

semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsection (d) of this section is listed on page 171), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1828, 1831v, 1841, 1843, 1848a of this title; title 7 section 6f.

§ 1845. Repealed. Pub. L. 89-485, § 9, July 1, 1966, 80 Stat. 240

Section, act May 9, 1956, ch. 240, § 6, 70 Stat. 137, prohibited any subsidiary bank from lending to or investing in its parent holding company or a fellow subsidiary bank. See section 371c of this title.

§ 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.

(b) State taxation authority not affected

No provision of this chapter 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 that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(May 9, 1956, ch. 240, § 7, 70 Stat. 138; Pub. L. 100-86, title I, § 101(f), Aug. 10, 1987, 101 Stat. 563; Pub. L. 103-328, title I, § 101(b), Sept. 29, 1994, 108 Stat. 2341.)

AMENDMENTS

1994—Pub. L. 103-328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Pub. L. 100-86 substituted “No provision of this chapter shall” for “The enactment by the Congress of this chapter shall not” and inserted “companies,” before “banks.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103-328, set out as a note under section 1828 of this title.

§ 1847. Penalties

(a) Criminal penalty

(1) Whoever knowingly violates any provision of this chapter or, being a company, violates any regulation or order issued by the Board under this chapter, shall be imprisoned not more than 1 year, fined not more than \$100,000 per day for each day during which the violation continues, or both.

(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this chapter shall be imprisoned not more than 5 years, fined not more than \$1,000,000 per day for each day during which the violation continues, or both.

Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18.

(b) Civil money penalty

(1) Penalty

Any company which violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

(2) Assessment; etc.

Any penalty imposed under paragraph (1) may be assessed and collected by the Board 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.

(3) Hearing

The company or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(4) Disbursement

All penalties collected under authority of this subsection shall be deposited into the Treasury.

(5) “Violate” defined

For purposes of this section, the term “violate” includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(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).

(d) Penalty for failure to make reports

(1) First tier

Any company which—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

(i) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board pursuant to this chapter, within the period of time specified by the Board; or

(ii) 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. The company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any company which—

(A) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board pursuant to this chapter, within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) 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.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board may, in its discretion, assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such company, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment; etc.

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board in the manner provided in subsection (b) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing

Any company against which any penalty is assessed under this subsection shall be afforded an agency hearing if such company submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(May 9, 1956, ch. 240, § 8, 70 Stat. 138; Pub. L. 95-630, title I, § 106(a), Nov. 10, 1978, 92 Stat. 3647;

Pub. L. 97-320, title IV, § 424(a), (d)(4), Oct. 15, 1982, 96 Stat. 1522, 1523; Pub. L. 101-73, title IX, §§ 905(i), 907(j), 911(e), Aug. 9, 1989, 103 Stat. 461, 475, 481.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-73, § 907(j)(1), substituted heading and pars. (1) and (2) for first two sentences which read as follows: “Any company which willfully violates any provision of this chapter, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than \$1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this chapter shall upon conviction be fined not more than \$10,000 or imprisoned not more than one year, or both.”

Subsec. (b). Pub. L. 101-73, § 907(j)(2), added headings and amended text generally. Prior to amendment, subsec. (b) read as follows:

“(1) Any company which violates or any individual who participates in a violation of any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues: *Provided*, That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

“(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

“(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in section 1848 of this title. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

“(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

“(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

“(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.”

Subsec. (c). Pub. L. 101-73, § 905(i), added subsec. (c).

Subsec. (d). Pub. L. 101-73, § 911(e), added subsec. (d). 1982—Subsec. (b)(1). Pub. L. 97-320 inserted proviso giving the Board discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted “may be assessed” for “shall be assessed”.

1978—Pub. L. 95-630 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(j) of Pub. L. 101-73 applicable to conduct engaged in after Aug. 9, 1989, except that

increased maximum penalties of \$5,000 and \$25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(l) of Pub. L. 101-73, set out as a note under section 93 of this title.

Amendment by section 911(e) of Pub. L. 101-73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101-73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as a note under section 93 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 780-5, 78q.

§ 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 the 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.

(May 9, 1956, ch. 240, § 9, 70 Stat. 138; Pub. L. 85-791, § 34, Aug. 28, 1958, 72 Stat. 951; Pub. L. 89-485, § 10, July 1, 1966, 80 Stat. 240.)

AMENDMENTS

1966—Pub. L. 89-485 reduced from 60 to 30 days the period allowed for the filing of a petition to obtain judicial review of a Board order.

1958—Pub. L. 85-791 substituted, in second sentence, “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” for “served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the record made before the Board”, and in third sentence, “such petition” for “the transcript”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1844, 1850 of this title.

§ 1848a. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board

(a) Limitation on direct action

The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safe-

guards, or standards, or otherwise take any action under or pursuant to any provision of this chapter or section 1818 of this title against or with respect to a functionally regulated subsidiary of a bank holding company unless—

(1) the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

(A) the financial safety, soundness, or stability of an affiliated depository institution; or

(B) the domestic or international payment system; and

(2) the Board finds that it is not reasonably possible to protect effectively against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

(b) Limitation on indirect action

The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this chapter or section 1818 of this title against or with respect to a bank holding company that requires the bank holding company to require a functionally regulated subsidiary of the holding company to engage, or to refrain from engaging, in any conduct or activities unless the Board could take such action directly against or with respect to the functionally regulated subsidiary in accordance with subsection (a) of this section.

(c) Actions specifically authorized

Notwithstanding subsection (a) or (b) of this section, the Board may take action under this chapter or section 1818 of this title to enforce compliance by a functionally regulated subsidiary of a bank holding company with any Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

(d) Functionally regulated subsidiary defined

For purposes of this section, the term “functionally regulated subsidiary” has the meaning given the term in section 1844(c)(5) of this title.

(May 9, 1956, ch. 240, § 10A, as added Pub. L. 106-102, title I, § 113, Nov. 12, 1999, 113 Stat. 1368.)

EFFECTIVE DATE

Section effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1831v of this title.

§ 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.