

or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

(Pub. L. 87-856, §3, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1541; Pub. L. 104-208, div. A, title II, §2613(d), Sept. 30, 1996, 110 Stat. 3009-477.)

AMENDMENTS

1996—Pub. L. 104-208 substituted “company” for “corporation” wherever appearing in section catchline and text.

1982—Pub. L. 97-320 substituted provisions relating to permissible bank service corporation activities for depository institutions for provisions that a bank service corporation must provide bank services to a bank that applied for them if the applying bank competed with a bank which held stock in the corporation unless comparable services were available elsewhere at competitive cost or furnishing the services would be beyond the practical capacity of the corporation.

§ 1864. Permissible bank service company activities for other persons

(a) Services permissible other than taking deposits

A bank service company may provide to any person any service authorized by this section, except that a bank service company shall not take deposits.

(b) Services to be performed in State where shareholders or members are located

Except with the prior approval of the Board under section 1865(b) of this title in accordance with subsection (f) of this section—

(1) a bank service company shall not perform the services authorized by this section in any State other than that State in which its shareholders or members are located; and

(2) all insured bank shareholders or members of a bank service company shall be located in the same State.

(c) Performance where State bank is shareholder or member

A bank service company in which a State bank is a shareholder or member shall perform only those services that such State bank shareholder or member is authorized to perform under the law of the State in which such State bank operates and shall perform such services only at locations in the State in which such State bank shareholder or member could be authorized to perform such services.

(d) Performance where national bank is shareholder or member

A bank service company in which a national bank is a shareholder or member shall perform only those services that such national bank shareholder or member is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank shareholder or member could be authorized to perform such services.

(e) Performance where State bank and national bank are shareholders or members

A bank service company that has both national bank and State bank shareholders or members shall perform only those services that

may lawfully be performed by both any shareholder or member of the company which is a national bank under the law of the United States and any shareholder or member of the company which is a State bank under the law of the State in which any such State bank operate¹ and shall perform such services only at locations in the State at which both its State bank and national bank shareholders or members could be authorized to perform such services.

(f) Geographic location

Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 1843(c)(8) of this title as of the day before November 12, 1999.

(Pub. L. 87-856, §4, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 97-457, §32(b)(2), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104-208, div. A, title II, §2613(e), Sept. 30, 1996, 110 Stat. 3009-477; Pub. L. 106-102, title I, §102(b)(2), Nov. 12, 1999, 113 Stat. 1342.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106-102 inserted before period at end “as of the day before November 12, 1999”.

1996—Pub. L. 104-208, §2613(e)(5), substituted “company” for “corporation” in section catchline.

Subsec. (a). Pub. L. 104-208, §2613(e)(1), substituted “company” for “corporation” in two places.

Subsec. (b). Pub. L. 104-208, §2613(e)(1), (2), inserted “or members” after “shareholders” wherever appearing in heading and text and substituted “company” for “corporation” in two places.

Subsecs. (c), (d). Pub. L. 104-208, §2613(e)(1), (3), inserted “or member” after “shareholder” wherever appearing in heading and text and substituted “company” for “corporation”.

Subsec. (e). Pub. L. 104-208, §2613(e)(1), (4), substituted “company” for “corporation”, “any shareholder or member of the company which is a national bank” for “its national bank shareholder or shareholders”, “any shareholder or member of the company which is a State bank” for “its State bank shareholder or shareholders”, and “any such State bank” for “such State bank or banks”, and inserted “or members” after “national bank and State bank shareholders” and after “State bank and national bank shareholders”.

Subsec. (f). Pub. L. 104-208, §2613(e)(1), substituted “company” for “corporation”.

1983—Subsecs. (d), (e). Pub. L. 97-457 substituted “under the law of the United States” for “under this chapter”.

1982—Pub. L. 97-320 substituted provisions relating to bank service corporation activities for other persons for provisions which read: “No bank service corporation may engage in any activity other than the performance of bank services for banks.”

EFFECTIVE DATE OF 1999 AMENDMENT

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

¹ So in original. Probably should be “operates”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1865 of this title.

§ 1865. Prior approval for investments in bank service companies

(a) Approval of Federal banking agency

No insured bank shall invest in the capital stock of a bank service company that performs any service under authority of subsection (c), (d), or (e) of section 1864 of this title without prior notice, as determined by the bank's appropriate Federal banking agency.

(b) Approval of Board

No insured bank shall invest in the capital stock of a bank service company that performs any service under authority of section 1864(f) of this title and no bank service company shall perform any activity under section 1864(f) of this title without the prior approval of the Board.

(c) Considerations in determining approval

In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service company involved, including the financial capability of the bank to make a proposed investment under this chapter, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

(d) Failure to act on application for approval

In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

(Pub. L. 87-856, §5, Oct. 23, 1962, 76 Stat. 1133; Pub. L. 95-630, title III, §308, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 103-325, title III, §323, Sept. 23, 1994, 108 Stat. 2227; Pub. L. 104-208, div. A, title II, §2613(f), Sept. 30, 1996, 110 Stat. 3009-478.)

AMENDMENTS

1996—Pub. L. 104-208 substituted “companies” for “corporations” in section catchline and “company” for “corporation” wherever appearing in text.

1994—Subsec. (a). Pub. L. 103-325, §323(1), substituted “prior notice, as determined by” for “the prior approval of”.

Subsec. (c). Pub. L. 103-325, §323(2), inserted “or whether to approve or disapprove any notice” after “approval”.

1982—Pub. L. 97-320 substituted provisions relating to prior approval for investments in bank service corporations for provisions relating to regulation and examination of bank services for a regularly examined bank or its subsidiary or affiliate whether performed on or off its premises. See section 1867(c) of this title.

1978—Pub. L. 95-630 among other changes, substituted provisions requiring banks regularly examined by a Federal supervisory agency, which cause to be performed, by contract or otherwise, any bank service for

itself, to notify such supervisory agency of the existence of a service relationship within 30 days after making such service contract or performance of service, whichever occurs first for provisions requiring that no bank subject to examination by a Federal supervisory agency may cause to be performed, by contract or otherwise, any bank service for itself unless satisfactory assurances are furnished to such supervisory agency by both the bank and the party performing such services that the performances thereof will be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1864 of this title.

§ 1866. Services to nonstockholders or nonmembers

No bank service company shall unreasonably discriminate in the provision of any services authorized under this chapter to any depository institution that does not own stock in or is not a member of the service company on the basis of the fact that such depository institution is in competition with an institution that owns stock in or is a member of the bank service company, except that—

(1) it shall not be considered unreasonable discrimination for a bank service company to provide services to a nonstockholding or nonmember institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(2) a bank service company may refuse to provide services to a nonstockholding or nonmember institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service company.

(Pub. L. 87-856, §6, Oct. 23, 1962, as added Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1543; amended Pub. L. 104-208, div. A, title II, §2613(g), Sept. 30, 1996, 110 Stat. 3009-478.)

AMENDMENTS

1996—Pub. L. 104-208, §2613(g)(1)-(4), (6), in section catchline, inserted “or nonmembers” after “nonstockholders”, and in introductory provisions of text, substituted “company” for “corporation” wherever appearing and “such depository institution” for “the nonstockholding institution” and inserted “or is not a member of” after “does not own stock in” and “or is a member of” after “that owns stock in”.

Pars. (1), (2). Pub. L. 104-208, §2613(g)(1), (5), substituted “company” for “corporation” wherever appearing and inserted “or nonmember” after “nonstockholding”.

§ 1867. Regulation and examination of bank service companies

(a) Principal investor

A bank service company shall be subject to examination and regulation by the appropriate