

title 26 sections 42, 414; title 29 section 1134; title 31 sections 5312, 5321, 5326; title 42 sections 669a, 5318a, 9601.

## **§ 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—

(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 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 noninsured depository institution with an insured depository institution, shall continue as an insured depository institution.

(Sept. 21, 1950, ch. 967, §2[4], 64 Stat. 875; Pub. L. 97-320, title I, §113(c), Oct. 15, 1982, 96 Stat. 1473; Pub. L. 101-73, title II, §§201(a), 205, Aug. 9, 1989, 103 Stat. 187, 194; Pub. L. 102-242, title I, §115(b), Dec. 19, 1991, 105 Stat. 2249; Pub. L. 102-550, title XVI, §1603(b)(6), Oct. 28, 1992, 106 Stat. 4079.)

#### **PRIOR PROVISIONS**

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

#### **AMENDMENTS**

1992—Subsec. (b). Pub. L. 102-550 amended directory language of Pub. L. 102-242, §115(b). See 1991 Amendment note below.

1991—Subsec. (b). Pub. L. 102-242, §115(b), as amended by Pub. L. 102-550, §1603(b)(6), amended subsec. (b) generally, substituting present provisions for provisions which related to certification by other banking agencies.

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

Subsec. (a). Pub. L. 101-73, §205(1), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and substituted “Each bank” for “Every bank”, and added par. (2).

Subsec. (b). Pub. L. 101-73, §205(2)(A), (B), inserted after first sentence “Any application or notice for membership or to commence or resume business shall be promptly provided by the appropriate Federal banking agency to the Corporation and the Corporation shall have a reasonable period of time to provide comments on such application or notice. Any comments submitted by the Corporation to the appropriate Federal banking agency shall be considered by such agency.” and struck out at end “A State bank, resulting from the conversion of an insured national bank, shall continue as an insured bank. A State bank, resulting from the merger or consolidation of insured banks, or from the merger or consolidation of a noninsured bank or institution with an insured State bank, shall continue as an insured bank.”

Pub. L. 101-73, §205(2)(C), which directed the amendment of subsec. (b) by substituting “(b) CERTIFICATION BY OTHER BANKING AGENCIES.—Every national bank” for “(b) Every national bank” could not be executed literally because the original read “(b) Every national member bank”, but was executed by inserting the heading without changing the text to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 101-73, §205(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Every Federal savings bank which is chartered pursuant to section 1464(o) of this title, and which is engaged in the business of receiving deposits other than trust funds, shall be an insured bank from the time it is authorized to commence business, until such time as its accounts are insured by the Federal Savings and Loan Insurance Corporation.”

Subsec. (d). Pub. L. 101-73, §205(3), added subsec. (d). 1982—Subsec. (c). Pub. L. 97-320 added subsec. (c).

#### **EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

#### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1815, 1816, 1817, 1818 of this title.

## **§ 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.

#### **(2) Interim depository institutions**

In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open for business, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency.

#### **(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.

**(4) Review requirements**

In reviewing any application under this subsection, the Board of Directors shall consider the factors described in section 1816 of this title in determining whether to approve the application for insurance.

**(5) Notice of denial of application for insurance**

If the Board of Directors votes to deny any application for insurance by any depository institution, the Board of Directors shall promptly notify the appropriate Federal banking agency and, in the case of any State depository institution, the appropriate State banking supervisor of the denial of such application, giving specific reasons in writing for the Board of Directors' determination with reference to the factors described in section 1816 of this title.

**(6) Nondelegation requirement**

The authority of the Board of Directors to make any determination to deny any application under this subsection may not be delegated by the Board of Directors.

**(b) Foreign branch nonmember banks; matters considered**

Subject to the provisions of this chapter and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

- (1) the financial history and condition of the bank,
- (2) the adequacy of its capital structure,
- (3) its future earnings prospects,
- (4) the general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,
- (5) the risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund,
- (6) the convenience and needs of the community to be served by the branch,
- (7) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this chapter, and
- (8) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this chapter.

**(c) Protection to deposit insurance fund; surety bond, pledge of assets, etc.; injunction**

(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on deposit with the Corporation, or as the Corpora-

tion may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in accordance with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such additional requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the deposit insurance fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any United States district court, or United States court of any territory, within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5, and may not be made an issue in an action for an injunction under this paragraph.

**(d) Insurance fees****(1) Uninsured institutions****(A) In general**

Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund and the Savings Asso-

ciation Insurance Fund as required by section 1817 of this title.

**(B) Fee credited to appropriate fund**

The fee paid by the depository institution shall be credited to the Bank Insurance Fund if the depository institution becomes a Bank Insurance Fund member, and to the Savings Association Insurance Fund if the depository institution becomes a Savings Association Insurance Fund member.

**(C) Exception for certain depository institutions**

Any depository institution that becomes an insured depository institution by operation of section 1814(a) of this title shall not pay any fee.

**(2) Conversions**

**(A) In general**

**(i) Prior approval required**

No insured depository institution may participate in a conversion transaction without the prior approval of the Corporation.

**(ii) 5-year moratorium on conversions**

Except as provided in subparagraph (C), the Corporation may not approve any conversion transaction before the later of the end of the 5-year period beginning on August 9, 1989, or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund.

**(B) "Conversion transaction" defined**

For purposes of this paragraph, the term "conversion transaction" means—

(i) the change of status of an insured depository institution from a Bank Insurance Fund member to a Savings Association Insurance Fund member or from a Savings Association Insurance Fund member to a Bank Insurance Fund member;

(ii) the merger or consolidation of a Bank Insurance Fund member with a Savings Association Insurance Fund member;

(iii) the assumption of any liability by—

(I) any Bank Insurance Fund member to pay any deposits of a Savings Association Insurance Fund member; or

(II) any Savings Association Insurance Fund member to pay any deposits of a Bank Insurance Fund member;

(iv) the transfer of assets of—

(I) any Bank Insurance Fund member to any Savings Association Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Bank Insurance Fund member; or

(II) any Savings Association Insurance Fund member to any Bank Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Savings Association Insurance Fund member; and

(v) the transfer of deposits—

(I) from a Bank Insurance Fund member to a Savings Association Insurance Fund member; or

(II) from a Savings Association Insurance Fund member to a Bank Insurance Fund member;

in a transaction in which the deposit is received from a depositor at an insured depository institution for which a receiver has been appointed and the receiving insured depository institution is acting as agent for the Corporation in connection with the payment of such deposit to the depositor at the institution for which a receiver has been appointed.

**(C) Approval during moratorium**

The Corporation may approve a conversion transaction at any time if—

(i) the conversion transaction affects an insubstantial portion, as determined by the Corporation, of the total deposits of each depository institution participating in the conversion transaction;

(ii) the conversion occurs in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, and the Corporation determines that the estimated financial benefits to the Savings Association Insurance Fund or Resolution Trust Corporation equal or exceed the Corporation's estimate of loss of assessment income to such insurance fund over the remaining balance of the moratorium period established by subparagraph (A), and the Resolution Trust Corporation concurs in the Corporation's determination; or

(iii) the conversion occurs in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default and the Corporation determines that the estimated financial benefits to the Bank Insurance Fund equal or exceed the Corporation's estimate of the loss of assessment income to the insurance fund over the remaining balance of the moratorium period established by subparagraph (A).

**(D) Certain transfers deemed to affect insubstantial portion of total deposits**

For purposes of subparagraph (C)(i), any conversion transaction shall be deemed to affect an insubstantial portion of the total deposits of an insured depository institution, to the extent the aggregate amount of the total deposits transferred in such transaction and in all conversion transactions occurring after August 9, 1989, does not exceed 35 percent of the lesser of—

(i) the amount which is equal to the sum of—

(I) the total deposits of such insured depository institution on May 1, 1989; and

(II) the total amount of net interest credited to the depository institution's deposits during the period beginning on May 1, 1989, and ending on the date of the transfer of deposits in connection with such transaction; or

(ii) the amount which is equal to the total deposits of such insured depository

institution on the date of the transfer of deposits in connection with such transaction.

**(E) Exit and entrance fees**

Each insured depository institution participating in a conversion transaction shall pay—

(i) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Savings Association Insurance Fund member, an exit fee (in an amount to be determined and assessed in accordance with subparagraph (F)) which—

(I) shall be deposited in the Savings Association Insurance Fund; or

(II) shall be paid to the Financing Corporation, if the Secretary of the Treasury determines that the Financing Corporation has exhausted all other sources of funding for interest payments on the obligations of the Financing Corporation and orders that such fees be paid to the Financing Corporation;

(ii) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Bank Insurance Fund member, an exit fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)) which shall be deposited in the Bank Insurance Fund; and

(iii) an entrance fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)), except that—

(I) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Bank Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Bank Insurance Fund, and shall be paid to the Bank Insurance Fund; and

(II) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Savings Association Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Savings Association Insurance Fund, and shall be paid to the Savings Association Insurance Fund.

**(F) Assessment of exit and entrance fees**

**(i) Determination of amount of exit fees**

**(I) Conversions before January 1, 1997**

In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated before January 1, 1997, the amount of such fee shall be determined jointly by the Corporation and the Secretary of the Treasury.

**(II) Assessments after December 31, 1996**

In the case of any exit fee assessed under subparagraph (E)(i) for any con-

version transaction consummated after December 31, 1996, the amount of such fee shall be determined by the Corporation.

**(ii) Procedures**

The Corporation shall prescribe, by regulation, procedures for assessing any exit or entrance fee under subparagraph (E).

**(G) Charter conversion of SAIF members**

This subsection shall not be construed as prohibiting any savings association which is a Savings Association Insurance Fund member from converting to a bank charter during the period described in subparagraph (A)(ii) if the resulting bank remains a Savings Association Insurance Fund member.

**(3) Optional conversions subject to special rules on deposit insurance payments**

**(A) Conversions allowed**

Notwithstanding paragraph (2)(A), and subject to the requirements of this paragraph, any insured depository institution may participate in a transaction described in clause (ii), (iii), or (iv) of paragraph (2)(B) if the transaction is approved by the responsible agency under section 1828(c)(2) of this title.

**(B) Assessments on deposits attributable to former depository institution**

**(i) Assessments by SAIF**

In the case of any acquiring, assuming, or resulting depository institution which is a Bank Insurance Fund member, that portion of the deposits of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction) shall be treated as deposits which are insured by the Savings Association Insurance Fund.

**(ii) Assessments by BIF**

In the case of any acquiring, assuming, or resulting depository institution which is a Savings Association Insurance Fund member, that portion of the deposits of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction) shall be treated as deposits which are insured by the Bank Insurance Fund.

**(C) Determination of adjusted attributable deposit amount**

Except as provided in subparagraph (K), the adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period by any acquiring, assuming, or resulting depository institution in connection with a transaction under subparagraph (A) is the amount which is equal to the sum of—

(i) the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction);

(ii) the total of the amounts determined under clause (iii) for semiannual periods preceding the semiannual period for which the determination is being made under this subparagraph; and

(iii) the amount by which the sum of the amounts described in clauses (i) and (ii) would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the annual rate of growth of deposits of the acquiring, assuming, or resulting depository institution minus the amount of any deposits acquired through the acquisition, in whole or in part, of another insured depository institution.

**(D) Deposit of assessment**

That portion of any assessment under section 1817 of this title which—

(i) is determined in accordance with subparagraph (B)(i) shall be deposited in the Savings Association Insurance Fund; and

(ii) is determined in accordance with subparagraph (B)(ii) shall be deposited in the Bank Insurance Fund.

**(E) Conditions for approval, generally**

**(i) Information required**

An application to engage in any transaction under this paragraph shall contain such information relating to the factors to be considered for approval as the responsible agency may require, by regulation or by specific request, in connection with any particular application.

**(ii) No transfer of deposit insurance permitted**

This paragraph shall not be construed as authorizing transactions which result in the transfer of any insured depository institution's Federal deposit insurance from 1 Federal deposit insurance fund to the other Federal deposit insurance fund.

**(iii) Capital requirements**

A transaction described in this paragraph shall not be approved under section 1828(c)(2) of this title unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.

**(F) Certain interstate transactions**

A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A) unless the transaction would comply with the requirements of section 1842(d) of this title if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire.

**(G) Allocation of costs in event of default**

If any acquiring, assuming, or resulting depository institution is in default or danger

of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such acquiring, assuming, or resulting depository institution assessed by the Bank Insurance Fund and the Savings Association Insurance Fund, respectively, under subparagraph (B).

**(H) Subsequent approval of conversion transaction**

This paragraph shall cease to apply if—

(i) after the end of the moratorium period established by paragraph (2)(A), the Corporation approves an application by any acquiring, assuming, or resulting depository institution to treat the transaction described in subparagraph (A) as a conversion transaction; and

(ii) the acquiring, assuming, or resulting depository institution pays the amount of any exit and entrance fee assessed by the Corporation under subparagraph (E) of paragraph (2) with respect to such transaction.

**(I) "Acquiring, assuming, or resulting depository institution" defined**

For purposes of this paragraph, the term "acquiring, assuming, or resulting depository institution" means any insured depository institution which—

(i) results from any transaction described in paragraph (2)(B)(ii) and approved under this paragraph;

(ii) in connection with a transaction described in paragraph (2)(B)(iii) and approved under this paragraph, assumes any liability to pay deposits of another insured depository institution; or

(iii) in connection with a transaction described in paragraph (2)(B)(iv) and approved under this paragraph, acquires assets from any insured depository institution in consideration of the assumption of liability for any deposits of such institution.

**(J) Redesignated (I)**

**(K) Adjustment of adjusted attributable deposit amount**

The amount determined under subparagraph (C)(i) for deposits acquired by March 31, 1995, shall be reduced by 20 percent for purposes of computing the adjusted attributable deposit amount for the payment of any assessment for any semiannual period that begins after September 30, 1996 (other than the special assessment imposed under section 2702(a) of such Act), for a Bank Insurance Fund member bank that, as of June 30, 1995—

(i) had an adjusted attributable deposit amount that was less than 50 percent of the total deposits of that member bank; or

(ii) had an adjusted attributable deposit amount equal to less than 75 percent of the total assessable deposits of that member bank;

(II) had total assessable deposits greater than \$5,000,000,000; and

(III) was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the Bank Insurance Fund greater than the aggregate amount of deposits insured or treated as insured by the Savings Association Insurance Fund.

**(e) Liability of commonly controlled depository institutions**

**(1) In general**

**(A) Liability established**

Any insured depository institution shall be liable for any loss incurred by the Corporation, or any loss which the Corporation reasonably anticipates incurring, after August 9, 1989, in connection with—

(i) the default of a commonly controlled insured depository institution; or

(ii) any assistance provided by the Corporation to any commonly controlled insured depository institution in danger of default.

**(B) Payment upon notice**

An insured depository institution shall pay the amount of any liability to the Corporation under subparagraph (A) upon receipt of written notice by the Corporation in accordance with this subsection.

**(C) Notice required to be provided within 2 years of loss**

No insured depository institution shall be liable to the Corporation under subparagraph (A) if written notice with respect to such liability is not received by such institution before the end of the 2-year period beginning on the date the Corporation incurred the loss.

**(2) Amount of compensation; procedures**

**(A) Use of estimates**

When an insured depository institution is in default or requires assistance to prevent default, the Corporation shall—

(i) in good faith, estimate the amount of the loss the Corporation will incur from such default or assistance;

(ii) if, with respect to such insured depository institution, there is more than 1 commonly controlled insured depository institution, estimate the amount of each such commonly controlled depository institution's share of such liability; and

(iii) advise each commonly controlled depository institution of the Corporation's estimate of the amount of such institution's liability for such losses.

**(B) Procedures; immediate payment**

The Corporation, after consultation with the appropriate Federal banking agency and the appropriate State chartering agency, shall—

(i) on a case-by-case basis, establish the procedures and schedule under which any insured depository institution shall reimburse the Corporation for such institu-

tion's liability under paragraph (1) in connection with any commonly controlled insured depository institution; or

(ii) require any insured depository institution to make immediate payment of the amount of such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution.

**(C) Priority**

The liability of any insured depository institution under this subsection shall have priority with respect to other obligations and liabilities as follows:

**(i) Superiority**

The liability shall be superior to the following obligations and liabilities of the depository institution:

(I) Any obligation to shareholders arising as a result of their status as shareholders (including any depository institution holding company or any shareholder or creditor of such company).

(II) Any obligation or liability owed to any affiliate of the depository institution (including any other insured depository institution), other than any secured obligation which was secured as of May 1, 1989.

**(ii) Subordination**

The liability shall be subordinate in right and payment to the following obligations and liabilities of the depository institution:

(I) Any deposit liability (which is not a liability described in clause (i)(II)).

(II) Any secured obligation, other than any obligation owed to any affiliate of the depository institution (including any other insured depository institution) which was secured after May 1, 1989.

(III) Any other general or senior liability (which is not a liability described in clause (i)).

(IV) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (i)).

**(D) Adjustment of estimated payment**

**(i) Overpayment**

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly controlled depository institution its pro rata share of any overpayment.

**(ii) Underpayment**

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly controlled depository institution to the

Corporation and shall require each such commonly controlled depository institution to make payment of any additional liability to the Corporation.

**(3) Review**

**(A) Judicial**

Actions of the Corporation shall be reviewable pursuant to chapter 7 of title 5.

**(B) Administrative**

The Corporation shall prescribe regulations and establish administrative procedures which provide for a hearing on the record for the review of—

(i) the amount of any loss incurred by the Corporation in connection with any insured depository institution;

(ii) the liability of individual commonly controlled depository institutions for the amount of such loss; and

(iii) the schedule of payments to be made by such commonly controlled depository institutions.

**(4) Limitation on rights of private parties**

To the extent the exercise of any right or power of any person would impair the ability of any insured depository institution to perform such institution's obligations under this subsection—

(A) the obligations of such insured depository institution shall supersede such right or power; and

(B) no court may give effect to such right or power with respect to such insured depository institution.

**(5) Waiver authority**

**(A) In general**

The Corporation, in its discretion, may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.

**(B) Condition**

During the period any exemption granted to any insured depository institution under subparagraph (A) or (C) is in effect, such insured depository institution and all other insured depository institution affiliates of such depository institution shall comply fully with the restrictions of sections 371c and 371c-1 of this title without regard to section 371c(d)(1) of this title.

**(C) Limited partnerships**

**(i) In general**

The Corporation may, in its discretion, exempt any limited partnership and any affiliate of any limited partnership (other than any insured depository institution which is a majority owned subsidiary of such partnership) from the provisions of this subsection if such limited partnership or affiliate has filed a registration statement with the Securities and Exchange Commission on or before April 10, 1989, indicating that as of the date of such filing

such partnership intended to acquire 1 or more insured depository institutions.

**(ii) Review and notice**

Within 10 business days after the date of submission of any request for an exemption under this subparagraph together with such information as shall be reasonably requested by the Corporation, the Corporation shall make a determination on the request and shall so advise the applicant.

**(6) 5-year transition rule**

During the 5-year period beginning on August 9, 1989—

(A) no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided by the Corporation or any loss incurred by the Corporation as a result of the default of a Bank Insurance Fund member which was acquired by such Savings Association Insurance Fund member or any affiliate of such member before August 9, 1989; and

(B) no Bank Insurance Fund member shall have such liability with respect to assistance provided by or loss incurred by the Corporation as a result of the default of a Savings Association Insurance Fund member which was acquired by such Bank Insurance Fund member or any affiliate of such member before August 9, 1989.

**(7) Exclusion for institutions acquired in debt collections**

Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if—

(A) 1 depository institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith; and

(B) during the period beginning on August 9, 1989, and ending upon the expiration of the exclusion, the controlling bank and all other insured depository institution affiliates of such controlling bank comply fully with the restrictions of sections 371c and 371c-1 of this title, without regard to section 371c(d)(1) of this title, in transactions with the acquired insured depository institution.

**(8) Exception for certain FSLIC assisted institutions**

No depository institution shall have any liability to the Corporation under this subsection as the result of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if—

(A) such affiliate was receiving cash payments from the Federal Savings and Loan Insurance Corporation under an assistance agreement or note entered into before August 9, 1989;

(B) the Federal Savings and Loan Insurance Corporation, or such other entity which

has succeeded to the payment obligations of such Corporation with respect to such assistance agreement or note, is unable to continue such payments; and

(C) such affiliate—

(i) is in default or in need of assistance solely as a result of the failure to meet the payment obligations referred to in subparagraph (B); and

(ii) is not otherwise in breach of the terms of any assistance agreement or note which would authorize the Federal Savings and Loan Insurance Corporation or such other successor entity, pursuant to the terms of such assistance agreement or note, to refuse to make such payments.

#### (9) Commonly controlled defined

For purposes of this subsection, depository institutions are commonly controlled if—

(A) such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section 1843(f)(6) of this title); or

(B) 1 depository institution is controlled by another depository institution.

(Sept. 21, 1950, ch. 967, §2[5], 64 Stat. 876; Pub. L. 95-369, §6(c)(7), Sept. 17, 1978, 92 Stat. 616; Pub. L. 97-320, title VII, §703(c), Oct. 15, 1982, 96 Stat. 1539; Pub. L. 101-73, title II, §§201(a), 206(a), Aug. 9, 1989, 103 Stat. 187, 195; Pub. L. 102-242, title I, §115(a), title III, §302(e)(1), (2), title V, §501(a), Dec. 19, 1991, 105 Stat. 2249, 2349, 2388; Pub. L. 102-550, title XVI, §§1605(a)(5)(B), 1607(a), Oct. 28, 1992, 106 Stat. 4085, 4089; Pub. L. 102-558, title III, §§303(b)(6)(B), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103-204, §9, Dec. 17, 1993, 107 Stat. 2388; Pub. L. 103-325, title III, §319(b), title VI, §602(a)(2), (3), Sept. 23, 1994, 108 Stat. 2225, 2288; Pub. L. 104-208, div. A, title II, §§2201(a), 2702(i), 2704(d)(14)(B)–(E), Sept. 30, 1996, 110 Stat. 3009-403, 3009-483, 3009-491.)

#### REFERENCES IN TEXT

Section 2702(a) of the Deposit Insurance Funds Act of 1996, referred to in subsec. (d)(3)(K), is section 2702(a) of Pub. L. 104-208, which is set out as a note under section 1817 of this title.

#### PRIOR PROVISIONS

Section is derived from subsec. (f)(2) of former section 264 of this title. See Codification note set out under section 1811 of this title.

#### AMENDMENTS

1996—Subsec. (b)(5). Pub. L. 104-208, §2704(d)(14)(B), which directed substitution of “Deposit Insurance Fund,” for “the Bank Insurance Fund or the Savings Association Insurance Fund,” was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d). Pub. L. 104-208, §2704(d)(14)(C) and (D), which directed the amendment of subsec. (d) by striking out par. (1) designation and heading, redesignating subpar. (A) of par. (1) as par. (1), realigning margin, and substituting “the reserve ratio of the Deposit Insurance Fund” for “reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund”, striking out subpar. (B) of par. (1) and pars. (2) and (3) and adding new par. (2), and redesignating subpar. (C) of par. (1) as par. (3) and realigning margin, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d)(3)(A). Pub. L. 104-208, §2201(a)(1), substituted “if the transaction is approved by” for “with the prior written approval of”.

Subsec. (d)(3)(C). Pub. L. 104-208, §2702(i)(1), substituted “Except as provided in subparagraph (K), the adjusted attributable deposit amount” for “The adjusted attributable deposit amount” in introductory provisions.

Subsec. (d)(3)(E). Pub. L. 104-208, §2201(a)(2), added cl. (iii), redesignated former cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cls. (i) and (iv), which directed review of any application under the procedures and factors set forth in section 1828(c) of this title and disapproval of any application unless depository institution met all applicable capital requirements, respectively.

Subsec. (d)(3)(G) to (J). Pub. L. 104-208, §2201(a)(3), (4), redesignated subpars. (H) to (J) as (G) to (I), respectively and struck out former subpar. (G) which related to expedited approval of acquisitions.

Subsec. (d)(3)(K). Pub. L. 104-208, §2702(i)(2), added subpar. (K).

Subsec. (e)(5)(A). Pub. L. 104-208, §2704(d)(14)(E)(i), which directed substitution of “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (e)(6) to (9). Pub. L. 104-208, §2704(d)(14)(E)(ii), (iii), which directed striking out par. (6) and redesignating pars. (7) to (9) as (6) to (8), respectively, was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (b)(5). Pub. L. 103-325, §602(a)(2), substituted comma for semicolon at end.

Subsec. (d)(3)(A). Pub. L. 103-325, §319(b)(1), redesignated cl. (i) formerly entitled “In general” as subpar. (A), inserted comma after “Notwithstanding paragraph (2)(A)”, and struck out heading and text of cl. (ii). Text read as follows: “If, in connection with any transaction referred to in clause (i), the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the prior written approval of the Board shall be required for such transaction in addition to the approval of any agency referred to in clause (i).”

Subsec. (d)(3)(E)(i). Pub. L. 103-325, §319(b)(2)(A), struck out “(and, in the event the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the Board)” after “responsible agency”.

Subsec. (d)(3)(E)(ii). Pub. L. 103-325, §319(b)(2)(B), struck out “or Board” after “responsible agency”.

Subsec. (d)(3)(E)(iv). Pub. L. 103-325, §319(b)(2)(C), struck out “, and the appropriate Federal banking agency for any depository institution holding company,” after “responsible agency”, “each” before “such agency determines”, and “, and any depository institution holding company which controls such institution,” after “resulting depository institution”.

Subsec. (d)(3)(F). Pub. L. 103-325, §319(b)(3), substituted “A Bank” for “The Board may not approve any transaction under subparagraph (A) in which the acquiring, assuming, or resulting depository institution is a Bank” and “may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A) unless” for “unless the Board determines that”.

Subsec. (d)(3)(K). Pub. L. 103-325, §319(b)(4), struck out heading and text of subpar. (K). Text read as follows: “For purposes of this paragraph, the term ‘Board’ (other than when such term appears in connection with a reference to the Board of Directors) means the Board of Governors of the Federal Reserve System.”

Subsec. (e)(4). Pub. L. 103-325, §602(a)(3), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins.

1993—Subsec. (d)(2)(A)(ii). Pub. L. 103-204, §9(a), substituted “before the later of the end” for “before the end” and inserted before period at end “or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund”.

Subsec. (d)(2)(B)(v). Pub. L. 103-204, §9(b), added cl. (v).

Subsec. (d)(2)(C)(ii), (iii), (3)(I)(i). Pub. L. 103-204, §9(c), substituted “moratorium period established by” for “5-year period referred to in”.

1992—Subsec. (d)(3)(B). Pub. L. 102-558, §303(b)(6)(B), amended directory language of Pub. L. 102-242, §302(e). See 1991 amendment note below. Pub. L. 102-550, §1605(a)(5)(B), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102-558, §305, set out as a Repeal of Duplicative Provisions note below.

Subsec. (d)(3)(K). Pub. L. 102-550, §1607(a), added subpar. (K).

1991—Pub. L. 102-242, §115(a), amended section catchline.

Subsec. (a). Pub. L. 102-242, §115(a), added subsec. (a) consisting of pars. (1) to (6) and struck out former subsec. (a) relating to application for insurance, which consisted of pars. (1) to (7).

Subsec. (d)(3). Pub. L. 102-242, §501(a), amended par. (3) generally, substituting present provisions consisting of subpars. (A) to (J) for provisions related to optional conversion through merger, which consisted of subpars. (A) to (G).

Subsec. (d)(3)(B)(i). Pub. L. 102-242, §302(e)(1), as amended by Pub. L. 102-558, §303(b)(6)(B), substituted “deposits” for “average assessment base” and “shall be treated as deposits which are insured by the Savings Association Insurance Fund.” for “shall—

“(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Savings Association Insurance Fund members;

“(II) not be taken into account for purposes of any assessment under section 1817 of this title for Bank Insurance Fund members; and

“(III) be treated as deposits which are insured by the Savings Association Insurance Fund.”

Subsec. (d)(3)(B)(ii). Pub. L. 102-242, §302(e)(2), as added by Pub. L. 102-558, §303(b)(6)(B), substituted “deposits” for “average assessment base” and “shall be treated as deposits which are insured by the Bank Insurance Fund.” for “shall—

“(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Bank Insurance Fund members;

“(II) not be taken into account for purposes of any assessment under section 1817 of this title for Savings Association Insurance Fund members; and

“(III) be treated as deposits which are insured by the Bank Insurance Fund.”

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

Subsec. (a). Pub. L. 101-73, §206(a)(1)–(4), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and substituted “Any” for “Subject to the provisions of this chapter, any”, inserted “and State savings association” after “any State nonmember bank” and after “such State nonmember bank”, “or savings association” after “such bank”, and “or savings association, and in the case of an application by a State savings association, the Corporation shall notify the Director of the Office of Thrift Supervision of the Corporation’s approval of such application” after “books of the bank”, and added pars. (2) to (7).

Subsec. (b)(4). Pub. L. 101-73, §206(a)(5), inserted “and fitness” after “character”.

Subsec. (b)(5) to (8). Pub. L. 101-73, §206(a)(6), added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsecs. (d), (e). Pub. L. 101-73, §206(a)(7), added subsecs. (d) and (e).

1982—Subsec. (a). Pub. L. 97-320 inserted provision relating to the determination before the application of an industrial bank or similar institution is approved that it is chartered and operating under provisions substantially comparable to those applicable to banks operating in the same State.

1978—Pub. L. 95-369 designated existing provision as subsec. (a) and added subsecs. (b) and (c).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(14)(B)–(E) of Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, set out as a note under section 1821 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(6)(B) of Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

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

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 302(e)(1), (2) of Pub. L. 102-242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102-242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102-242, set out as a note under section 1817 of this title.

Section 501(b) of Pub. L. 102-242 provided that: “The amendment made by subsection (a) to section 5(d)(3)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)(C)] shall apply with respect to semiannual periods beginning after the date of the enactment of this Act [Dec. 19, 1991].”

#### REPEAL OF DUPLICATIVE PROVISIONS

Section 305 of Pub. L. 102-558 provided that: “In the event of the enactment of H.R. 5334 (An Act to amend and extend certain laws relating to housing and community development, and for other purposes) [enacted as Pub. L. 102-550], the following provisions of that Act, and the amendments made by such provisions, are repealed, effective on the date of enactment of this Act [Oct. 28, 1992]:

“(1) Section 1603(a)(3) of such Act [amending section 1817 of this title and enacting provisions set out as a note under section 1817 of this title].

“(2) Section 1604(a)(11) of such Act [amending section 3104 of this title].

“(3) Paragraphs (1), (2), and (3) of section 1604(b) of such Act [amending sections 1817, 1834, and 1834a of this title].

“(3) [sic] Paragraphs (2) through (7) of section 1605(a) of such Act [amending sections 1815, 1817, 1818, 1820, 1834, and 1834a of this title and enacting provisions set out as notes under sections 1817, 1834, and 1834a of this title].”

#### NEWLY INSURED THRIFT PROVISION

Section 206(b) of Pub. L. 101-73 provided that: “Any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)], as added by section 204(c) of this Act)—

“(1) which was an insured institution (as defined in section 401(a) of the National Housing Act [12 U.S.C. 1724(a)], as in effect before the date of the enactment of this Act [Aug. 9, 1989]) on the day before the date of the enactment of this Act;

“(2) the board of directors of which determined, before April 1, 1987, to terminate such association’s status as an insured institution (as so defined) as evidenced in sworn minutes of the board of directors meeting held before such date;

“(3) had insured deposits of less than \$11,000,000 on April 1, 1987; and

“(4) was an insured institution (as so defined) for less than 1 year as of April 1, 1987, may cease to be a Savings Association Insurance Fund member and become a Bank Insurance Fund member at any time during the 2-year period beginning on the date of the enactment of this Act without the approval of the Federal Deposit Insurance Corporation under section 5(d)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(2)] (as added by subsection (a) of this section) and without incurring any liability for any exit or entrance fee imposed under such section 5(d)(2).”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 215c, 461, 1441, 1464, 1467a, 1814, 1816, 1821, 3104 of this title; title 26 section 593.

### § 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 Bank Insurance Fund or the Savings Association 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.

(Sept. 21, 1950, ch. 967, §2[6], 64 Stat. 876; Pub. L. 101-73, title II, §207, Aug. 9, 1989, 103 Stat. 206; Pub. L. 104-208, div. A, title II, §2704(d)(14)(F), Sept. 30, 1996, 110 Stat. 3009-491.)

#### PRIOR PROVISIONS

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

#### AMENDMENTS

1996—Par. (5). Pub. L. 104-208, which directed substitution of “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”, was not executed. See Effective Date of 1996 Amendment note below.

1989—Pub. L. 101-73 amended section generally. Prior to amendment, section read as follows: “The factors to be enumerated in the certificate required under section 1814 of this title and to be considered by the Board of Directors under section 1815 of this title shall be the following: The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this chapter.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings asso-

ciation on that date, see section 2704(c) of Pub. L. 104-208, set out as a note under section 1821 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1815, 1828 of this title.

### § 1817. Assessments

#### (a) Reports of condition; access to reports

(1) Each insured State nonmember bank (except a District bank) and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the 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 (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days