation, a definition for the term 'well-defined local community, neighborhood, or rural district' for purposes of--

(A) making any determination with regard to the field of membership of a credit union described in subsection (b)(3); and

(B) establishing the criteria applicable with respect to any such determination.

(2) Scope of Application. -- The definition prescribed by the Board under paragraph (1) shall apply with respect to any application to form a new credit union, or to alter or expand the field of membership of an existing credit union, that is filed with the Board after the date of enactment of the Credit Union Membership Access Act.

CHAPTER 16--FEDERAL DEPOSIT INSURANCE CORPORATION

§1811. Federal Deposit Insurance Corporation

(a) Establishment of Corporation

There is hereby established a Federal Deposit Insurance Corporation (hereinafter referred to as the "Corporation") which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to the benefits of insurance under this chapter, and which shall have the powers hereinafter granted. . . .

§1813. Definitions

As used in this chapter--

(a) Definitions of bank and related terms

(1) Bank

The term "bank"--

(A) means any national bank and State bank and any Federal branch and insured branch;

(B) includes any former savings association that--

(i) has converted from a savings association charter; and

(ii) is a Deposit Insurance Fund member.

(2) State bank

The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which--

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the

Copyright © 2024 Michael P. Malloy. All rights reserved.

Code of Law for the District of Columbia, including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.

(3) State

The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(b) Definition of savings associations and related terms

(1) Savings association

The term "savings association" means--

(A) any Federal savings association;

(B) any State savings association; and

(C) any corporation (other than a bank) that the Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association.

(2) Federal savings association

The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 1464 of this title.

(3) State savings association

The term "State savings association" means--

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2) of this section),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.

(c) Definitions relating to depository institutions

(1) Depository institution

The term "depository institution" means any bank or savings association.

(2) Insured depository institution

The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.

(3) Institutions included for certain purposes

The term "insured depository institution" includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 1818 of this title.

(4) Federal depository institution

The term "Federal depository institution" means any national bank, any Federal savings association, and any Federal branch.

(5) State depository institution

The term "State depository institution" means any State bank, any State savings association, and any insured branch which is not a Federal branch.

(d) Definitions relating to member banks

(1) National member bank

The term "national member bank" means any national bank which is a member of the Federal Reserve System.

(2) State member bank

The term "State member bank" means any State bank which is a member of the Federal Reserve System.

(e) Definitions relating to nonmember banks

(1) National nonmember bank

The term "national nonmember bank" means any national bank which--

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve Sustem.

(2) State nonmember bank

The term "State nonmember bank"

Copyright © 2024 Michael P. Malloy. All rights reserved.

means any State bank which is not a member of the Federal Reserve System.

(f) Mutual savings bank

The term "mutual savings bank" means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

(g) Savings bank

The term "savings bank" means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

(h) Insured bank

The term "insured bank" means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this chapter; and the term "noninsured bank" means any bank the deposits of which are not so insured.

(i) New depository institution and bridge depository institution defined

(1) New depository institution

The term “new depository institution” means a new national bank or Federal savings association, other than a bridge depository institution, organized by the Corporation in accordance with section 1821(m) of this title.

(2) Bridge depository institution

The term “bridge depository institution” means a new national bank or Federal savings association organized by the Corporation in accordance with section 1821(n) of this title.

(j) Receiver

The term "receiver" includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

(k) Board of Directors

The term "Board of Directors" means the Board of Directors of the Corporation.

(*l*) Deposit

The term "deposit" means--

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: Provided, That, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection.

(2) trust funds as defined in this chapter received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association.

(3) money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special

Copyright © 2024 Michael P. Malloy. All rights reserved.

or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.

(4) outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this chapter or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless --

(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System; and

(C) any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of Title 26.

(m) Insured deposit

(1) In general

Subject to paragraph (2), the term "insured deposit" means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 1817(i) and 1821(a) of this title.

(2) In the case of any deposit in a branch of a foreign bank, the term "insured deposit" means an insured deposit as defined in paragraph (1) of this subsection which--

(A) is payable in the United States to--

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable

Copyright © 2024 Michael P. Malloy. All rights reserved.

entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this chapter; and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this chapter or to facilitate the administration thereof.

(3) Uninsured deposits

The term "uninsured deposit" means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

(4) Preferred deposits

The term "preferred deposits" means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

. . .

(o) Domestic branch

The term "domestic branch" includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent. The term "domestic branch" does not include an automated teller machine or a remote service unit. The term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted. . . .

(q) Appropriate Federal banking agency

The term "appropriate Federal banking agency" means--

(1) the Office of the Comptroller of the Currency, in the case of--

(A) any national banking association;

(B) any Federal branch or agency of a foreign bank; and

(C) any Federal savings association;

(2) the Federal Deposit Insurance Corporation, in the case of--

(A) any State nonmember insured bank;

(B) any foreign bank having an insured branch; and

(C) any State savings association;

(3) the Board of Governors of the Federal Reserve System, in the case of--

(A) any State member bank;

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

(C) any foreign bank which does not operate an insured branch;

(D) any agency or commercial lending company other than a Federal agency;

(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution. . . .

(s) Definitions relating to foreign

Copyright © 2024 Michael P. Malloy. All rights reserved.

banks and branches

(1) Foreign bank

The term "foreign bank has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978 [12 U.S.C. § 3101(7)].

(2) Federal branch

The term "Federal branch" has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978 [12 U.S.C. § 3101(6)].

(3) Insured branch

The term "insured branch" means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978 [12 U.S.C. § 3101(3)]) of a foreign bank any deposits in which are insured pursuant to this chapter. . . .

(u) Institution-affiliated party

The term "institution-affiliated party" means--

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 1817(j) of this title;

(3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in--

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution. . . .

(w) Definitions relating to affiliates of depository institutions

(1) Depository institution holding company

The term "depository institution holding company" means a bank holding company or a savings and loan holding company.

(2) Bank holding company

The term "bank holding company" has the meaning given to such term in section 1841 of this title.

(3) Savings and loan holding company

The term "savings and loan holding company" has the meaning given to such term in section 1467a of this title.

(4) Subsidiary

The term "subsidiary"--

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) Control

The term "control" has the meaning given to such term in section 1841 of this title.

(6) Affiliate

The term "affiliate" has the meaning given to such term in section 1841(k) of this title.

(7) Company

The term "company" has the same meaning as in section 1841(b) of this title.

(x) Definitions relating to default

(1) Default

The term "default" means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking

Copyright © 2024 Michael P. Malloy. All rights reserved.

agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) In danger of default

The term "in danger of default" means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that--

(A) in the opinion of such agency or authority--

(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority--

(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance. . . .

§1814. Insured depository institutions

(a) Continuation of insurance

(1) Banks

Each bank, which is an insured depository institution on September 21, 1950, shall be and continue to be, without application or approval, an insured depository institution and shall be subject to the provisions of this chapter.

(2) Savings associations

Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before August 9,1989, shall be, without application or approval, an insured depository institution.

(b) Continuation of insurance upon becoming a member bank

In the case of an insured bank which is admitted to membership in the Federal Reserve System or an insured State bank which is converted into a national member bank, the bank shall continue as an insured bank.

(c) Continuation of insurance after conversion

Subject to section 1815(d) of this title and section 5(i)(5) of the Home Owners" Loan Act [12 U.S.C. § 1464(i)(5)]--

(1) any State depository institution which results from the conversion of any insured Federal depository institution; and

(2) any Federal depository institution which results from the conversion of any insured State or Federal depository institution,

shall continue as an insured depository institution.

(d) Continuation of insurance after merger or consolidation

Any State depository institution or any Federal depository institution which results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a non-insured depository institution with an insured depository institution, shall continue as an insured depository institution.

Copyright © 2024 Michael P. Malloy. All rights reserved.

§1815. Deposit insurance

(a) Application to Corporation required

(1) In general

Except as provided in paragraphs (2) and (3), any depository institution which is engaged in the business of receiving deposits other than trust funds (as defined in section 1813(p) of this title), upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution. . . .

(3) Application and approval not required in cases of continued insurance

Paragraph (1) shall not apply in the case of any depository institution whose insured status is continued pursuant to section 1814 of this title. . . .

§1816. Factors to be considered

The factors that are required, under section 1814 of this title, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 1814 of this title and that are required, under section 1815 of this title, to be considered by the Board of Directors in connection with any determination by such Board pursuant to section 1815 of this title are the following:

(1) The financial history and condition of the depository institution.

(2) The adequacy of the depository institution's capital structure.

(3) The future earnings prospects of the depository institution.

(4) The general character and fitness of the management of the depository institution.

(5) The risk presented by such depository institution to the Deposit Insurance Fund.

(6) The convenience and needs of the community to be served by such depository institution.

(7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.

§1817. Assessments

. . .

(b) Assessments

(1) Risk-based assessment system

(A) Risk-based assessment system required

The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions. . . .

(C) Risk-based assessment system defined

For purposes of this paragraph, the term "risk-based assessment system" means a system for calculating a depository institution's semiannual assessment based on--

(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to--

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the Deposit Insurance Fund.

(D) Separate assessment systems

The Board of Directors may establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.

(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.–

(i) SOURCES OF INFORMATION.--For purposes of determining risk

Copyright © 2024 Michael P. Malloy. All rights reserved.

of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, including reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from private economic, credit, or business analysts.

(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.--

(I) IN GENERAL.--Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

(II) TREATMENT ON AGGREGATE BASIS.--In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

(iii) RULE OF CONSTRUCTION.--No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation, except as provided in section 7(a)(2)(B).

(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.--In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment. . . .

(j) Change in control of insured depository institutions

(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue. The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if --

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed–

(i) to investigate and determine that no acquiring party has a record of failing

Copyright © 2024 Michael P. Malloy. All rights reserved.

to comply with the requirements of subchapter II of chapter 53 of Title 31; or

(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action.

(2)(A) Notice to State agency

Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State depository institution supervisory agency if the depository institution the voting shares of which are sought to be acquired is a State depository institution, and shall allow thirty days within which the views and recommendations of such State depository institution supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable default of the depository institution involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this paragraph or, if a copy of the notice is forwarded to the State depository institution supervisory agency, such Federal banking agency may request that the views and recommendations of such State depository institution supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) Investigation of principals required

Upon receiving any notice under this subsection, the appropriate Federal banking agency shall --

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) Report

The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) Public comment

Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, unless such agency determines that an emergency exists, within a reasonable period of time --

(i) publish the name of the insured depository institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for

Copyright © 2024 Michael P. Malloy. All rights reserved.

the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of Title 5. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition,

Copyright © 2024 Michael P. Malloy. All rights reserved.

and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if--

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank;

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or

(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(8) For the purposes of this subsection, the term --

(A) "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution. . . .

(12) Whenever such a change in control occurs, each insured depository institution shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors. . . .

(17) Exceptions

This subsection shall not apply with respect to a transaction which is subject to--

(A) section 1842 of this title;

(B) section 1828(c) of this title; or

(C) section 1467a of this title.

(18) Applicability of change in control provisions to other institutions

For purposes of this subsection, the term "insured depository institution" includes--

(A) any depository institution holding company; and

(B) any other company which con-

Copyright © 2024 Michael P. Malloy. All rights reserved.

trols an insured depository institution and is not a depository institution holding company. . . .

§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) 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 continue 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. ...

(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

Copyright © 2024 Michael P. Malloy. All rights reserved.

(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) of this section 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. . . .

(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 the period 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. . . .

(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 agency may

Copyright © 2024 Michael P. Malloy. All rights reserved.

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. . . .

(3) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 of this Act [12 U.S.C. § 1831aa] 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) and to any organization organized and operated under section 25(a) 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 depository institution. 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 50 of this Act [12 U.S.C. § 1831aa] 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 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

Copyright © 2024 Michael P. Malloy. All rights reserved.

conditions resulting from violations or practices

The authority to issue an order under this subsection and subsection (c) of this section 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;

(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) of this section 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.

(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) of this section. 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

Copyright © 2024 Michael P. Malloy. All rights reserved.

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) of this section 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) of this section.

(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 dem-

Copyright © 2024 Michael P. Malloy. All rights reserved.

onstrate any loss to an insured depository institution. . . .

(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 other request by the 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. . . .

(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. . . .

(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

Copyright © 2024 Michael P. Malloy. All rights reserved.

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 (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) of this section, 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) of this section, or as a savings association under subsection (b)(9) of this section;

(iii) any insured credit union under the Federal Credit Union Act [12 U.S.C. §§ 1781 *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

Copyright © 2024 Michael P. Malloy. All rights reserved.

(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) of this section, the term "appropriate Federal financial institutions regulatory agency" means--

(i) the appropriate Federal banking agency, in the case of an insured depository institution; . . .

(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.

(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. . . .

(C) Removal or prohibition

(i) In general

If a judgment of conviction or an

Copyright © 2024 Michael P. Malloy. All rights reserved.

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 manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate 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).

(h) Hearings and judicial review

(1) Any hearing provided for in 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) of this section. 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

Copyright © 2024 Michael P. Malloy. All rights reserved.

the date of service of such order, a 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; civil money 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) of this section 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

Copyright © 2024 Michael P. Malloy. All rights reserved.

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. . . .

(3) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an 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). . . .

(j) Criminal penalty

Whoever, being subject to an order in effect under subsection (e) or (g) of this section, 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) of this section) 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) of this section;

(3) any insured credit union (as defined in section 1752(7) of this title);

. . .

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

(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 correc-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tive 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. ...

(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. . . .

(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. . . .

(5) 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. . . .

Copyright © 2024 Michael P. Malloy. All rights reserved.

§1820a. Examination of investment companies

(a) Exclusive Commission Authority.--Except as provided in subsection (c), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(b) Examination Results and Other Information.--The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) Certain Examinations Authorized.--Nothing in this section shall prevent the Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the insured depository institution and the affiliate, and the effect of such relationship on the insured depository institution.

(d) Definitions.--For purposes of this section, the following definitions shall apply:

(1) 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.

(2) Commission.--The term "Commission" means the Securities and Exchange Commission.

(3) Corporation.--The term "Corporation" means the Federal Deposit Insurance Corporation.

(4) Federal Banking Agency.--The term "Federal banking agency" has the meaning given the term in section 3(z) of the Federal Deposit Insurance Act [12 U.S.C. § 1813(z)].

(5) Insured Depository Institution.--The term "insured depository institution" has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

(6) Registered Investment Company.--The term "registered investment company" means an investment company that is registered with the Commission under the Investment Company Act of 1940.

(7) Savings and Loan Holding Company.--The term "savings and loan holding company" has the meaning given the term in section 10(a)(1)(D) of the Home Owners' Loan Act.

§1821. Insurance funds

(a) Deposit insurance

(1) Insured amounts payable

(A) In general

The Corporation shall insure the deposits of all insured depository institutions as provided in this chapter.

(B) NET AMOUNT OF INSURED DEPOSIT.--The net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

(C) Aggregation of deposits

For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other

Copyright © 2024 Michael P. Malloy. All rights reserved.

person, other than any amount in a trust fund described in paragraph (1) or (2) of section 1817(i) of this title or any funds described in section 1817(i)(3) of this title.

(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.--

(i) PASS-THROUGH INSURANCE.--The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.--An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(iii) DEFINITIONS.--For purposes of this subparagraph, the following definitions shall apply:

(I) CAPITAL STANDARDS.--The terms 'well capitalized' and 'adequately capitalized' have the same meanings as in section 1831o of this title.

(II) EMPLOYEE BENEFIT PLAN.--The term 'employee benefit plan' has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

(III) PASS-THROUGH DEPOSIT INSURANCE.--The term 'pass-through deposit insurance' means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.

(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.--For purposes of this chapter, the term 'standard maximum deposit insurance amount' means $250,000, adjusted as provided under subparagraph (F) after March 31, 2010. . . .

(F) INFLATION ADJUSTMENT.--

(i) IN GENERAL.--By April 1 of 2010, and the 1st day of each subsequent 5- year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 1787(k) of this title) applicable to any depositor at an insured depository institution shall be increased by calculating the product of--

(I) $100,000; and

(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding April 1, 2006.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(ii) ROUNDING.--If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

(iii) PUBLICATION AND REPORT TO THE CONGRESS.--Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall--

Copyright © 2024 Michael P. Malloy. All rights reserved.

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 1787(k)(3) of the Federal Credit Union Act, as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-MONTH IMPLEMENTATION PERIOD.--Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

(v) INFLATION ADJUSTMENT CONSIDERATION.--In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider--

(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

(II) potential problems affecting insured depository institutions; or

(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits. . . .

(c) Appointment of Corporation as conservator or receiver

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) Federal depository institutions

(A) Appointment

(i) Conservator

The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution and the Corporation may accept such appointment.

(ii) Receiver

The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law.

(B) Additional powers

In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation's rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject

Copyright © 2024 Michael P. Malloy. All rights reserved.

to the supervision of the appropriate Federal banking agency.

(3) Insured State depository institutions

(A) Appointment by appropriate State supervisor

Whenever the authority having supervision of any insured State depository institution appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) Additional powers

In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) Appointment of Corporation by the Corporation

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if--

(A) the Corporation determines--

(i) that--

(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

(II) such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and

(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)--

(i) existed with respect to such institution at the time--

(I) the conservator, receiver, or other legal custodian was appointed; or

(II) such institution was closed; or

(ii) exist at any time--

(I) during the appointment of the conservator, receiver, or other legal custodian; or

(II) while such institution is closed.

(5) Grounds for appointing conservator or receiver

The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) Assets insufficient for obligations

The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) Substantial dissipation

Substantial dissipation of assets or earnings due to--

(i) any violation of any statute or regulation; or

Copyright © 2024 Michael P. Malloy. All rights reserved.

(ii) any unsafe or unsound practice.

(C) Unsafe or unsound condition

An unsafe or unsound condition to transact business.

(D) Cease and desist orders

Any willful violation of a cease-and-desist order which has become final.

(E) Concealment

Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, paper, records, or assets. . . .

(F) Inability to meet obligations

The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) Losses

The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 1831o(b) of this title) without Federal assistance.

(H) Violations of law

Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to--

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund.

(I) Consent

The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) Cessation of insured status

The institution ceases to be an insured institution.

(K) Undercapitalization

The institution is undercapitalized (as defined in section 1831o(b) of this title), and--

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 1831o(f)(2)(A) of this title;

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 1831o(e)(2)(D) of this title; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1831o(e)(2) of this title.

(L) The institution

(i) is critically undercapitalized, as defined in section 1831o(b) of this title; or

(ii) otherwise has substantially insufficient capital.

(M) Money laundering offense

The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under section 1956 or 1957 of Title 18 or section 5322 or 5324 of Title 31.

(6) Appointment by Comptroller of the Currency

(A) Conservator

The Corporation may, at the discretion of the Comptroller of the Currency, be appointed conservator and the Corporation may accept any such appointment.

(B) Receiver

The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.

(7) JUDICIAL REVIEW.--If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an action in

Copyright © 2024 Michael P. Malloy. All rights reserved.

the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

(8) Replacement of conservator of State depository institution--

(A) In general

In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) Replacement treated as removal of incumbent

The replacement of a conservator with a receiver undMrI.]1paragraph (A) shall be treated as the removal of the Corporation as conservator.

(C) Right of review of original appointment not affected

The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) Appropriate Federal banking agency may appoint Corporation as conservator or receiver for insured State depository institution to carry out section 1831o of this title

(A) In general

The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that--

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 1831o of this title.

(B) Nondelegation

The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) Corporation may appoint itself as conservator or receiver for insured depository institution to prevent loss to Deposit Insurance Fund

The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that--

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce–

(i) the risk that the Deposit Insurance Fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the Deposit Insurance Fund is expected to incur with respect to that institution.

(11) Appropriate Federal banking agency shall not appoint conservator under certain provisions without giving Corporation notice of intention to appoint receiver

The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to

Copyright © 2024 Michael P. Malloy. All rights reserved.

appoint the conservator and the grounds for the appointment.

(12) Directors not liable for acquiescing in appointment of conservator or receiver

The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to--

(A) the appointment of the Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 1831o(f)(2)(A)(iii) of this title.

(13) Additional powers

In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution--

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may--

(i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation. . . .

(d) Powers and duties of Corporation as conservator or receiver . . .

(3) Authority of receiver to determine claims

(A) In general

The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4). . . .

(4) Rulemaking authority relating to determination of claims

(A) In general

The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(B) Final settlement payment procedure

(i) In general

In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants. . . .

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation. . . .

(D) Authority to disallow claims

(i) In general

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver. . . .

(E) No judicial review of determina-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tion pursuant to subparagraph (d)

No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) Provision for agency review or judicial determination of claims

(A) In general

Before the end of the 60-day period beginning on the earlier of--

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations

If any claimant fails to--

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims

(A) Administrative hearing

If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of Title 5.

(B) Other review procedures

(i) In general

The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i). . . .

(f) Payment of insured deposits

(1) In general

In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section, either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor.

...

(j) Limitation on court action

Except as provided in this section, no court may take any action, except at the

Copyright © 2024 Michael P. Malloy. All rights reserved.

request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) Liability of directors and officers

A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation--

(1) acting as conservator or receiver of such institution,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 1823 of this title,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

(*l*) Damages

In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) New depository institutions

(1) Organization authorized

As soon as possible after the default of an insured depository institution, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured depository institution in default or the public shall organize a new national bank or Federal savings association in the same community as the insured depository institution in default to assume the insured deposits of such depository institution in default and otherwise to perform temporarily the functions hereinafter provided for. . . .

(17) Transfer to other institution

If the capital stock of the new depository institution is not offered for sale, or if an adequate amount of capital for such new depository institution is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new depository institution to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) Winding up

Unless the capital stock of the new depository institution is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such depository institution, after giving such notice, if any, as the Comptroller of the Currency, may require, and shall certify to the Comptroller of the Currency, the termination of the new depository institution. Thereafter the Corpora-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tion shall be liable for the obligations of such depository institution and shall be the owner of its assets. . . .

(n) Bridge depository institutions

(1) Organization

(A) Purpose

When 1 or more insured depository institutions are in default, or when the Corporation anticipates that 1 or more insured depository institutions may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency, with respect to 1 or more insured banks or 1 or more insured savings associations, shall charter, 1 or more national banks or Federal savings associations, as appropriate, with respect thereto with the powers and attributes of national banking associations, or Federal savings associations, as appropriate, subject to the provisions of this subsection, to be referred to as "bridge depository institutions".

(B) Authorities

Upon the granting of a charter to a bridge depository institution, the bridge depository institution may--

(i) assume such deposits of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this chapter. . . .

(9) Duration of bridge depository institution

Subject to paragraphs (11) and (12), the status of a bridge depository institution as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge depository institution as such for 3 additional 1-year periods.

(10) Termination of bridge depository institution status

The status of any bridge depository institution as such shall terminate upon the earliest of--

(A) the merger or consolidation of the bridge depository institution with a depository institution that is not a bridge depository institution;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(C) the sale of 80 percent, or more, of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge depository institution by a depository institution holding company or a depository institution that is not a bridge depository institution, or the acquisition of all or substantially all of the assets of the bridge depository institution by a depository institution holding company, a depository institution that is not a bridge depository institution, or other entity as permitted under applicable law; and

(E) the expiration of the period pro-

Copyright © 2024 Michael P. Malloy. All rights reserved.

vided in paragraph (9), or the earlier dissolution of the bridge depository institution as provided in paragraph (12).

(11) Effect of termination events

(A) Merger or consolidation

A bridge depository institution that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank or a Federal savings association, as the case may be, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) Charter conversion

Following the sale of a majority of the capital stock of the bridge depository institution as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge depository institution to reflect the termination of the status of the bridge depository institution as such, whereupon the depository institution shall remain a national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) Sale of stock

Following the sale of 80 percent or more of the capital stock of a bridge depository institution as provided in paragraph (10)(C), the depository institution shall remain a national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) Assumption of liabilities and sale of assets

Following the assumption of all or substantially all of the liabilities of the bridge depository institution, or the sale of all or substantially all of the assets of the bridge depository institution, as provided in paragraph (10)(D), at the election of the Corporation the bridge depository institution may retain its status as such for the period provided in paragraph (9).

(E) Effect on holding companies

A depository institution holding company acquiring a bridge depository institution under section 1823(f) of this title, paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge depository institution as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 1823(f) of this title. . . .

(12) Dissolution of bridge depository institution

(A) In general

Notwithstanding any other provision of State or Federal law, if the bridge depository institution's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)--

(i) the Board of Directors may, in its discretion, dissolve a bridge depository institution in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge depository institution was chartered, or any extension thereof, as provided in paragraph (9).

. . .

§1823. Corporation monies

. . .

(c) Assistance to insured depository institutions

(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured

Copyright © 2024 Michael P. Malloy. All rights reserved.

depository institution--

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to an insured bank in default, such action is taken to restore such insured bank to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of an insured depository institution described in subparagraph (B) with another insured depository institution or the sale of any or all of the assets of such insured depository institution or the assumption of any or all of such insured depository institution's liabilities by another insured depository institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe--

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in, or purchase the securities of, such other insured depository institution or the company which controls or will acquire control of such other insured depository institution;

(iii) to guarantee such other insured depository institution or the company which controls or will acquire control of such other insured depository institution against loss by reason of such insured institution's merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution--

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation, in its sole discretion, to require assistance under subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidating with or acquiring the assets of an insured depository institution under subsection (f) or (k) of this section with such financial assistance as it could provide an insured institution under this subsection.

(4) Least-cost resolution required

(A) In general

Notwithstanding any other provision of this chapter, the Corporation may not exercise any authority under this subsection or subsection (d), (f), (h), (i), or (k) of this section with respect to any insured depository institution unless--

(i) the Corporation determines that

Copyright © 2024 Michael P. Malloy. All rights reserved.

the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and

(ii) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long- term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the Deposit Insurance Fund of all possible methods for meeting the Corporation's obligation under this section. ...

(8) Assistance before appointment of conservator or receiver

(A) In general

Subject to the least-cost provisions of paragraph (4), the Corporation shall consider providing direct financial assistance under this section for depository institutions before the appointment of a conservator or receiver for such institution only under the following circumstances:

(i) Troubled condition criteria

The Corporation determines--

(I) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased; and

(II) it is unlikely that the institution can meet all currently applicable capital standards without assistance.

(ii) Other criteria

The depository institution meets the following criteria:

(I) The appropriate Federal banking agency and the Corporation have determined that, during such period of time preceding the date of such determination as the agency or the Corporation considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

(II) The institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

. . .

(11) Unenforceability of certain agreements

No provision contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly–

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire,

(B) prohibits any person from offering to acquire or acquiring, or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any insured depository institution, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under section 1821 of this title or this section, shall be enforceable against or impose any liability on such person, as such enforcement or liability shall be contrary to public policy.

. . .

(e) Agreements against interests of Corporation

(1) In general

No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 1821 of this title, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement--

(A) is in writing,

(B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

(C) was approved by the board of

Copyright © 2024 Michael P. Malloy. All rights reserved.

directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(D) has been, continuously, from the time of its execution, an official record of the depository institution.

(2) Public deposits

An agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity or of any depositor referred to in section 1821(a)(2) of this title shall not be deemed to be invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement.

(f) Assisted emergency interstate acquisitions

(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-State bank[,] savings association or out-of-State holding company for which the Corporation provides assistance under subsection (c) of this section.

(2)(A) Whenever an insured bank with total assets of $500,000,000 or more (as determined from its most recent report of condition) is in default, the Corporation, as receiver, may, in its discretion and upon such terms and conditions as the Corporation may determine, arrange the sale of assets of the depository institution in default and the assumption of the liabilities of the bank in default, including the sale of such assets to and the assumption of such liabilities by an insured depository institution located in the State where the bank in default was chartered but established by an out-of-State bank or holding company. Where otherwise lawfully required, a transaction under this subsection must be approved by the primary Federal or State supervisor of all parties thereto.

(B)(i) Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State bank supervisor of the State in which the insured bank in default was chartered.

(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) If the State supervisor objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

(3) Emergency interstate acquisitions of insured banks in danger of default

(A) Acquisition of insured banks in danger of default

One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain--

(i) an insured bank in danger of default which has total assets of $500,000,000 or more; or

(ii) 2 or more affiliated insured banks in danger of closing which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

(B) Acquisition of a holding company or other bank affiliate

If one or more out-of-State banks or out-of-State holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than

Copyright © 2024 Michael P. Malloy. All rights reserved.

33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain--

(i) the holding company which controls the affiliated insured banks so acquired; or

(ii) any other affiliated insured bank.

(C) Request for assistance by corporate board of directors

The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of default which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

(D) Certain acquisitions authorized after assistance is provided

Notwithstanding paragraph (1), if--

(i) at any time after August 10, 1987, the Corporation provides any assistance under subsection (c) of this section to an insured bank; and

(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

(E) State bank supervisor approval

The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of default is located approves the acquisition. . . .

(4)(A) Acquisitions not subject to certain other laws

Section 1842(d) of this title, any provision of State law, and section 1730a(e)(3) of this title shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.

(B) Any subsidiary created by operation of this subsection may retain and operate any existing branch or branches of the institution merged with or acquired under paragraph (2) or (3), but otherwise shall be subject to the conditions upon which a national bank may establish and operate branches in the State in which such insured institution is located.

(C) No insured institution acquired under this subsection shall after it is acquired move its principal office or any branch office which it would be prohibited from moving if the institution were a national bank.

(D) Subsequent nonemergency interstate acquisitions subject to State law

(i) In general

Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

(ii) Delayed date of applicability

Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of--

(I) the end of the 2-year period beginning on the date the acquisition re-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ferred to in such clause with respect to such company is consummated; or

(II) the end of any period established under State law during which such out-of-State bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

(iii) Determination of principally conducted

For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 1842(d) of this title with respect to such holding company.

(E) Certain State interstate banking laws inapplicable

Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company.

(5) In determining whether to arrange a sale of assets and assumption of liabilities or an acquisition or a merger under the authority of paragraph (2) or (3), the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the bank in default or the bank in danger of default.

(6)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the "lowest acceptable offer"), is from an offeror that is not an existing in-State bank of the same type as the bank that is in default or is in danger of default (or, where the bank is an insured bank other than a mutual savings bank, the lowest acceptable offer is not from an in-State holding company), the Corporation shall permit the offeror which made the initial lowest acceptable offer and each offeror who made an offer the estimated cost of which to the Corporation was within 15 per centum or $15,000,000, whichever is less, of the initial lowest acceptable offer to submit a new offer.

(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions. The Corporation shall authorize transactions under this subsection considering the following priorities:

(i) First, between depository institutions of the same type within the same State.

(ii) Second, between depository institutions of the same type--

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

(iv) Fourth, between depository institutions of different types in the same State.

(v) Fifth, between depository institutions of different types--

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(vi) Sixth, between depository insti-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tutions of different types in different States other than the States described in clause (v).

(C) Minority bank priority

In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).

(D) In determining the cost of offers and reoffers, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

(7) No sale may be made under the provisions of paragraph (2) or (3)--

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

(B) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; or

(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository institution. . . .

(9) No assistance authorized for certain subsidiaries of holding companies

(A) In general

The Corporation shall not provide any assistance to a subsidiary, other than a subsidiary that is an insured depository institution, of a holding company in connection with any acquisition under this subsection.

(B) Intermediate holding company permitted

This paragraph does not prohibit an intermediate holding company or an affiliate of an insured depository institution from being a conduit for assistance ultimately intended for an insured bank. ...

(k) Emergency acquisitions

(1) In general

(A) Acquisitions authorized

(i) Transactions described

Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize--

(I) a savings association that is eligible for assistance pursuant to subsection (c) of this section to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

(II) any other savings association to acquire control of such savings association, or

(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

(ii) Terms of transactions

Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

(iii) Approval by appropriate agency

Where otherwise required by law, transactions under this subsection must be

Copyright © 2024 Michael P. Malloy. All rights reserved.

approved by the appropriate Federal banking agency of every party thereto.

(iv) Acquisitions by savings associations

Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Comptroller of the Currency, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 1464(c)(4)(B) of this title.

(v) Dual service

Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act [12 U.S.C. §§ 3201 *et seq*.] may, with the approval of the Corporation, continue for up to 10 years.

(vi) Continued applicability of certain state restrictions

Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

(B) Consultation with State official

(i) Consultation required

Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

(ii) Period for State response

The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) Approval over objection of State official

If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

(2) Solicitation of offers

(A) In general

In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

(B) Minority-controlled institutions

In the case of a minority-controlled depository institution, the Corporation shall seek an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

(3) Determination of costs

In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

(4) Branching provisions

(A) In general

If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

(B) Restrictions

(i) In general

Notwithstanding subparagraph (A), if--

(I) a savings association described in such subparagraph does not have its home

Copyright © 2024 Michael P. Malloy. All rights reserved.

office in the State of the bank holding company bank subsidiary, and

(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of Title 26, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the savings association is located.

(ii) Transition period

The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

(5) Assistance before appointment of conservator or receiver

(A) Assistance proposals

The Corporation shall consider proposals by savings associations for assistance pursuant to subsection (c) of this section before grounds exist for appointment of a conservator or receiver for such [association] under the following circumstances:

(i) Troubled condition criteria

The Corporation determines--

(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

(ii) Other criteria

The member meets the following criteria:

(I) Before August 9, 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

(III) The member is a qualified thrift lender (as defined in section 1467a(m) of this title) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

(VI) The member's offices are located in an economically depressed region.

(B) Corporation consideration of assistance proposal

If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

(C) Economically depressed region defined

For purposes of this paragraph, the term "economically depressed region" means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a

Copyright © 2024 Michael P. Malloy. All rights reserved.

decline in energy or agricultural values or prices.

§1828. Regulations governing insured depository institutions

. . .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) REPORTS ON COMPETITIVE FACTORS.--

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

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

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

(B) FURNISHING OF REPORT.--The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency--

(i) not later than 30 calendar days after the date on which the Attorney Gen-

Copyright © 2024 Michael P. Malloy. All rights reserved.

eral received the request; or

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

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

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

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

(5) The responsible agency shall not approve--

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

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

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

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the

Copyright © 2024 Michael P. Malloy. All rights reserved.

merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

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

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

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

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

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

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

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

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

(11) Money laundering

In every case, the responsible agency, shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.

(12) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon con-

Copyright © 2024 Michael P. Malloy. All rights reserved.

summation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 1823 of this title.

(C) In this paragraph--

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

(ii) the term "home State" means--

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

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

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

(d) Branch banks

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

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

(3) Exclusive authority for additional branches

(A) In general

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

(B) Retention of branches

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

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

(ii) the branch resulted from--

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

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

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

Copyright © 2024 Michael P. Malloy. All rights reserved.

branches

(A) In general

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

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

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

(B) Conditions on establishment and operation of interstate branch

(i) Establishment

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

(ii) Operation

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

(C) “De novo branch” defined

For purposes of this paragraph, the term “de novo branch” means a branch of a State bank which--

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

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

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

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

(D) “Home State” defined

The term “home State” means the State by which a State bank is chartered.

(E) “Host State” defined

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

(j) Restrictions on transactions with affiliates and insiders

(1) Transactions with affiliates

(A) In general

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

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

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

(3) Avoiding extraterritorial application to foreign banks

(A) Transactions with affiliates

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

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

Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch. . . .

(*l*) Acquisition of foreign banks or entities

When authorized by State law, a

Copyright © 2024 Michael P. Malloy. All rights reserved.

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

(s) Prohibition on certain affiliations

(1) In general

No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) Exception for members of a Federal home loan bank

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

(3) Routine business financing

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

(5) "Government-sponsored enterprise" defined

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

(u) Limitation on Claims.--

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

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

(B) for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal banking agency has followed the procedure set forth in such section.

(2) Definition of Claim.--For purposes of paragraph (1), the term 'claim'--

(A) means a cause of action based on Federal or State law that--

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

(v) Loans by Insured Institutions on Their Own Stock.--

(1) General Prohibition.--No insured depository institution may make any loan

Copyright © 2024 Michael P. Malloy. All rights reserved.

or discount on the security of the shares of its own capital stock.

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

(x) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.--

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

(2) RULE OF CONSTRUCTION.--No provision of paragraph (1) may be construed as implying or establishing that--

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

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

§1828a. Prudential safeguards

(a) Comptroller of the Currency.--

(1) In General.--The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are--

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

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

(2) Review.--The Comptroller of the Currency shall regularly--

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

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

(b) Board of Governors of the Federal Reserve System.--

(1) In General.--The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions--

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

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

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

(2) Finding.--The Board of Gover-

Copyright © 2024 Michael P. Malloy. All rights reserved.

nors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that the exercise of such authority is--

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies or State member banks, as the case may be; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(3) Review.--The Board of Governors of the Federal Reserve System shall regularly--

(A) review all restrictions or requirements established pursuant to paragraph (1) or (4) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (2)(B) or (4)(B); and

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

(c) Federal Deposit Insurance Corporation.--

(1) In General.--The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act) and a subsidiary of the State nonmember bank that the Corporation finds are--

(A) consistent with the purposes of this Act, the Federal Deposit Insurance Act, or other Federal law applicable to State nonmember banks; and

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

(2) Review.--The Federal Deposit Insurance Corporation shall regularly--

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

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

§1831a. Activities of insured State banks

(a) Permissible activities

(1) In general

After the end of the 1-year period beginning on December 19, 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless --

(A) the Corporation has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and

(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) Processing period

(A) In general

The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under

Copyright © 2024 Michael P. Malloy. All rights reserved.

this subsection.

(B) Extension of time period

The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(b) Insurance underwriting

(1) In general

Notwithstanding subsection (a) of this section, an insured State bank may not engage in insurance underwriting except to the extent that activity is permissible for national banks. . . .

(c) Equity Investments by insured State banks

(1) In general

An insured State bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank.

(2) Exception for certain subsidiaries

Paragraph (1) shall not prohibit an insured State bank from acquiring or retaining an equity investment in a subsidiary of which the insured State bank is a majority owner. . . .

(d) Subsidiaries of insured State banks

(1) In general

After the end of the 1-year period beginning on December 19, 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless--

(A) the Corporation has determined that the activity poses no significant risk to the Deposit Insurance Fund; and

(B) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) Insurance underwriting prohibited

(A) Prohibition

Notwithstanding paragraph (1), no subsidiary of an insured State bank may engage in insurance underwriting except to the extent such activities are permissible for national banks.

(B) Continuation of existing activities

Notwithstanding subparagraph (A), a well-capitalized insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on November 21, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

(C) Exception

Subparagraph (A) does not apply to a subsidiary of an insured State bank if--

(i) the insured State bank was required, before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under State law; and

(ii) control of the insured State bank has not changed since that date.

(3) Processing period

(A) In general

The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under this subsection.

(B) Extension of time period

The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(e) Savings bank life insurance

(1) In general

No provision of this chapter shall be construed as prohibiting or impairing the

Copyright © 2024 Michael P. Malloy. All rights reserved.

sale or underwriting of savings bank life insurance, or the ownership of stock in a savings bank life insurance company, by any insured bank which--

(A) is located in the Commonwealth of Massachusetts or the State of New York or Connecticut; and

(B) meets applicable consumer disclosure requirements with respect to such insurance. . . .

(j) Activities of branches of out-of-State banks

(1) Application of Host State Law

The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

(2) Activities of branches

An insured State bank that establishes a branch in a host State may conduct any activity at such branch that is permissible under the laws of the home State of such bank, to the extent such activity is permissible either for a bank chartered by the host State (subject to the restrictions in this section) or for a branch in the host State of an out-of-state national bank.

(3) Savings provision

No provision of this subsection shall be construed as affecting the applicability of--

(A) any State law of any home State under subsection (b), (c), or (d) of section 1831u of this title; or

(B) Federal law to State banks and State bank branches in the home State or the host State.

(4) Definitions

The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 1831u(f) of this title.

§ 1831d. State-chartered insured depository institutions and insured branches of foreign banks

(a) Interest rates

In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

(b) Interest overcharge; forfeiture; interest payment recovery

If the rate prescribed in subsection (a) of this section exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a) of this section, the taking, receiving, reserv-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ing, or charging a greater rate of interest than is allowed by subsection (a) of this section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

§1831e. Activities of savings associations

(a) In general

On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless--

(1) the Corporation has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and

(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(b) Differences of magnitude between state and federal powers

Notwithstanding subsection (a)(1) of this section, if an activity (other than an activity described in section 1464(c)(2)(B) of this title) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if--

(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the Deposit Insurance Fund; and

(2) the savings association chartered under State law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(c) Equity investments by state savings associations

(1) In general

Notwithstanding subsections (a) and (b) of this section, a savings association chartered under State law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

(2) Exception for service corporations

Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service corporations if--

(A) the Corporation has determined that no significant risk to the Deposit Insurance Fund is posed by--

(i) the amount that the association proposes to acquire or retain; or

(ii) the activities in which the service corporation engages; and

(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

. . .

§1831f. Brokered deposits

(a) In general

An insured depository institution that is not well capitalized may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into 1 or more deposit accounts.

(b) Renewals and rollovers treated as acceptance of funds

Any renewal of an account in any troubled institution and any rollover of

Copyright © 2024 Michael P. Malloy. All rights reserved.

any amount on deposit in any such account shall be treated as an acceptance of funds by such troubled institution for purposes of subsection (a) of this section.

(c) Waiver authority

The Corporation may, on a case-by-case basis and upon application by an insured depository institution which is adequately capitalized (but not well capitalized), waive the applicability of subsection (a) of this section upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution....

(g) Definitions relating to deposit broker

(1) Deposit broker

The term "deposit broker" means--

(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(2) Exclusions

The term "deposit broker" does not include--

(A) an insured depository institution, with respect to funds placed with that depository institution;

(B) an employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) a trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

(F) the trustee of a testamentary account;

(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) a trustee or custodian of a pension or profitsharing plan qualified under section 401(d) or 403(a) of Title 26; or

(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) Inclusion of depository institutions engaging in certain activities

Notwithstanding paragraph (2), the term "deposit broker" includes any insured depository institution that is not well capitalized (as defined in section 1831o of this title), and any employee of such institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area. . . .

(h) Deposit solicitation restricted

An insured depository institution that is undercapitalized, as defined in section 1831o of this title, shall not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits--

(1) in such institution's normal market areas; or

(2) in the market area in which such deposits would otherwise be accepted....

Copyright © 2024 Michael P. Malloy. All rights reserved.

§1831i. Agency disapproval of directors and senior executive officers of insured depository institutions or depository institution holding companies

(a) Prior notice required

An insured depository institution or depository institution holding company shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution or holding company at least 30 days (or such other period, as determined by the appropriate Federal banking agency) before such addition or employment becomes effective, if --

(1) the insured depository institution or depository institution holding company is not in compliance with the minimum capital requirement applicable to such institution or is otherwise in a troubled condition, as determined by such agency on the basis of such institution's or holding company's most recent report of condition or report of examination or inspection; or

(2) the agency determines, in connection with the review by the agency of the plan required under section 1831o of this title or otherwise, that such prior notice is appropriate.

(3) [Redesignated (1)]

(b) Disapproval by agency

An insured depository institution or depository institution holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the appropriate Federal banking agency issues a notice of disapproval of such addition or employment before the end of the notice period, not to exceed 90 days, beginning on the date the agency receives notice of the proposed action pursuant to subsection (a) of this section.

(c) Exception in extraordinary circumstances

(1) In general

Each appropriate Federal banking agency may prescribe by regulation conditions under which the prior notice requirement of subsection (a) of this section may be waived in the event of extraordinary circumstances.

(2) No effect on disapproval authority of agency

Such waivers shall not affect the authority of each agency to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver. . . .

(e) Standard for disapproval

The appropriate Federal banking agency shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) of this section if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be employed by, or associated with, the depository institution or depository institution holding company. . . .

§1831o. Prompt corrective action

(a) Resolving problems to protect Deposit Insurance Fund

(1) Purpose

The purpose of this section is to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund.

(2) Prompt corrective action required

Each appropriate Federal banking agency and the Corporation (acting in the Corporation's capacity as the insurer of depository institutions under this chapter) shall carry out the purpose of this section

Copyright © 2024 Michael P. Malloy. All rights reserved.

by taking prompt corrective action to resolve the problems of insured depository institutions. . . .

§1831o-1. Source of strength

(a) Holding companies

The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.

(b) Other companies

If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

. . . (d) Reports

The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or indirectly controls the insured depository institution, to submit a report, under oath, for the purposes of--

(1) assessing the ability of such company to comply with the requirement under subsection (b); and

(2) enforcing the compliance of such company with the requirement under subsection (b).

(e) Rules

Not later than 1 year after the transfer date, as defined in section 5411 of this title, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

(f) Definition

In this section, the term "source of financial strength" means the ability of a company that directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.

§1831r-1. Notice of branch closure

(a) Notice to appropriate Federal banking agency

(1) In general

An insured depository institution which proposes to close any branch shall submit a notice of the proposed closing to the appropriate Federal banking agency not later than the first day of the 90-day period ending on the date proposed for the closing. . . .

(b) Notice to customers

(1) In general

An insured depository institution which proposes to close a branch shall provide notice of the proposed closing to its customers. . . .

(c) Adoption of policies

Each insured depository institution shall adopt policies for closings of branches of the institution.

(d) Branch closures in interstate banking or branching operations

(1) Notice requirements

In the case of an interstate bank which proposes to close any branch in a low- or moderate-income area, the notice required under subsection (b)(2) of this section shall contain the mailing address of the appropriate Federal banking agency and a statement that comments on the proposed closing of such branch may be mailed to such agency.

(2) Action required by appropriate Federal banking agency

If, in the case of a branch referred to

Copyright © 2024 Michael P. Malloy. All rights reserved.

in paragraph (1)--

(A) a person from the area in which such branch is located--

(i) submits a written request relating to the closing of such branch to the appropriate Federal banking agency; and

(ii) includes a statement of specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the area affected by the closing of the branch; and

(B) the agency concludes that the request is not frivolous,

the agency shall consult with community leaders in the affected area and convene a meeting of representatives of the agency and other interested depository institution regulatory agencies with community leaders in the affected area and such other individuals, organizations, and depository institutions (as defined in section 461(b)(1)(A) of this title) as the agency may determine, in the discretion of the agency, to be appropriate, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area, including the establishment of a new branch by another depository institution, the chartering of a new depository institution, or the establishment of a community development credit union, following the closing of the branch.

(3) No effect on closing

No action by the appropriate Federal banking agency under paragraph (2) shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of subsections (a) and (b) of this section have been met by such bank with respect to the branch being closed. . . .

(e) Scope of application

This section shall not apply with respect to --

(1) an automated teller machine;

(2) the relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation --

(A) occurs within the immediate neighborhood; and

(B) does not substantially affect the nature of the business or customers served; or

(3) a branch that is closed in connection with --

(A) an emergency acquisition under --

(i) section 1821(n) of this title; or

(ii) subsection (f) or (k) of section 1823 of this title; or

(B) any assistance provided by the Corporation under section 1823(c) of this title.

§1831u. Interstate bank mergers

(a) Approval of interstate merger transactions authorized

(1) In general

Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 1828(c) of this title between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

(2) State election to prohibit interstate merger transactions

(A) In general

Notwithstanding paragraph (1), a merger transaction may not be approved pursuant to paragraph (1) if the transaction involves a bank the home State of which has enacted a law after September 29, 1994, and before June 1, 1997, that--

(i) applies equally to all out-of-State banks; and

(ii) expressly prohibits merger transactions involving out-of-State banks.

(B) No effect on prior approvals of merger transactions

A law enacted by a State pursuant to subparagraph (A) shall have no effect on merger transactions that were approved

Copyright © 2024 Michael P. Malloy. All rights reserved.

before the effective date of such law.

(3) State election to permit early interstate merger transactions

(A) In general

A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that--

(i) applies equally to all out-of-State banks; and

(ii) expressly permits interstate merger transactions with all out-of-State banks.

(B) Certain conditions allowed

A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if--

(i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);

(ii) the imposition of the conditions is not preempted by Federal law; and

(iii) the conditions do not apply or require performance after May 31, 1997.

(4) Interstate merger transactions involving acquisitions of branches

(A) In general

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

(B) Treatment of branch for purposes of this section

In the case of an interstate merger transaction which involves the acquisition of a branch of an insured bank without the acquisition of the bank, the branch shall be treated, for purposes of this section, as an insured bank the home State of which is the State in which the branch is located.

(5) Preservation of State age laws

(A) In general

The responsible agency may not approve an application pursuant to paragraph (1) that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(B) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding subparagraph (A), the responsible agency may approve a merger transaction pursuant to paragraph (1) involving the acquisition of a bank that has been in existence at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(6) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank or branch shall be deemed to have been in existence for the same period of time as the bank or branch to be acquired.

(b) Provisions relating to application and approval process

(1) Compliance with State filing requirements

(A) In general

Any bank which files an application for an interstate merger transaction shall--

(i) comply with the filing requirements of any host State of the bank which will result from such transaction to the extent that the requirement--

(I) does not have the effect of discriminating against out-of-State banks or

Copyright © 2024 Michael P. Malloy. All rights reserved.

out-of-State bank holding companies or subsidiaries of such banks or bank holding companies; and

(II) is similar in effect to any requirement imposed by the host State on a nonbanking corporation incorporated in another State that engages in business in the host State; and

(ii) submit a copy of the application to the State bank supervisor of the host State.

(B) Penalty for failure to comply

The responsible agency may not approve an application for an interstate merger transaction if the applicant materially fails to comply with subparagraph (A).

(2) Concentration limits

(A) Nationwide concentration limits

The responsible agency may not approve an application for an interstate merger transaction if the resulting bank (including all insured depository institutions which are affiliates of the resulting bank), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Statewide concentration limits other than with respect to initial entries

The responsible agency may not approve an application for an interstate merger transaction if--

(i) any bank involved in the transaction (including all insured depository institutions which are affiliates of any such bank) has a branch in any State in which any other bank involved in the transaction has a branch; and

(ii) the resulting bank (including all insured depository institutions which would be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) Effectiveness of State deposit caps

No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) Exceptions to subparagraph (B)

The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) without regard to the applicability of subparagraph (B) with respect to any State if--

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the transaction is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) Exception for certain banks

This paragraph shall not apply with respect to any interstate merger transaction involving only affiliated banks.

(3) Community reinvestment compliance

Copyright © 2024 Michael P. Malloy. All rights reserved.

In determining whether to approve an application for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction, the responsible agency shall--

(A) comply with the responsibilities of the agency regarding such application under section 2903 of this title;

(B) take into account the most recent written evaluation under section 2903 of this title of any bank which would be an affiliate of the resulting bank; and

(C) take into account the record of compliance of any applicant bank with applicable State community reinvestment laws.

(4) Adequacy of capital and management skills

The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) of this section only if--

(A) each bank involved in the transaction is adequately capitalized as of the date the application is filed; and

(B) the responsible agency determines that the resulting bank will be well capitalized and well managed upon the consummation of the transaction.

(5) Surrender of charter after merger transaction

The charters of all banks involved in an interstate merger transaction, other than the charter of the resulting bank, shall be surrendered, upon request, to the Federal banking agency or State bank supervisor which issued the charter.

(c) Applicability of certain laws to interstate banking operations

(1) State taxation authority not affected

(A) In general

No provision of this section shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(B) Imposition of shares tax by host States

In the case of a branch of an out-of-State bank which results from an interstate merger transaction, a proportionate amount of the value of the shares of the out-of-State bank may be subject to any bank shares tax levied or imposed by the host State, or any political subdivision of such host State that imposes such tax based upon a method adopted by the host State, which may include allocation and apportionment.

(2) Applicability of antitrust laws

No provision of this section shall be construed as affecting--

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(3) Reservation of certain rights to States

No provision of this section shall be construed as limiting in any way the right of a State to--

(A) determine the authority of State banks chartered by that State to establish and maintain branches; or

(B) supervise, regulate, and examine State banks chartered by that State.

(4) State-imposed notice requirements

A host State may impose any notification or reporting requirement on a branch of an out-of-State bank if the requirement--

(A) does not discriminate against

Copyright © 2024 Michael P. Malloy. All rights reserved.

out-of-State banks or bank holding companies; and

(B) is not preempted by any Federal law regarding the same subject.

(d) Operations of the resulting bank

(1) Continued operations

A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

(2) Additional branches

Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

(3) Certain conditions and commitments continued

If, as a condition for the acquisition of a bank by an out-of-State bank holding company before September 29, 1994--

(A) the home State of the acquired bank imposed conditions on such acquisition by such out-of-State bank holding company; or

(B) the bank holding company made commitments to such State in connection with the acquisition,

the State may enforce such conditions and commitments with respect to such bank holding company or any affiliated successor company which controls a bank or branch in such State as a result of an interstate merger transaction to the same extent as the State could enforce such conditions or commitments against the bank holding company before the consummation of the merger transaction.

(e) Exception for banks in default or in danger of default

If an application under subsection (a)(1) of this section for approval of a merger transaction which involves 1 or more banks in default or in danger of default or with respect to which the Corporation provides assistance under section 1823(c) of this title, the responsible agency may approve such application without regard to subsection (b) of this section, or paragraph (2), (4), or (5) of subsection (a) of this section.

(f) Applicable rate and other charge limitations

(1) In general

In the case of any State that has a constitutional provision that sets a maximum lawful annual percentage rate of interest on any contract at not more than 5 percent above the discount rate for 90-day commercial paper in effect at the Federal reserve bank for the Federal reserve district in which such State is located, except as provided in paragraph (2), upon the establishment in such State of a branch of any out-of-State insured depository institution in such State under this section, the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved (or in the case of a governmental entity located in such State, paid) from time to time in any loan or discount made or upon any note, bill of exchange, financing transaction, or other evidence of debt by--

(A) any insured depository institution whose home State is such State shall be equal to not more than the greater of--

(i) the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction under the constitution or any statute or other law of the home State of the out-of-State insured depository institution establishing any such branch, without reference to this

Copyright © 2024 Michael P. Malloy. All rights reserved.

section, as such maximum interest rate or amount of interest may change from time to time; or

(ii) the maximum rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction by a State insured depository institution chartered under the laws of such State or a national bank or Federal savings association whose main office is located in such State without reference to this section; and

(B) any governmental entity located in such State or any person that is not a depository institution described in subparagraph (A) doing business in such State, shall be equal to not more than the greater of the State's maximum lawful annual percentage rate or 17 percent--

(i) to facilitate the uniform implementation of federally mandated or federally established programs and financings related thereto, including--

(I) uniform accessibility of student loans, including the issuance of qualified student loan bonds as set forth in section 144(b) of Title 26;

(II) the uniform accessibility of mortgage loans, including the issuance of qualified mortgage bonds and qualified veterans' mortgage bonds as set forth in section 143 of such title;

(III) the uniform accessibility of safe and affordable housing programs administered or subject to review by the Department of Housing and Urban Development, including--

(aa) the issuance of exempt facility bonds for qualified residential rental property as set forth in section 142(d) of such title; and

(bb) the issuance of low income housing tax credits as set forth in section 42 of such title; and

(cc) Repealed. Pub.L. 111-83, Title V, § 563(a)(2)(C)(i)(III), Oct. 28, 2009, 123 Stat. 2183

(IV) the uniform accessibility bonds and obligations issued under the American Recovery and Reinvestment Act of 2009;

(ii) to facilitate interstate commerce through the issuance of bonds and obligations under any provision of State law, including bonds and obligations for the purpose of economic development, education, and improvements to infrastructure; and

(iii) to facilitate interstate commerce generally, including consumer loans, in the case of any person or governmental entity (other than a depository institution subject to subparagraph (A) and paragraph (2)).

(2) Rule of construction

(A) In general

No provision of this subsection shall be construed as superseding or affecting--

(i) the authority of any insured depository institution to take, receive, reserve, and charge interest on any loan made in any State other than the State referred to in paragraph (1); or

(ii) the applicability of section 1735f-7a of this title, section 85 of this title, or 1831d of this title.

(B) Applicability

This subsection shall be construed to apply to any loan or discount made, or note, bill of exchange, financing transaction, or other evidence of debt, originated by an insured depository institution, a governmental entity located in such State, or a person that is not a depository institution described in subparagraph (A) doing business in such State.

(g) Definitions

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

(2) Antitrust laws

The term "antitrust laws"--

(A) has the same meaning as in subsection (a) of section 12 of Title 15; and

(B) includes section 45 of Title 15 to the extent such section 45 relates to unfair

Copyright © 2024 Michael P. Malloy. All rights reserved.

methods of competition.

(3) Branch

The term "branch" means any domestic branch.

(4) Home State

The term "home State"--

(A) means--

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

(ii) with respect to a State bank, the State by which the bank is chartered; and

(B) with respect to a bank holding company, has the same meaning as in section 1841(o)(4) of this title.

(5) Host State

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

(6) Interstate merger transaction

The term "interstate merger transaction" means any merger transaction approved pursuant to subsection (a)(1) of this section.

(7) Merger transaction

The term "merger transaction" has the meaning determined under section 1828(c)(3) of this title.

(8) Out-of-State bank

The term "out-of-State bank" means, with respect to any State, a bank whose home State is another State.

(9) Out-of-State bank holding company

The term "out-of-State bank holding company" means, with respect to any State, a bank holding company whose home State is another State.

(10) Responsible agency

The term "responsible agency" means the agency determined in accordance with section 1828(c)(2) of this title with respect to a merger transaction.

(11) Resulting bank

The term "resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

§1831v. Authority of State insurance regulator and Securities and Exchange Commission

(a) In General.--Notwithstanding any other provision of law, the provisions of--

(1) section 5(c) of the Bank Holding Company Act of 1956 [12 U.S.C. § 1844(c)] that limit the reports from, to make examinations of, or to impose capital requirements on holding companies and their functionally regulated subsidiaries or that require deference to other regulators;

(2) section 5(g) of the Bank Holding Company Act of 1956 [12 U.S.C. § 1844(g)] that limit the authority of the Board to require a functionally regulated subsidiary of a holding company to provide capital or other funds or assets to a depository institution subsidiary of the holding company and to take certain actions including requiring divestiture of the depository institution; and

(3) section 10A of the Bank Holding Company Act of 1956 [12 U.S.C. § 1848a] that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to holding companies and their functionally regulated subsidiaries;

shall also limit whatever authority that a Federal banking agency might otherwise have under any statute or regulation to require reports, make examinations, impose capital requirements, or take any other direct or indirect action with respect to any functionally regulated affiliate of a depository institution, subject to the same standards and requirements as are applicable to the Board under those provisions.

(b) Certain Exemption Authorized.--No provision of this section shall be construed as preventing the Corporation, if the Corporation finds it neces-

Copyright © 2024 Michael P. Malloy. All rights reserved.

sary to determine the condition of a depository institution for insurance purposes, from examining an affiliate of any depository institution, pursuant to section 10(b)(4), as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(c) Definitions.--For purposes of this section, the following definitions shall apply:

(1) Functionally Regulated Subsidiary.--The term 'functionally regulated subsidiary' has the meaning given the term in section 5(c)(5) of the Bank Holding Company Act of 1956.

(2) Functionally Regulated Affiliate.--The term 'functionally regulated affiliate' means, with respect to any depository institution, any affiliate of such depository institution that is--

(A) not a depository institution holding company; and

(B) a company described in any clause of section 5(c)(5)(B) of the Bank Holding Company Act of 1956.

§1831w. Safety and soundness firewalls applicable to financial subsidiaries of banks

(a) In General.--An insured State bank may control or hold an interest in a subsidiary that engages in activities as principal that would only be permissible for a national bank to conduct through a financial subsidiary if--

(1) the State bank and each insured depository institution affiliate of the State bank are well capitalized (after the capital deduction required by paragraph (2));

(2) the State bank complies with the capital deduction and financial statement disclosure requirements in section 5136A(c) of the Revised Statutes of the United States [12 U.S.C. § 24a(c)];

(3) the State bank complies with the financial and operational safeguards required by section 5136A(d) of the Revised Statutes of the United States [12 U.S.C. § 24a(d)]; and

(4) the State bank complies with the amendments to sections 23A and 23B of the Federal Reserve Act [12 U.S.C. §§ 371c, 371c-1] made by section 121(b) of the Gramm-Leach-Bliley Act.

(b) Preservation of Existing Subsidiaries.--Notwithstanding subsection (a), an insured State bank may retain control of a subsidiary, or retain an interest in a subsidiary, that the State bank lawfully controlled or acquired before the date of the enactment of the Gramm-Leach-Bliley Act, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date.

(c) Definitions.--For purposes of this section, the following definitions shall apply:

(1) Subsidiary.--The term 'subsidiary' means any company that is a subsidiary (as defined in section 3(w)(4) [12 U.S.C. § 1813(w)(4)]) of 1 or more insured banks.

(2) Financial Subsidiary.--The term 'financial subsidiary' has the meaning given the term in section 5136A(g) of the Revised Statutes of the United States [12 U.S.C. § 24a(g)].

(d) Preservation of Authority.--

(1) Federal Deposit Insurance Act.--No provision of this section shall be construed as superseding the authority of the Federal Deposit Insurance Corporation to review subsidiary activities under section 24.

(2) Federal Reserve Act.--No provision of this section shall be construed as affecting the applicability of the 20th undesignated paragraph of section 9 of the Federal Reserve Act.

Copyright © 2024 Michael P. Malloy. All rights reserved.

§1831x. Insurance customer protections

(a) Regulations Required.--

(1) In General.--The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, customer protection regulations (which the agencies jointly determine to be appropriate) that--

(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) are consistent with the requirements of this Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

(2) Applicability to Subsidiaries.--The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of a depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

(3) Consultation and Joint Regulations.--The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

(b) Sales Practices.--The regulations prescribed pursuant to subsection (a) shall include antitying and anticoercion rules applicable to the sale of insurance products that prohibit a depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon--

(1) the purchase of an insurance product from the institution or any of its affiliates; or

(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(c) Disclosures and Advertising.--The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

(1) Disclosures.--

(A) In General.--Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

(i) Uninsured Status.--As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the depository institution.

(ii) Investment Risk.--In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

(iii) Coercion.--The approval of an extension of credit may not be conditioned on--

(I) the purchase of an insurance product from the institution in which the application for credit is pending or of any affiliate of the institution; or

(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(B) Making Disclosure Readily Understandable.--Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous,

Copyright © 2024 Michael P. Malloy. All rights reserved.

simple, direct, and readily understandable, such as the following:

(i) "Not FDIC-Insured".

(ii) "Not Guaranteed by the Bank".

(iii) "May Go Down in Value".

(iv) "Not Insured by Any Government Agency".

(C) Limitation.--Nothing in this paragraph requires the inclusion of the foregoing disclosures in advertisements of a general nature describing or listing the services or products offered by an institution.

(D) Meaningful Disclosures.--Disclosures shall not be considered to be meaningfully provided under this paragraph if the institution or its representative states that disclosures required by this subsection were available to the customer in printed material available for distribution, where such printed material is not provided and such information is not orally disclosed to the customer.

(E) Adjustments for Alternative Methods of Purchase.--In prescribing the requirements under subparagraphs (A) and (F), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

(F) Consumer Acknowledgment.--A requirement that a depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

(2) Prohibition on Misrepresentations.--A prohibition on any practice, or any advertising, at any office of, or on behalf of, the depository institution, or any subsidiary, as appropriate, that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to--

(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution;

(B) in the case of a variable annuity or insurance product that involves an investment risk, the investment risk associated with any such product; or

(C) in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that--

(i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and

(ii) the customer is free to purchase the insurance product from another source.

(d) Separation of Banking and Nonbanking Activities.--

(1) Regulations Required.--The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

(2) Requirements.--Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) Separate Setting.--A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

(B) Referrals.--Standards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks

Copyright © 2024 Michael P. Malloy. All rights reserved.

to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(C) Qualification and Licensing Requirements.--Standards prohibiting any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed. . . .

(g) Effect on Other Authority.--

(1) In General.--No provision of this section shall be construed as granting, limiting, or otherwise affecting--

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

(B) except as provided in paragraph (2), any authority of any State insurance commission (or any agency or office performing like functions), or of any State securities commission (or any agency or office performing like functions), or other State authority under any State law.

(2) Coordination with State Law.--

(A) In General.--Except as provided in subparagraph (B), insurance customer protection regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

(B) Preemption.--

(i) In General.--If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

(ii) Considerations.--Before making a final determination under clause (i), the Federal agencies referred to in clause (i) shall give appropriate consideration to comments submitted by the appropriate State regulatory authorities relating to the level of protection afforded to consumers under State law.

(Iii) Federal Preemption and Ability of States to Override Federal Preemption.--If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section affords greater protections than a comparable State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

(h) Non-Discrimination Against Non-affiliated Agents.--The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) shall not have the effect of discriminating, either intentionally or unintentionally, against *1415 any person engaged in insurance sales or solicitations

Copyright © 2024 Michael P. Malloy. All rights reserved.

that is not affiliated with a depository institution.

§1831y. CRA sunshine requirements

(a) Public Disclosure of Agreements.--Any agreement (as defined in subsection (e)) entered into after the date of the enactment of the Gramm-Leach-Bliley Act by an insured depository institution or affiliate with a nongovernmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources of such insured depository institution or affiliate--

(1) shall be in its entirety fully disclosed, and the full text thereof made available to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution and to the public by each party to the agreement; and

(2) shall obligate each party to comply with this section.

(b) Annual Report of Activity by Insured Depository Institution.--Each insured depository institution or affiliate that is a party to an agreement described in subsection (a) shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution, not less frequently than once each year, such information as the Federal banking agency may by rule require relating to the following actions taken by the party pursuant to the agreement during the preceding 12-month period:

(1) Payments, fees, or loans made to any party to the agreement or received from any party to the agreement and the terms and conditions of the same.

(2) Aggregate data on loans, investments, and services provided by each party in its community or communities pursuant to the agreement.

(3) Such other pertinent matters as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

(c) Annual Report of Activity by Nongovernmental Entities.--

(1) In General.--Each nongovernmental entity or person that is not an affiliate of an insured depository institution and that is a party to an agreement described in subsection (a) shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution that is a party to such agreement, not less frequently than once each year, an accounting of the use of funds received pursuant to each such agreement during the preceding 12-month period.

(2) Submission to Insured Depository Institution.--A nongovernmental entity or person referred to in paragraph (1) may comply with the reporting requirement in such paragraph by transmitting the report to the insured depository institution that is a party to the agreement, and such insured depository institution shall promptly transmit such report to the appropriate Federal banking agency with supervisory authority over the insured depository institution.

(3) Information to Be Included.--The accounting referred to in paragraph (1) shall include a detailed, itemized list of the uses to which such funds have been made, including compensation, administrative expenses, travel, entertainment, consulting and professional fees paid, and such other categories, as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

(d) Applicability.--Subsections (b) and (c) shall not apply with respect to any agreement entered into before the end of the 6-month period beginning on the date of the enactment of the

Copyright © 2024 Michael P. Malloy. All rights reserved.

Gramm-Leach-Bliley Act.

(e) Definitions.--

(1) Agreement.--For purposes of this section, the term 'agreement'--

(A) means--

(i) any written contract, written arrangement, or other written understanding that provides for cash payments, grants, or other consideration with a value in excess of $10,000, or for loans the aggregate amount of principal of which exceeds $50,000, annually (or the sum of all such agreements during a 12-month period with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000); or

(ii) a group of substantively related contracts with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000, annually;

made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977, at least 1 party to which is an insured depository institution or affiliate thereof, whether organized on a profit or not-for-profit basis; and

(B) does not include--

(i) any individual mortgage loan;

(ii) any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities, if the funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to other parties; or

(iii) any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act of 1977.

(2) Fulfillment of CRA.--For purposes of subparagraph (A), the term 'fulfillment' means a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision--

(A) to approve or disapprove an application for a deposit facility (as defined in section 803 of the Community Reinvestment Act of 1977); or

(B) to assign a rating to an insured depository institution under section 807 of the Community Reinvestment Act of 1977.

(f) Violations.--

(1) Violations by Persons Other than Insured Depository Institutions or Their Affiliates.--

(A) Material Failure to Comply.--If the party to an agreement described in subsection (a) that is not an insured depository institution or affiliate willfully fails to comply with this section in a material way, as determined by the appropriate Federal banking agency, the agreement shall be unenforceable after the offending party has been given notice and a reasonable period of time to perform or comply.

(B) Diversion of Funds or Resources.--If funds or resources received under an agreement described in subsection (a) have been diverted contrary to the purposes of the agreement for personal financial gain, the appropriate Federal banking agency with supervisory responsibility over the insured depository institution may impose either or both of the following penalties:

(i) Disgorgement by the offending individual of funds received under the agreement.

(ii) Prohibition of the offending individual from being a party to any agreement described in subsection (a) for a period of not to exceed 10 years.

(2) Designation of Successor Non-

Copyright © 2024 Michael P. Malloy. All rights reserved.

governmental Party.--If an agreement described in subsection (a) is found to be unenforceable under this subsection, the appropriate Federal banking agency may assist the insured depository institution in identifying a successor nongovernmental party to assume the responsibilities of the agreement.

(3) Inadvertent or De Minimis Reporting Errors.--An error in a report filed under subsection (c) that is inadvertent or de minimis shall not subject the filing party to any penalty.

(g) Rule of Construction.--No provision of this section shall be construed as authorizing any appropriate Federal banking agency to enforce the provisions of any agreement described in subsection (a).

(h) Regulations.--

(1) In General.--Each appropriate Federal banking agency shall prescribe regulations, in accordance with paragraph (4), requiring procedures reasonably designed to ensure and monitor compliance with the requirements of this section.

(2) Protection of Parties.--In carrying out paragraph (1), each appropriate Federal banking agency shall--

(A) ensure that the regulations prescribed by the agency do not impose an undue burden on the parties and that proprietary and confidential information is protected; and

(B) establish procedures to allow any nongovernmental entity or person who is a party to a large number of agreements described in subsection (a) to make a single or consolidated filing of a report under subsection (c) to an insured depository institution or an appropriate Federal banking agency.

(3) Parties Not Subject to Reporting Requirements.--The Board of Governors of the Federal Reserve System may prescribe regulations--

(A) to prevent evasions of subsection (e)(1)(B)(iii); and

(B) to provide further exemptions under such subsection, consistent with the purposes of this section.

(4) Coordination, Consistency, and Comparability.--In carrying out paragraph (1), each appropriate Federal banking agency shall consult and coordinate with the other such agencies for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies. . . .

§1831aa Enforcement of Agreements.

(a) IN GENERAL.--Notwithstanding clause (i) or (ii) of section 8(b)(6)(A) or section 38(e)(2)(E)(i), the appropriate Federal banking agency for a depository institution may enforce, under section 8, the terms of--

(1) any condition imposed in writing by the agency on the depository institution or an institution-affiliated party in connection with any action on any application, notice, or other request concerning the depository institution; or

(2) any written agreement entered into between the agency and the depository institution or an institution-affiliated party.

(b) RECEIVERSHIPS AND CONSERVATORSHIPS.--After the appointment of the Corporation as the receiver or conservator for a depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) imposed on or entered into with such institution or institution-affiliated party through an action brought in an appropriate United States district court.

Copyright © 2024 Michael P. Malloy. All rights reserved.

§1832. Withdrawals by negotiable or transferable instruments for transfers to third parties

(a) Authority of depository institution; applicability

(1) Notwithstanding any other provision of law but subject to paragraph (2), a depository institution is authorized to permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to deposits or accounts which consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof. . . .

§1835a. Prohibition against deposit production offices

(a) Regulations

The appropriate Federal banking agencies shall prescribe uniform regulations effective June 1, 1997, which prohibit any out-of-State bank from using any authority to engage in interstate branching pursuant to this title, or any amendment made by this title to any other provision of law, primarily for the purpose of deposit production.

. . .

CHAPTER 17--BANK HOLDING COMPANIES

§1841. Definitions

(a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this chapter.

(2) Any company has control over a bank or over any company if--

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this chapter, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection--

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to December 31, 1970, only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after December 31, 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which--

(i) is wholly owned by 1 or more thrift institutions or savings banks; and

(ii) is restricted to accepting--

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act [12 U.S.C. §§ 1811 *et seq.*] is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on December 31, 1970, and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mu-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 24 of this title.

(6) For the purposes of this chapter, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) "Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust but shall not include any corporation the majority of the shares of which are owned by the United States or by any State, and shall not include a qualified family partnership. "Company covered in 1970" means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

(c) Bank defined

For purposes of this chapter--

(1) In general

Except as provided in paragraph (2), the term "bank" means any of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act [12 U.S.C. § 1813(h)].

(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both--

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(ii) is engaged in the business of making commercial loans.

(2) Exceptions

The term "bank" does not include any of the following:

(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

(B) An insured institution (as defined in subsection (j) of this section).

(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

(D) An institution that functions solely in a trust or fiduciary capacity, if--

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not--

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act [12 U.S.C. § 248a]; or

(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act [12 U.S.C. § 461(b)(7)].

(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act [12 U.S.C. § 461-(b)(1)(A)(iv)]).

(F) An institution, including an insti-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tution that accepts collateral for extensions of credit by holding deposits under $100,000, and by other means which --

(i) engages only in credit card operations;

(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(iii) does not accept any savings or time deposit of less than $100,000;

(iv) maintains only one office that accepts deposits; and

(v) does not engage in the business of making commercial loans, other than credit card loans that are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations.

(G) An organization operating under section 25 [12 U.S.C. § 601 *et seq.*] or section 25(a) [12 U.S.C. §§ 611 *et seq.*] of the Federal Reserve Act.

(H) An industrial loan company, industrial bank, or other similar institution which is--

(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act [12 U.S.C. §§ 1811 *et seq.*]--

(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

(II) which has total assets of less than $100,000,000; or

(III) the control of which is not acquired by any company after August 10, 1987; or

(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

(d) "Subsidiary", with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management of policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

(e) The term "successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this chapter.

(f) "Board" means the Board of Governors of the Federal Reserve System.

(g) For the purposes of this chapter-

Copyright © 2024 Michael P. Malloy. All rights reserved.

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company; and

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company, unless the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of this Act. . . .

(i) Thrift institution

For purposes of this chapter, the term "thrift institution" means--

(1) any domestic building and loan or savings and loan association;

(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

(3) any Federal savings bank; and

(4) any State-chartered savings bank the holding company of which is registered pursuant to section 1730a of this title.

(j) Definition of savings associations and related term

The term "savings association" or "insured institution" means--

(1) any Federal savings association or Federal savings bank;

(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Deposit Insurance Fund; and

(3) any savings bank or cooperative bank which is deemed by the appropriate Federal banking agency to be a savings association under section 1467a(1) of this title.

(k) Affiliate

For purposes of this chapter, the term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(*l*) Savings bank holding company

For purposes of this chapter, the term "savings bank holding company" means any company which controls one or more qualified savings banks if the aggregate total assets of such savings banks constitute, upon formation of the holding company and at all times thereafter, at least 70 percent of the total assets of such company.

(m) [Repealed]

(n) Incorporated definitions

For purposes of this chapter, the terms "depository institution", "insured depository institution", "appropriate Federal banking agency", "default", "in danger of default", and "State bank supervisor" have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813].

(o) Other definitions

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

(1) Capital terms

(A) Insured depository institutions

With respect to insured depository institutions, the terms "well capitalized", "adequately capitalized", and "undercapitalized" have the same meanings as in section 38 of the Federal Deposit Insurance Act [12 U.S.C. § 1831o].

(B) Bank holding company

(i) Adequately capitalized

With respect to a bank holding company, the term "adequately capitalized" means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

(ii) Well capitalized

A bank holding company is "well capitalized" if it meets the required capital levels for well capitalized bank holding companies established by the Board.

(C) Other capital terms

The terms "Tier 1" and "risk-weighted assets" have the meanings

Copyright © 2024 Michael P. Malloy. All rights reserved.

given those terms in the capital guidelines or regulations established by the Board for bank holding companies.

(2) Antitrust laws

Except as provided in section 1849 of this title, the term "antitrust laws"--

(A) has the same meaning as in subsection (a) of section 12 of Title 15; and

(B) includes section 45 of Title 15 to the extent that such section 45 relates to unfair methods of competition.

(3) Branch

The term "branch" means a domestic branch (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813]).

(4) Home State

The term "home State" means--

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

(B) with respect to a State bank, the State by which the bank is chartered; and

(C) with respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of--

(i) July 1, 1966; or

(ii) the date on which the company becomes a bank holding company under this chapter;

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

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

(5) Host State

The term "host State" means--

(A) with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch; and

(B) with respect to a bank holding company, a State, other than the home State of the company, in which the company controls, or seeks to control, a bank subsidiary.

(6) Out-of-State bank

The term "out-of-State bank" means, with respect to any State, a bank whose home State is another State.

(7) Out-of-State bank holding company

The term "out-of-State bank holding company" means, with respect to any State, a bank holding company whose home State is another State.

(8) Lead insured depository institutions

(A) In general

The term "lead insured depository institution" means the largest insured depository institution controlled by the subject bank holding company at any time, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution during the previous 12-month period.

(B) Branch or agency

For purposes of this paragraph and section 1843(j)(4) of this title, the term "insured depository institution" includes any branch or agency operated in the United States by a foreign bank.

(9) Well managed

The term "well managed" means --

(A) in the case of any company or depository institution which receives examinations, the achievement of --

(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

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

(B) in the case of a company or depository institution that has not received an examination rating, the existence and

Copyright © 2024 Michael P. Malloy. All rights reserved.

use of managerial resources which the Board determines are satisfactory.

(10) Qualified family partnership

The term "qualified family partnership" means a general or limited partnership that the Board determines --

(A) does not directly control any bank, except through a registered bank holding company;

(B) does not control more than 1 registered bank holding company;

(C) does not engage in any business activity, except indirectly through ownership of other business entities;

(D) has no investments other than those permitted for a bank holding company pursuant to section 1843(c) of this title;

(E) is not obligated on any debt, either directly or as a guarantor;

(F) has partners, all of whom are either --

(i) individuals related to each other by blood, marriage (including former marriage), or adoption; or

(ii) trusts for the primary benefit of individuals related as described in clause (i); and

(G) has filed with the Board a statement that includes --

(i) the basis for the eligibility of the partnership under subparagraph (F);

(ii) a list of the existing activities and investments of the partnership;

(iii) a commitment to comply with this paragraph;

(iv) a commitment to comply with section 7 of the Federal Deposit Insurance Act [12 U.S.C. § 1817] with respect to any acquisition of control of an insured depository institution occurring after September 30, 1996; and

(v) a commitment to be subject, to the same extent as if the qualified family partnership were a bank holding company --

(I) to examination by the Board to assure compliance with this paragraph; and

(II) to section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818].

(p) Financial Holding Company.--For purposes of this Act, the term 'financial holding company' means a bank holding company that meets the requirements of section 4(*l*)(1) [12 U.S.C. § 1843(*l*)(1)].

(q) Insurance Company.--For purposes of sections 4 and 5, the term 'insurance company' includes any person engaged in the business of insurance to the extent of such activities.

§1842. Acquisition of bank shares or assets

(a) Prior approval of Board as necessary; exceptions; disposition, time extension; subsequent approval or disposition upon disapproval

It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title, or (ii) in the

Copyright © 2024 Michael P. Malloy. All rights reserved.

regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after May 9, 1956, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after December 31, 1970, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval; or (C) the acquisition, by a company, of control of a bank in a reorganization in which a person or group of persons exchanges their shares of the bank for shares of a newly formed bank holding company and receives after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if--.

(i) immediately following the acquisition--

(I) the bank holding company meets the capital and other financial standards prescribed by the Board by regulation for such a bank holding company; and

(II) the bank is adequately capitalized (as defined in section 1831o of this title);

(ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization;

(iii) the company provides 30 days prior notice to the Board and the Board does not object to such transaction during such 30-day period; and

(iv) the holding company will not acquire control of any additional bank as a result of the reorganization.

(b) Application for approval; notice to Comptroller of Currency or State authority; views and recommendations; disapproval; hearings; order of Board; nonaction deemed grant of application; procedure in emergencies or probable failures requiring immediate Board action and orders

(1) Notice and hearing requirements

Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority,

Copyright © 2024 Michael P. Malloy. All rights reserved.

as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

(2) Waiver in case of bank in danger of closing

If the Board receives a certification described in section 1823(f)(8)(D) of this title from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.

(c) Factors for consideration by Board

(1) Competitive factors

The Board shall not approve--

(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or trade, unless it finds that the anticompetitive effects of the proposed

Copyright © 2024 Michael P. Malloy. All rights reserved.

transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) Banking and community factors

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

(3) Supervisory factors

The Board shall disapprove any application under this section by any company if--

(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this chapter; or

(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

(4) Treatment of certain bank stock loans

Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(5) Managerial resources

Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

(6) Money laundering

In every case, the Board shall take into consideration the effectiveness of the company or companies in combatting money laundering activities, including in overseas branches.

(7) Financial stability

In every case, the Board shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.

(d) Interstate banking

(1) Approvals authorized

(A) Acquisition of banks

The Board may approve an application under this section by a bank holding company that is well capitalized and well managed to acquire control of, or acquire all or substantially all of the assets of, a bank located in a State other than the home State of such bank holding company, without regard to whether such transaction is prohibited under the law of any State.

(B) Preservation of State age laws

(i) In general

Notwithstanding subparagraph (A), the Board may not approve an application pursuant to such subparagraph that would have the effect of permitting an out-of-State bank holding company to

Copyright © 2024 Michael P. Malloy. All rights reserved.

acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(ii) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding clause (i), the Board may approve, pursuant to subparagraph (A), the acquisition of a bank that has been in existence for at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(C) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank shall be deemed to have been in existence for the same period of time as the bank to be acquired.

(D) Effect on State contingency laws

No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if--

(i) the State law does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or bank holding companies;

(ii) that State law was in effect as of September 29, 1994;

(iii) the Federal Deposit Insurance Corporation has not determined that compliance with such State law would result in an unacceptable risk to the Deposit Insurance Fund; and

(iv) the appropriate Federal banking agency for such bank has not found that compliance with such State law would place the bank in an unsafe or unsound condition.

(2) Concentration limits

(A) Nationwide concentration limits

The Board may not approve an application pursuant to paragraph (1)(A) if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Statewide concentration limits other than with respect to initial entries

The Board may not approve an application pursuant to paragraph (1)(A) if--

(i) immediately before the consummation of the acquisition for which such application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in the home State of any bank to be acquired or in any host State in which any such bank maintains a branch; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) Effectiveness of State deposit caps

No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against

Copyright © 2024 Michael P. Malloy. All rights reserved.

out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) Exceptions to subparagraph (B)

The Board may approve an application pursuant to paragraph (1)(A) without regard to the applicability of subparagraph (B) with respect to any State if--

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the acquisition is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) "Deposit" defined

For purposes of this paragraph, the term "deposit" has the same meaning as in section 1813(l) of this title.

(3) Community reinvestment compliance

In determining whether to approve an application under paragraph (1)(A), the Board shall--

(A) comply with the responsibilities of the Board regarding such application under section 2903 of this title; and

(B) take into account the applicant's record of compliance with applicable State community reinvestment laws.

(4) Applicability of antitrust laws

No provision of this subsection shall be construed as affecting--

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(5) Exception for banks in default or in danger of default

The Board may approve an application pursuant to paragraph (1)(A) which involves--

(A) an acquisition of 1 or more banks in default or in danger of default; or

(B) an acquisition with respect to which assistance is provided under section 1823(c) of this title;

without regard to subparagraph (B) or (D) of paragraph (1) or paragraph (2) or (3).

(e) Insured depository institution

Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured depository institution as defined in section 1813 of this title.

(f) [Repealed].

(g) Mutual bank holding company

(1) Establishment

Notwithstanding any provision of Federal law other than this chapter, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

(2) Regulations.--A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.

§1843. Interests in nonbanking organizations

(a) Ownership or control of voting shares of any company not a bank; engagement in activities other than banking

Except as otherwise provided in this chapter, no bank holding company shall--

(1) after May 9, 1956, acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940 [15 U.S.C. §§ 80a-1 *et seq*.], prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or, in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: Provided, That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this chapter, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after December 31, 1970, the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board. Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and August 10, 1987, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come

Copyright © 2024 Michael P. Malloy. All rights reserved.

into compliance with the requirements of this chapter.

The Board is authorized, upon application by a bank holding company, to extend the two year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this chapter, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company.

(b) Statement purporting to represent shares of any company except a bank or bank holding company

After two years from May 9, 1956, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) Exemptions

The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of Title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to--

(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired,

Copyright © 2024 Michael P. Malloy. All rights reserved.

the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 1841(b) of this title and except as provided in paragraphs (2) and (3) of section 1841(g) of this title;

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 24 of this title;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this chapter) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on December 31, 1970, or by any subsidiary thereof, if such company--

(A) within the applicable time limits prescribed in subsection (a)(2) of this

Copyright © 2024 Michael P. Malloy. All rights reserved.

section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe;

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus. ...

(d) Exemption of company controlling one bank prior to July 1, 1968

To the extent that such action would not be substantially at variance with the purposes of this chapter and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total inter- ests and so small in relation to the bank-ing market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) Divestiture of nonexempt shares

With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a) of this section. Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

(f) Certain companies not treated as bank holding companies

(1) In general

Except as provided in paragraph (9), any company which--

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before August 10, 1987,

shall not be treated as a bank holding company for purposes of this chapter solely by virtue of such company's control of such institution.

(2) Loss of exemption

Subject to paragraph (3), a company

Copyright © 2024 Michael P. Malloy. All rights reserved.

described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if--

(A) such company directly or indirectly--

(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection) after March 5, 1987; or

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than--

(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(IV) shares held in an account solely for trading purposes;

(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(VI) loans or other accounts receivable acquired in the normal course of business;

(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

(IX) shares of a savings association held by any insurance company, as defined in section 80a-2(a)(17) of Title 15, except as provided in paragraph (11);

(X) shares issued in a qualified stock issuance under section 1467a(q) of this title; and

(XI) assets that are derived from, or incidental to, activities in which institutions described in subparagraph (F) or (H) of section 1841(c)(2) are permitted to engage;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association;

(B) any bank subsidiary of such company--

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

(ii) engages in the business of making commercial loans (except that, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

(C) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in the account of the bank at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).

(3) Permissible Overdrafts Described.--For purposes of paragraph (2)(C), an overdraft is described in this paragraph if--

(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

(B) such overdraft--

Copyright © 2024 Michael P. Malloy. All rights reserved.

(i) is permitted or incurred on behalf of an affiliate that is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations that are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

(C) such overdraft--

(i) is permitted or incurred by, or on behalf of, an affiliate in connection with an activity that is financial in nature or incidental to a financial activity; and

(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a bank that is a member of the Federal Reserve System, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a bank that is not a member of the Federal Reserve System.

(4) Divestiture in Case of Loss of Exemption.--If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has--

(A) either--

(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity. ...

(g) Limitations on certain banks

(1) In general

Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not--

(A) engage in any activity after August 10, 1987, which would have caused such institution to be a bank (as defined in section 1841(c) of this title, as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) Limitations cease to apply under certain circumstances

The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 1842(d) of this title if--

(A) an application for such acquisition were filed under section 1842(a) of this title; and

(B) such bank were treated as an additional bank (under section 1842(d) of this title).

(h) Tying provisions

(1) Applicable to certain exempt institutions and parent companies

An institution described in subparagraph (D), (F), (G), or (H) of section 1841(c)(2) of this title shall be treated as a bank, and a company that controls such an institution shall be treated as a bank

Copyright © 2024 Michael P. Malloy. All rights reserved.

holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. §§ 1971 *et seq*.] and section 22(h) of the Federal Reserve Act [12 U.S.C. § 375b] and any regulation prescribed under any such section.

(2) Applicable with respect to certain transactions

A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 1841(c)(2) of this title and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. § 1971 *et seq*.] in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

(i) Acquisition of savings associations

(1) In general

The Board may approve an application by any bank holding company under subsection (c)(8) of this section to acquire any savings association in accordance with the requirements and limitations of this section.

(2) Prohibition on tandem restrictions

In approving an application by a bank holding company to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 371 and 371c-1 of this title or any other applicable law.

(3) Acquisition of insolvent savings associations

(A) In general

Notwithstanding any other provision of this chapter, any qualified savings association which became a federally chartered stock company in December of 1986 and which is acquired by any bank holding company without Federal financial assistance after June 1, 1991, and before March 1, 1992, and any subsidiary of any such association, may after such acquisition continue to engage within the home State of the qualified savings association in insurance agency activities in which any Federal savings association (or any subsidiary thereof) may engage in accordance with the Home Owners' Loan Act [12 U.S.C. §§ 1461 *et seq*.] and regulations pursuant to such Act if the qualified savings association or subsidiary thereof was continuously engaged in such activity from June 1, 1991, to the date of the acquisition.

(B) Definition of qualified savings association

For purposes of this paragraph, the term "qualified savings association" means any savings association that--

(i) was chartered or organized as a savings association before June 1, 1991;

(ii) had, immediately before the acquisition of such association by the bank holding company referred to in subparagraph (A), negative tangible capital and total insured deposits in excess of $3,000,000,000; and

(iii) will meet all applicable regulatory capital requirements as a result of such acquisition.

(4) Solicitation of views

(A) Notice

Upon receiving any application or notice by a bank holding company to acquire, directly or indirectly, a savings association under subsection (c)(8) of this section, the Board shall solicit comments and recommendations from--

(i) the Comptroller of the Currency, with respect to the acquisition of a Federal savings association; and

(ii) the Federal Deposit Insurance Corporation, with respect to the acquisition of a State savings association.

(B) Comment period

Copyright © 2024 Michael P. Malloy. All rights reserved.

The comments and recommendations of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board not later than 30 days after the receipt by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, that an emergency exists that requires expeditious action).

(5) Examination

(A) Scope

The Board shall consult with the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that directly or indirectly controls a savings association.

(B) Access to inspection reports

Upon the request of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, the Board shall furnish the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company that directly or indirectly controls a savings association.

(6) Coordination of enforcement efforts

The Board and the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, shall cooperate in any enforcement action against any bank holding company that controls a savings association, if the relevant conduct involves such association.

(7) Repealed.

(8) Interstate acquisitions

(A) In general

The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this chapter if--

(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Exception

Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).

(j) Notice procedures for nonbanking activities

(1) General notice procedure

(A) Notice requirement

. . . [N]o bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) or in any complementary activity under subsection (k)(1)(B) of this section without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence. . . .

(i) Notice of disapproval

Any notice filed under this subsection shall be deemed to be approved by

Copyright © 2024 Michael P. Malloy. All rights reserved.

the Board unless, before the end of the 60-day period beginning on the date the Board receives a complete notice under subparagraph (A), the Board issues an order disapproving the transaction or activity and setting forth the reasons for disapproval.

(ii) Extension of period

The Board may extend the 60-day period referred to in clause (i) for an additional 30 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(iii) Determination of period in case of public hearing

In the event a hearing is requested or the Board determines that a hearing is warranted, the Board may extend the notice period provided in this subsection for such time as is reasonably necessary to conduct a hearing and to evaluate the hearing record. Such extension shall not exceed the 91-day period beginning on the date that the hearing record is complete.

(D) Approval before end of period

(i) In general

Any transaction or activity may commence before the expiration of any period for disapproval established under this paragraph if the Board issues a written notice of approval.

(ii) Shorter periods by regulation

The Board may prescribe regulations which provide for a shorter notice period with respect to particular activities or transactions.

(E) Extension of period

In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) or (a)(2) or in any complementary activity under subsection (k)(1)(B) of this section that has not been previously approved by regulation, the Board may extend the notice period under this subsection for an additional 90 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(2) General standards for review

(A) Criteria

In connection with a notice under this subsection, the Board shall consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.

(B) Grounds for disapproval

The Board may deny any proposed transaction or activity for which notice has been submitted pursuant to this subsection if the bank holding company submitting such notice neglects, fails, or refuses to furnish the Board all the information required by the Board.

(C) Conditional action

Nothing in this subsection limits the authority of the Board to impose conditions in connection with an action under this section. . . .

(k) Engaging in Activities That Are Financial in Nature.--

(1) In General.--Notwithstanding subsection (a), a financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order)--

(A) to be financial in nature or incidental to such financial activity; or

(B) is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of deposi-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tory institutions or the financial system generally.

(2) Coordination Between the Board and the Secretary of the Treasury.--

(A) Proposals Raised Before the Board.--

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

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

(B) Proposals Raised by the Treasury.--

(i) Treasury Recommendation.--The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

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

(3) Factors to Be Considered.--In determining whether an activity is financial in nature or incidental to a financial activity, the Board shall take into account--

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

(B) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

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

(D) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to--

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

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

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

(4) Activities That Are Financial in Nature.--For purposes of this subsection, the following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the fore-

Copyright © 2024 Michael P. Malloy. All rights reserved.

going, in any state.

(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(E) Underwriting, dealing in, or making a market in securities.

(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

(G) Engaging, in the United States, in any activity that--

(i) a bank holding company may engage in outside of the United States; and

(ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c)(13) (as in effect on the day before the date of the enactment of the Gramm-Leach-Bliley Act) to be usual in connection with the transaction of banking or other financial operations abroad.

(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if--

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by--

(I) a securities affiliate or an affiliate thereof; or

(II) an affiliate of an insurance company described in subparagraph (I)(ii) that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940, or an affiliate of such investment adviser;as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(iii) such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in clause (ii); and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section

Copyright © 2024 Michael P. Malloy. All rights reserved.

if--

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

(5) Actions Required.--

(A) In General.--The Board shall, by regulation or order, define, consistent with the purposes of this Act, the activities described in subparagraph (B) as financial in nature, and the extent to which such activities are financial in nature or incidental to a financial activity.

(B) Activities.--The activities described in this subparagraph are as follows:

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

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

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

(6) Required Notification.--

(A) In General.--A financial holding company that acquires any company or commences any activity pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired not later than 30 calendar days after commencing the activity or consummating the acquisition, as the case may be.

(B) Approval not required for certain financial activities

(i) In general

Except as provided in subsection (j) with regard to the acquisition of a savings association and clause (ii), a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

(ii) Exception

A financial holding company may not acquire a company, without the prior approval of the Board, in a transaction in which the total consolidated assets to be acquired by the financial holding company exceed $10,000,000,000.

(iii) Hart-Scott-Rodino filing requirement

Solely for purposes of section 18a(c)(8) of Title 15, the transactions subject to the requirements of this paragraph shall be treated as if the approval of the Board is not required.

(7) Merchant Banking Activities.--

(A) Joint Regulations.--The Board and the Secretary of the Treasury may issue such regulations implementing paragraph (4)(H), including limitations on transactions between depository institutions and companies controlled pursuant to such paragraph, as the Board and the Secretary jointly deem appropriate to assure compliance with the purposes and prevent evasions of this Act and the Gramm-Leach-Bliley Act and to protect depository institutions.

(B) Sunset of Restrictions on Mer-

Copyright © 2024 Michael P. Malloy. All rights reserved.

chant Banking Activities of Financial Subsidiaries.--The restrictions contained in paragraph (4)(H) on the ownership and control of shares, assets, or ownership interests by or on behalf of a subsidiary of a depository institution shall not apply to a financial subsidiary (as defined in [12 U.S.C. § 24a]) of a bank, if the Board and the Secretary of the Treasury jointly authorize financial subsidiaries of banks to engage in merchant banking activities pursuant to section 122 of the Gramm-Leach-Bliley Act.

(*l*) Conditions for Engaging in Expanded Financial Activities.--

(1) in General.--Notwithstanding subsection (k), (n), or (o), a bank holding company may not engage in any activity, or directly or indirectly acquire or retain shares of any company engaged in any activity, under subsection (k), (n), or (o), other than activities permissible for any bank holding company under subsection (c)(8), unless--

(A) all of the depository institution subsidiaries of the bank holding company are well capitalized;

(B) all of the depository institution subsidiaries of the bank holding company are well managed;

(C) the bank holding company is well capitalized and well managed; and

(D) the bank holding company has filed with the Board--

(i) a declaration that the company elects to be a financial holding company to engage in activities or acquire and retain shares of a company that were not permissible for a bank holding company to engage in or acquire before the enactment of the Gramm-Leach-Bliley Act; and

(ii) a certification that the company meets the requirements of subparagraphs (A) (B), and (C).

(2) CRA Requirement.-- Notwithstanding subsection (k) or (n) of this section, [12 U.S.C. § 24a], or section 46(a) of the Federal Deposit Insurance Act, the appropriate Federal banking agency shall prohibit a financial holding company or any insured depository institution from--

(A) commencing any new activity under subsection (k) or (n) of this section, [12 U.S.C. § 24a], or section 46(a) of the Federal Deposit Insurance Act; or

(B) directly or indirectly acquiring control of a company engaged in any activity under subsection (k) or (n) of this section, [12 U.S.C. § 24a], or section 46(a) of the Federal Deposit Insurance Act (other than an investment made pursuant to subparagraph (H) or (I) of subsection (k)(4), or section 122 of the Gramm-Leach-Bliley Act, or under section 46(a) of the Federal Deposit Insurance Act by reason of such section 122, by an affiliate already engaged in activities under any such provision);

if any insured depository institution subsidiary of such financial holding company, or the insured depository institution or any of its insured depository institution affiliates, has received in its most recent examination under the Community Reinvestment Act of 1977, a rating of less than "satisfactory record of meeting community credit needs".

(3) Foreign Banks.--For purposes of paragraph (1), the Board shall apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.

(m) Provisions Applicable to Financial Holding Companies That Fail to Meet Certain Requirements.--

(1) In General.--If the Board finds that--

(A) a financial holding company is engaged, directly or indirectly, in any activity under subsection (k), (n), or (o),

Copyright © 2024 Michael P. Malloy. All rights reserved.

other than activities that are permissible for a bank holding company under subsection (c)(8); and

(B) such financial holding company is not in compliance with the requirements of subsection (l)(1);

the Board shall give notice to the financial holding company to that effect, describing the conditions giving rise to the notice.

(2) Agreement to Correct Conditions Required.--Not later than 45 days after the date of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the financial holding company shall execute an agreement with the Board to comply with the requirements applicable to a financial holding company under subsection (l)(1).

(3) Board May Impose Limitations.--Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of that financial holding company or any affiliate of that company as the Board determines to be appropriate under the circumstances and consistent with the purposes of this Act.

(4) Failure to Correct.--If the conditions described in a notice to a financial holding company under paragraph (1) are not corrected within 180 days after the date of receipt by the financial holding company of a notice under paragraph (1), the Board may require such financial holding company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the discretion of the Board, either--

(A) to divest control of any subsidiary depository institution; or

(B) at the election of the financial holding company instead to cease to engage in any activity conducted by such financial holding company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible for a bank holding company under subsection (c)(8).

(5) Consultation.--In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies and authorities.

(n) Authority to Retain Limited Nonfinancial Activities and Affiliations.--

(1) In General.-- Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Gramm-Leach-Bliley Act may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if--

(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1999;

(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1999, and other activities permissible under this Act.

(2) Predominantly Financial.--For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to a financial activity under subsection (k) represent at least 85 percent of the consolidated annual gross revenues of the company.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(3) No Expansion of Grandfathered Commercial Activities Through Merger or Consolidation.--A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company that is engaged in any activity that the Board has not determined to be financial in nature or incidental to a financial activity under subsection (k), except this paragraph shall not apply with respect to a company that owns a broadcasting station licensed under title III of the Communications Act of 1934 and the shares of which are under common control with an insurance company since January 1, 1998, unless such company is acquired by, or otherwise becomes an affiliate of, a bank holding company that, at the time such acquisition or affiliation is consummated, is 1 of the 5 largest domestic bank holding companies (as determined on the basis of the consolidated total assets of such companies).

(4) Continuing Revenue Limitation on Grandfathered Commercial Activities.-- Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

(5) Cross Marketing Restrictions Applicable to Commercial Activities.--

(A) In General.--A depository institution controlled by a financial holding company shall not--

(i) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (k)(4); or

(ii) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in clause (i).

(B) Rule of Construction.--Subparagraph (A) shall not be construed as prohibiting an arrangement between a depository institution and a company owned or controlled pursuant to subparagraph (H) or (I) of subsection (k)(4) for the marketing of products or services through statement inserts or Internet websites if--

(i) such arrangement does not violate section 106 of the Bank Holding Company Act Amendments of 1970; and

(ii) the Board determines that the arrangement is in the public interest, does not undermine the separation of banking and commerce, and is consistent with the safety and soundness of depository institutions.

(6) Transactions with Nonfinancial Affiliates.--A depository institution controlled by a financial holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to this subsection.

(7) Sunset of Grandfather.--A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act. The Board may, upon application by a financial

Copyright © 2024 Michael P. Malloy. All rights reserved.

holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

(o) Regulation of Certain Financial Holding Companies.--Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of enactment of the Gramm-Leach-Bliley Act, may continue to engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of September 30, 1997, if--

(1) the holding company, or any subsidiary of the holding company, lawfully was engaged, directly or indirectly, in any of such activities as of September 30, 1997, in the United States;

(2) the attributed aggregate consolidated assets of the company held by the holding company pursuant to this subsection, and not otherwise permitted to be held by a financial holding company, are equal to not more than 5 percent of the total consolidated assets of the bank holding company, except that the Board may increase that percentage by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act; and

(3) the holding company does not permit--

(A) any company, the shares of which it owns or controls pursuant to this subsection, to offer or market any product or service of an affiliated depository institution; or

(B) any affiliated depository institution to offer or market any product or service of any company, the shares of which are owned or controlled by such holding company pursuant to this subsection.

§1844. Administration

(a) Registration of bank holding company

Within one hundred and eighty days after May 9, 1956, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this chapter. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. A declaration filed in accordance with section 4(*l*)(1)(C) [12 U.S.C. § 1843(*l*)(1)(C)] shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.

(b) Regulations and orders

The Board is authorized to issue such regulations and orders, including regulations and orders relating to the capital requirements for bank holding companies, as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof. In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction,

Copyright © 2024 Michael P. Malloy. All rights reserved.

consistent with the safety and soundness of the company.

(c) Reports and Examinations.--

(1) Reports.--

(A) In General.--The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to--

(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the bank holding company; and

(ii) compliance by the bank holding company or subsidiary with--

(I) this chapter;

(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provision of Federal law.

(B) Use of existing reports and other supervisory information

The Board shall, to the fullest extent possible, use--

(i) reports and other supervisory information that the bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(ii) externally audited financial statements of the bank holding company or subsidiary;

(iii) information otherwise available from Federal or State regulatory agencies; and

(iv) information that is otherwise required to be reported publicly.

(C) Availability

Upon the request of the Board, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).

(2) Examinations

(A) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to--

(i) inform the Board of--

(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

(II) the financial, operational, and other risks within the bank holding company system that may pose a threat to--

(aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or

(bb) the stability of the financial system of the United States; and

(III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and

(ii) monitor the compliance of the bank holding company and the subsidiary with--

(I) this chapter;

(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

(B) Use of reports to reduce examinations

For purposes of this paragraph, the Board shall, to the fullest extent possible, rely on--

(i) examination reports made by other Federal or State regulatory agencies relating to a bank holding company and any subsidiary of a bank holding company; and

(ii) the reports and other information required under paragraph (1).

(C) Coordination with other regulators

Copyright © 2024 Michael P. Malloy. All rights reserved.

The Board shall--

(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a bank holding company before commencing an examination of the subsidiary under this section; and

(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.

(3) Capital.--

(A) In General.--The Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company that--

(i) is not a depository institution; and

(ii) is--

(I) in compliance with the applicable capital requirements of its Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

(II) properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State; or

(III) is licensed as an insurance agent with the appropriate State insurance authority.

(B) Rule of Construction.--Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to--

(i) activities of a registered investment adviser other than with respect to investment advisory activities or activities incidental to investment advisory activities; or

(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

(C) Limitations on Indirect Action.--In developing, establishing, or assessing bank holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board may not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is--

(i) a bank holding company; or

(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

(4) Functional Regulation of Securities and Insurance Activities.--

(A) Securities Activities.--Securities activities conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by the Securities and Exchange Commission, and by relevant State securities authorities, as appropriate, subject to section 104 of the Gramm-Leach-Bliley Act [15 U.S.C. § 6701], to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(B) Insurance Activities.--Subject to section 104 of the Gramm-Leach-Bliley Act [15 U.S.C. § 6701], insurance agency and brokerage activities and activities as principal conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by a State insurance authority to the same extent as if they were conducted in a nondepository institution subsidiary of a

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank holding company.

(5) Definition.--For purposes of this subsection, the term 'functionally regulated subsidiary' means any company--

(A) that is not a bank holding company or a depository institution; and

(B) that is--

(i) a broker or dealer that is registered under the Securities Exchange Act of 1934;

(ii) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(iii) an investment company that is registered under the Investment Company Act of 1940;

(iv) an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or

(v) an entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities. . . .

(e) Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk

(1) Notwithstanding any other provision of this chapter, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this chapter or with the Financial Institutions Supervisory Act of 1966, at the election of the bank holding company--

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company; or

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court

Copyright © 2024 Michael P. Malloy. All rights reserved.

within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 1848 of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order. . . .

(g) Authority of State Insurance Regulator and the Securities and Exchange Commission.--

(1) In General.--Notwithstanding any other provision of law, any regulation, order, or other action of the Board that requires a bank holding company to provide funds or other assets to a subsidiary depository institution shall not be effective nor enforceable with respect to an entity described in subparagraph (A) if--

(A) such funds or assets are to be provided by--

(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

(ii) an affiliate of the depository institution that is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

(2) Notice to State Insurance Authority or SEC Required.--If the Board requires a bank holding company, or an affiliate of a bank holding company, that is an insurance company or a broker, dealer, investment company, or investment adviser described in paragraph (1)(A) to provide funds or assets to a depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

(3) Divestiture in Lieu of Other Action.--If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the depository institution.

(4) Conditions Before Divestiture.--During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date

Copyright © 2024 Michael P. Malloy. All rights reserved.

the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the depository institution, including restricting or prohibiting transactions between the depository institution and any affiliate of the institution, as are appropriate under the circumstances.

(5) Rule of Construction.--No provision of this subsection may be construed as limiting or otherwise affecting, except to the extent specifically provided in this subsection, the regulatory authority, including the scope of the authority, of any Federal agency or department with regard to any entity that is within the jurisdiction of such agency or department. . . .

§1846. Reservation of rights to States

(a) In general

No provision of this chapter shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof. . . .

§1847. Penalties

. . .

(c) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a bank holding company (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice 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 holding company (whether such date occurs before, on, or after August 9, 1989). . . .

§1848. Judicial review

Any party aggrieved by an order of the Board under this chapter may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

§1849. Saving provision

(a) General rule

Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) Antitrust review

(1) In general

The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of

Copyright © 2024 Michael P. Malloy. All rights reserved.

a proposed acquisition, merger, or consolidation transaction and, if the transaction also involves an acquisition under section 4, the Board shall also notify the Federal Trade Commission of such approval. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 1842 of this title on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, the standards applied by the court shall be identical with those that the Board is directed to apply under section 1842 of this title. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 1842 of this title in compliance with this chapter and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, but nothing in this chapter shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

(2) Section 1823(f) cases

(A) If--

(i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and

(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 1823(f) of this title and such acquisition is subject to the approval of the Board under section 1842 of this title,

the Corporation shall immediately notify the Board of such facts.

(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.

(c) Antitrust proceedings; Board and State banking agency as party; representation by counsel

In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 1842 of this title, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel. . . .

(e) Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966, with respect to merger transactions

Any court having pending before it on or after July 1, 1966, any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title shall apply the substantive rule of law set forth in section 1842 of this title.

(f) Definition of "antitrust laws"

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

§ 1850. Acquisition of subsidiary, nonbanking activity or business, and tying arrangement: Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 1842 of this title or to engage in an activity otherwise prohibited under chapter 22 of this title [12 U.S.C. § 1971 *et seq.*], a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 1848 of this title or as otherwise provided by law.

§ 1850a. Securities holding companies

(a) Definitions

In this section--

(1) the term “associated person of a securities holding company” means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

(2) the term “foreign bank” has the same meaning as in section 3101(7) of this title;

(3) the term “insured bank” has the same meaning as in section 1813 of this title;

(4) the term “securities holding company”--

(A) means--

(i) a person (other than a natural person) that owns or controls 1 or more

Copyright © 2024 Michael P. Malloy. All rights reserved.

brokers or dealers registered with the Commission; and

(ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is--

(i) a nonbank financial company supervised by the Board under title I;

(ii) an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or a savings association;

(iii) an affiliate of an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or an affiliate of a savings association;

(iv) a foreign bank, foreign company, or company that is described in section 3106(a) of this title;

(v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(vi) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term "supervised securities holding company" means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms "affiliate", "bank", "bank holding company", "company", "control", "savings association", and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(b) Supervision of a securities holding company not having a bank or savings association affiliate

(1) In general

A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

(2) Registration as a supervised securities holding company

(A) Registration

A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) Effective date

A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

(c) Supervision of securities holding companies

(1) Recordkeeping and reporting

(A) Recordkeeping and reporting required

Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding com-

Copyright © 2024 Michael P. Malloy. All rights reserved.

pany or affiliate with applicable provisions of law.

(B) Form and contents

(i) In general

Any record or report required to be made, furnished, or kept under this paragraph shall--

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) Contents

Records and reports required to be made, furnished, or kept under this paragraph may include--

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) Use of existing reports

(A) In general

The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) Availability

A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) Examination authority

(A) Focus of examination authority

The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Deference to other examinations

For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) Capital and risk management

(1) In general

The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

(2) Differentiation

In imposing standards under this subsection, the Board of Governors may differentiate among supervised securities holding companies on an individual basis,

Copyright © 2024 Michael P. Malloy. All rights reserved.

or by category, taking into consideration the requirements under paragraph (3).

(3) Content

Any standards imposed on a supervised securities holding company under this subsection shall take into account--

(A) the differences among types of business activities carried out by the supervised securities holding company;

(B) the amount and nature of the financial assets of the supervised securities holding company;

c (C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

(F) the importance of the supervised securities holding company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) Notice

A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

(e) Other provisions of law applicable to supervised securities holding companies

(1) Federal Deposit Insurance Act

Subsections (b), (c) through (s), and (u) of section 1818 of this title shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Bank Holding Company Act of 1956

Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

§1851. Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds

(a) In general

(1) Prohibition

Unless otherwise provided in this section, a banking entity shall not--

(A) engage in proprietary trading; or

(B) acquire or retain any equity,

Copyright © 2024 Michael P. Malloy. All rights reserved.

partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

(2) Nonbank financial companies supervised by the Board

Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

(b) Study and rulemaking

(1) Study

Not later than 6 months after July 21, 2010, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to--

(A) promote and enhance the safety and soundness of banking entities;

(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

(2) Rulemaking

(A) In general

Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

(B) Coordinated rulemaking

(i) Regulatory authority

The regulations issued under this paragraph shall be issued by--

(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 3106 of this title, any nonbank financial company supervised by the Board, and

Copyright © 2024 Michael P. Malloy. All rights reserved.

any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 5301 of this title; and

(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 5301 of this title.

(ii) Coordination, consistency, and comparability

In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

(iii) Council role

The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

(c) Effective date

(1) In general

Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of--

(A) 12 months after the date of the issuance of final rules under subsection (b); or

(B) 2 years after July 21, 2010.

(2) Conformance period for divestiture

A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant to this section or 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

(3) Extended transition for illiquid funds

(A) Application

The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

(B) Time limit on approval

The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

(4) Divestiture required

Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of--

(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

Copyright © 2024 Michael P. Malloy. All rights reserved.

(B) the date on which any extensions granted by the Board under paragraph (3) expire.

(5) Additional capital during transition period

Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

(6) Special rulemaking

Not later than 6 months after July 21, 2010, the Board shall issues rules to implement paragraphs (2) and (3).

(d) Permitted activities

(1) In general

Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as "permitted activities") are permitted:

(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662),[1] investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 24 of this title, or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program.

(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company di-

1. This is an apparent mistake in the enacted version of the DFA. The reference should probably read "section 103 of the Small Business Investment Act of 1958".

Copyright © 2024 Michael P. Malloy. All rights reserved.

rectly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if--

(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if--

(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name . . . ;

(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 1843(c) of this title, provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly

Copyright © 2024 Michael P. Malloy. All rights reserved.

controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 1843(c) of this title solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

(2) Limitation on permitted activities

(A) In general

No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity--

(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

(iii) would pose a threat to the safety and soundness of such banking entity; or

(iv) would pose a threat to the financial stability of the United States.

(B) Rulemaking

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

(3) Capital and quantitative limitations

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

(4) De minimis investment

(A) In general

A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of--

(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

(ii) making a de minimis investment.

(B) Limitations and restrictions on investments

(i) Requirement to seek other investors

A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

Copyright © 2024 Michael P. Malloy. All rights reserved.

(ii) Limitations on size of investments

Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall--

(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund;

(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

(iii) Capital

For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

(C) Extension

Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

(e) Anti-evasion

(1) Rulemaking

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rulemaking provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

(2) Termination of activities or investment

Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

(f) Limitations on relationships with hedge funds and private equity funds

(1) In general

No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 371c of this title, with the hedge fund or private equity fund, as if such banking entity and the

Copyright © 2024 Michael P. Malloy. All rights reserved.

affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

(2) Treatment as member bank

A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 371c-1 of this title, as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

(3) Permitted services

(A) In general

Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity has taken an equity, partnership, or other ownership interest, if--

(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v) are satisfied; and

(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

(B) Treatment of prime brokerage transactions

For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 371c-1 of this title as if the counterparty were an affiliate of the banking entity.

(4) Application to nonbank financial companies supervised by the Board

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

(g) Rules of construction

(1) Limitation on contrary authority

Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

(2) Sale or securitization of loans

Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

(3) Authority of Federal agencies and State regulatory authorities

Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

(h) Definitions

In this section, the following definitions shall apply:

(1) Banking entity

The term "banking entity" means any insured depository institution ..., any company that controls an insured depository institution, or that is treated as a

Copyright © 2024 Michael P. Malloy. All rights reserved.

bank holding company for purposes of section 3106 of this title, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term "insured depository institution" does not include an institution--

(A) that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not--

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 248a of this title; or

(II) exercise discount or borrowing privileges pursuant to section 461(b)(7) of this title. . . .

(2) Hedge fund; private equity fund

The terms "hedge fund" and "private equity fund" mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

(3) Nonbank financial company supervised by the Board

The term "nonbank financial company supervised by the Board" means a nonbank financial company supervised by the Board of Governors, as defined in section 5311 of this title.

(4) Proprietary trading

The term "proprietary trading", when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(5) Sponsor

The term to "sponsor" a fund means--

(A) to serve as a general partner, managing member, or trustee of a fund;

(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name. . . .

(6) Trading account

The term "trading account" means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in

Copyright © 2024 Michael P. Malloy. All rights reserved.

subsection (b)(2), determine.

(7) Illiquid fund

(A) In general

The term "illiquid fund" means a hedge fund or private equity fund that--

(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

(B) Hedge fund

For the purposes of this paragraph, the term "hedge fund" means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 80b-3(m) of Title 15.

CHAPTER 22--TYING ARRANGEMENTS

§ 1971. Definitions

As used in this chapter, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 1841 of this title. For purposes of this chapter only, the term "company", as used in section 1841 of this title, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department. For purposes of this section, a financial subsidiary of a national bank engaging in activities pursuant to section 5136A(a) of the Revised Statutes of the United States [12 U.S.C. § 24a(a)] shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.

§1972. Certain tying arrangements prohibited; correspondent accounts

(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement--

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company,

Copyright © 2024 Michael P. Malloy. All rights reserved.

other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may by regulation or order permit such exceptions to the foregoing prohibition and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title as it considers will not be contrary to the purposes of this chapter.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the meaning prescribed by the Board pursuant to section 375b of this title and the term "executive officer" shall have the same meaning given it under section 375a of this title.

(F) Civil money penalty

(i) First tier

Copyright © 2024 Michael P. Malloy. All rights reserved.

Any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who, violates any provision of this paragraph shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(ii) Second tier

Notwithstanding clause (i), any bank which, any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who--

(I)(aa) commits any violation described in clause (i);

(bb) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty;

(II) which violation, practice or breach--

(aa) is part of a pattern of misconduct;

(bb) causes or is likely to cause more than a minimal loss to such bank; or

(cc) 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.

(iii) Third tier

Notwithstanding clauses (i) and (ii), any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who--

(I) knowingly--

(aa) commits any violation described in clause (i);

(bb) engages in any unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty; and

(II) knowingly or recklessly causes a substantial loss to such bank 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 clause (iv) for each day during which such violation, practice or breach continues.

(iv) Maximum amounts of penalties for any violation described in clause (iii)

The maximum daily amount of any civil penalty which may be assessed pursuant to clause (iii) for any violation, practice or breach described in such clause is--

(I) in the case of any person other than a bank, an amount to not exceed $1,000,000; and

(II) in the case of a bank, an amount not to exceed the lesser of--

(aa) $1,000,000; or

(bb) 1 percent of the total assets of such bank.

(v) Assessment; etc.

Any penalty imposed under clause (i), (ii), or (iii) may be assessed and collected--

(I) in the case of a national bank, by the Comptroller of the Currency;

(II) in the case of a State member bank, by the Board; and

(III) in the case of an insured nonmember State bank, by the Federal Deposit Insurance Corporation,

in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section. . . .

(H) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdic-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tion and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice 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 bank (whether such date occurs before, on, or after August 9, 1989.)

§1975. Civil actions by persons injured; jurisdiction and venue; amount of recovery

Any person who is injured in his business or property by reason of anything forbidden in section 1972 of this title may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him, and the cost of suit, including a reasonable attorney's fee.

§1976. Injunctive relief for persons against threatened loss or damages; equitable proceedings; preliminary injunctions

Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of section 1972 of this title, under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

CHAPTER 30--COMMUNITY REINVESTMENT

§2903. Financial institutions; evaluation

(a) In general

In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall--

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

(b) Majority-owned institutions

In assessing and taking into account, under subsection (a) of this section, the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

(c) Financial Holding Company Requirement.--

(1) In General.--An election by a bank holding company to become a financial holding company under section 4 of the Bank Holding Company Act of 1956

Copyright © 2024 Michael P. Malloy. All rights reserved.

shall not be effective if--

(A) the Board finds that, as of the date the declaration of such election and the certification is filed by such holding company under section 4(l)(1)(C) of the Bank Holding Company Act of 1956, not all of the subsidiary insured depository institutions of the bank holding company had achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution; and

(B) the Board notifies the company of such finding before the end of the 30-day period beginning on such date.

(2) Limited Exclusions for Newly Acquired Insured Depository Institutions.--Any insured depository institution acquired by a bank holding company during the 12-month period preceding the date of the submission to the Board of the declaration and certification under section 4(l)(1)(C) of the Bank Holding Company Act of 1956 may be excluded for purposes of paragraph (1) during the 12-month period beginning on the date of such acquisition if--

(A) the bank holding company has submitted an affirmative plan to the appropriate Federal financial supervisory agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution; and

(B) the plan has been accepted by such agency.

(3) Definitions.--For purposes of this subsection, the following definitions shall apply:

(A) Bank Holding Company; Financial Holding Company.--The terms 'bank holding company' and 'financial holding company' have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956.

(B) Board.--The term 'Board' means the Board of Governors of the Federal Reserve System.

(C) Insured Depository Institution.--The term 'insured depository institution' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

(d) Low-cost education loans

In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency shall consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers.

§2906. Written evaluations

(a) Required

(1) In general

Upon the conclusion of each examination of an insured depository institution under section 2903 of this title, the appropriate Federal financial supervisory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low and moderate-income neighborhoods.

(2) Public and confidential sections

Each written evaluation required under paragraph (1) shall have a public section and a confidential section.

(b) Public section of report

(1) Findings and conclusions

(A) Contents of written evaluation

The public section of the written evaluation shall--

(i) state the appropriate Federal financial supervisory agency's conclusions for each assessment factor identified in the regulations prescribed by the Federal financial supervisory agencies to implement this chapter;

(ii) discuss the facts and data supporting such conclusions; and

(iii) contain the institution's rating and a statement describing the basis for

Copyright © 2024 Michael P. Malloy. All rights reserved.

the rating.

(B) Metropolitan area distinctions

The information required by clauses (i) and (ii) of subparagraph (A) shall be presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices.

(2) Assigned rating

The institution's rating referred to in paragraph (1)(C) shall be 1 of the following:

(A) "Outstanding record of meeting community credit needs".

(B) "Satisfactory record of meeting community credit needs".

(C) "Needs to improve record of meeting community credit needs".

(D) "Substantial noncompliance in meeting community credit needs".

Such ratings shall be disclosed to the public on and after July 1, 1990.

(c) Confidential section of report

(1) Privacy of named individuals

The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, or any person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(2) Topics not suitable for disclosure

The confidential section shall also contain any statements obtained or made by the appropriate Federal financial supervisory agency in the course of an examination which, in the judgment of the agency, are too sensitive or speculative in nature to disclose to the institution or the public.

(3) Disclosure to depository institution

The confidential section may be disclosed, in whole or part, to the institution, if the appropriate Federal financial supervisory agency determines that such disclosure will promote the objectives of this chapter. However, disclosure under this paragraph shall not identify a person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(d) Institutions with interstate branches

(1) State-by-State evaluation

In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the appropriate Federal financial supervisory agency shall prepare--

(A) a written evaluation of the entire institution's record of performance under this chapter, as required by subsections (a), (b), and (c) of this section; and

(B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such State under this chapter, as required by subsections (a), (b), and (c) of this section.

(2) Multistate metropolitan areas

In the case of a regulated financial institution that maintains domestic branches in 2 or more States within a multistate metropolitan area, the appropriate Federal financial supervisory agency shall prepare a separate written evaluation of the institution's record of performance within such metropolitan area under this chapter, as required by subsections (a), (b), and (c) of this section. If the agency prepares a written evaluation pursuant to this paragraph, the scope of the written evaluation required under paragraph (1)(B) shall be adjusted accordingly.

(3) Content of State level evaluation

A written evaluation prepared pursuant to paragraph (1)(B) shall--

(A) present the information required by subparagraphs (A) and (B) of subsection (b)(1) of this section separately for each metropolitan area in which the institution maintains 1 or more domestic

Copyright © 2024 Michael P. Malloy. All rights reserved.

branch offices and separately for the remainder of the nonmetropolitan area of the State if the institution maintains 1 or more domestic branch offices in such nonmetropolitan area; and

(B) describe how the Federal financial supervisory agency has performed the examination of the institution, including a list of the individual branches examined.

(e) Definitions

For purposes of this section the following definitions shall apply:

(1) Domestic branch

The term "domestic branch" means any branch office or other facility of a regulated financial institution that accepts deposits, located in any State.

(2) Metropolitan area

The term "metropolitan area" means any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area, as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency.

(3) State

The term "State" has the same meaning as in section 1813 of this title.

§2908. Small bank regulatory relief

(a) In General.--Except as provided in subsections (b) and (c), any regulated financial institution with aggregate assets of not more than $250,000,000 shall be subject to routine examination under this title--

(1) not more than once every 60 months for an institution that has achieved a rating of 'outstanding record of meeting community credit needs' at its most recent examination under section 804;

(2) not more than once every 48 months for an institution that has received a rating of 'satisfactory record of meeting community credit needs' at its most recent examination under section 804; and

(3) as deemed necessary by the appropriate Federal financial supervisory agency, for an institution that has received a rating of less than 'satisfactory record of meeting community credit needs' at its most recent examination under section 804.

(b) No Exception from CRA Examinations in Connection with Applications for Deposit Facilities.--A regulated financial institution described in subsection (a) shall remain subject to examination under this title in connection with an application for a deposit facility.

(c) Discretion.--A regulated financial institution described in subsection (a) may be subject to more frequent or less frequent examinations for reasonable cause under such circumstances as may be determined by the appropriate Federal financial supervisory agency.

CHAPTER 33--DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS

§3201. Definitions

As used in this chapter--

(1) the term "depository institution" means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(2) the term "depository holding company" means a bank holding company as defined in section 1841(a) of this title, a company which would be a bank holding company as defined in section 1841(a) of this title but for the exemption contained in subsection (a)(5)(F) thereof, or a savings and loan holding company as defined in section 1730a(a)(1)(D) of this title;

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an "affiliate of," or as "affiliated" with any other corporation means that--

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term "subsidiary" is defined in either section 1841(d) of this title in the case of a bank holding company or section 1730a(a)(1)(H) of this title in the case of a savings and loan holding company; or

(B) more than 25 percent of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 25 percent of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings banks on November 10, 1978, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, and is a bankers' bank, described in Paragraph Seventh of section 24 of this title; or

(E) one of the corporations is a bank, chartered under State law and insured by the Federal Deposit Insurance Corporation, the voting securities of which are held only by persons who are officers of other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: Provided, however, That in no case shall the voting securities of such corporation be held by such officers of other banks in excess of 6 per centum of the paid-in capital and 6 per centum of the surplus of such a bank.

(4) the term "management official" means an employee or officer with management functions, a director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000), a trustee of a business organization under the control of trustees, or any person who has a representative or nominee serving in any such capacity: Provided, That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank is specifically authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons, then, for the purposes of this chapter, such corporator, trustee, director, or other officer shall not be deemed to be a management official of such trust company: And provided further, That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank, then, for the purposes of this chapter, such management official shall not be deemed to be a management official of any such savings bank or coopera-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tive bank;

(5) the term "office" used with reference to a depository institution means either a principal office or a branch; and

(6) the term "appropriate Federal depository institutions regulatory agency" means, with respect to any depository institution or depository holding company, the agency referred to in section 3207 of this title in connection with such institution or company.

§3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited

A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either--

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than $50,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

§3203. Dual service of management official of $2,500,000,000 institution or holding company as management official of unaffiliated $1,500,000,000 institution or holding company prohibited

If a depository institution or a depository holding company has total assets exceeding $2,500,000,000 a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $1,500,000,000 or as a management official of any affiliate of such other institution. In order to allow for inflation or market changes, the appropriate Federal depository institutions regulatory agencies may, by regulation, adjust, as necessary, the amount of total assets required for depository institutions or depository holding companies under this section.

§3204. Exceptions

The prohibitions contained in sections 3202 and 3203 of this title shall not apply in the case of any one or more of the following or subsidiary thereof:

(1) A depository institution or depository holding company which has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function. . . .

(3) A credit union being served by a management official of another credit union. . . .

(5) A State-chartered savings and loan guaranty corporation.

(6) A Federal Home Loan Bank or any other bank organized specifically to serve depository institutions.

(7) A depository institution or a

Copyright © 2024 Michael P. Malloy. All rights reserved.

depository holding company which--

(A) is closed or is in danger of closing, as determined by the appropriate Federal depository institutions regulatory agency in accordance with regulations prescribed by such agency; and

(B) is acquired by another depository institution or depository holding company,

during the 5-year period beginning on the date of the acquisition of the depository institution or depository holding company described in subparagraph (A).

(8)(A) A diversified savings and loan holding company (as defined in section 1730a(a)(1)(F) of this title) with respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if--

(i) notice of the proposed dual service is given by such diversified savings and loan holding company to--

(I) the appropriate Federal depository institutions regulatory agency for such company; and

(II) the appropriate Federal depository institutions regulatory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director,

not less than 60 days before such dual service is proposed to begin; and

(ii) the proposed dual service is not disapproved by any such appropriate Federal depository institutions regulatory agency before the end of such 60- day period.

(B) Any appropriate Federal depository institutions regulatory agency may disapprove, under subparagraph (A)(ii), a notice of proposed dual service by any individual if such agency finds that--

(i) the dual service cannot be structured or limited so as to preclude the dual service's resulting in a monopoly or substantial lessening of competition in financial services in any part of the United States;

(ii) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.

(C) Any appropriate Federal depository institutions regulatory agency may, at any time after the end of the 60-day period referred to in subparagraph (A), require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstances occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.

(9) Any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act [12 U.S.C. § 1467a(a)(1)(A)] or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act) [12 U.S.C. § 1467a(a)(1)(D)] which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act [12 U.S.C. § 1467a(q)], except that this paragraph shall apply only with respect to service as a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Director of the Office of Thrift Supervision has determined that such service is consistent with the purposes of this chapter and the Home Owners' Loan Act [12 U.S.C. §§ 1461 *et seq*.].

Copyright © 2024 Michael P. Malloy. All rights reserved.

§3205. Management official in position prior to November 10, 1978

(a) Continuation of service

A person whose service in a position as a management official began prior to November 10, 1978, and who was not immediately prior to November 10, 1978, in violation of section 19 of Title 15 is not prohibited by section 3202 or section 3203 of this title from continuing to serve in that position. The appropriate Federal depository institutions regulatory agency may provide a reasonable period of time for compliance with this chapter, not exceeding fifteen months, after any change in circumstances which makes service described in the preceding sentence prohibited by this chapter, except that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 3202 or section 3203 of this title.

(b) Depository institution and diversified savings and loan holding company

Effective on November 10, 1978, a person who serves as a management official of a company which is not a depository institution or a depository holding company and as a management official of a depository institution or a depository holding company is not prohibited from continuing to serve as a management official of that depository institution or depository holding company as a result of that company which is not a depository institution or depository holding company becoming a diversified savings and loan holding company as that term is defined in section 1730a(a) of this title.

(c) Repealed. Pub.L. 104-208, Div. A, Title II, s 2210(b)(3), Sept. 30, 1996, 110 Stat. 3009-3410.

§3206. Administration and enforcement

This chapter shall be administered and enforced by--

(1) the Comptroller of the Currency with respect to national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation) and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, bank holding companies, and savings and loan holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),

(4) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National credit Union Administration, and

(5) upon referral by the agencies named in the foregoing paragraphs (1) through (4), the Attorney General shall have the authority to enforce compliance by any person with this chapter.

§3207. Rules and regulations

Regulations to carry out this chapter, including regulations that permit service by a management official that would otherwise be prohibited by section 3202 of this title or section 3203 of this title, if such service would not result in a monopoly or substantial lessening of competi-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tion, may be prescribed by --

(1) the Comptroller of the Currency with respect to national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies, and savings and loan holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),

(4) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National credit Union Administration.

§3208. Powers available to Attorney General for enforcement

(a) For the purpose of the exercise by the Attorney General of the enforcement functions of the Attorney General under section 3206(6) of this title, all of the functions and powers of the Attorney General under the Clayton Act [15 U.S.C. §§ 12 *et seq.*] are available to the Attorney General, irrespective of any jurisdictional tests in the Clayton Act, including the power to take enforcement actions in the same manner as if the violation had been a violation of the Clayton Act.

(b) All of the functions and powers of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice are available to the Attorney General or to such Assistant Attorney General to investigate possible violations under section 3206(6) of the title in the same manner as if such possible violations were possible violations of the Clayton Act [15 U.S.C. §§ 12 *et seq.*].

CHAPTER 40--INTERNATIONAL LENDING SUPERVISION

§3907. Capital adequacy

(a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate. Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to

Copyright © 2024 Michael P. Malloy. All rights reserved.

subsection (a) of this section may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 1818 of this title.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain [capital] at or above its required level as established pursuant to subsection (a) of this section.

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 1818(i) of this title to the same extent as an effective and outstanding order issued pursuant to section 1818(b) of this title which has become final.

(3)(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such banking institution, seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

TITLE 15. COMMERCE AND TRADE

CHAPTER 1--MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

§1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

§2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or

Copyright © 2024 Michael P. Malloy. All rights reserved.

conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

§18. Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition. . . .

CHAPTER 2A--SECURITIES AND TRUST INDENTURES

SUBCHAPTER I--DOMESTIC SECURITIES

§77b. Definitions; promotion of efficiency, competition, and capital formation

(a) Definitions

When used in this subchapter, unless the context otherwise requires–

(1) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-

Copyright © 2024 Michael P. Malloy. All rights reserved.

sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. . . .

§77c. Classes of securities under this subchapter

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities: . . .

(2) Any security . . . issued or guaranteed by any bank; . . . or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 80a-3(c)(3) of this title; . . . or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank. . . . For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940 [15 U.S.C. §§ 80a-1 *et seq.*]. . . .

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution. ...

§77q. Fraudulent interstate transactions

(a) Use of interstate commerce for purpose of fraud or deceit

It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) Use of interstate commerce for purpose of offering for sale

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in inter-

Copyright © 2024 Michael P. Malloy. All rights reserved.

state commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) Exemptions of section 77c not applicable to this section

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

(d) Limitation

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 78c(a)(78) of this title) shall be subject to the restrictions and limitations of section 77b-1(b) of this title.

CHAPTER 2B--SECURITIES EXCHANGES

§78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires--

. . .

(4) Broker

(A) In general

The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) Exception for certain bank activities

A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) Third party brokerage arrangements

The bank enters into a contractual or other written arrangement with a broker or dealer registered under this chapter under which the broker or dealer offers brokerage services on or off the premises of the bank if--

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage

Copyright © 2024 Michael P. Malloy. All rights reserved.

transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) Trust activities

The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and--

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) Permissible securities transactions

The bank effects transactions in--

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of Title 12, in conformity with section 78o-5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) Certain stock purchase plans

(I) Employee benefit plans

The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 1841 of Title 12), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) Dividend reinvestment plans

The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if--

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for

Copyright © 2024 Michael P. Malloy. All rights reserved.

programs for odd-lot holders or plans registered with the Commission.

(III) Issuer plans

The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if--

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(IV) Permissible delivery of materials

The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are--

(aa) comparable in scope or nature to that permitted by the Commission as of November 12, 1999; or

(bb) otherwise permitted by the Commission.

(v) Sweep accounts

The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 [15 U.S.C.A. § 80a-1 et seq.] that holds itself out as a money market fund.

(vi) Affiliate transactions

The bank effects transactions for the account of any affiliate of the bank (as defined in section 1841 of Title 12) other than--

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 1843(k)(4)(H) of Title 12.

(vii) Private securities offerings

The bank--

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(5) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after November 12, 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this chapter, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) Safekeeping and custody activities

(I) In general

The bank, as part of customary banking activities--

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) Exception for carrying broker activities

The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 78o(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) Identified banking products

The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act [15 U.S.C.A. § 78c note].

(x) Municipal securities

The bank effects transactions in municipal securities.

(xi) De minimis exception

The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) Execution by broker or dealer

The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless--

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that--

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) Fiduciary capacity

For purposes of subparagraph (B)(ii), the term “fiduciary capacity” means--

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) Exception for entities subject to section 78o(e) of this title

The term “broker” does not include a bank that--

(i) was, on the day before November 12, 1999, subject to section 78o(e) of this title; and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) Joint rulemaking required

The Commission and the Board of Governors of the Federal Reserve System

Copyright © 2024 Michael P. Malloy. All rights reserved.

shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) Dealer

(A) In general

The term "dealer" means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

(B) Exception for person not engaged in the business of dealing

The term "dealer" does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) Exception for certain bank activities

A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) Permissible securities transactions

The bank buys or sells--

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 24 of Title 12, in conformity with section 78o-5 of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) Investment, trustee, and fiduciary transactions

The bank buys or sells securities for investment purposes--

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) Asset-backed transactions

The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by--

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) Identified banking products

The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act [15 U.S.C.A. § 78c note].

(6) The term "bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 1462(5) of Title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 1462(4) of Title 12, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the currency pursuant to section 92a of Title 12, and which is

Copyright © 2024 Michael P. Malloy. All rights reserved.

supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this chapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph. . . .

§78j. Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange--

(a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Paragraph (1) of this subsection shall not apply to security futures products.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rules promulgated under subsection (b) of this section that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) of this section and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under section 77q(a) of this title and sections 78i, 78o, 78p, 78t, and 78u-1 of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities.

§78*l*. Registration requirements for securities

. . .

(i) Securities issued by banks

In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. § 1811 *et seq.*], the powers, functions, and duties vested in the Commission to administer and enforce this section and sections 78j-1, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations

Copyright © 2024 Michael P. Malloy. All rights reserved.

as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under this section and sections 78j-1, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, and 78p of this title, and sections 7241, 7242, 7243, 7244, 7261(b), 7262, 7264, and 7265 of this title, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of October 28, 1974, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

CHAPTER 2D--INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER I--INVESTMENT COMPANIES

§80a-2. Definitions

(a) When used in this subchapter, unless the context otherwise requires--

. . .

(5) "Bank" means (A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph. . . .

§80a-3. Definition of investment company

(a) Definitions

When used in this subchapter, "investment company" means any issuer which--

(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(2) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities,

Copyright © 2024 Michael P. Malloy. All rights reserved.

and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

As used in this section, "investment securities" includes all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies. ...

(c) Further exemptions

Notwithstanding subsection (a) of this section, none of the following persons is an investment company within the meaning of this subchapter:

. . .

(3) Any bank . . . ; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; or any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if--

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not--

(i) advertised; or

(ii) offered for sale to the general public; and

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

(4) Any person substantially all of whose business is confined to making small loans, industrial banking, or similar businesses. . . .

§80a-8. Registration of investment companies

(a) Notification of registration; effective date of registration

Any investment company organized or otherwise created under the laws of the United States or of a State may register for the purposes of this subchapter by filing with the Commission a notification of registration, in such form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An investment company shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) Registration statement; contents

Every registered investment company shall file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations, an original and such copies of a registration statement, in such form and containing such of the following information and documents as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors:

(1) a recital of the policy of the registrant in respect of each of the following types of activities, such recital consisting in each case of a statement whether the registrant reserves freedom of action to engage in activities of such type, and if such freedom of action is reserved, a statement briefly indicating, insofar as is practicable, the extent to which the registrant intends to engage therein:

(A) the classification and subclassifications, as defined in sections 80a-4 and

Copyright © 2024 Michael P. Malloy. All rights reserved.

80a-5 of this title, within which the registrant proposes to operate;

(B) borrowing money;

(C) the issuance of senior securities;

(D) engaging in the business of underwriting securities issued by other persons;

(E) concentrating investments in a particular industry or group of industries;

(F) the purchase and sale of real estate and commodities, or either of them;

(G) making loans to other persons; and

(H) portfolio turn-over (including a statement showing the aggregate dollar amount of purchases and sales of portfolio securities, other than Government securities, in each of the last three full fiscal years preceding the filing of such registration statement);

(2) a recital of all investment policies of the registrant, not enumerated in paragraph (1), which are changeable only if authorized by shareholder vote;

(3) a recital of all policies of the registrant, not enumerated in paragraphs (1) and (2), in respect of matters which the registrant deems matters of fundamental policy;

(4) the name and address of each affiliated person of the registrant; the name and principal address of every company, other than the registrant, of which each such person is an officer, director, or partner; a brief statement of the business experience for the preceding five years of each officer and director of the registrant; and

(5) the information and documents which would be required to be filed in order to register under the Securities Act of 1933 [15 U.S.C. § 77a *et seq.*] and the Securities Exchange Act of 1934 [15 U.S.C. § 78a *et seq.*], all securities (other than short-term paper) which the registrant has outstanding or proposes to issue.

(c) Alternative information

The Commission shall make provision, by permissive rules and regulations or order, for the filing of the following, or so much of the following as the Commission may designate, in lieu of the information and documents required pursuant to subsection (b) of this section:

(1) copies of the most recent registration statement filed by the registrant under the Securities Act of 1933 [15 U.S.C. § 77a *et seq.*] and currently effective under such Act, or if the registrant has not filed such a statement, copies of a registration statement filed by the registrant under the Securities Exchange Act of 1934 [15 U.S.C. § 78a *et seq.*] and currently effective under such Act;

(2) copies of any reports filed by the registrant pursuant to section 78m or 78o(d) of this title; and

(3) a report containing reasonably current information regarding the matters included in copies filed pursuant to paragraphs (1) and (2) of this subsection, and such further information regarding matters not included in such copies as the Commission is authorized to require under subsection (b) of this section. . . .

(e) Failure to file registration statement or omissions of material fact

If it appears to the Commission that a registered investment company has failed to file the registration statement required by this section or a report required pursuant to section 80a-29(a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a-33(b) of this title, the Commission shall notify such company by registered mail or by certified mail of the failure to file such registration statement or report, or of the respects in which such registration statement or report appears to be materially incomplete or misleading, as the case may be, and shall fix a date (in no event earlier than thirty days after the

Copyright © 2024 Michael P. Malloy. All rights reserved.

mailing of such notice) prior to which such company may file such registration statement or report or correct the same. If such registration statement or report is not filed or corrected within the time so fixed by the Commission or any extension thereof, the Commission, after appropriate notice and opportunity for hearing, and upon such conditions and with such exemptions as it deems appropriate for the protection of investors, may by order suspend the registration of such company until such statement or report is filed or corrected, or may by order revoke such registration, if the evidence establishes--

(1) that such company has failed to file a registration statement required by this section or a report required pursuant to section 80a-29(a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a-33(b) of this title; and

(2) that such suspension or revocation is in the public interest. . . .

SUBCHAPTER II--INVESTMENT ADVISERS

§80b-2. Definitions

(a) When used in this subchapter, unless the context otherwise requires--

. . .

(2) "Bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 2(4) of the Home Owners' Loan Act, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph. . . .

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956 [12 U.S.C. §§ 1841 *et seq.*] which is not an investment company, except that the term "investment adviser" includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser. . . .

(26) The term "separately identifiable department or division" of a bank means a unit--

Copyright © 2024 Michael P. Malloy. All rights reserved.

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940. ...

§80b-3. Registration of investment advisers

(a) Necessity of registration

. . . [I]t shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser. . . .

§80b-10a. Consultation

(a) Examination Results and Other Information.--

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access--

(A) with respect to the investment advisory activities of any--

(i) bank holding company or savings and loan holding company;

(ii) bank; or

(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

(B) in the case of a bank holding company or savings and loan holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, with respect to the investment advisory activities of such bank or bank holding company.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company or savings and loan holding company, bank, or separately identifiable department or division of a bank, which is registered under section 203 of this title.

(3) Notwithstanding any other provision of law, the Commission and the appropriate Federal banking agencies shall not be compelled to disclose any information provided under paragraph (1) or (2). Nothing in this paragraph shall authorize the Commission or such agencies to withhold information from Congress, or prevent the Commission or such agencies from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States, the Commission, or such agencies. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(b) Effect on Other Authority.--Nothing in this section shall limit in any respect the authority of the appropri-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ate Federal banking agency with respect to such bank holding company or savings and loan holding company (or affiliates or subsidiaries thereof), bank, or subsidiary, department, or division or a bank under any other provision of law.

(c) Definition.--For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as given in section 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813].

Chapter III -- Insurance

§6701. Operation of state law

(a) State Regulation of the Business of Insurance.--The Act entitled "An Act to express the intent of Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the "McCarran-Ferguson Act") remains the law of the United States.

(b) Mandatory Insurance Licensing Requirements.--No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e).

(c) Affiliations.--

(1) In General.--Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

(2) Insurance.--With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit--

(A) any State from--

(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition of, or a change or continuation of control of, an insurer domiciled in that State; and

(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State;

during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or

(C) any State from restricting a

Copyright © 2024 Michael P. Malloy. All rights reserved.

change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

(d) Activities.--

(1) In General.--Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

(2) Insurance Sales.--

(A) In General.--In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A. v. Nelson*, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.

(B) Certain State Laws Preserved.--Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by a depository institution, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that--

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term "services as an insurance agent or broker" does not include a referral by an unlicensed person of a customer or poten-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tial customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits--

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate--

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the credit worthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy--

(I) is not a deposit;

Copyright © 2024 Michael P. Malloy. All rights reserved.

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) Limitations.--

(i) OCC Deference.--Section 304(e) [15 U.S.C. § 6714] does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) Nondiscrimination.--Subsection (e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) Construction.--Nothing in this paragraph shall be construed--

(I) to limit the applicability of the decision of the Supreme Court in *Barnett Bank of Marion County N.A. v. Nelson*, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

(3) Insurance Activities Other than Sales.--State statutes, regulations, interpretations, orders, and other actions shall not be preempted under paragraph (1) to the extent that they--

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled "An Act to express the intent of Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the "McCarran-Ferguson Act");

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsec-

Copyright © 2024 Michael P. Malloy. All rights reserved.

tion (e).

(4) Financial Activities Other than Insurance.--No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that--

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f); and

(D) it--

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(e) Nondiscrimination.--Except as provided in any restrictions described in subsection (d)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action--

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

(f) Limitation.--Subsections (c) and (d) shall not be construed to affect--

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State,

Copyright © 2024 Michael P. Malloy. All rights reserved.

under the laws of such State--

(A) to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 203A of the Investment Advisers Act of 1940), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 203A); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

(g) Definitions.--For purposes of this section, the following definitions shall apply:

(1) Affiliate.--The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) Antitrust Laws.--The term "antitrust laws" has the meaning given the term in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act (to the extent that such section 5 relates to unfair methods of competition).

(3) Depository Institution.--The term "depository institution"--

(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(4) Insurer.--The term "insurer" means any person engaged in the business of insurance.

(5) State.--The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Subtitle A -- State Regulation of Insurance

§6711. Functional regulation of insurance

The insurance activities of any person (including a national bank exercising its power to act as agent under the eleventh undesignated paragraph of section 13 of the Federal Reserve Act) shall be functionally regulated by the States, subject to section 104.

§6712. Insurance underwriting in national banks

(a) In General.--Except as provided in section 303 [15 U.S.C. § 6713], a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) Authorized Products.--For the purposes of this section, a product is authorized if--

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide

Copyright © 2024 Michael P. Malloy. All rights reserved.

such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) Definition.--For purposes of this section, the term "insurance" means--

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which--

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers" compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is--

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal--

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(d) Rule of Construction.--For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

§6713. Title insurance activities of national banks and their affiliates

(a) General Prohibition.--No national bank may engage in any activity involving the underwriting or sale of title insurance.

(b) Nondiscrimination Parity Exception.--

(1) (In General.-- Notwithstanding

Copyright © 2024 Michael P. Malloy. All rights reserved.

any other provision of law (including section 104 of this Act), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) Coordination with "Wildcard" Provision.--A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) Grandfathering with Consistent Regulation.--

(1) In General.--Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before the date of the enactment of this Act.

(2) Insurance Affiliate.--In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) Insurance Subsidiary.--In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) "Affiliate" and "Subsidiary" Defined.--For purposes of this section, the terms "affiliate" and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(e) Rule of Construction.--No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before the date of the enactment of this Act and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

§6714. Expedited and equalized dispute resolution for federal regulators

(a) Filing in Court of Appeals.--In the case of a regulatory conflict between a State insurance regulator and a Federal regulator regarding insurance issues, including whether a State law, rule, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, the Federal or State regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) Expedited Review.--The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) Supreme Court Review.--Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals

Copyright © 2024 Michael P. Malloy. All rights reserved.

with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) Statute of Limitation.--No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of--

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) Standard of Review.--The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

§6715. Certain state affiliation laws preempted for insurance companies and affiliates

Except as provided in section 104(c)(2) [15 U.S.C. § 6701(c)(2)], no State may, by law, regulation, order, interpretation, or otherwise--

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a director indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

§6716. Interagency consultation

(a) Purpose.--It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance

Copyright © 2024 Michael P. Malloy. All rights reserved.

activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) Examination Results and Other Information.--

(1) Information of the Board.--Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) Banking Agency Information.--Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) State Insurance Regulator Information.--Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which--

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

(c) Consultation.--Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) Effect on Other Authority.--Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

(e) Confidentiality and Privilege.--

(1) Confidentiality.--The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or

Copyright © 2024 Michael P. Malloy. All rights reserved.

other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) Privilege.--The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) Definitions.--For purposes of this section, the following definitions shall apply:

(1) Appropriate Federal Banking Agency; Depository Institution.--The terms "appropriate Federal banking agency" and "depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) Board and Financial Holding Company.--The terms "Board" and "financial holding company" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

§6717. Definition of state

For purposes of this subtitle, the term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Subtitle B -- Redomestication of Mutual Insurers

§6731. General application

This subtitle shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

§6732. Redomestication of mutual insurers

(a) Redomestication.--A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) Resulting Domicile.--Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) Licenses Preserved.--The certificate of authority, agents" appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) Effectiveness of Outstanding Policies and Contracts.--

(1) In General.--All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be

Copyright © 2024 Michael P. Malloy. All rights reserved.

endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) Forms.--

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) Notice.--A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) Procedural Requirements.--No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) Approval by Board of Directors and Policyholders.--The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) Continued Voting Control by Policyholders; Review of Public Stock Offering.--After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) Award of Stock or Grant of Options to Officers and Directors.--During the applicable period provided for under the State law of the transferee domicile following completion of an initial public offering, or for a period of six months if no such applicable period is provided, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) Policyholder Rights.--Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) Fair and Equitable Treatment of Policyholders.--The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

Copyright © 2024 Michael P. Malloy. All rights reserved.

§6733. Effect on state laws restricting redomestication

(a) In General.--Unless otherwise permitted by this subtitle, State laws of any transferor domicile that conflict with the purposes and intent of this subtitle are preempted, including but not limited to--

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subtitle;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subtitle, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated; and

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) Differential Treatment Prohibited.--No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) Laws Prohibiting Operations.--If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer promptly following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to--

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed State in which the redomesticated insurer is doing business to determine the insurer's financial condition, if--

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordi-

Copyright © 2024 Michael P. Malloy. All rights reserved.

nated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in--

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 314(a);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

§6734. Other provisions

(a) Judicial Review.--The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(b) Severability.--If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances,shall not be affected thereby.

§6735. Definitions

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

(1) Court of Competent Jurisdiction.--The term "court of competent jurisdiction" means a court authorized pursuant to section 314(a) to adjudicate litigation arising under this subtitle.

(2) Domicile.--The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.

(3) Insurance Licensee.--The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) Institution.--The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) Licensed State.--The term "licensed State" means any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) Mutual Insurer.--The term "mutual insurer" means a mutual insurer organized under the laws of any State.

(7) Person.--The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(8) Policyholder.--The term "policyholder" means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) Redomesticated Insurer.--The term "redomesticated insurer" means a mutual insurer that has redomesticated pursuant to this subtitle.

(10) Redomesticating Insurer.--The term "redomesticating insurer" means a mutual insurer that is redomesticating pursuant to this subtitle.

(11) Redomestication or Transfer.--The term "redomestication" or "transfer" means the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subtitle.

(12) State Insurance Regulator.--The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(13) State Law.--The term "State law" means the statutes of any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) Transferee Domicile.--The term "transferee domicile" means the State to which a mutual insurer is redomesticating pursuant to this subtitle.

(15) Transferor Domicile.--The term "transferor domicile" means the State from which a mutual insurer is redomesticating pursuant to this subtitle.

Subtitle C -- National Association of Registered Agents and Brokers

§6751. National Association of Registered Agents and Brokers

(a) Establishment

There is established the National Association of Registered Agents and Brokers (referred to in this subchapter as the "Association").

(b) Status

The Association shall--

(1) be a nonprofit corporation;

(2) not be an agent or instrumentality of the Federal Government;

(3) be an independent organization that may not be merged with or into any other private or public entity; and

(4) except as otherwise provided in this subchapter, be subject to, and have all the powers conferred upon, a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-301.01 et seq.) or any successor thereto.

§6752. Purpose

The purpose of the Association shall be to provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulations, and preserving the rights of a State, pertaining to--

(1) licensing, continuing education, and other qualification requirements of insurance producers that are not members

Copyright © 2024 Michael P. Malloy. All rights reserved.

of the Association;

(2) resident or nonresident insurance producer appointment requirements;

(3) supervising and disciplining resident and nonresident insurance producers;

(4) establishing licensing fees for resident and nonresident insurance producers so that there is no loss of insurance producer licensing revenue to the State; and

(5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers.

§6753. Membership

(a) Eligibility

(1) In general

Any insurance producer licensed in its home State shall, subject to paragraphs (2) and (4), be eligible to become a member of the Association.

(2) Ineligibility for suspension or revocation of license

Subject to paragraph (3), an insurance producer is not eligible to become a member of the Association if a State insurance regulator has suspended or revoked the insurance license of the insurance producer in that State.

(3) Resumption of eligibility

Paragraph (2) shall cease to apply to any insurance producer if--

(A) the State insurance regulator reissues or renews the license of the insurance producer in the State in which the license was suspended or revoked, or otherwise terminates or vacates the suspension or revocation; or

(B) the suspension or revocation expires or is subsequently overturned by a court of competent jurisdiction.

(4) Criminal history record check required

(A) In general

An insurance producer who is an individual shall not be eligible to become a member of the Association unless the insurance producer has undergone a criminal history record check that complies with regulations prescribed by the Attorney General of the United States under subparagraph (K).

(B) Criminal history record check requested by home State

An insurance producer who is licensed in a State and who has undergone a criminal history record check during the 2-year period preceding the date of submission of an application to become a member of the Association, in compliance with a requirement to undergo such criminal history record check as a condition for such licensure in the State, shall be deemed to have undergone a criminal history record check for purposes of subparagraph (A).

(C) Criminal history record check requested by Association

(i) In general

The Association shall, upon request by an insurance producer licensed in a State, submit fingerprints or other identification information obtained from the insurance producer, and a request for a criminal history record check of the insurance producer, to the Federal Bureau of Investigation.

(ii) Procedures

The board of directors of the Association (referred to in this subchapter as the "Board") shall prescribe procedures for obtaining and utilizing fingerprints or other identification information and criminal history record information, including the establishment of reasonable fees to defray the expenses of the Association in connection with the performance of a criminal history record check and appropriate safeguards for maintaining confidentiality and security of the information. Any fees charged pursuant to this clause shall be separate and distinct from those charged by the Attorney General pursuant

Copyright © 2024 Michael P. Malloy. All rights reserved.

to subparagraph (I).

(D) Form of request

A submission under subparagraph (C)(i) shall include such fingerprints or other identification information as is required by the Attorney General concerning the person about whom the criminal history record check is requested, and a statement signed by the person authorizing the Attorney General to provide the information to the Association and for the Association to receive the information.

(E) Provision of information by Attorney General

Upon receiving a submission under subparagraph (C)(i) from the Association, the Attorney General shall search all criminal history records of the Federal Bureau of Investigation, including records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, that the Attorney General determines appropriate for criminal history records corresponding to the fingerprints or other identification information provided under subparagraph (D) and provide all criminal history record information included in the request to the Association.

(F) Limitation on permissible uses of information

Any information provided to the Association under subparagraph (E) may only--

(i) be used for purposes of determining compliance with membership criteria established by the Association;

(ii) be disclosed to State insurance regulators, or Federal or State law enforcement agencies, in conformance with applicable law; or

(iii) be disclosed, upon request, to the insurance producer to whom the criminal history record information relates.

(G) Penalty for improper use or disclosure

Whoever knowingly uses any information provided under subparagraph (E) for a purpose not authorized in subparagraph (F), or discloses any such information to anyone not authorized to receive it, shall be fined not more than $50,000 per violation as determined by a court of competent jurisdiction.

(H) Reliance on information

Neither the Association nor any of its Board members, officers, or employees shall be liable in any action for using information provided under subparagraph (E) as permitted under subparagraph (F) in good faith and in reasonable reliance on its accuracy.

(I) Fees

The Attorney General may charge a reasonable fee for conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association to the Attorney General.

(J) Rule of construction

Nothing in this paragraph shall be construed as--

(i) requiring a State insurance regulator to perform criminal history record checks under this section; or

(ii) limiting any other authority that allows access to criminal history records.

(K) Regulations

The Attorney General shall prescribe regulations to carry out this paragraph, which shall include--

(i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and

(ii) procedures providing a reasonable opportunity for an insurance producer to contest the accuracy of information regarding the insurance producer provided under subparagraph (E).

(L) Ineligibility for membership

(i) In general

The Association may, under reasonably consistently applied standards, deny membership to an insurance producer on the basis of criminal history record information provided under subparagraph (E),

Copyright © 2024 Michael P. Malloy. All rights reserved.

or where the insurance producer has been subject to disciplinary action, as described in paragraph (2).

(ii) Rights of applicants denied membership

The Association shall notify any insurance producer who is denied membership on the basis of criminal history record information provided under subparagraph (E) of the right of the insurance producer to--

(I) obtain a copy of all criminal history record information provided to the Association under subparagraph (E) with respect to the insurance producer; and

(II) challenge the denial of membership based on the accuracy and completeness of the information.

(M) Definition

For purposes of this paragraph, the term "criminal history record check" means a national background check of criminal history records of the Federal Bureau of Investigation.

(b) Authority to establish membership criteria

The Association may establish membership criteria that bear a reasonable relationship to the purposes for which the Association was established.

(c) Establishment of classes and categories of membership

(1) Classes of membership

The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, experience, or other qualifications.

(2) Business entities

The Association shall establish a class of membership and membership criteria for business entities. A business entity that applies for membership shall be required to designate an individual Association member responsible for the compliance of the business entity with Association standards and the insurance laws, standards, and regulations of any State in which the business entity seeks to do business on the basis of Association membership.

(3) Categories

(A) Separate categories for insurance producers permitted

The Association may establish separate categories of membership for insurance producers and for other persons or entities within each class, based on the types of licensing categories that exist under State laws.

(B) Separate treatment for depository institutions prohibited

No special categories of membership, and no distinct membership criteria, shall be established for members that are depository institutions or for employees, agents, or affiliates of depository institutions.

(d) Membership criteria

(1) In general

The Association may establish criteria for membership which shall include standards for personal qualifications, education, training, and experience. The Association shall not establish criteria that unfairly limit the ability of a small insurance producer to become a member of the Association, including imposing discriminatory membership fees.

(2) Qualifications

In establishing criteria under paragraph (1), the Association shall not adopt any qualification less protective to the public than that contained in the National Association of Insurance Commissioners (referred to in this subchapter as the "NAIC") Producer Licensing Model Act in effect as of January 12, 2015, and shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(3) Assistance from States

(A) In general

The Association may request a State

Copyright © 2024 Michael P. Malloy. All rights reserved.

to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

(B) Authorization of information sharing

A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing--

(i) the State to share information with the Association; and

(ii) the Association to receive the information.

(C) Rule of construction

Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

(4) Denial of membership

The Association may, based on reasonably consistently applied standards, deny membership to any State-licensed insurance producer for failure to meet the membership criteria established by the Association.

(e) Effect of membership

(1) Authority of Association members

Membership in the Association shall--

(A) authorize an insurance producer to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

(B) be the equivalent of a nonresident insurance producer license for purposes of authorizing the insurance producer to engage in the activities described in subparagraph (A) in any State where the member pays the licensing fee; and

(C) be the equivalent of a nonresident insurance producer license for the purpose of subjecting an insurance producer to all laws, regulations, provisions or other action of any State concerning revocation, suspension, or other enforcement action related to the ability of a member to engage in any activity within the scope of authority granted under this subsection and to all State laws, regulations, provisions, and actions preserved under paragraph (5).

(2) Violent Crime Control and Law Enforcement Act of 1994

Nothing in this subchapter shall be construed to alter, modify, or supercede any requirement established by section 1033 of Title 18.

(3) Agent for remitting fees

The Association shall act as an agent for any member for purposes of remitting licensing fees to any State pursuant to paragraph (1).

(4) Notification of action

(A) In general

The Association shall notify the States (including State insurance regulators) and the NAIC when an insurance producer has satisfied the membership criteria of this section. The States (including State insurance regulators) shall have 10 business days after the date of the notification in order to provide the Association with evidence that the insurance producer does not satisfy the criteria for membership in the Association.

(B) Ongoing disclosures required

On an ongoing basis, the Association shall disclose to the States (including State insurance regulators) and the NAIC a list of the States in which each member is authorized to operate. The Association

Copyright © 2024 Michael P. Malloy. All rights reserved.

shall immediately notify the States (including State insurance regulators) and the NAIC when a member is newly authorized to operate in one or more States, or is no longer authorized to operate in one or more States on the basis of Association membership.

(5) Preservation of consumer protection and market conduct regulation

(A) In general

No provision of this section shall be construed as altering or affecting the applicability or continuing effectiveness of any law, regulation, provision, or other action of any State, including those described in subparagraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subchapter related to market entry for nonresident insurance producers, and then only to the extent of the inconsistency.

(B) Preserved regulations

The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that--

(i) regulate market conduct, insurance producer conduct, or unfair trade practices;

(ii) establish consumer protections; or

(iii) require insurance producers to be appointed by a licensed or authorized insurer.

(f) Biennial renewal

Membership in the Association shall be renewed on a biennial basis.

(g) Continuing education

(1) In general

The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to the continuing education requirements under the licensing laws of a majority of the States.

(2) State continuing education requirements

A member may not be required to satisfy continuing education requirements imposed under the laws, regulations, provisions, or actions of any State other than the home State of the member.

(3) Reciprocity

The Association shall not require a member to satisfy continuing education requirements that are equivalent to any continuing education requirements of the home State of the member that have been satisfied by the member during the applicable licensing period.

(4) Limitation on the Association

The Association shall not directly or indirectly offer any continuing education courses for insurance producers.

(h) Probation, suspension and revocation

(1) Disciplinary action

The Association may place an insurance producer that is a member of the Association on probation or suspend or revoke the membership of the insurance producer in the Association, or assess monetary fines or penalties, as the Association determines to be appropriate, if--

(A) the insurance producer fails to meet the applicable membership criteria or other standards established by the Association;

(B) the insurance producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator;

(C) an insurance license held by the insurance producer has been suspended or revoked by a State insurance regulator; or

(D) the insurance producer has been convicted of a crime that would have resulted in the denial of membership pursuant to subsection (a)(4)(L)(i) at the time of application, and the Association has received a copy of the final disposition from a court of competent jurisdiction.

(2) Violations of Association standards

Copyright © 2024 Michael P. Malloy. All rights reserved.

The Association shall have the power to investigate alleged violations of Association standards.

(3) Reporting

The Association shall immediately notify the States (including State insurance regulators) and the NAIC when the membership of an insurance producer has been placed on probation or has been suspended, revoked, or otherwise terminated, or when the Association has assessed monetary fines or penalties.

(i) Consumer complaints

(1) In general

The Association shall--

(A) refer any complaint against a member of the Association from a consumer relating to alleged misconduct or violations of State insurance laws to the State insurance regulator where the consumer resides and, when appropriate, to any additional State insurance regulator, as determined by standards adopted by the Association; and

(B) make any related records and information available to each State insurance regulator to whom the complaint is forwarded.

(2) Telephone and other access

The Association shall maintain a toll-free number for purposes of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet webpage.

(3) Final disposition of investigation

State insurance regulators shall provide the Association with information regarding the final disposition of a complaint referred pursuant to paragraph (1)(A), but nothing shall be construed to compel a State to release confidential investigation reports or other information protected by State law to the Association.

(j) Information sharing

The Association may--

(1) share documents, materials, or other information, including confidential and privileged documents, with a State, Federal, or international governmental entity or with the NAIC or other appropriate entity referred to paragraphs (3) and (4), provided that the recipient has the authority and agrees to maintain the confidentiality or privileged status of the document, material, or other information;

(2) limit the sharing of information as required under this subchapter with the NAIC or any other non-governmental entity, in circumstances under which the Association determines that the sharing of such information is unnecessary to further the purposes of this subchapter;

(3) establish a central clearinghouse, or utilize the NAIC or another appropriate entity, as determined by the Association, as a central clearinghouse, for use by the Association and the States (including State insurance regulators), through which members of the Association may disclose their intent to operate in 1 or more States and pay the licensing fees to the appropriate States; and

(4) establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.

(k) Effective date

The provisions of this section shall take effect on the later of--

(1) the expiration of the 2-year period beginning on January 12, 2015; and

(2) the date of incorporation of the Association.

§6754. Board of directors

(a) Establishment

There is established a board of directors of the Association, which shall have authority to govern and supervise all activities of the Association.

(b) Powers

Copyright © 2024 Michael P. Malloy. All rights reserved.

The Board shall have such of the powers and authority of the Association as may be specified in the bylaws of the Association.

(c) Composition

(1) In general

The Board shall consist of 13 members who shall be appointed by the President, by and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, of whom--

(A) 8 shall be State insurance commissioners appointed in the manner provided in paragraph (2), 1 of whom shall be designated by the President to serve as the chairperson of the Board until the Board elects one such State insurance commissioner Board member to serve as the chairperson of the Board;

(B) 3 shall have demonstrated expertise and experience with property and casualty insurance producer licensing; and

(C) 2 shall have demonstrated expertise and experience with life or health insurance producer licensing.

(2) State insurance regulator representatives

(A) Recommendations

Before making any appointments pursuant to paragraph (1)(A), the President shall request a list of recommended candidates from the States through the NAIC, which shall not be binding on the President. If the NAIC fails to submit a list of recommendations not later than 15 business days after the date of the request, the President may make the requisite appointments without considering the views of the NAIC.

(B) Political affiliation

Not more than 4 Board members appointed under paragraph (1)(A) shall belong to the same political party.

(C) Former State insurance commissioners

(i) In general

If, after offering each currently serving State insurance commissioner an appointment to the Board, fewer than 8 State insurance commissioners have accepted appointment to the Board, the President may appoint the remaining State insurance commissioner Board members, as required under paragraph (1)(A), of the appropriate political party as required under subparagraph (B), from among individuals who are former State insurance commissioners.

(ii) Limitation

A former State insurance commissioner appointed as described in clause (i) may not be employed by or have any present direct or indirect financial interest in any insurer, insurance producer, or other entity in the insurance industry, other than direct or indirect ownership of, or beneficial interest in, an insurance policy or annuity contract written or sold by an insurer.

(D) Service through term

If a Board member appointed under paragraph (1)(A) ceases to be a State insurance commissioner during the term of the Board member, the Board member shall cease to be a Board member.

(3) Private sector representatives

In making any appointment pursuant to subparagraph (B) or (C) of paragraph (1), the President may seek recommendations for candidates from groups representing the category of individuals described, which shall not be binding on the President.

(4) State insurance commissioner defined

For purposes of this subsection, the term "State insurance commissioner" means a person who serves in the position in State government, or on the board, commission, or other body that is the primary insurance regulatory authority for the State.

(d) Terms

Copyright © 2024 Michael P. Malloy. All rights reserved.

(1) In general

Except as provided under paragraph (2), the term of service for each Board member shall be 2 years.

(2) Exceptions

(A) 1-year terms

The term of service shall be 1 year, as designated by the President at the time of the nomination of the subject Board members for--

(i) 4 of the State insurance commissioner Board members initially appointed under paragraph (1)(A), of whom not more than 2 shall belong to the same political party;

(ii) 1 of the Board members initially appointed under paragraph (1)(B); and

(iii) 1 of the Board members initially appointed under paragraph (1)(C).

(B) Expiration of term

A Board member may continue to serve after the expiration of the term to which the Board member was appointed for the earlier of 2 years or until a successor is appointed.

(C) Mid-term appointments

A Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the Board member was appointed shall be appointed only for the remainder of that term.

(3) Successive terms

Board members may be reappointed to successive terms.

(e) Initial appointments

The appointment of initial Board members shall be made no later than 90 days after January 12, 2015.

(f) Meetings

(1) In general

The Board shall meet--

(A) at the call of the chairperson;

(B) as requested in writing to the chairperson by not fewer than 5 Board members; or

(C) as otherwise provided by the bylaws of the Association.

(2) Quorum required

A majority of all Board members shall constitute a quorum.

(3) Voting

Decisions of the Board shall require the approval of a majority of all Board members present at a meeting, a quorum being present.

(4) Initial meeting

The Board shall hold its first meeting not later than 45 days after the date on which all initial Board members have been appointed.

(g) Restriction on confidential information

Board members appointed pursuant to subparagraphs (B) and (C) of subsection (c)(1) shall not have access to confidential information received by the Association in connection with complaints, investigations, or disciplinary proceedings involving insurance producers.

(h) Ethics and conflicts of interest

The Board shall issue and enforce an ethical conduct code to address permissible and prohibited activities of Board members and Association officers, employees, agents, or consultants. The code shall, at a minimum, include provisions that prohibit any Board member or Association officer, employee, agent or consultant from--

(1) engaging in unethical conduct in the course of performing Association duties;

(2) participating in the making or influencing the making of any Association decision, the outcome of which the Board member, officer, employee, agent, or consultant knows or had reason to know would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the person or a member of the immediate family of the person;

(3) accepting any gift from any person or entity other than the Association that is given because of the position held

Copyright © 2024 Michael P. Malloy. All rights reserved.

by the person in the Association;

(4) making political contributions to any person or entity on behalf of the Association; and

(5) lobbying or paying a person to lobby on behalf of the Association.

(i) Compensation

(1) In general

Except as provided in paragraph (2), no Board member may receive any compensation from the Association or any other person or entity on account of Board membership.

(2) Travel expenses and per diem

Board members may be reimbursed only by the Association for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter I of chapter 57 of Title 5, while away from home or regular places of business in performance of services for the Association.

§6755. Bylaws, standards, and disciplinary actions

(a) Adoption and amendment of bylaws and standards

(1) Procedures

The Association shall adopt procedures for the adoption of bylaws and standards that are similar to procedures under subchapter II of chapter 5 of Title 5 (commonly known as the `Administrative Procedure Act').

(2) Copy required to be filed

The Board shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, all proposed bylaws and standards of the Association, or any proposed amendment to the bylaws or standards of the Association, accompanied by a concise general statement of the basis and purpose of such proposal.

(3) Effective date

Any proposed bylaw or standard of the Association, and any proposed amendment to the bylaws or standards of the Association, shall take effect, after notice under paragraph (2) and opportunity for public comment, on such date as the Association may designate, unless suspended under section 6759(c) of this title.

(4) Rule of construction

Nothing in this section shall be construed to subject the Board or the Association to the requirements of subchapter II of chapter 5 of Title 5 (commonly known as the `Administrative Procedure Act').

(b) Disciplinary action by the Association

(1) Specification of charges

In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed, or to determine whether a member of the Association should be placed on probation (referred to in this section as a `disciplinary action') or whether to assess fines or monetary penalties, the Association shall bring specific charges, notify the member of the charges, give the member an opportunity to defend against the charges, and keep a record.

(2) Supporting statement

A determination to take disciplinary action shall be supported by a statement setting forth--

(A) any act or practice in which the member has been found to have been engaged;

(B) the specific provision of this subchapter or standard of the Association that any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for the sanction.

(3) Ineligibility of private sector representatives

Board members appointed pursuant to section 6754(c)(3) of this title may

Copyright © 2024 Michael P. Malloy. All rights reserved.

not--

(A) participate in any disciplinary action or be counted toward establishing a quorum during a disciplinary action; and

(B) have access to confidential information concerning any disciplinary action.

§6756. Powers

In addition to all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, the Association shall have the power to--

(1) establish and collect such membership fees as the Association finds necessary to impose to cover the costs of its operations;

(2) adopt, amend, and repeal bylaws, procedures, or standards governing the conduct of Association business and performance of its duties;

(3) establish procedures for providing notice and opportunity for comment pursuant to section 6755(a) of this title;

(4) enter into and perform such agreements as necessary to carry out the duties of the Association;

(5) hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of this subchapter, and determine their qualification;

(6) establish personnel policies of the Association and programs relating to, among other things, conflicts of interest, rates of compensation, where applicable, and qualifications of personnel;

(7) borrow money; and

(8) secure funding for such amounts as the Association determines to be necessary and appropriate to organize and begin operations of the Association, which shall be treated as loans to be repaid by the Association with interest at market rate.

§6757. Report by the Association

(a) In general

As soon as practicable after the close of each fiscal year, the Association shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subchapter, during such fiscal year.

(b) Financial statements

Each report submitted under subsection (a) with respect to any fiscal year shall include audited financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

§6758. Liability of the Association and the Board members, officers, and employees of the Association

(a) In general

The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) Liability of Board members, officers, and employees

No Board member, officer, or employee of the Association shall be personally liable to any person for any action

Copyright © 2024 Michael P. Malloy. All rights reserved.

taken or omitted in good faith in any matter within the scope of their responsibilities in connection with the Association.

§6759. Presidential oversight

(a) Removal of Board

If the President determines that the Association is acting in a manner contrary to the interests of the public or the purposes of this subchapter or has failed to perform its duties under this subchapter, the President may remove the entire existing Board for the remainder of the term to which the Board members were appointed and appoint, in accordance with section 6754 of this title and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, new Board members to fill the vacancies on the Board for the remainder of the terms.

(b) Removal of Board member

The President may remove a Board member only for neglect of duty or malfeasance in office.

(c) Suspension of bylaws and standards and prohibition of actions

Following notice to the Board, the President, or a person designated by the President for such purpose, may suspend the effectiveness of any bylaw or standard, or prohibit any action, of the Association that the President or the designee determines is contrary to the purposes of this subtitle.

§6760. Relationship to State law

(a) Preemption of State laws

State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted to the extent provided in subsection (b).

(b) Prohibited actions

(1) In general

No State shall--

(A) impede the activities of, take any action against, or apply any provision of law or regulation arbitrarily or discriminatorily to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(B) impose any requirement upon a member of the Association that it pay fees different from those required to be paid to that State were it not a member of the Association; or

(C) impose any continuing education requirements on any nonresident insurance producer that is a member of the Association.

(2) States other than a home State

No State, other than the home State of a member of the Association, shall--

(A) impose any licensing, personal or corporate qualifications, education, training, experience, residency, continuing education, or bonding requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership;

(B) impose any requirement upon a member of the Association that it be licensed, registered, or otherwise qualified to do business or remain in good standing in the State, including any requirement that the insurance producer register as a foreign company with the secretary of state or equivalent State official;

(C) require that a member of the Association submit to a criminal history record check as a condition of doing business in the State; or

(D) impose any licensing, registration, or appointment requirements upon a member of the Association, or require a member of the Association to be authorized to operate as an insurance producer, in order to sell, solicit, or negotiate insur-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ance for commercial property and casualty risks to an insured with risks located in more than one State, if the member is licensed or otherwise authorized to operate in the State where the insured maintains its principal place of business and the contract of insurance insures risks located in that State.

(3) Preservation of State disciplinary authority

Nothing in this section may be construed to prohibit a State from investigating and taking appropriate disciplinary action, including suspension or revocation of authority of an insurance producer to do business in a State, in accordance with State law and that is not inconsistent with the provisions of this section, against a member of the Association as a result of a complaint or for any alleged activity, regardless of whether the activity occurred before or after the insurance producer commenced doing business in the State pursuant to Association membership.

§ 6761. Coordination with Financial Industry Regulatory Authority

The Association shall coordinate with the Financial Industry Regulatory Authority in order to ease any administrative burdens that fall on members of the Association that are subject to regulation by the Financial Industry Regulatory Authority, consistent with the requirements of this subchapter and the Federal securities laws.

§6762. Right of action

(a) Right of action

Any person aggrieved by a decision or action of the Association may, after reasonably exhausting available avenues for resolution within the Association, commence a civil action in an appropriate United States district court, and obtain all appropriate relief.

(b) Association interpretations

In any action under subsection (a), the court shall give appropriate weight to the interpretation of the Association of its bylaws and standards and this subchapter.

§6763. Federal funding prohibited

The Association may not receive, accept, or borrow any amounts from the Federal Government to pay for, or reimburse, the Association for, the costs of establishing or operating the Association.

§6764. Definitions

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

(1) Business entity

The term "business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(2) Depository institution

The term "depository institution" has the meaning as in section 1813 of Title 12.

(3) Home State

The term "home State" means the State in which the insurance producer maintains its principal place of residence or business and is licensed to act as an insurance producer.

(4) Insurance

The term "insurance" means any product, other than title insurance or bail bonds, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(5) Insurance producer

The term "insurance producer" means any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates

Copyright © 2024 Michael P. Malloy. All rights reserved.

policies of insurance or offers advice, counsel, opinions or services related to insurance.

(6) Insurer

The term "insurer" has the meaning as in section 313(e)(2)(B) of Title 31.

(7) Principal place of business

The term "principal place of business" means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

(8) Principal place of residence

The term "principal place of residence" means the State in which an insurance producer resides for the greatest number of days during a calendar year.

(9) State

The term "State" includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(10) State law

(A) In general

The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(B) Laws applicable in the District of Columbia

A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.

Chapter V -- Privacy

Subtitle A -- Disclosure of Nonpublic Personal Information

§6801. Protection of nonpublic personal information

(a) Privacy Obligation Policy.--It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial Institutions Safeguards.--In furtherance of the policy in subsection (a), each agency or authority described in section 505(a) [15 U.S.C. § 6805], other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards--

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

§6802. Obligations with respect to disclosures of personal information

(a) Notice Requirements.--Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal

Copyright © 2024 Michael P. Malloy. All rights reserved.

information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503 [15 U.S.C. § 6803].

(b) Opt Out.--

(1) In General.--A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless--

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) Exception.--This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504 [15 U.S.C. § 6804], if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on Reuse of Information.--Except as otherwise provided in this subtitle, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the Sharing of Account Number Information for Marketing Purposes.--A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) General Exceptions.--Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information--

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with--

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction

Copyright © 2024 Michael P. Malloy. All rights reserved.

therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including the Bureau of Consumer Financial Protection[,] a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act, or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

§6803. Disclosure of institution privacy policy

(a) Disclosure Required.--At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504 [15 U.S.C. § 6804], of such financial institution's policies and practices with respect to--

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502 [15 U.S.C. § 6802], including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

(b) REGULATIONS.--Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 504 [15 U.S.C. § 6804].

(c) Information to Be Included.--The disclosure required by subsection (a) shall include--

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 502 of this subtitle, and includ-

Copyright © 2024 Michael P. Malloy. All rights reserved.

ing--

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501 [15 U.S.C. § 6801]; and

(4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

(d) EXEMPTION FOR CERTIFIED PUBLIC ACCOUNTANTS.--

(1) IN GENERAL.--The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is--

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) LIMITATION.--Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) DEFINITIONS.--For purposes of this subsection, the term 'State' means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) MODEL FORMS.–

(1) IN GENERAL.--The agencies referred to in section 504(a)(1) shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) FORMAT.--A model form developed under paragraph (1) shall–

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) TIMING.--A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after the date of enactment of this subsection.

(4) SAFE HARBOR.--Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section. . . .

§6804. Rulemaking

(a) Regulatory Authority.--

(1) Rulemaking

(A) In general

Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to their

Copyright © 2024 Michael P. Malloy. All rights reserved.

respective jurisdiction under section 6805 of this title (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 6801 of this title.

(B) CFTC

The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 7b-2 of Title 7.

(C) Federal Trade Commission authority

Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to any financial institution that is a person described in section 5519(a) of Title 12.

(D) Rule of construction

Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subchapter.

(2) Coordination, consistency, and comparability

Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, [with] representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of Title 5.

(b) Authority to grant exceptions

The regulations prescribed under subsection (a) of this section may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.

§6805. Enforcement

(a) In General.--Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818], by the appropriate Federal banking agency, as defined in section 1813(q) of Title 12, in the case of--

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act, and bank holding companies and their nonbank subsidiaries or affiliates

Copyright © 2024 Michael P. Malloy. All rights reserved.

(except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act, by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940, by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940, by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of this Act [15 U.S.C. § 6701].

(7) Under the Federal Trade Commission Act, by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subchapter, but not with respect to the standards under section 6801 of this title.

(b) Enforcement of Section 501.--

(1) In General.--Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, shall implement the standards prescribed under section 501(b) [15 U.S.C. § 6801(b)] in the same manner, to the extent practicable, as standards prescribed pursuant to section 39(a) of the Federal Deposit Insurance Act are implemented pursuant to such section.

(2) Exception.--The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 501(b) by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) Absence of State Action.--If a State insurance authority fails to adopt regulations to carry out this subtitle, such State shall not be eligible to override, pursuant to section 47(g)(2)(B)(iii) of the Federal Deposit Insurance Act, the insurance customer protection regulations prescribed by a Federal banking agency under section 47(a) of such Act.

(d) Definitions.--The terms used in subsection (a)(1) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the same meaning as given in section 1(b) of the International Banking Act of 1978. . . .

Copyright © 2024 Michael P. Malloy. All rights reserved.

§6807. Relation to state laws

(a) In General.--This subtitle and the amendments made by this subtitle shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) Greater Protection under State Law.--For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle and the amendments made by this subtitle, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under section 505(a) of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party. . . .

§6809. Definitions

As used in this subtitle:

(1) Federal Banking Agency.--The term "Federal banking agency" has the same meaning as given in section 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813].

(2) Federal Functional Regulator.--The term "Federal functional regulator" means--

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board; and

(F) the Securities and Exchange Commission.

(3) Financial Institution.--

(A) In General.--The term "financial institution" means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. § 1843(k)].

(B) Persons Subject to CFTC Regulation.--Notwithstanding subparagraph (A), the term "financial institution" does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(C) Farm Credit Institutions.-- Notwithstanding subparagraph (A), the term "financial institution" does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.

(D) Other Secondary Market Institutions.--Notwithstanding subparagraph (A), the term "financial institution" does not include institutions chartered by Congress specifically to engage in transactions described in section 502(e)(1)(C) [15 U.S.C. § 6802], as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) Nonpublic Personal Information.--

(A) The term "nonpublic personal information" means personally identifiable financial information--

(i) provided by a consumer to a financial institution;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by the financial institution.

Copyright © 2024 Michael P. Malloy. All rights reserved.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 504 [15 U.S.C. § 6804].

(C) Notwithstanding subparagraph (B), such term--

(i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but

(ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

(5) Nonaffiliated Third Party.-- The term "nonaffiliated third party" means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) Affiliate.--The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(7) Necessary to Effect, Administer, or Enforce.--The term "as necessary to effect, administer, or enforce the transaction" means--

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes--

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with--

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) State Insurance Authority.--The term "State insurance authority" means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) Consumer.--The term "consumer"

Copyright © 2024 Michael P. Malloy. All rights reserved.

means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) Joint Agreement.--The term "joint agreement" means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 504 [15 U.S.C. § 6804].

(11) Customer Relationship.--The term "time of establishing a customer relationship" shall be defined by the regulations prescribed under section 504 [15 U.S.C. § 6804], and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.

Copyright © 2024 Michael P. Malloy. All rights reserved.