

fied generally to this chapter. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The District of Columbia Credit Unions Act, referred to in par. (2), was act June 23, 1932, ch. 272, 47 Stat. 326, and was repealed by Pub. L. 88-395, § 4, Aug. 1, 1964, 78 Stat. 377.

CODIFICATION

Section was not enacted as part of the Federal Credit Union Act which comprises this chapter.

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

“Board” and “the Board’s”, meaning the National Credit Union Administration Board, substituted in par. (3) for “Director” and “his”, respectively, meaning Director of Bureau of Federal Credit Unions, pursuant to section 3 of Pub. L. 91-206 and section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

SUBCHAPTER II—SHARE INSURANCE

§ 1781. Insurance of member accounts

(a) Eligibility

The Board, as hereinafter provided, shall insure the member accounts of all Federal credit unions and it may insure the member accounts of (1) credit unions organized and operated according to the laws of any State, 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, and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of subchapter I of this chapter and regulations issued thereunder.

(b) Application; agreement

Application for insurance of member accounts shall be made immediately by each Federal credit union and may be made at any time by a State credit union or a credit union operating under the jurisdiction of the Department of Defense. Applications for such insurance shall be in such form as the Board shall provide and shall contain an agreement by the applicant—

(1) to pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the applicant for insurance: *Provided*, That examinations required under subchapter I of this chapter shall be so conducted that the information derived therefrom may be utilized for share insurance purposes, and examinations conducted by State regulatory agencies shall be utilized by the Board for such purposes to the maximum extent feasible;

(2) to permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions;

(3) to permit the Board to have access to any information or report with respect to any examination made by or for any public regu-

latory authority, including any commission, board, or authority having supervision of a State-chartered credit union, and furnish such additional information with respect thereto as the Board may require;

(4) to provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates;

(5) to maintain such regular reserves as may be required by the laws of the State, district, territory, or other jurisdiction pursuant to which it is organized and operated, in the case of a State-chartered credit union, or as may be required by this chapter, in the case of a Federal credit union;

(6) to maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members or to assure that all insured credit unions maintain regular reserves which are not less than those required under subchapter I of this chapter;

(7) not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board except for accounts authorized by State law for State credit unions;

(8) to pay and maintain its deposit and to pay the premium charges for insurance imposed by this subchapter; and

(9) to comply with the requirements of this subchapter and of regulations prescribed by the Board pursuant thereto.

(c) Approval of application

(1) Before approving the application of any credit union for insurance of its member accounts, the Board shall consider—

(A) the history, financial condition, and management policies of the applicant;

(B) the economic advisability of insuring the applicant without undue risk of the fund;

(C) the general character and fitness of the applicant's management;

(D) the convenience and needs of the members to be served by the applicant; and

(E) whether the applicant is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(2) The Board shall disapprove the application of any credit union for insurance of its member accounts if it finds that its reserves are inadequate, that its financial condition and policies are unsafe or unsound, that its management is unfit, that insurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

(3) Repealed. Pub. L. 95-22, title III, § 301, Apr. 19, 1977, 91 Stat. 49.

(d) Certificate of insurance

Upon the approval of any application for insurance, the Board shall notify the applicant

and shall issue to it a certificate evidencing the fact that it is, as of the date of issuance of the certificate, an insured credit union under the provisions of this subchapter.

(e) Prohibition on certain associations

(1) In general

No insured credit union may be sponsored by or accept financial support, directly or indirectly, from any Government-sponsored enterprise, if the credit union includes the customers of the Government-sponsored enterprise in the field of membership of the credit union.

(2) Routine business financing

Paragraph (1) shall not apply with respect to advances or other forms of financial assistance generally provided by a Government-sponsored enterprise in the ordinary course of business of the enterprise.

(3) "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.

(4) Employee credit union

No provision of this subsection shall be construed as prohibiting any employee of a Government-sponsored enterprise from becoming a member of a credit union whose field of membership is the employees of such enterprise.

(June 26, 1934, ch. 750, title II, §201, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 994; amended Pub. L. 92-221, §§1, 2, Dec. 23, 1971, 85 Stat. 796, 797; Pub. L. 95-22, title III, §301, Apr. 19, 1977, 91 Stat. 49; Pub. L. 95-630, title V, §§502(b), 504, Nov. 10, 1978, 92 Stat. 3681, 3682; Pub. L. 98-369, div. B, title VIII, §2801, July 18, 1984, 98 Stat. 1203; Pub. L. 104-208, div. A, title II, §2615(a), Sept. 30, 1996, 110 Stat. 3009-478; Pub. L. 109-351, title VII, §726(11), Oct. 13, 2006, 120 Stat. 2002.)

Editorial Notes

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (e)(3), is section 1404(e)(1)(A) of Pub. L. 101-73, which is set out as a note under section 1811 of this title.

AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109-351 substituted "this chapter" for "section 1762 of this title".

1996—Subsec. (e). Pub. L. 104-208 added subsec. (e).

1984—Subsec. (b)(8). Pub. L. 98-369 inserted provisions relating to payment and maintenance of the deposit.

1978—Subsec. (a). Pub. L. 95-630, §§502(b), 504(a), substituted "Board" for "Administrator" and "it" for "he", and inserted ", including the trust territories," after "the several territories".

Subsec. (b). Pub. L. 95-630, §§502(b), 504(b), substituted "Board" for "Administrator" wherever appearing and inserted in par. (7) "except for accounts authorized by State law for State credit unions" after "by the Board".

Subsec. (c). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, and in par. (2) substituted "it" for "he" before "finds".

Subsecs. (d), (e). Pub. L. 95-630, §§502(b), 504(c), struck out subsec. (d), redesignated subsec. (e) as (d) and substituted "Board" for "Administrator".

1977—Subsec. (c)(3). Pub. L. 95-22 struck out par. (3) which provided for approval by Administrator of applications of State credit unions for insurance of its member accounts where credit union meets requirements of this chapter and where in the event of liquidation of the credit union, the claims with respect to demand deposit accounts shall be subordinate to the claims with respect to member accounts.

1971—Subsec. (c)(2). Pub. L. 92-221, §1(a), substituted "disapproved" for "reject".

Subsec. (c)(3). Pub. L. 92-221, §2, added par. (3).

Subsec. (d). Pub. L. 92-221, §1(b), substituted provisions allowing, in certain cases, a two-year period to meet the requirements for insurance following the disapproval of an application for insurance by a Federal credit union, for provisions mandating the suspension or revocation of the charter of a Federal credit union unless the credit union met the requirements for insurance and became an insured credit union within one year of the rejection of its application for insurance.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title II, §2615(c), Sept. 30, 1996, 110 Stat. 3009-479, provided that: "The amendments made by this section [amending this section and section 1828 of this title] shall apply on and after January 1, 1996."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§ 1782. Administration of insurance fund

(a) Reports of condition

(1) Each insured credit union shall make reports of condition to the Board upon dates which shall be selected by it. Such reports of condition shall be in such form and shall contain such information as the Board may require. The reporting dates selected for reports of condition shall be the same for all insured credit unions except that when any of said reporting dates is a non-business day for any credit union the preceding business day shall be its reporting date. The total amount of the member accounts of each insured credit union as of each reporting date shall be reported in such reports of condition in accordance with regulations prescribed by the Board. Each report of condition shall contain a declaration by the president, by a vice president, by the treasurer, or by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief. Unless such requirement is waived by the Board, the correctness of each report of condition shall be attested by the signatures of three of the officers of the reporting credit union with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(2) The Board may call for such other reports as it may from time to time require.

(3) The Board may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Any insured credit union which maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or 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 insured credit union shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any insured credit union which fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, 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 insured credit union 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 Board may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such credit union, 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 Board in the manner provided in section 1786(k)(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 insured credit union against which any penalty is assessed under this subsection shall be afforded an agency hearing if such insured credit union submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1786(j) of this title shall apply to any proceeding under this subsection.

(4) The Board may accept any report of condition made to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of condition made to the Board.

(5) Reports required under subchapter I of this chapter shall be so prepared that they can be used for share insurance purposes. To the maximum extent feasible, the Board shall use for insurance purposes reports submitted to State regulatory agencies by State-chartered credit unions.

(6) AUDIT REQUIREMENT.—

(A) IN GENERAL.—Before the end of the 120-day period beginning on August 9, 1989, and notwithstanding any other provision of Fed-

eral or State law, the Board shall prescribe, by regulation, audit standards which require an outside, independent audit of any insured credit union by a certified public accountant for any fiscal year (of such credit union)—

(i) for which such credit union has not conducted an annual supervisory committee audit;

(ii) for which such credit union has not received a complete and satisfactory supervisory committee audit; or

(iii) during which such credit union has experienced persistent and serious record-keeping deficiencies, as determined by the Board.

(B) UNSAFE OR UNSOUND PRACTICE.—The Board may treat the failure of any insured credit union to obtain an outside, independent audit for any fiscal year for which such audit is required under subparagraph (A) or (D) as an unsafe or unsound practice within the meaning of section 1786(b) of this title.

(C) ACCOUNTING PRINCIPLES.—

(i) IN GENERAL.—Accounting principles applicable to reports or statements required to be filed with the Board by each insured credit union shall be uniform and consistent with generally accepted accounting principles.

(ii) BOARD DETERMINATION.—If the Board determines that the application of any generally accepted accounting principle to any insured credit union is not appropriate, the Board may prescribe an accounting principle for application to the credit union that is no less stringent than generally accepted accounting principles.

(iii) DE MINIMUS¹ EXCEPTION.—This subparagraph shall not apply to any insured credit union, the total assets of which are less than \$10,000,000, unless prescribed by the Board or an appropriate State credit union supervisor.

(D) LARGE CREDIT UNION AUDIT REQUIREMENT.—

(i) IN GENERAL.—Each insured credit union having total assets of \$500,000,000 or more shall have an annual independent audit of the financial statements of the credit union, performed in accordance with generally accepted auditing standards by an independent certified public accountant or public accountant licensed by the appropriate State or jurisdiction to perform those services.

(ii) VOLUNTARY AUDITS.—If a Federal credit union that is not required to conduct an audit under clause (i), and that has total assets of more than \$10,000,000 conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.

(7) REPORT TO INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured credit union which has engaged the services of an inde-

¹ So in original. Probably should be "De minimis".

pendent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the most recent report of condition made by such credit union (pursuant to this chapter or any other provision of law) and a copy of the most recent report of examination received by such credit union.

(B) **ADDITIONAL INFORMATION.**—In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured credit union shall provide such auditor with—

(i) a copy of any supervisory memorandum of understanding with such credit union and any written agreement between the Board or a State regulatory agency and the credit union which is in effect during the period covered by the audit; and

(ii) a report of any action initiated or taken by the Board during such period under subsection (e), (f), (g), (i), (l), or (q) of section 1786 of this title, or any similar action taken by a State regulatory agency under State law, or any other civil money penalty assessed by the Board under this chapter, with respect to—

(I) the credit union; or

(II) any institution-affiliated party.

(8) **DATA SHARING WITH OTHER AGENCIES AND PERSONS.**—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the discretion of the Board, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

(B) any officer, director, or receiver of such credit union or entity; and

(C) any other person that the Board determines to be appropriate.

(b) Certified statement

(1) Statement required

(A) In general

For each calendar year, in the case of an insured credit union with total assets of not more than \$50,000,000, and for each semi-annual period in the case of an insured credit union with total assets of \$50,000,000 or more, an insured credit union shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the relevant period and both the amount of its deposit or adjustment of deposit and the amount of the insurance charge due to the Fund for that period, both as computed under subsection (c).

(B) Exception for newly insured credit union

Subparagraph (A) shall not apply with respect to a credit union that became insured during the reporting period.

(2) Form

The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

(3) Certification

The president of the credit union or any officer designated by the board of directors shall certify, with respect to each statement required to be filed with the Board pursuant to this subsection, that to the best of his or her knowledge and belief the statement is true, correct, complete, and in accordance with this subchapter and the regulations issued under this subchapter.

(c) Deposit with National Credit Union Share Insurance Fund; amount, return, distribution, etc.

(1)(A)(i) Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares.

(ii) The Board may, in its discretion, authorize insured credit unions to initially fund such deposit over a period of time in excess of one year if necessary to avoid adverse effects on the condition of insured credit unions.

(iii) **PERIODIC ADJUSTMENT.**—The amount of each insured credit union's deposit shall be adjusted as follows, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares:

(I) annually, in the case of an insured credit union with total assets of not more than \$50,000,000; and

(II) semi-annually, in the case of an insured credit union with total assets of \$50,000,000 or more.

(B)(i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.

(ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.

(iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.

(iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

(2) INSURANCE PREMIUM CHARGES.—

(A) **IN GENERAL.**—Each insured credit union shall, at such times as the Board prescribes

(but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).

(B) RELATION OF PREMIUM CHARGE TO EQUITY RATIO OF FUND.—The Board may assess a premium charge only if—

- (i) the Fund's equity ratio is less than 1.3 percent; and
- (ii) the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(C) PREMIUM CHARGE REQUIRED IF EQUITY RATIO FALLS BELOW 1.2 PERCENT.—If the Fund's equity ratio is less than 1.2 percent, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

(D) FUND RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C); or

(II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) without any determination under sub-clause (I) having been made,

the Board shall establish and implement a restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Board determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

(iii) TRANSPARENCY.—Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(3) DISTRIBUTIONS FROM FUND REQUIRED.—

(A) IN GENERAL.—The Board shall, subject to the requirements of section 1790e(e) of this title, effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of that calendar year—

- (i) any loans to the Fund from the Federal Government, and any interest on those loans, have been repaid;
- (ii) the Fund's equity ratio exceeds the normal operating level; and
- (iii) the Fund's available assets ratio exceeds 1.0 percent.

(B) AMOUNT OF DISTRIBUTION.—The Board shall distribute under subparagraph (A) the maximum possible amount that—

(i) does not reduce the Fund's equity ratio below the normal operating level; and

(ii) does not reduce the Fund's available assets ratio below 1.0 percent.

(C) CALCULATION BASED ON CERTIFIED STATEMENTS.—In calculating the Fund's equity ratio and available assets ratio for purposes of this paragraph, the Board shall determine the aggregate amount of the insured shares in all insured credit unions from insured credit unions certified statements under subsection (b) for the final reporting period of the calendar year referred to in subparagraph (A).

(4) TIMELINESS AND ACCURACY OF DATA.—In calculating the available assets ratio and equity ratio of the Fund, the Board shall use the most current and accurate data reasonably available.

(d) Remedy for failure to report; penalty for failure to file certified statement or pay premium; dispute as to deposit or premium charge; prohibition on distribution of assets or dividends while in default

(1) Any insured credit union which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of its deposit or any premium charge for insurance may be compelled to make such report or to file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Board against the credit union and any officer or officers thereof. Any such suit may be brought in any court of the United States of competent jurisdiction in the district or territory in which the principal office of the credit union is located.

(2) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT OR TO PAY DEPOSIT OR PREMIUM.—

(A) FIRST TIER.—Any insured credit union which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement under such subsection; or

(ii) submits the statement at a time which is minimally after the time required,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false and misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.—Any insured credit union which—

(i) fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement in a manner not described in subparagraph (A); or

(ii) fails or refuses to pay any deposit or premium for insurance required under this subchapter,

shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues, such false and misleading information is not corrected, or such deposit or premium is not paid.

(C) **THIRD TIER.**—Notwithstanding subparagraphs (A) and (B), if any insured credit union knowingly or with reckless disregard for the accuracy of any certified statement under subsection (b)(1) submits a false or misleading certified statement under such subsection, the Board may assess a penalty of not more than \$1,000,000 or not more than 1 percent of the total assets of the credit union, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) **ASSESSMENT PROCEDURE.**—Any penalty imposed under this paragraph shall be assessed and collected by the Board in the manner provided in section 1786(k)(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.

(E) **HEARING.**—Any insured credit union against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the credit union submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 1786(j) of this title shall apply to any proceeding under this subparagraph.

(F) **SPECIAL RULE FOR DISPUTED PAYMENTS.**—No penalty may be assessed for the failure of any insured credit union to pay any deposit or premium for insurance if—

(i) the failure is due to a dispute between the credit union and the Board over the amount of the deposit or premium which is due from the credit union; and

(ii) the credit union deposits security satisfactory to the Board for payment of the deposit or insurance premium upon final determination of the dispute.

(3) No insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge for insurance due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.

(e) Recovery of unpaid deposit or premium; limitations

The Board, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid deposit or premium charge for insurance lawfully pay-

able by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any deposit or premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the Board a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of its deposit or any premium charge, the claim shall not be deemed to have accrued until the discovery by the Board of the fact that the certified statement is false or fraudulent.

(f) Penalty for failure to comply with section; court determination of failure; remedies not exclusive

Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed under subsection (b) of this section or to pay its deposit or any premium charge for insurance required to be paid under any provision of this subchapter, and should the credit union fail to correct such failure within thirty days after written notice has been given by the Board to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such deposit or premium charges as required by law, all the rights, privileges, and franchises of the credit union granted to it under subchapter I of this chapter shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the Board in its own name, before the credit union shall be declared dissolved. The remedies provided in this subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) Records

Each insured credit union shall maintain such records as will readily permit verification of the correctness of its reports of condition, certified statements, and deposit and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purpose for a period in excess of five years from the date of the making of any such report, the filing of any such statement, or the payment of any deposit or adjustment thereof or any premium charge, except that when there is a dispute between the insured credit union and the Board over the amount of any deposit or adjustment thereof or any premium charge for insur-

ance the credit union shall retain such records until final determination of the issue.

(h) Definitions

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

(1) Available assets ratio

The term “available assets ratio”, when applied to the Fund, means the ratio of—

(A) the amount determined by subtracting—

(i) direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made, from

(ii) the sum of cash and the market value of unencumbered investments authorized under section 1783(c) of this title, to

(B) the aggregate amount of the insured shares in all insured credit unions.

(2) Equity ratio

The term “equity ratio”, which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of—

(A) the amount of Fund capitalization, including insured credit unions’ 1 percent capitalization deposits and the retained earnings balance of the Fund (net of direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made); to

(B) the aggregate amount of the insured shares in all insured credit unions.

(3) Insured shares

The term “insured shares”, when applied to this section, includes share, share draft, share certificate, and other similar accounts as determined by the Board, but does not include amounts exceeding the insured account limit set forth in section 1787(k)(1) of this title.

(4) Normal operating level

The term “normal operating level”, when applied to the Fund, means an equity ratio specified by the Board, which shall be not less than 1.2 percent and not more than 1.5 percent.

(June 26, 1934, ch. 750, title II, §202, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 995; amended Pub. L. 93-383, title VII, §727, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95-630, title V, §§502(b), 505, Nov. 10, 1978, 92 Stat. 3681, 3682; Pub. L. 97-320, title V, §§528, 529, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 97-457, §29, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 98-369, div. B, title VIII, §§2802-2810, July 18, 1984, 98 Stat. 1204, 1205; Pub. L. 101-73, title IX, §§911(f), 919, 931(b), Aug. 9, 1989, 103 Stat. 482, 488, 493; Pub. L. 102-242, title III, §313(b), Dec. 19, 1991, 105 Stat. 2369; Pub. L. 102-550, title XVI, §1605(b)(3), Oct. 28, 1992, 106 Stat. 4087; Pub. L. 105-219, title II, §201, title III, §302(a), Aug. 7, 1998, 112 Stat. 918, 931; Pub. L. 109-351, title VII, §§707(b), 726(12), Oct. 13, 2006, 120 Stat. 1987, 2002; Pub. L. 111-22, div. A, title II, §204(e), (f)(2), May 20, 2009, 123 Stat. 1651, 1653; Pub. L. 111-382, §2, Jan. 4, 2011, 124 Stat. 4135.)

Editorial Notes

AMENDMENTS

2011—Subsec. (h)(2). Pub. L. 111-382 substituted “which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity,” for “when applied to the Fund,” in introductory provisions.

2009—Subsec. (c)(2)(D). Pub. L. 111-22, §204(e), added subpar. (D).

Subsec. (c)(3)(A). Pub. L. 111-22, §204(f)(2), inserted “, subject to the requirements of section 1790(e) of this title,” after “The Board shall” in introductory provisions.

2006—Subsec. (a)(8). Pub. L. 109-351, §707(b), added par. (8).

Subsec. (h)(3). Pub. L. 109-351, §726(12), substituted “section 1787(k)(1) of this title” for “section 1787(c)(1) of this title”.

1998—Subsec. (a)(6). Pub. L. 105-219, §201, substituted “subparagraph (A) or (D)” for “subparagraph (A)” in subpar. (B) and added subpars. (C) and (D).

Subsec. (b). Pub. L. 105-219, §302(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows:

“(b)(1) For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section.

“(2) The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

“(3) Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of his knowledge and belief that statement is true, correct, and complete and in accordance with this subchapter and regulations issued thereunder.”

Subsec. (c)(1)(A)(iii). Pub. L. 105-219, §302(a)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: “The amount of each insured credit union’s deposit shall be adjusted annually, in accordance with procedures determined by the Board, to reflect changes in the credit union’s insured shares.”

Subsec. (c)(2), (3). Pub. L. 105-219, §302(a)(3), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

“(2) Each insured credit union, at such time as the Board prescribes, shall pay to the fund a premium charge for insurance equal to one-twelfth of 1 per centum of the total amount of the insured shares in such credit union at the close of the preceding insurance year.

“(3) When, at the end of a given insurance year, any loans to the fund from the Federal Government and the interest thereon have been repaid and the equity of the fund exceeds the normal operating level, the Board shall effect for that insurance year a pro rata distribution to insured credit unions of an amount sufficient to reduce the equity in the fund to its normal operating level.”

Subsec. (c)(4). Pub. L. 105-219, §302(a)(4), added par. (4).

Subsec. (h). Pub. L. 105-219, §302(a)(5), added subsec. (h) and struck out former subsec. (h) which read as follows: “For the purposes of this section—

“(1) the term ‘insurance year’ means the period beginning on January 1 and ending on the following December 31, both dates inclusive, unless otherwise prescribed by the Board;

“(2) the term ‘normal operating level’, when applied to the fund, means an amount equal to 1.3 per centum

of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine; and

“(3) the term ‘insured shares’ when applied to this section includes share, share draft, share certificate and other similar accounts as determined by the Board, but does not include amounts in excess of the insured account limit set forth in section 1787(c)(1) of this title.”

1992—Subsec. (d)(2). Pub. L. 102-550, in subpar. (C), substituted “insured credit union” for “insured depository institution”, struck out “or” after “subsection (b)(1)”, and substituted “Board” for “Corporation” and “assets of the credit union” for “assets of the institution”, in subpar. (D), substituted “Board” for “Corporation”, and in subpar. (E), substituted “insured credit union” for “insured depository institution” and “if the credit union” for “if the institution”.

1991—Subsec. (d)(2). Pub. L. 102-242 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any insured credit union which willfully fails or refuses to file any certified statement or to pay its deposit or any premium charge for insurance required under this subchapter shall be subject to a penalty of not more than \$100 for each day that such violation continues, which penalty the Board may recover for its use. The provisions of this paragraph shall not be applicable in any case in which the refusal to pay its deposit or the premium charge for insurance is due to a dispute between the insured credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.”

1989—Subsec. (a)(3). Pub. L. 101-73, §911(f), inserted provisions relating to penalties and agency hearings and struck out at end: “Every insured credit union which willfully fails to make or publish any such report within ten days shall be subject to a penalty of not more than \$100 for each day of such failure, recoverable by the Board for its use.”

Subsec. (a)(6). Pub. L. 101-73, §919, added par. (6).

Subsec. (a)(7). Pub. L. 101-73, §931(b), added par. (7).

1984—Subsec. (b). Pub. L. 98-369, §2802, in amending subsec. (b) generally, revised existing provisions into numbered pars. (1) to (3) and in par. (1) substituted “For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section.” for “On or before January 31 of each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board a certified statement showing the total amount of the member accounts in the credit union at the close of the preceding insurance year and the amount of the premium charge for insurance due to the fund for that year, as computed under subsection (c) of this section.”

Subsec. (c)(1). Pub. L. 98-369, §2803(6), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 98-369, §2803(3)–(5), substituted “Each insured credit union, at such time as the Board prescribes” for “Except as provided in paragraph (2) of this subsection, each insured credit union, on or before January 31 of each insurance year” and “insured shares” for “member accounts”.

Pub. L. 98-369, §2803(1), (2), redesignated par. (1) as (2). Former par. (2), which related to payment of a premium charge for insurance by each credit union in existence prior to Oct. 19, 1970, and insured under this subchapter after January 1 of any insurance, was struck out.

Subsec. (c)(3). Pub. L. 98-369, §2804, amended par. (3) generally. Prior to amendment, par. (3) read as follows:

“When any loans to the fund from the Federal Government and the interest thereon have been repaid and the amount in the fund equals or exceeds the normal operating level, the Board may reduce the premium charge for insurance, but not below the amount necessary, in its judgment, to maintain the fund at the normal operating level. Any such reduction shall be effective only so long as the amount in the fund equals or exceeds the normal operating level and no loan to the fund from the Federal Government is outstanding.”

Subsec. (c)(4). Pub. L. 98-369, §2805, struck out par. (4) which provided that “If in any year expenditures from the fund exceed the income of the fund, the Board may require each insured credit union to pay to the fund for such year, in addition to the regular premium charge for insurance payable under paragraph (1), (2), or (3) of this subsection, a special premium charge which shall not exceed an amount equal to the amount of the regular premium charge”.

Subsec. (d)(1), (2). Pub. L. 98-369, §2806(a)(1), inserted “its deposit or” wherever appearing.

Subsec. (d)(3). Pub. L. 98-369, §2806(a), inserted “its deposit or” wherever appearing and substituted “insured shares” for “member accounts”.

Subsec. (e). Pub. L. 98-369, §2806(a)(1), (b)(1), (2), inserted “its deposit or” and “deposit or” wherever appearing.

Subsec. (f). Pub. L. 98-369, §2806(a)(1), (b)(3), inserted “its deposit or” and “deposit or”.

Subsec. (g). Pub. L. 98-369, §2807, inserted “and deposit” and “deposit or adjustment thereof or any” in two places.

Subsec. (h)(1). Pub. L. 98-369, §2808, inserted “, unless otherwise prescribed by the Board”.

Subsec. (h)(2). Pub. L. 98-369, §2809, in amending par. (2) generally, substituted “fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine” for “Fund, means an amount equal to 1 per centum of the aggregate amount of the member accounts in all insured credit unions”.

Subsec. (h)(3). Pub. L. 98-369, §2810, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “the term ‘members accounts’ when applied to the premium charge for insurance of accounts shall not include amounts received from other credit unions, the accounts of which are federally insured or insured or guaranteed by a fund established under State law or regulation for this purpose, in excess of the insured account limit set forth in section 1787(c)(1) of this title.”

1983—Subsec. (c)(1). Pub. L. 97-457 substituted “paragraph (2)” for “paragraphs (2) and (3)” after “except as provided in”.

1982—Subsec. (c)(3). Pub. L. 97-320, §529, redesignated par. (4) as (3). Former (3), which set forth rules for computing the insurance premiums due from credit unions chartered after Oct. 19, 1970, that became insured in the insurance year of their charter, was struck out.

Subsec. (c)(4), (5). Pub. L. 97-320, §529, redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (c)(6). Pub. L. 97-320, §529, struck out par. (6) which set forth rules for payment of insurance rebates to insured credit unions closed for liquidation because of insolvency or otherwise.

Subsec. (h)(3). Pub. L. 97-320, §528, substituted “‘members accounts’” for “‘member account’”, struck out “federally insured” after “received from other”, and inserted “, the accounts of which are federally insured or insured or guaranteed by a fund established under State law or regulation for this purpose,” after “credit unions”.

1978—Subsec. (a). Pub. L. 95-630, §§502(b), 505(a), substituted “Board” for “Administrator” wherever appearing; “it” for “him” and “such officer’s knowledge” for “his knowledge” in par. (1); “reports as it” for “reports as he” in par. (2); and “it may direct” for “he may direct” and “for its use” for “for his use” in par. (3).

Subsecs. (b) to (g). Pub. L. 95-630, §502(b), substituted “Board” for “Administrator” wherever appearing, and “its” for “his” where appropriate.

Subsec. (h)(3). Pub. L. 95-630, §505(b), substituted “The term ‘member account’ when” for “the term ‘members accounts’ when”, struck out “of federally insured credit unions” after “of accounts”, and inserted “received from other federally insured credit unions” after “not include amounts”.

1974—Subsec. (h)(3). Pub. L. 93-383 added par. (3).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-219, title III, §302(b), Aug. 7, 1998, 112 Stat. 934, provided that: “This section [amending this section] and the amendments made by this section shall become effective on January 1 of the first calendar year beginning more than 180 days after the date of enactment of this Act [Aug. 7, 1998].”

EFFECTIVE DATE OF 1992 AMENDMENT

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, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 911(f) 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 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§ 1783. National Credit Union Share Insurance Fund

(a) Creation; use of fund

There is hereby created in the Treasury of the United States a National Credit Union Share Insurance Fund which shall be used by the Board as a revolving fund for carrying out the purposes of this subchapter. Money in the fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments of insurance under section 1787 of this title, for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions, and for such administrative and other expenses incurred in carrying out the purposes of this subchapter as it may determine to be proper.

(b) Deposit of deposits and premium charges, fees and penalties

All deposits and premium charges for insurance paid pursuant to the provisions of section 1782 of this title and all fees for examinations and all penalties collected by the Board under any provision of this subchapter shall be deposited in the National Credit Union Share Insurance Fund. The Board shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives with respect to the operating level of the fund. Such report shall also include the results of an independent audit of the fund.

(c) Investment authorization

The Board may authorize the Secretary of the Treasury to invest and reinvest such portions of

the fund as the Board may determine are not needed for current operations in any interest-bearing securities of the United States or in any securities guaranteed as to both principal and interest by the United States or in bonds or other obligations which are lawful investments for fiduciary, trust, and public funds of the United States, and the income therefrom shall constitute a part of the fund.

(d) Loans to fund, limitation and terms; interest accrual; determination of interest rate

(1) If, in the judgment of the Board, a loan to the insurance fund, or to the stabilization fund described in section 1790e of this title, is required at any time for purposes of this subchapter,¹ the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate \$6,000,000,000 outstanding at any one time. Except as otherwise provided in this subsection, section 1790e of this title, and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.

(2) Interest shall accrue to the Treasury on the amount of any outstanding loans made to the fund pursuant to paragraph (1) of this subsection on the basis of the average daily amount of such outstanding loans determined at the close of each fiscal year with respect to such year, and the Board shall pay the interest so accruing into the Treasury as miscellaneous receipts annually from the fund. The Secretary of the Treasury shall determine the applicable interest rate in advance by calculating the average yield to maturity (on the basis of daily closing market bid quotations during the month of September of the preceding fiscal year) on outstanding marketable public debt obligations of the United States having a maturity date of five or less years from the first day of such month of September and by adjusting such yield to the nearest one-eighth of 1 per centum.

(3) For the purpose of making loans under paragraph (1) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are hereby extended to include such loans. All loans and repayments under this section shall be treated as public debt transactions of the United States.

(4) TEMPORARY INCREASES AUTHORIZED.—

(A) RECOMMENDATIONS FOR INCREASE.—During the period beginning on May 20, 2009, and ending on December 31, 2010, if, upon the written recommendation of the Board (upon a vote of not less than two-thirds of the members of the Board) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the \$6,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the

¹ See References in Text note below.

amount so determined to be necessary, not to exceed \$30,000,000,000.

(B) **REPORT REQUIRED.**—If the borrowing authority of the Board is increased above \$6,000,000,000 pursuant to subparagraph (A), the Board shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.

(e) Excess funds credited against loans

So long as any loans to the fund are outstanding, the Board shall from time to time, not less often than annually, determine whether the balance in the fund is in excess of the amount which, in its judgment, is needed to meet the requirements of the fund and shall pay such excess to the Secretary of the Treasury, to be credited against the loans to the fund.

(f) Authorization for fund to borrow from Central Liquidity Facility

In addition to the authority to borrow from the Secretary of the Treasury provided in subsection (d), if in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this subchapter, the fund is authorized to borrow from the National Credit Union Administration Central Liquidity Facility.

(June 26, 1934, ch. 750, title II, §203, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 999; amended Pub. L. 94-273, §2(4), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 97-320, title V, §530, Oct. 15, 1982, 96 Stat. 1535; Pub. L. 98-369, div. B, title VIII, §2811, July 18, 1984, 98 Stat. 1206; Pub. L. 111-22, div. A, title II, §204(c)(2), (3), May 20, 2009, 123 Stat. 1650.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsec. (d)(1), probably should have been a reference to this title in the original, meaning title II of act June 26, 1934, ch. 750, which is classified generally to this subchapter.

CODIFICATION

In subsec. (d)(3), “chapter 31 of title 31” substituted for “the Second Liberty Bond Act, as amended” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2009—Subsec. (d)(1). Pub. L. 111-22, §204(c)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “If, in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this subchapter, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate \$100,000,000 outstanding at any one time. Except as otherwise provided in this subsection and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.”

Subsec. (d)(4). Pub. L. 111-22, §204(c)(3), added par. (4). 1984—Subsec. (b). Pub. L. 98-369 inserted “deposits and” and provisions relating to annual reporting requirements by the Board.

1982—Subsec. (f). Pub. L. 97-320 added subsec. (f).

1978—Pub. L. 95-630 substituted “Board” for “Administrator” wherever appearing and “it” and “its” for “he” and “his”, respectively, where appropriate.

1976—Subsec. (d)(2). Pub. L. 94-273 substituted “September” for “June” wherever appearing.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§ 1784. Examination of insured credit unions

(a) Examiners and claim agents; powers; report by examiner; jurisdiction of court

The Board shall appoint examiners who shall have power, on its behalf, to examine any insured credit union, any credit union making application for insurance of its member accounts, or any closed insured credit union whenever in the judgment of the Board an examination is necessary to determine the condition of any such credit union for insurance purposes. Each examiner shall have power to make a thorough examination of all of the affairs of the credit union and shall make a full and detailed report of the condition of the credit union to the Board. The Board in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured member accounts. Each claim agent shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured accounts, and to issue subpoenas and subpoenas duces tecum and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

(b) Power of Board; jurisdiction of court

In connection with examinations of insured credit unions, or with other types of investigations to determine compliance with applicable law and regulations, the Board, or its designated representatives, shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect of the affairs of any such credit union, and to issue subpoenas and subpoenas

duces tecum and to exercise such other powers as are set forth in section 1786(p) of this title and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States Court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

(c) Court orders enforcing subpoenas; immunity

In cases of refusal to obey a subpoena issued to, or contumacy by, any person, the Board may invoke the aid of any court of the United States within the jurisdiction of which such hearing, examination, or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. Such court may issue an order requiring such person to appear before the Board, or before a person designated by it, there to produce records, if so ordered, or to give testimony touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or carries on business or wherever he may be found. No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpoena issued under the authority of this subchapter on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) Administration acceptance of State board reports; reports of Board furnished to State board

The Administration may accept any report of examination made by or to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of examination made on behalf of the Board.

(e) Flood insurance compliance by insured credit unions

(1) Examination

The Board shall, during each examination conducted under this section, determine whether the insured credit union is complying with the requirements of the national flood insurance program.

(2) Report

(A) Requirement

Not later than 1 year after September 23, 1994, and biennially thereafter for the next 4

years, the Board shall submit a report to the Congress on compliance by insured credit unions with the requirements of the national flood insurance program.

(B) Contents

The report shall include a description of the methods used to determine compliance, the number of insured credit unions examined during the reporting year, a listing and total number of insured credit unions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(f) Access to liquidity

The Board shall—

(1) periodically assess the potential liquidity needs of each insured credit union, and the options that the credit union has available for meeting those needs; and

(2) periodically assess the potential liquidity needs of insured credit unions as a group, and the options that insured credit unions have available for meeting those needs.

(g) Sharing information with Federal reserve banks

The Board shall, for the purpose of facilitating insured credit unions' access to liquidity, make available to the Federal reserve banks (subject to appropriate assurances of confidentiality) information relevant to making advances to such credit unions, including the Board's reports of examination.

(June 26, 1934, ch. 750, title II, §204, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1001; amended Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 101-73, title IX, §915(a), Aug. 9, 1989, 103 Stat. 486; Pub. L. 103-325, title V, §529(b), Sept. 23, 1994, 108 Stat. 2266; Pub. L. 105-219, title III, §303, Aug. 7, 1998, 112 Stat. 934; Pub. L. 109-351, title VII, §726(13), Oct. 13, 2006, 120 Stat. 2002.)

Editorial Notes

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-351 substituted “such other powers” for “such others powers”.

1998—Subsecs. (f), (g). Pub. L. 105-219 added subsecs. (f) and (g).

1994—Subsec. (e). Pub. L. 103-325 added subsec. (e).

1989—Subsec. (b). Pub. L. 101-73, §915(a)(1), inserted “or with other types of investigations to determine compliance with applicable law and regulations,” after “insured credit unions,”.

Pub. L. 101-73, §915(a)(2), which directed the insertion of “and to exercise such others powers as are set forth in section 1786(p) of this title” after “subpena duces tecum”, was executed by making the insertion after “subpenas duces tecum”, as the probable intent of Congress.

1978—Pub. L. 95-630 substituted “Board” for “Administrator” wherever appearing, and “it” and “its” for “him” and “his”, respectively, where appropriate.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provi-

sions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§ 1785. Requirements governing insured credit unions

(a) Insurance logo

(1) Insured credit unions

(A) In general

Each insured credit union shall display at each place of business maintained by that credit union a sign or signs relating to the insurance of the share accounts of the institution, in accordance with regulations to be prescribed by the Board.

(B) Statement to be included

Each sign required under subparagraph (A) shall include a statement that insured share accounts are backed by the full faith and credit of the United States Government.

(2) Regulations

The Board shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) Penalties

For each day that an insured credit union continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than \$100, which the Board may recover for its use.

(b) Restrictions

(1) Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board—

(A) merge or consolidate with any non-insured credit union or institution;

(B) assume liability to pay any member accounts in, or similar liabilities of, any non-insured credit union or institution;

(C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) convert into a noninsured credit union or institution.

(2) CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), an insured credit union may convert to a mutual savings bank or savings association (if the savings association is in mutual form), as those terms are defined in section 1813 of this title, without the prior approval of the Board, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations.

(B) CONVERSION PROPOSAL.—A proposal for a conversion described in subparagraph (A) shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the insured credit union. Approval of the proposal for conversion shall

be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal.

(C) NOTICE OF PROPOSAL TO MEMBERS.—An insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert—

(i) 90 days before the date of the member vote on the conversion;

(ii) 60 days before the date of the member vote on the conversion; and

(iii) 30 days before the date of the member vote on the conversion.

(D) NOTICE OF PROPOSAL TO BOARD.—The Board may require an insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) to submit a notice to the Board of its intent to convert during the 90-day period preceding the date of the completion of the conversion.

(E) INAPPLICABILITY OF CHAPTER UPON CONVERSION.—Upon completion of a conversion described in subparagraph (A), the credit union shall no longer be subject to any of the provisions of this chapter.

(F) LIMIT ON COMPENSATION OF OFFICIALS.—

(i) IN GENERAL.—No director or senior management official of an insured credit union may receive any economic benefit in connection with a conversion of the credit union as described in subparagraph (A), other than—

(I) director fees; and

(II) compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

(ii) SENIOR MANAGEMENT OFFICIAL.—For purposes of this subparagraph, the term “senior management official” means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer (as defined by the appropriate Federal banking agency pursuant to section 1831i(f) of this title).

(G) CONSISTENT RULES.—

(i) IN GENERAL.—Not later than 6 months after August 7, 1998, the Administration shall promulgate final rules applicable to charter conversions described in this paragraph that are consistent with rules promulgated by other financial regulators, including the Office of the Comptroller of the Currency. The rules required by this clause shall provide that charter conversion by an insured credit union shall be subject to regulation that is no more or less restrictive than that applicable to charter conversions by other financial institutions.

(ii) OVERSIGHT OF MEMBER VOTE.—The member vote concerning charter conversion under this paragraph shall be administered by the Administration, and shall be verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion. If either the Administration or that regulatory agency dis-

approves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the Administration or the agency.

(3) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) Considerations for waiver or enforcement of restrictions

In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

- (1) the history, financial condition, and management policies of the credit union;
- (2) the adequacy of the credit union's reserves;
- (3) the economic advisability of the transaction;
- (4) the general character and fitness of the credit union's management;
- (5) the convenience and needs of the members to be served by the credit union; and
- (6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) Prohibition

(1) In general

Except with prior written consent of the Board—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

- (i) become, or continue as, an institution-affiliated party with respect to any insured credit union; or
- (ii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) Minimum 10-year prohibition period for certain offenses

(A) In general

If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

- (i) an offense under—
 - (I) section 215, 656, 657, 1005, 1006, 1007, 1008,¹ 1014, 1032, 1344, 1517, 1956, or 1957 of title 18; or
 - (II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

- (ii) the offense of conspiring to commit any such offense,

the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) Exception by order of sentencing court

(i) In general

On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) Period for filing

A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(3) Penalty

Whoever knowingly violates paragraph (1) or (2) shall be fined not more than \$1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(4) Exceptions

(A) Certain older offenses

(i) In general

With respect to an individual, paragraph (1) shall not apply to an offense if—

- (I) it has been 7 years or more since the offense occurred; or
- (II) the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.

(ii) Offenses committed by individuals 21 or younger

For individuals who committed an offense when they were 21 years of age or younger, paragraph (1) shall not apply to the offense if it has been more than 30 months since the sentencing occurred.

(iii) Limitation

This subparagraph shall not apply to an offense described under paragraph (1)(B).¹

(B) Expungement and sealing

With respect to an individual, paragraph (1) shall not apply to an offense if—

- (i) there is an order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense; and
- (ii) it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's State, Tribal, or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.

¹ See References in Text note below.

(C) De minimis exemption**(i) In general**

Paragraph (1) shall not apply to such de minimis offenses as the Board determines, by rule.

(ii) Confinement criteria

In issuing rules under clause (i), the Board shall include a requirement that the offense was punishable by a term of three years or less confined in a correctional facility, where such confinement—

(I) is calculated based on the time an individual spent incarcerated as a punishment or a sanction, not as pretrial detention; and

(II) does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location.

(iii) Bad check criteria

In setting the criteria for de minimis offenses under clause (i), if the Board establishes criteria with respect to insufficient funds checks, the Board shall require that the aggregate total face value of all insufficient funds checks across all convictions or program entries related to insufficient funds checks is \$2,000 or less.

(iv) Designated lesser offenses

Paragraph (1) shall not apply to certain lesser offenses (including the use of a fake ID, shoplifting, trespass, fare evasion, driving with an expired license or tag, and such other low-risk offenses as the Board may designate) if 1 year or more has passed since the applicable conviction or program entry.

(5) Consent applications**(A) In general**

The Board shall accept consent applications from an individual and from an insured credit union on behalf of an individual that are filed separately or contemporaneously with a regional office of the Board.

(B) Sponsored applications filed with regional offices

Consent applications filed at a regional office of the Board by an insured credit union on behalf of an individual—

(i) shall be reviewed by such office;

(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board; and

(iii) may only be denied by such office if the general counsel of the Board (or a designee) certifies that the denial is consistent with this section.

(C) Individual applications filed with regional offices

Consent applications filed at a regional office by an individual—

(i) shall be reviewed by such office; and

(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board, except with respect to—

(I) cases involving an offense described under paragraph (1)(B);¹ and

(II) such other high-level security cases as may be designated by the Board.

(D) National office review

The national office of the Board shall—

(i) review any consent application with respect to which a regional office is not authorized to approve or deny the application; and

(ii) review any consent application that is denied by a regional office, if the individual requests a review by the national office.

(E) Forms and instructions**(i) Availability**

The Board shall make all forms and instructions related to consent applications available to the public, including on the website of the Board.

(ii) Contents

The forms and instructions described under clause (i) shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.

(F) Consideration of criminal history**(i) Regional office consideration**

In reviewing a consent application, a regional office shall—

(I) primarily rely on the criminal history record of the Federal Bureau of Investigation; and

(II) provide such record to the applicant to review for accuracy.

(ii) Certified copies

The Board may not require an applicant to provide certified copies of criminal history records unless the Board determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

(G) Consideration of rehabilitation

Consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Board shall—

(i) conduct an individualized assessment when evaluating consent applications that takes into account evidence of rehabilitation, the applicant's age at the time of the conviction or program entry, the time that has elapsed since conviction or program entry, and the relationship of individual's² offense to the responsibilities of the applicable position;

(ii) consider the individual's employment history, letters of recommendation, certificates documenting participation in substance abuse programs, successful participating in job preparation and educational

² So in original. Probably should be preceded by "the".

programs, and other relevant mitigating evidence; and

(iii) consider any additional information the Board determines necessary for safety and soundness.

(H) Scope of employment

With respect to an approved consent application filed by an insured credit union on behalf of an individual, if the Board determines it appropriate, such approved consent application shall allow the individual to work for the same employer (without restrictions on the location) and across positions, except that the prior consent of the Board (which may require a new application) shall be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer determines will require higher security screening credentials.

(I) Coordination with FDIC

In carrying out this subsection, the Board shall consult and coordinate with the Federal Deposit Insurance Corporation as needed to promote consistent implementation where appropriate.

(6) Definitions

In this subsection:

(A) Consent application

The term "consent application" means an application filed with Board² by an individual (or by an insured credit union on behalf of an individual) seeking the written consent of the Board under paragraph (1)(A).

(B) Criminal offense involving dishonesty

The term "criminal offense involving dishonesty"—

(i) means an offense under which an individual, directly or indirectly—

(I) cheats or defrauds; or

(II) wrongfully takes property belonging to another in violation of a criminal statute;

(ii) includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(iii) does not include—

(I) a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

(II) an offense involving the possession of controlled substances.

(C) Pretrial diversion or similar program

The term "pretrial diversion or similar program" means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service.

(e) Security standards; reports; penalty

(1) The Board shall promulgate rules establishing minimum standards with which in-

sured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed \$100 for each day of the violation.

(f) Share draft accounts; maintenance, loans, etc.

(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, 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.

(g) Interest rates

(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, 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 insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan 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 interest paid from the credit union taking or receiving such interest.

(h) Emergency merger

Notwithstanding any other provision of law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize an insured credit union to purchase any of the assets of, or assume any of the liabilities of, any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that—

- (1) an emergency requiring expeditious action exists with respect to such other insured credit union;
- (2) other alternatives are not reasonably available; and
- (3) the public interest would best be served by approval of such merger, consolidation, purchase, or assumption.

(i) Emergency purchase of assets; conversion to insured deposits

(1) Notwithstanding any other provision of this chapter or of State law, the Board may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of or assume any of the liabilities of an insured credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the Board must attempt to effect the merger or consolidation of an insured credit union which is insolvent or in danger of insolvency with another insured credit union, as provided in subsection (h).

(2) For purposes of the authority contained in paragraph (1), insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

(j) Privileges not affected by disclosure to banking agency or supervisor

(1) In general

The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, 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 Board, 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 the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.

(June 26, 1934, ch. 750, title II, §205, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1002; amended Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96-221, title III, §305(d), title V, §523, Mar. 31, 1980, 94 Stat. 147, 166; Pub. L. 97-320, title I, §131, 141(a)(8), title VII, §706(b), Oct. 15, 1982, 96 Stat. 1486, 1489, 1540; Pub. L. 100-86, title V, §509(a), Aug. 10, 1987, 101 Stat. 635; Pub. L. 101-73, title IX, §910(b), Aug. 9, 1989, 103 Stat. 478; Pub. L. 103-322, title XXXII, §320606, Sept. 13, 1994, 108 Stat. 2119; Pub. L. 105-219, title II, §202, Aug. 7, 1998, 112 Stat. 919; Pub. L. 109-173, §2(d)(3), Feb. 15, 2006, 119 Stat. 3604; Pub. L. 109-351, title VI, §607(b), Oct. 13, 2006, 120 Stat. 1982; Pub. L. 111-203, title III, §362(2), July 21, 2010, 124 Stat. 1549; Pub. L. 117-263, div. E, title LVII, §5705(b), Dec. 23, 2022, 136 Stat. 3414.)

Editorial Notes

REFERENCES IN TEXT

Section 1008 of title 18, referred to in subsec. (d)(2)(A)(i)(I), was repealed by Pub. L. 101-73, title IX, §961(g)(1), Aug. 9, 1989, 103 Stat. 500.

Paragraph (1)(B), referred to in subsec. (d)(4)(A)(iii), (5)(C)(i)(I), probably should be a reference to “paragraph (2)”, meaning par. (2) of subsec. (d). See similar provisions in section 1829(c)(1)(C) and (f)(3)(B)(i) of this title, which refer to offenses described in subsec. (a)(2) of that section, which correspond to those listed in subsec. (d)(2) of this section.

The Civil Rights Act of 1964, referred to in subsec. (d)(5)(G), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

2022—Subsec. (d)(4) to (6). Pub. L. 117-263 added pars. (4) to (6).

2010—Subsec. (b)(2)(G)(i). Pub. L. 111-203, §362(2)(A), struck out “the Office of Thrift Supervision and” before “the Office of the Comptroller”.

Subsec. (i)(1). Pub. L. 111-203, §362(2)(B), struck out “or the Federal Savings and Loan Insurance Corporation” before “to purchase”.

2006—Subsec. (a). Pub. L. 109-173 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Every insured credit union shall display at each place of business maintained by it a sign or signs indicating that its member accounts are insured by the Board and shall include in all of its advertisements a statement to the effect that its member accounts are insured by the Board. The Board may exempt from this requirement advertisements which do not relate to member accounts or advertisements in which it is impractical to include such a statement. The Board shall prescribe by regulation the forms of such signs, the manner of display, the substance of any such statement, and the manner of use.”

Subsec. (j). Pub. L. 109-351 added subsec. (j).

1998—Subsec. (b)(1). Pub. L. 105-219, §202(1), substituted “Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board” for “Except with the prior written approval of the Board, no insured credit union shall”.

Subsec. (b)(2), (3). Pub. L. 105-219, §202(2), (3), added par. (2) and redesignated former par. (2) as (3).

1994—Subsec. (d). Pub. L. 103-322 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

“(1) PROHIBITION.—Except with the prior written consent of the Board—

“(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured credit union; and

“(B) an insured credit union may not permit such participation.

“(2) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined not more than \$1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.”

1989—Subsec. (d). Pub. L. 101-73 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Except with the written consent of the Board, no person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the credit union involved shall be subject to a penalty of not more than \$100 for each day this prohibition is violated, which the Board may recover for its use.”

1987—Pub. L. 100-86 repealed Pub. L. 97-320, §141. See 1982 Amendment note below.

1982—Subsec. (f)(2). Pub. L. 97-320, §706(b), inserted provisions relating to deposits of public funds.

Subsecs. (h), (i). Pub. L. 97-320, §131, added subsecs. (h) and (i).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 131 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

1980—Subsec. (f). Pub. L. 96-221, §305(d), added subsec. (f).

Subsec. (g). Pub. L. 96-221, §523, added subsec. (g).

1978—Pub. L. 95-630 substituted “Board” for “Administrator” wherever appearing, and “its” for “his” where appropriate.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-173, §2(e), Feb. 15, 2006, 119 Stat. 3605, provided that: “This section [amending this section and sections 1787, 1817, 1821, 1828, 1831t, and 3104 of this title] and the amendments made by this section shall take effect on the date on which the final regulations required under section 2109(a)(2) of the Federal Deposit Insurance Reform Act of 2005 [Pub. L. 109-171, set out as a Regulations note under section 1817 of this title] take effect [Apr. 1, 2006, see 71 F.R. 14629].”

EFFECTIVE DATE OF 1980 AMENDMENT

Enactment of subsec. (f) by Pub. L. 96-221 effective at the close of Mar. 31, 1980, see section 306 of Pub. L. 96-221, set out as a note under section 1464 of this title.

Pub. L. 96-221, title V, §525, Mar. 31, 1980, 94 Stat. 167, provided that: “The amendments made by sections 521 through 523 of this title [amending this section and enacting sections 1730g and 1831d of this title] shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the

date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97-320

No amendment made by section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100-86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99-452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97-320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99-400, set out as a note under section 1464 of this title.

DEFINITION OF “STATE”

For purposes of subsec. (g) of this section, the term “State” to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96-221, set out as a note under section 1735f-7a of this title.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96-221, section 1735f-7 of this title, or any other provisions of law, including section 85 of this title, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96-221, set out as a note under section 1735f-7a of this title.

§ 1786. Termination of insured credit union status; cease and desist orders; removal or suspension from office; procedure

(a) Termination of insurance

(1) Any insured credit union other than a Federal credit union may, upon not less than ninety days’ written notice to the Board and upon the affirmative vote of a majority of its members

within one year prior to the giving of such notice, terminate its status as an insured credit union.

(2) Any insured credit union, other than a Federal credit union, which has obtained a new certificate of insurance from a corporation authorized and duly licensed to insure member accounts may upon not less than ninety days' written notice to the Board convert from status as an insured credit union under this chapter: *Provided*, That at the time of giving notice to the Board the provisions of paragraph (b)(1) of this section are not being invoked against the credit union.

(b) Unsound condition of credit union; notice to correct condition; hearing; judicial review

(1) Whenever, in the opinion of the Board, any insured credit union is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is in an unsafe or unsound condition to continue operations as an insured credit union, or is violating or has violated an applicable law, rule, regulation, order, or any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party,¹ or is violating or has violated any written agreement entered into with the Board, the Board shall serve upon the credit union a statement with respect to such practices or conditions or violations for the purpose of securing the correction thereof. In the case of an insured State-chartered credit union, the Board shall send a copy of such statement to the commission, board, or authority, if any, having supervision of such credit union. Unless such correction shall be made within one hundred and twenty days after service of such statement, or within such shorter period of not less than twenty days after such service as the Board shall require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay in the correction of such practices or conditions or violations, or as the commission, board, or authority having supervision of such credit union, if any, shall require in the case of an insured State-chartered credit union, the Board, if it shall determine to proceed further, shall give to the credit union not less than thirty days' written notice of its intention to terminate the status of the credit union as an insured credit union. Such notice shall contain a statement of the facts constituting the alleged unsafe and unsound practices or conditions or violations and shall fix a time and place for a hearing thereon. 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 Board at the request of the credit union. Unless the credit union shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured credit union. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any unsafe or unsound practice or

condition or violation specified in the notice has been established and has not been corrected within the time above-prescribed in which to make such correction, the Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the notice.

(2) Any credit union whose insured status has been terminated by order of the Board 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 (j) of this section.

(c) Notice to members of termination of insured status

In the event of the termination of a credit union's status as an insured credit union as provided under subsection (a)(1) or (b) of this section, the credit union shall give prompt and reasonable notice to all of its members whose accounts are insured that it has ceased to be an insured credit union. It may include in such notice a statement of the fact that member accounts insured on the effective date of such termination, to the extent not withdrawn, remain insured for one year from the date of such termination, but it shall not further represent itself in any manner as an insured credit union. In the event of failure to give the notice as herein provided to members whose accounts are insured, the Board is authorized to give reasonable notice.

(d) Continuation of insurance for one year; approval of conversion of status; procedure subsequent to approval; reduction of premium charges

(1) After the termination of the insured status of any credit union as provided under subsection (a)(1) or (b) of this section, insurance of its member accounts to the extent that they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the Board. The credit union shall continue to maintain its deposit with and pay premiums to the Board during such period as in the case of an insured credit union and the Board shall have the right to examine such credit union from time to time during the period during which such insurance continues. Such credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union for the period of one year from the date of such termination. In the event that such credit union shall be closed for liquidation within such period of one year, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union. Notwithstanding the above, when an insured credit union's insured status is terminated and the credit union subsequently obtains comparable insurance coverage from another source, insurance of its accounts by the fund may cease immediately upon the ef-

¹ So in original.

fective date of such comparable coverage by mutual consent of the credit union and the Board.

(2) No credit union shall convert from status as an insured credit union under this chapter as provided under subsection (a)(2) of this section until the proposition for such conversion has been approved by a majority of all the directors of the credit union, and by affirmative vote of a majority of the members of the credit union who vote on the proposition in a vote in which at least 20 per centum of the total membership of the credit union participates. Following approval by the directors, written notice of the proposition and of the date set for the membership vote shall be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. The membership shall be given the opportunity to vote by mail ballot. If the proposition is approved by the membership, prompt and reasonable notice of insurance conversion shall be given to all members.

(3) In the event of a conversion of a credit union from status as an insured credit union under this chapter as provided under subsection (a)(2) of this section, premium charges payable under section 1782(c) of this title shall be reduced by an amount proportionate to the number of calendar months for which the converting credit union will no longer be insured under this chapter. As long as a converting credit union remains insured under this chapter, it shall remain subject to all of the provisions of this subchapter.

(e) Opinion of Board as to unsound condition of credit union; notice of charges; hearing; order to cease and desist; judicial review

(1) If, in the opinion of the Board, any insured credit union, credit union which has insured accounts, or any institution-affiliated party is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such credit union, or is violating or has violated, or the Board has reasonable cause to believe that the credit union or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the credit union or any written agreement entered into with the Board, the Board may issue and serve upon the credit union 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 credit union 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 Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing

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 Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the credit union 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 credit union 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.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the credit union or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(3) **AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.**—The authority to issue an order under this subsection and subsection (f) which requires an insured credit union or any institution-affiliated party to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such insured credit union or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such credit union 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 Board;

(B) restrict the growth of the institution;

(C) rescind agreements or contracts;

(D) dispose of any loan or asset involved;

(E) employ qualified officers or employees (who may be subject to approval by the Board at the direction of such Board); and

(F) take such other action as the Board determines to be appropriate.

(4) **AUTHORITY TO LIMIT ACTIVITIES.**—The authority to issue an order under this subsection or subsection (f) includes the authority to place limitations on the activities or functions of an insured credit union or any institution-affiliated party.

(f) Temporary cease and desist order; injunctive procedure

(1) Whenever the Board 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 credit union or any institution-affiliated party pursuant to paragraph (1) of subsection (e) of this sec-

tion, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the credit union, or is likely to weaken the condition of the credit union or otherwise prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section, the Board may issue a temporary order requiring the credit union or such party to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (e)(3). Such order shall become effective upon service upon the credit union 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 Administration shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the credit union or such party, until the effective date of such order.

(2) Within ten days after the credit union concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the credit union or such party may apply to the United States district court for the judicial district in which the home office of the credit union 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 credit union or such party under paragraph (1) of subsection (e) 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 (e)(1) specifies, on the basis of particular facts and circumstances, that an insured credit union's books and records are so incomplete or inaccurate that the Board is unable, through the normal supervisory process, to determine the financial condition of that insured credit union or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that insured credit union, the Board 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 (e)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (e)(1) in connection with the notice of charges; or

(II) the date the Board determines, by examination or otherwise, that the insured credit union's books and records are accurate and reflect the financial condition of the credit union.

(4) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(g) Removal and prohibition authority

(1) AUTHORITY TO ISSUE ORDER.—Whenever the Board 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 the Board in connection with any action on any application, notice, or request by such credit union or institution-affiliated party; or

(IV) any written agreement between such credit union and the Board;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union 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 credit union or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured credit union's members 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 such party's unfitness to serve as a director or officer of, or to otherwise participate in the conduct of the affairs of, an insured credit union,

the Board may serve upon such party a written notice of the Board'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 credit union.

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the Board determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, unless such violation was inadvertent or unintentional;

(ii) an officer or director of an insured credit union has knowledge that an institution-affiliated party of the insured credit union has violated any such provision or any provision of law referred to in subsection (i)(1)(A)(ii); or

(iii) an officer or director of an insured credit union has committed any violation of the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.],

the Board may serve upon such party, officer, or director a written notice of the Board's intention to remove such officer or director from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the Board shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Board serves written notice under paragraph (1) or (2) to any institution-affiliated party of the Board's intention to issue an order under such paragraph, the Board may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the institution, if the Board—

(i) determines that such action is necessary for the protection of the credit union or the interests of the credit union's members; and

(ii) serves such person with written notice of the suspension order.

(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under paragraph (6), shall remain in effect and enforceable until—

(I) the date the Board dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the Board to such person under paragraph (1) or (2).

(C) COPY OF ORDER.—If the Board issues a suspension order under subparagraph (A) to any institution-affiliated party, the Board shall serve a copy of such order on any insured credit union with which such party is associated at the time such order is issued.

(4) A notice of intention to remove a director, committee member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured credit union, 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 Board at the request of (A) such director, committee member, or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, committee member, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he 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 Board shall find that any of the grounds specified in such notice have been established, the Board may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, committee member, officer, or other person concerned (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 Board or a reviewing court.

(5) 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.

(6) Within ten days after any director, officer, committee member, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under paragraph (3) of this subsection, such director, officer, committee member, or other person may apply to the United States district court for the judicial district in which the principal office of the credit union 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 director, officer, committee member, or other person under paragraph (1) or (2) of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(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 (i), has been removed or suspended

from office in an insured credit union or prohibited from participating in the conduct of the affairs of an insured credit union 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 paragraph (3) or (4) of section 1818(b) of this title, or as a savings association under section 1818(b)(9) of this title;
- (iii) any insured credit union;
- (iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];
- (v) any appropriate Federal financial 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 credit union, such party receives the written consent of—

- (i) the Board; and
- (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. If any person receives such a written consent from the Board, the Board shall publicly disclose such consent. If the agency referred to in clause (ii) grants such a written consent, such agency shall report such action to the Board 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, the term “appropriate Federal financial institutions regulatory agency” means—

- (i) the appropriate Federal banking agency, as provided in section 1813(q) of this title;
- (ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];
- (iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 1752(7) of this title); and
- (iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Agency and any Federal home loan bank;²

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of

subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the Board specifically finds that it should apply to a corporation, firm, or other business enterprise.

(h) Board’s appointment of conservator; consultation with State; authority

(1) The Board may, *ex parte* without notice, appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as conservator and immediately take possession and control of the business and assets of any insured credit union in any case in which—

(A) the Board determines that such action is necessary to conserve the assets of any insured credit union or to protect the Fund or the interests of the members of such insured credit union;

(B) an insured credit union, by a resolution of its board of directors, consents to such an action by the Board;

(C) the Attorney General notifies the Board in writing that an insured credit union has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31;

(D) there is a willful violation of a cease-and-desist order which has become final;

(E) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the Board;

(F) the credit union is significantly undercapitalized, as defined in section 1790d of this title, and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or

(G) the credit union is critically undercapitalized, as defined in section 1790d of this title.

(2)(A) Except as provided in subparagraph (C), in the case of a State-chartered insured credit union, the authority conferred by paragraph (1) shall not be exercised without the written approval of the State official having jurisdiction over the State-chartered credit union that the grounds specified for such exercise exist.

(B) If such approval has not been received by the Board within 30 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State’s written reasons, if any, for withholding approval, then the Board may proceed without State approval only by a unanimous vote of the Board.

(C) In the case of a State-chartered insured credit union, the authority conferred by subparagraphs (F) and (G) of paragraph (1) may not be exercised unless the Board has complied with section 1790d(f) of this title.

(3) Not later than ten days after the date on which the Board takes possession and control of the business and assets of an insured credit union pursuant to paragraph (1), such insured

² So in original. The semicolon probably should be a period.

credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be enjoined from continuing such possession and control. Except as provided in this paragraph, no court may take any action, except at the request of the Board by regulation or order, to restrain or affect the exercise of powers or functions of the Board as conservator.

(4) Except as provided in paragraph (3), in the case of a Federal credit union, the Board may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time—

(A) as the Board shall permit such credit union to continue business subject to such terms and conditions as may be imposed by the Board; or

(B) as such credit union is liquidated in accordance with the provisions of section 1787 of this title.

(5) Except as provided in paragraph (3), in the case of an insured State-chartered credit union, the Board may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time—

(A) as the Board shall permit such credit union to continue business, subject to such terms and conditions as may be imposed by the Board;

(B) as the Board shall permit the transfer of possession and control of such credit union to any commission, board, or authority which has supervisory authority over such credit union and which is authorized by State law to operate such credit union; or

(C) as such credit union is liquidated in accordance with the provisions of section 1787 of this title.

(6) The Board may appoint such agents as it considers necessary in order to assist the Board in carrying out its duties as a conservator under this subsection.

(7) All expenses incurred by the Board in exercising its authority under this subsection with respect to any credit union shall be paid out of the assets of such credit union.

(8) The conservator shall have all the powers of the members, the directors, the officers, and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the Board.

(9) The authority granted by this subsection is in addition to all other authority granted to the Board under this chapter.

(i) Suspension, removal, and prohibition from participation orders in the case of certain criminal offenses

(1) SUSPENSION OR PROHIBITION AUTHORIZED.—

(A) IN GENERAL.—Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprison-

ment 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 Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in any credit union, 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 credit union.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Board.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an 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 Board may, if continued service or participation by such party may pose a threat to the interests of any credit union's members or may threaten to impair public confidence in any credit union, 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 credit union without the prior written consent of the Board.

(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 Board 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 credit union without the prior written consent of the Board.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party, whereupon such party (if a director or an officer) shall cease to be a director or officer of such credit union.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Board from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in credit

union affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section.

(iii) **EFFECTIVE PERIOD.**—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Board.

(E) **CONTINUATION OF AUTHORITY.**—The Board may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a credit union at the time of an offense described in subparagraph (A) without regard to—

(i) whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board; or

(ii) whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the Board.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a Federal credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a Federal credit union are suspended pursuant to this section, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office. Directors appointed temporarily by the Board shall, within thirty days following their appointment, call a special meeting for the election of new directors, unless during the thirty-day period (A) the regular annual meeting is scheduled, or (B) the suspensions giving rise to the appointment of temporary directors are terminated.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the credit union by such party does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair public confidence in the credit union. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before the Board or its designee to submit written materials (or, at the discretion of the Board, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify such party whether the suspension or prohibition

from participation in any manner in the conduct of the affairs of the credit union will be continued, terminated or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to such party. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(j) Jurisdiction of hearing; procedure; judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (i)(3) of this section) shall be held in the Federal judicial district or in the territory in which the principal office of the credit union 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 Board 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 (j). Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it may deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board 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 credit union or the institution-affiliated party concerned or an order issued under subsection (i)(1) of this section) by filing in the court of appeals of the United States for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty 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 such 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, 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 Board. 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 Board.

(k) Jurisdiction and enforcement; penalty

(1) The Board 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 principal office of the credit union is located, for the enforcement of any effective and outstanding notice or order issued under this section or section 1790d of this title, and such courts shall have jurisdiction and power to order and require compliance therewith. However, except as otherwise provided in this section or section 1790d 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 section 1790d of this title or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) **FIRST TIER.**—Any insured credit union 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 (e), (f), (g), (i), or (q), or any final order under section 1790d of this title;
- (iii) violates any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party; or
- (iv) violates any written agreement between such credit union 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 credit union 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 credit union; 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 credit union; 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.

(C) **THIRD TIER.**—Notwithstanding subparagraphs (A) and (B), any insured credit union 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 credit union; or

(III) breaches any fiduciary duty; and

(ii) 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 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 credit union, an amount not to exceed \$1,000,000; and

(ii) in the case of any insured credit union, an amount not to exceed the lesser of—

(I) \$1,000,000; or

(II) 1 percent of the total assets of such credit union.

(E) ASSESSMENT.—

(i) **WRITTEN NOTICE.**—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the Board by written notice.

(ii) **FINALITY OF ASSESSMENT.**—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) **AUTHORITY TO MODIFY OR REMIT PENALTY.**—The Board may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) **MITIGATING FACTORS.**—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the Board shall take into account the appropriateness of the penalty with respect to—

- (i) the size of financial resources and good faith of the insured credit union or the person charged;
- (ii) the gravity of the violation;
- (iii) the history of previous violations; and
- (iv) such other matters as justice may require.

(H) **HEARING.**—The insured credit union or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

³ So in original. Probably should be “not to”.

(i) REFERRAL.—If any insured credit union or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Board shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) “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.

(L) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured credit union) shall not affect the jurisdiction and authority of the Board 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 credit union (whether such date occurs before, on, or after August 9, 1989).

(I) Criminal penalty for violation of certain orders

Whoever—

(1) under this chapter, is suspended or removed from, or prohibited from participating in the affairs of any credit union described in subsection (g)(5); and

(2) knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (g)(5)) in the conduct of the affairs of such a credit union;

shall be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

(m) Definitions

As used in this section (1) the terms “cease-and-desist order which has become final” and “order which has become final” means a cease-and-desist order, or an order issued by the Board with the consent of the credit union or the director, officer, committee member, or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (j) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under subsection (i) of this section, and (2) the term “violation” includes, without limitation any action

(alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(n) Notice or order to State board supervising State-chartered credit union

Any service required or authorized to be made by the Board under this section may be made by registered mail or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Copies of any notice or order served by the Board upon any State-chartered credit union or any director, officer, or committee member thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the commission, board, or authority, if any, having supervision of such credit union.

(o) Notice of proceedings to State board supervising State-chartered credit union; effect of corrective action by State board; attack on validity of notice or order

In connection with any proceeding under subsection (e), (f)(1), or (g) of this section involving an insured State-chartered credit union or any institution-affiliated party, the Board shall provide the commission, board, or authority, if any, having supervision of such credit union, with notice of its intent to institute such a proceeding and the grounds thereof. Unless within such time as the Board 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 corrective action is effectuated by action of such commission, board, or authority, the Board may proceed as provided in this section. No credit union or other party who is the subject of any notice or order issued by the Board 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.

(p) Proceedings; powers of Board; court enforcement of subpoenas; witness fees; expenses and attorneys’ fees

In the course of or in connection with any proceeding under this section or in connection with any claim for insured deposits or any examination or investigation under section 1784(b) of this title, the Board, in conducting the proceeding, examination, or investigation or considering the claim for insured deposits,¹ or any designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum, and the Board is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District

Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceedings instituted under this section by an insured credit union or a director, officer, or committee member thereof may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper, and such expenses and fees shall be paid by the credit union or from its assets.

(q) Compliance with monetary transaction recordkeeping and report requirements

(1) Compliance procedures required

The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31.

(2) Examinations of credit unions to include review of compliance procedures

(A) In general

Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) Exam report requirement

The report of examination shall describe any problem with the procedures maintained by the credit union.

(3) Order to comply with requirements

If the Board determines that an insured credit union—

- (A) has failed to establish and maintain the procedures described in paragraph (1); or
- (B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(r) "Institution-affiliated party" defined

For purposes of this chapter, the term "institution-affiliated party" means—

- (1) any committee member, director, officer, or employee of, or agent for, an insured credit union;
- (2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union; and
- (3) 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 credit union.

(s) Public disclosure of agency action

(1) In general

The Board 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 Board, unless the Board, 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 the Board 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 the Board 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.

(3) Reports to Congress

A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.

(4) Transcript of hearing

A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (k). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5.

(5) Delay of publication under exceptional circumstances

If the Board 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.

(6) Documents filed under seal in public enforcement hearings

The Board may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(7) Retention of documents

The Board shall keep and maintain a record, for a period of at least 6 years, of all docu-

ments described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(8) Disclosures to Congress

No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(9) Preservation of records

(A) In general

The Board may cause any and all records, papers, or documents kept by the Administration or in the possession or custody of the Administration to be—

- (i) photographed or microphotographed or otherwise reproduced upon film; or
- (ii) preserved in any electronic medium or format which is capable of—

(I) being read or scanned by computer; and

(II) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

(B) Treatment as original records

Any photographs, micrographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(C) Authority of the administration

Any photographs, microphotographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be preserved in such manner as the Administration shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Administration may direct.

(t) Regulation of certain forms of benefits to institution-affiliated parties

(1) Golden parachutes and indemnification payments

The Board may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Board shall prescribe, by regulation, the factors to be considered by the Board in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party

has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the credit union that has had a material effect on the financial condition of the credit union.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the credit union, the appointment of a conservator or liquidating agent for the credit union, or the credit union's troubled condition (as defined in regulations prescribed by the Board pursuant to paragraph (4)(A)(ii)(III)).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material effect on the financial condition of the credit union.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

- (i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18; or
- (ii) section 1341 or 1343 of such title affecting a financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the credit union and the degree to which—

- (i) the payment reasonably reflects compensation earned over the period of employment; and
- (ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No credit union may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such credit union or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

- (i) preventing the proper application of the assets of the credit union; or
- (ii) preferring one creditor over another.

(4) “Golden parachute payment” defined

For purposes of this subsection—

(A) In general

The term “golden parachute payment” means any payment (or any agreement to make any payment) in the nature of compensation by any credit union for the benefit of any institution-affiliated party pursuant to an obligation of such credit union that—

- (i) is contingent on the termination of such party's affiliation with the credit union; and
- (ii) is received on or after the date on which—

- (I) the credit union is insolvent;
- (II) any conservator or liquidating agent is appointed for such credit union;
- (III) the Board determines that the credit union is in a troubled condition

(as defined in regulations which the Board shall prescribe);

(IV) the credit union has been assigned a composite rating by the Board of 4 or 5 under the Uniform Financial Institutions Rating System (as applicable with respect to credit unions); or

(V) the credit union is subject to a proceeding initiated by the Board to terminate or suspend deposit insurance for such credit union.

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included

The term “golden parachute payment” shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory retirement or severance benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) Other definitions

For purposes of this subsection—

(A) Indemnification payment

Subject to paragraph (6), the term “indemnification payment” means any payment (or any agreement to make any payment) by any credit union for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Board which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the credit union; or

(iii) is required to take any affirmative action described in subsection (e)(3) with respect to such credit union.

(B) Liability or legal expense

The term “liability or legal expense” means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment

or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term “payment” includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any credit union from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the credit union which is described in paragraph (5)(A).

(u) Foreign investigations

(1) Requesting assistance from foreign banking authorities

In conducting any investigation, examination, or enforcement action under this chapter, the Board may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) Providing assistance to foreign banking authorities

(A) In general

The Board may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) Investigation by Federal banking agency

The Board may, in the Board’s discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the Board.

(C) Factors to consider

In deciding whether to provide assistance under this paragraph, the Board shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of the Board or any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) Treatment of foreign banking authority

For purposes of any Federal law or Board regulation relating to the collection or transfer of information by the Board or any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) Rule of construction

Paragraphs (1) and (2) shall not be construed to limit the authority of the Board or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(v) Termination of insurance for money laundering or cash transaction reporting offenses

(1) In general

(A) Conviction of title 18 offenses

(i) Duty to notify

If an insured State credit union has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) Notice of termination

After written notification from the Attorney General to the Board of such a conviction, the Board shall issue to such insured credit union a notice of its intention to terminate the insured status of the insured credit union and schedule a hearing on the matter, which shall be conducted as a termination hearing pursuant to subsection (b) of this section, except that no period for correction shall apply to a notice issued under this subparagraph.

(B) Conviction of title 31 offenses

If a credit union is convicted of any criminal offense under section 5322 or 5324 of title 31 after prior written notification from the Attorney General, the Board may initiate proceedings to terminate the insured status of such credit union in the manner described in subparagraph (A).

(C) Notice to State supervisor

The Board shall simultaneously transmit a copy of any notice under this paragraph to the appropriate State financial institutions supervisor.

(2) Factors to be considered

In determining whether to terminate insurance under paragraph (1), the Board shall take into account the following factors:

(A) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

(C) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was found guilty.

(D) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) Notice to State credit union supervisor and public

When the order to terminate insured status initiated pursuant to this subsection is final, the Board shall—

(A) notify the commission, board, or authority (if any) having supervision of the credit union described in paragraph (1) at least 10 days prior to the effective date of the order of the termination of the insured status of such credit union; and

(B) publish notice of the termination of the insured status of the credit union.

(4) Temporary insurance of previously insured deposits

Upon termination of the insured status of any State credit union pursuant to paragraph (1), the deposits of such credit union shall be treated in accordance with subsection (d)(2).

(5) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured credit union that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(w) One-year restrictions on Federal examiners of insured credit unions

(1) In general

In addition to other applicable restrictions set forth in title 18, the penalties set forth in paragraph (5) of this subsection shall apply to any person who—

(A) was an officer or employee (including any special Government employee) of the Administration;

(B) served 2 or more months during the final 12 months of his or her employment with the Administration as the senior examiner (or a functionally equivalent position) of an insured credit union with continuing, broad responsibility for the examination (or inspection) of that insured credit union on behalf of the Administration; and

(C) within 1 year after the termination date of his or her service or employment

with the Administration, knowingly accepts compensation as an employee, officer, director, or consultant from such insured credit union.

(2) Rule of construction

For purposes of this subsection, a person shall be deemed to act as a consultant for an insured credit union only if such person directly works on matters for, or on behalf of, such insured credit union.

(3) Regulations

(A) In general

The Board shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

(B) Consultation

In prescribing rules or regulations under this paragraph, the Board shall, to the extent it deems necessary, consult with the Federal banking agencies (as defined in section 1813 of this title) on regulations issued by such agencies in carrying out section 1820(k) of this title.

(4) Waiver

The Board may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of the Administration if the Chairman certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the Administration.

(5) Penalties

(A) In general

In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever the Board determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with an insured credit union, the Board shall impose upon such person one or more of the following penalties:

(i) Industry-wide prohibition order

The Board shall serve a written notice or order in accordance with and subject to the provisions of subsection (g)(4) for written notices or orders under paragraph (1) or (2) of subsection (g), upon such person of the intention of the Board—

(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the insured credit union for a period of up to 5 years; and

(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured credit union for a period of up to 5 years.

(ii) Civil monetary penalty

The Board may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of

not more than \$250,000. Any administrative proceeding under this clause shall be conducted in accordance with subsection (k). In lieu of an action by the Board under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

(B) Scope of prohibition order

Any person subject to an order issued under this subparagraph (A)(i) shall be subject to paragraphs (5) and (7) of subsection (g) in the same manner and to the same extent as a person subject to an order issued under subsection (g).

(June 26, 1934, ch. 750, title II, § 206, as added Pub. L. 91-468, § 1(3), Oct. 19, 1970, 84 Stat. 1003; amended Pub. L. 93-383, title VII, § 728, Aug. 22, 1974, 88 Stat. 720; Pub. L. 95-22, title III, § 307, Apr. 19, 1977, 91 Stat. 52; Pub. L. 95-630, title I, §§ 107(a)(4), (c)(4), (d)(4), (e)(4), 111(d), title V, § 502(b), Nov. 10, 1978, 92 Stat. 3652, 3656, 3659, 3663, 3670, 3681; Pub. L. 97-320, title I, §§ 132, 141(a)(8), title IV, §§ 424(a), (d)(9), (e), 427(c), Oct. 15, 1982, 96 Stat. 1487, 1489, 1522, 1523, 1525; Pub. L. 98-369, div. B, title VIII, § 2812, July 18, 1984, 98 Stat. 1206; Pub. L. 99-570, title I, § 1359(d), Oct. 27, 1986, 100 Stat. 3207-29; Pub. L. 100-86, title V, § 509(a), title VII, §§ 709-713, Aug. 10, 1987, 101 Stat. 635, 653, 654; Pub. L. 101-73, title IX, §§ 901(a), (b)(2), 902(b), 903(b), 904(b), 905(b), 906(b), 907(b), 908(b), 913(b), 915(b), 920(b), title XII, § 1217(b), Aug. 9, 1989, 103 Stat. 446, 448, 451, 455, 458, 460, 462, 464, 477, 484, 486, 488, 546; Pub. L. 101-647, title XXV, §§ 2523(b), 2532(c), 2547(b), Nov. 29, 1990, 104 Stat. 4870, 4881, 4887; Pub. L. 102-233, title III, § 302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102-550, title XV, §§ 1501(b), 1503(b), 1504(b), Oct. 28, 1992, 106 Stat. 4044, 4050, 4053; Pub. L. 103-325, title IV, § 411(c)(2)(B), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 105-219, title III, § 301(b)(1), (g)(1), (2), Aug. 7, 1998, 112 Stat. 930, 931; Pub. L. 108-458, title VI, § 6303(c), Dec. 17, 2004, 118 Stat. 3753; Pub. L. 109-351, title VII, §§ 708(b), 715(b), 716(b), 723(b), 726(14)-(19), Oct. 13, 2006, 120 Stat. 1989, 1995, 1996, 2000, 2002, 2003; Pub. L. 111-203, title III, § 362(3), July 21, 2010, 124 Stat. 1549.)

Editorial Notes

REFERENCES IN TEXT

The Depository Institution Management Interlocks Act, referred to in subsec. (g)(2)(A)(iii), is title II of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3672, which is classified principally to chapter 33 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (g)(7)(A)(iv), (D)(ii), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§ 2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

AMENDMENTS

2010—Subsec. (g)(7)(A)(ii). Pub. L. 111-203, § 362(3)(A)(i), substituted “(b)(9)” for “(b)(8)”.

Subsec. (g)(7)(A)(v). Pub. L. 111-203, § 362(3)(A)(ii), substituted “financial” for “depository” and inserted “and” at end.

Subsec. (g)(7)(A)(vi). Pub. L. 111-203, § 362(3)(A)(iii), substituted “Agency” for “Board” and a period for “; and” at end.

Subsec. (g)(7)(A)(vii). Pub. L. 111-203, § 362(3)(A)(iv), struck out cl. (vii) which read as follows: “the Resolution Trust Corporation.”

Subsec. (g)(7)(D)(iii). Pub. L. 111-203, § 362(3)(B)(i), inserted “and” at end.

Subsec. (g)(7)(D)(iv). Pub. L. 111-203, § 362(3)(B)(ii), substituted “Agency” for “Board” and struck out “and” at end.

Subsec. (g)(7)(D)(v). Pub. L. 111-203, § 362(3)(B)(iii), struck out cl. (v) which read as follows: “the Thrift Depositor Protection Oversight Board, in the case of the Resolution Trust Corporation.”

2006—Subsec. (b)(1). Pub. L. 109-351, § 716(b)(1), substituted “any action on any application, notice, or other request by the credit union or institution-affiliated party,” for “the granting of any application or other request by the credit union” in first sentence.

Subsec. (e)(3)(D). Pub. L. 109-351, § 726(14), struck out “and” after semicolon.

Subsec. (f)(1). Pub. L. 109-351, § 726(15), substituted “subsection (e)(3)” for “subsection (e)(3)(B)”.

Subsec. (g)(1)(A)(i)(III). Pub. L. 109-351, § 716(b)(2), substituted “any action on any application, notice, or request by such credit union or institution-affiliated party” for “the grant of any application or other request by such credit union”.

Subsec. (g)(7)(D). Pub. L. 109-351, § 726(16), struck out “and subsection (1)” after “For purposes of this paragraph” in introductory provisions.

Subsec. (i). Pub. L. 109-351, § 708(b)(2), inserted heading.

Subsec. (i)(1)(A). Pub. L. 109-351, § 708(b)(1)(A), substituted “any credit union” for “the credit union” in two places.

Subsec. (i)(1)(B)(i). Pub. L. 109-351, § 708(b)(1)(B), inserted “of which the subject of the order is, or most recently was, an institution-affiliated party” before period at end.

Subsec. (i)(1)(C). Pub. L. 109-351, § 708(b)(1)(C), substituted “any credit union’s” for “the credit union’s” in cl. (i) and “any credit union” for “the credit union” wherever appearing.

Subsec. (i)(1)(D)(i). Pub. L. 109-351, § 708(b)(1)(D), substituted “upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party” for “upon such credit union”.

Subsec. (i)(1)(E). Pub. L. 109-351, § 708(b)(1)(E), added subpar. (E).

Subsec. (k)(2)(A)(iii). Pub. L. 109-351, § 716(b)(3), substituted “any action on any application, notice, or other request by the credit union or institution-affiliated party” for “the grant of any application or other request by such credit union”.

Subsec. (k)(3). Pub. L. 109-351, § 715(b), inserted “or order” after “notice” in two places.

Subsec. (s)(9). Pub. L. 109-351, § 723(b), added par. (9). Subsec. (t)(2)(B). Pub. L. 109-351, § 726(17), inserted “regulations” after “(as defined in)”.

Subsec. (t)(2)(C). Pub. L. 109-351, § 726(18), substituted “material effect” for “material affect”.

Subsec. (t)(4)(A)(ii)(II). Pub. L. 109-351, § 726(19), struck out “or” after semicolon at end.

2004—Subsec. (w). Pub. L. 108-458 added subsec. (w).

1998—Subsec. (h)(1). Pub. L. 105-219, § 301(g)(2), inserted “or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union)” after “appoint itself” in introductory provisions.

Subsec. (h)(1)(F), (G). Pub. L. 105-219, § 301(b)(1)(A), added subpars. (F) and (G).

Subsec. (h)(2)(A). Pub. L. 105-219, § 301(b)(1)(B)(i), substituted “Except as provided in subparagraph (C), in the case” for “In the case”.

Subsec. (h)(2)(C). Pub. L. 105-219, § 301(b)(1)(B)(ii), added subpar. (C).

Subsec. (k)(1). Pub. L. 105-219, § 301(g)(1)(A), inserted “or section 1790d of this title” after “this section” in three places.

Subsec. (k)(2)(A)(ii). Pub. L. 105-219, § 301(g)(1)(B), inserted “, or any final order under section 1790d of this title” before semicolon at end.

1994—Subsecs. (h)(1)(C), (i)(1)(A)(ii), (v)(1)(B). Pub. L. 103-325 substituted “section 5322 or 5324 of title 31” for “section 5322 of title 31”.

1992—Subsec. (g)(2). Pub. L. 102-550, § 1504(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Whenever, in the opinion of the Board, any director, officer, or committee member of an insured credit union has committed any violation of the Depository Institution Management Interlocks Act, the Board may serve upon such director, officer, or committee member a written notice of its intention to remove him from office.”

Subsec. (h)(1)(C) to (E). Pub. L. 102-550, § 1501(b), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 102-550, § 1504(b)(2), amended par. (1) generally, subdividing existing provisions into subpars. (A) to (D), and, in subpar. (A), including violations under section 1956, 1957, or 1960 of title 18 or section 5322 of title 31 as reason for suspension of any violator from further participation in the affairs of the credit union.

Subsec. (v). Pub. L. 102-550, § 1503(b), added subsec. (v).

1990—Subsec. (j)(1). Pub. L. 101-647, § 2547(b)(2), which directed amendment of par. (1) by striking out after first sentence “Such hearing shall be private, unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest,” was executed by striking out “Such hearing shall be private unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.” as the probable intent of Congress.

Subsec. (s). Pub. L. 101-647, § 2547(b)(1), amended subsec. (s) generally. Prior to amendment, subsec. (s) read as follows:

“(1) IN GENERAL.—The Board shall publish and make available to the public—

“(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

“(B) any modification to or termination of any final order described in subparagraph (A).

“(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety or soundness of an insured credit union or other federally regulated depository institution, the Board may delay the publication of such order for a reasonable time.”

Subsec. (t). Pub. L. 101-647, § 2523(b), added subsec. (t).

Subsec. (u). Pub. L. 101-647, § 2532(c), added subsec. (u).

1989—Subsec. (e)(1). Pub. L. 101-73, § 901(b)(2)(A), (B), substituted references to institution-affiliated parties for references to directors, officers, committee members, agents, or other persons participating in the conduct of the affairs of credit unions. Substitution by section 901(b)(2)(A)(ii) was executed to reflect the probable intent of Congress, notwithstanding an error in the directory language.

Subsec. (e)(3), (4). Pub. L. 101-73, § 902(b)(1), added pars. (3) and (4).

Subsec. (f)(1). Pub. L. 101-73, § 902(b)(2)(B), substituted “significant” for “substantial”, struck out “seriously” before “weaken the condition of” and before “prejudice the interests of”, and inserted after first sentence “Such order may include any requirement authorized under subsection (e)(3)(B).”

Pub. L. 101-73, § 901(b)(2)(B), (C), substituted references to institution-affiliated parties for references to directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of credit unions.

Subsec. (f)(2). Pub. L. 101-73, § 901(b)(2)(B), substituted references to institution-affiliated parties for references to directors, officers, committee members, em-

ployees, agents, or other persons participating in the conduct of the affairs of credit unions.

Subsec. (f)(3), (4). Pub. L. 101-73, §902(b)(2)(A), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (g)(1). Pub. L. 101-73, §903(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Whenever, in the opinion of the Board, any director, officer, committee member, or employee of an insured credit union has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer, committee member, or employee and the Board determines that the credit union has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the Board may serve upon such director, officer, committee member, or employee a written notice of its intention to remove him from office."

Subsec. (g)(2). Pub. L. 101-73, §903(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "Whenever, in the opinion of the Board, any director, officer, committee member, or employee of an insured credit union, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to continue as a director, officer, committee member, or employee, and, whenever, in the opinion of the Board, any agent or other person participating in the conduct of the affairs of an insured credit union, by conduct or practice with respect to such credit union or other insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to participate in the conduct of the affairs of such insured credit union, the Board may serve upon such director, officer, committee member, employee, agent, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such credit union."

Subsec. (g)(3). Pub. L. 101-73, §903(b)(2), added par. (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 101-73, §903(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided for temporary suspension from office or prohibition from further participation in credit union activities.

Subsec. (g)(5). Pub. L. 101-73, §903(b)(2), (3), added par. (5). Former par. (5) redesignated (4).

Subsec. (g)(6). Pub. L. 101-73, §903(b)(4), substituted "credit union under paragraph (3)" for "credit union under paragraph (4)" and "person under paragraph (1) or (2)" for "person under paragraph (1), (2), or (3)".

Subsec. (g)(7). Pub. L. 101-73, §904(b), amended par. (7) generally, revising and restating as subpars. (A) to (F) provisions of former subpars. (A) and (B).

Subsec. (h)(3). Pub. L. 101-73, §1217(b), inserted at end "Except as provided in this paragraph, no court may take any action, except at the request of the Board by regulation or order, to restrain or affect the exercise of powers or functions of the Board as conservator."

Subsec. (i)(1). Pub. L. 101-73, §906(b), struck out "authorized by a United States attorney" after "is charged in any information, indictment, or complaint", and substituted "or an agreement to enter a pre-trial diversion or other similar program" for "with respect to such crime" after "judgment of conviction".

Pub. L. 101-73, §901(b)(2)(D)(i)-(iv), (vi), substituted references to institution-affiliated parties for references to directors, committee members, or officers of insured credit unions, or other persons participating in the conduct of the affairs of credit unions, and substituted "whereupon such party (if a director, a com-

mittee member, or an officer)" for "whereupon such director, committee member, or officer".

Pub. L. 101-73, §901(b)(2)(D)(v), which directed the substitution of "party" for "director, officer or other person" could not be executed because "director, officer or other person" does not appear in par. (1).

Subsec. (i)(3). Pub. L. 101-73, §901(b)(2)(E)(i)-(iv), substituted references to institution-affiliated parties for references to directors, committee members, officers, or other persons.

Pub. L. 101-73, §901(b)(2)(E)(v), which directed the substitution of "such party" for "said director, committee member, officer or other person" was executed by making the substitution for "said director, committee member, officer, or other person" after "whether the order removing" in third sentence to reflect the probable intent of Congress.

Subsec. (j)(2). Pub. L. 101-73, §920(b), substituted "Any party to any proceeding under paragraph (1)" for "Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the practices or violations stated therein,".

Pub. L. 101-73, §901(b)(2)(F), substituted "institution-affiliated party" for "director, officer, committee member, or other person".

Subsec. (k)(2). Pub. L. 101-73, §907(b), in amending par. (2) generally, designated existing provisions as cls. (i) to (iv), substituted provisions imposing a fine of \$5,000 per day for violation of any law or regulation, a final or temporary order, any condition imposed in writing, or any written agreement for provisions imposing a fine of \$1,000 per day for violation of any final order, authorizing the penalizing agency to compromise or modify such penalty, providing for assessment and collection of such penalty by written notice, and defining "violates", and added subpars. (B) to (L).

Subsec. (k)(3). Pub. L. 101-73, §905(b), added par. (3).

Subsec. (l). Pub. L. 101-73, §908(b), amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "Any director, officer, or committee member, or former director, officer, or committee member, of an insured credit union or of a credit union any of the member accounts of which are insured, or any other person against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, committee member, or other person under subsections (g)(4), (g)(5), or (i) of this section and who (i) participates in any manner in the conduct of the affairs of the credit union involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such credit union, or (ii) without the prior written approval of the Board votes for a director, serves or acts as a director, officer, committee member, or employee of any credit union, shall upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both."

Subsec. (o). Pub. L. 101-73, §901(b)(2)(G), substituted "institution-affiliated party" for "director, officer, committee member or other person participating in the conduct of its affairs".

Subsec. (p). Pub. L. 101-73, §915(b), in first sentence, inserted "or in connection with any claim for insured deposits or any examination or investigation under section 1784(b) of this title" after "any proceeding under this section", ", in conducting the proceeding, examination, or investigation or considering the claim for insured deposits," after "section, the Board", and ", claims, examinations, or investigations" before period at end.

Subsec. (r). Pub. L. 101-73, §901(a), added subsec. (r).

Subsec. (s). Pub. L. 101-73, §913(b), added subsec. (s). 1987—Pub. L. 100-86, §509(a), repealed Pub. L. 97-320, §141. See 1982 Amendment notes below.

Subsec. (g)(1). Pub. L. 100-86, §709(1), substituted "committee member, or employee" for "or committee member" in three places.

Subsec. (g)(2). Pub. L. 100-86, §709(2)-(4), substituted “committee member, or employee” for “or committee member” in two places, substituted “any agent or other person” for “any other person”, and inserted “employee, agent,” before “or other person”.

Subsec. (g)(7). Pub. L. 100-86, §710, added par. (7).

Subsec. (h)(1)(C), (D). Pub. L. 100-86, §711, added subpars. (C) and (D).

Subsec. (h)(2)(B). Pub. L. 100-86, §712, substituted “30” for “ninety”.

Subsec. (h)(8), (9). Pub. L. 100-86, §713, added par. (8) and redesignated former par. (8) as (9).

1986—Subsec. (k)(2)(A). Pub. L. 99-570, §1359(d)(2), inserted reference to subsec. (q) of this section.

Subsec. (q). Pub. L. 99-570, §1359(d)(1), added subsec. (q).

1984—Subsec. (d)(1). Pub. L. 98-369 inserted “(1)” after “subsection (a)”, “maintain its deposit with and”, and provisions relating to termination of insured status and the obtaining of comparable insurance coverage from another source.

1982—Subsec. (b)(2). Pub. L. 97-320, §132(b), substituted “subsection (j)” for “subsection (i)”.

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (g)(3) to (6). Pub. L. 97-320, §427(c)(1), added par. (3); redesignated former pars. (3) to (5) as (4) to (6), respectively; inserted reference to par. (3) in two places and substituted reference to par. (6) for par. (5) in par. (4); and inserted reference to par. (3) and substituted reference to par. (4) for par. (3) in par. (6).

Subsecs. (h), (i). Pub. L. 97-320, §132(a), added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (j). Pub. L. 97-320, §132(a), (c), (d), redesignated former subsec. (i) as (j), substituted “subsection (i)(3)” for “subsection (h)(3)” in first sentence and “subsection (j)” for “subsection (i)” in fourth sentence of par. (1), and substituted “subsection (i)(1)” for “subsection (h)(1)” after “an order issued under” in par. (2). Former subsec. (j) redesignated (k).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (k). Pub. L. 97-320, §132(a)(1), redesignated former subsec. (j) as (k). Former subsec. (k) redesignated (l).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (k)(2)(A), (D). Pub. L. 97-320, §424(a), (d)(9), (e), which directed insertion of proviso giving Board au-

thority to compromise, etc., any civil money penalty imposed under this subsection and substitution of “may be assessed” for “shall be assessed” in subsec. (j)(2)(A), and substitution of “twenty days from the service” for “ten days from the date” in subsection (j)(2)(D), was executed to subsec. (k)(2)(A), (D) to reflect the probable intent of Congress and the redesignation of subsec. (j) as (k) by section 132(a)(1) of Pub. L. 97-320.

Subsec. (l). Pub. L. 97-320, §132(a)(1), (e), redesignated former subsec. (k) as (l) and substituted “(i)” for “(h)” after “(g)(3), (g)(4), or”. Former subsec. (l) redesignated (m).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Pub. L. 97-320, §427(c)(2), which directed substitution of reference to subsec. (g)(5) for subsec. (g)(3) in subsec. (k), was executed to subsec. (l) to reflect the probable intent of Congress and the redesignation of subsec. (k) as (l) by section 132(a)(1) of Pub. L. 97-320.

Subsec. (m). Pub. L. 97-320, §132(a)(1), (f), redesignated former subsec. (l) as (m) and substituted “subsection (j)” for “subsection (i)” after “paragraph (2) of” and “subsection (i)” for “subsection (h)” after “an order issued under”. Former subsec. (m) redesignated (n).

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsecs. (n) to (p). Pub. L. 97-320, §132(a)(1), redesignated former subsecs. (m) to (o) as (n) to (p), respectively.

Pub. L. 97-320, §141(a)(8), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 132 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

1978—Subsecs. (a) to (d). Pub. L. 95-630, §502(b), substituted “Board” for “Administrator” wherever appearing, and “it” and “its” for “he” and “his”, respectively, where appropriate.

Subsec. (e). Pub. L. 95-630, §§107(a)(4), 502(b), substituted “Board” for “Administrator” wherever appearing, and in par. (1) extended coverage of provisions to include directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of any insured credit union or credit union which has insured accounts.

Subsec. (f). Pub. L. 95-630, §§107(c)(4), 502(b), substituted “Board” for “Administrator” wherever appearing, inserted references to any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of the credit union, and inserted in par. (1) “prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section” after “its insured members” and “and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings” after “violation or practice”.

Subsec. (g). Pub. L. 95-630, §§107(d)(4), 502(b), substituted “Board” for “Administrator” wherever appearing, in pars. (1), (2) “its” for “his”, in par. (3) “it” for “he”, “or prohibit him” for “and/or prohibit him”,

“suspension or prohibition” for “suspension and/or prohibition”, and “removal and prohibition” for “removal and/or prohibition”, and in par. (4) “or to prohibit” for “and/or to prohibit”, “removal or prohibition” for “removal and/or prohibition”, and “or prohibition” for “and/or prohibition”.

Subsec. (h). Pub. L. 95-630, §§111(d)(1), 502(b), among other changes, substituted “Board” for “Administrator” wherever appearing, in par. (1) substituted “Crime” for “felony” in two places and “subsection (g) of this section” for “paragraph (1) or (2) of subsection (g) of this section”, inserted “which is punishable by imprisonment for a term exceeding one year under State or Federal law” after “or breach of trust” and “, if continued service or participation by the individual may pose a threat to the interests of the credit union’s members or may threaten to impair public confidence in the credit union” after “the Board may” in two places, and inserted provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Board, and added par. (3).

Subsec. (i). Pub. L. 95-630, §§111(d)(2), (3), 502(b), substituted “Board” for “Administrator” wherever appearing, in par. (1) substituted “its” for “his” and “it” for “he” and “him” and inserted “(other than the hearing provided for in subsection (h)(3) of this section)” after “provided for in this section”, and in par. (2) substituted “subsection (h)(1)” for “subsection (h)”.

Subsec. (j). Pub. L. 95-630, §§107(e)(4), 502(b), designated existing provisions as par. (1), added par. (2), and substituted “Board” for “Administrator” wherever appearing and “its” for “his” in par. (1).

Subsecs. (k) to (o). Pub. L. 95-630, §502(b), substituted “Board” for “Administrator” wherever appearing.

1977—Subsec. (g)(1). Pub. L. 95-22, §307(a), struck out “and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, officer, or committee member” after “or breach of fiduciary duty”.

Subsec. (g)(2). Pub. L. 95-22, §307(b), substituted “dishonesty or unfitness” for “dishonesty and unfitness” wherever appearing.

1974—Subsec. (a). Pub. L. 93-383, §728(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 93-383, §728(b), inserted “(1)” after “(a)”.

Subsec. (d). Pub. L. 93-383, §728(c), designated existing provisions as par. (1) and added pars. (2) and (3).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102-233, formerly set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)-(d) of Pub. L. 105-216, formerly set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-458, title VI, §6303(d), Dec. 17, 2004, 118 Stat. 3754, provided that: “Notwithstanding any other effective date established pursuant to this Act [see Tables for classification], subsection (a) shall become effective on the date of enactment of this Act [Dec. 17, 2004], and the amendments made by subsections (b) and (c) [amending this section and section 1820 of this title] shall become effective at the end of the 12-month period beginning on the date of enactment of this Act [Dec. 17, 2004], whether or not final regulations are

issued in accordance with the amendments made by this section [amending this section and section 1820 of this title] as of that date of enactment.”

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-550, title XV, §1501(c), Oct. 28, 1992, 106 Stat. 4045, provided that: “The amendments made by this section [amending this section and section 1821 of this title] shall take effect on December 20, 1992.”

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-73, title IX, §903(e), Aug. 9, 1989, 103 Stat. 457, provided that: “The amendments made by this section [amending this section and section 1818 of this title] shall apply with respect to violations committed and activities engaged in after the date of the enactment of this Act [Aug. 9, 1989].”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 107(a)(4), (c)(4), (d)(4), and 111(d)(1)-(3) of Pub. L. 95-630 effective upon 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.

Amendment by section 107(e)(4) of Pub. L. 95-630 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.

Amendment by section 502(b) of Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

The regulations required to be prescribed under amendment by Pub. L. 99-570 effective at end of 3-month period beginning on October 27, 1986, see section 1364(e) of Pub. L. 99-570, set out as a note under section 1464 of this title.

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97-320

No amendment made by section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100-86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99-452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97-320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99-400, set out as a note under section 1464 of this title.

§ 1786a. Omitted

Editorial Notes

CODIFICATION

Section, act June 26, 1934, ch. 750, title II, §206A, as added Pub. L. 105-164, §3(b), Mar. 20, 1998, 112 Stat. 35; amended Pub. L. 109-351, title VII, §726(20), Oct. 13, 2006,

120 Stat. 2003, which related to regulation and examination of credit union organizations and service providers by the National Credit Union Administration Board, ceased to be effective as of Dec. 31, 2001, pursuant to subsec. (f) of the section.

§ 1787. Payment of insurance

(a) Liquidation by Board; bond; appointment of agent; fees to be fixed by Board

(1)(A) Upon its finding that a Federal credit union insured under this subchapter is bankrupt or insolvent, the Board shall close such credit union for liquidation and appoint itself liquidating agent therefor.

(B) Not later than 10 days after the date on which the Board closes a credit union for liquidation pursuant to paragraph (1), or accepts appointment as liquidating agent pursuant to subsection (b), such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Except as otherwise provided in this subparagraph, no court may take any action for or toward the removal of any liquidating agent or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a liquidating agent.

(2) Notwithstanding any other provision of law, the Board as liquidating agent of a closed Federal credit union insured under this subchapter shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such liquidating agent. All fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Board and may be paid by them out of funds coming into its possession as such liquidating agent.

(3) LIQUIDATION TO FACILITATE PROMPT CORRECTIVE ACTION.—The Board may close any credit union for liquidation, and appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as liquidating agent of that credit union, if—

(A) the Board determines that—

(i) the credit union is significantly undercapitalized, as defined in section 1790d of this title, and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or

(ii) the credit union is critically undercapitalized, as defined in section 1790d of this title; and

(B) in the case of a State-chartered insured credit union, the Board has complied with section 1790d(l) of this title.

(b) Powers and duties of Board as conservator or liquidating agent

(1) Rulemaking authority of Board

The Board may prescribe such regulations as the Board determines to be appropriate regarding the conduct of the Board as conservator or liquidating agent.

(2) General powers

(A) Successor to credit union

The Board shall, as conservator or liquidating agent, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the credit union, and of any member, accountholder, officer, or director of such credit union with respect to the credit union and the assets of the credit union; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such credit union.

(B) Operate the credit union

The Board may, as conservator or liquidating agent—

(i) take over the assets of and operate the credit union with all the powers of the members or shareholders, the directors, and the officers of the credit union and shall be authorized to conduct all business of the credit union;

(ii) collect all obligations and money due the credit union;

(iii) perform all functions of the credit union in the name of the credit union which is consistent with the appointment as conservator or liquidating agent; and

(iv) preserve and conserve the assets and property of such credit union.

(C) Functions of credit union's officers, directors, and shareholders

The Board may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any credit union for which the Board has been appointed conservator or liquidating agent.

(D) Powers as conservator

The Board may, as conservator, take such action as may be—

(i) necessary to put the credit union in a sound and solvent condition; and

(ii) appropriate to carry on the business of the credit union and preserve and conserve the assets and property of the credit union.

(E) Additional powers as liquidating agent

The Board may, as liquidating agent, place the credit union in liquidation and proceed to realize upon the assets of the credit union, having due regard to the conditions of credit in the locality.

(F) Payment of valid obligations

The Board, as conservator or liquidating agent, shall pay all valid obligations of the credit union in accordance with the prescriptions and limitations of this chapter.

(G) Attachment of assets and injunctive relief

Subject to subparagraph (H), any court of competent jurisdiction may, at the request of the Board (in the Board's capacity as conservator or liquidating agent for any insured credit union or in the Board's corporate capacity in the exercise of any authority under

this section), issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Board under the control of the court and appointing a trustee to hold such assets.

(H) Standards

(i) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (G) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought by the Board pursuant to subparagraph (G) may be requested under the laws of such State.

(I) Subpoena authority

(i) In general

The Board may, as conservator or liquidating agent and for purposes of carrying out any power, authority, or duty with respect to an insured credit union (including determining any claim against the credit union and determining and realizing upon any asset of any person in the course of collecting money due the credit union), exercise any power established under section 1786(p) of this title, and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) Authority of Board

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board or their designees.

(iii) Rule of construction

This subsection shall not be construed as limiting any rights that the Board, in any capacity, might otherwise have under section 1786(p) of this title.

(J) Incidental powers

The Board may, as conservator or liquidating agent—

- (i) exercise all powers and authorities specifically granted to conservators or liquidating agents, respectively, under this chapter and such incidental powers as shall be necessary to carry out such powers; and
- (ii) take any action authorized by this chapter,

which the Board determines is in the best interests of the credit union, its account holders, or the Board.

(K) Exemption from criminal prosecution

The Administration shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by a credit union, or persons acting on behalf of a credit union, prior to the appointment of the Administration as liquidating agent.

(3) Authority of liquidating agent to determine claims

(A) In general

The Board may, as liquidating agent, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) Notice requirements

The liquidating agent, in any case involving the liquidation or winding up of the affairs of a closed credit union, shall—

- (i) promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and
- (ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) Mailing required

The liquidating agent shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the credit union's books—

- (i) at the creditor's last address appearing in such books; or
- (ii) upon discovery of the name and address of a claimant not appearing on the credit union's books within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

The Board may prescribe regulations regarding the allowance or disallowance of claims by the liquidating agent and providing for administrative determination of claims and review of such determination.

(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 credit union is filed with the Board as liquidating agent, the Board 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 Board.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any

determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the credit union's books;
- (II) in the claim filed by the claimant;
- or
- (III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

- (I) a statement of each reason for the disallowance; and
- (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

The liquidating agent shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the liquidating agent from any claimant which is proved to the satisfaction of the liquidating agent.

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the liquidating agent if—

- (I) the claimant did not receive notice of the appointment of the liquidating agent in time to file such claim before such date; and
- (II) such claim is filed in time to permit payment of such claim.

(D) Authority to disallow claims

The liquidating agent 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 liquidating agent.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the Board'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 liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not

prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(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 credit union for which the Board is liquidating agent; 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 liquidating agent) in the district or territorial court of the United States for the district within which the credit union'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 liquidating agent),

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 liquidating agent) 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 Board agrees to such request, the Board shall consider the claim after opportunity for a hearing on the record. The final determination of the Board 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 Board shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Board shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Board may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Board, must agree to the use of the process in a particular case.

(iv) Consideration of incentives

The Board shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Board shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any credit union for which the Board has been appointed liquidating agent; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Board shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); or

(ii) notify the claimant of the determination, and if the claim is disallowed, a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Board denies the claim.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the liquidating agent), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(9) Agreement as basis of claim

(A) Requirements

Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 1788(a)(3) of this title shall not form the basis of, or substantially comprise, a claim against the liquidating agent or the Board.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 1788(a)(3) of this title, any agreement between a Federal home loan bank or Federal Reserve bank and any insured credit union which was executed before the extension of credit by such bank to such credit union shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) Payment of claims

(A) In general

The liquidating agent may, in the liquidating agent's discretion and to the extent funds are available, pay creditor claims which are allowed by the liquidating agent, approved by the Board pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this chapter.

(B) Payment of dividends on claims

The liquidating agent may, in the liquidating agent's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Board (in such Board's corporate capacity or as liquidating agent), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(11) Distribution of assets

(A) Subrogated claims; claims of uninsured accountholders and other creditors

The liquidating agent shall—

(i) retain for the account of the Board such portion of the amounts realized from any liquidation as the Board may be entitled to receive in connection with the subrogation of the claims of accountholders; and

(ii) pay to accountholders and other creditors the net amounts available for distribution to them.

(B) Distribution to shareholders of amounts remaining after payment of all other claims and expenses

In any case in which funds remain after all accountholders, creditors, other claimants, and administrative expenses are paid, the liquidating agent shall distribute such funds to the credit union's shareholders or members together with the accounting report required under paragraph (14)(C).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or liquidating agent for an insured credit union, the conservator or liquidating agent may request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any liquidating agent,

in any judicial action or proceeding to which such credit union is or becomes a party.

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or liquidating agent pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties

(A) Prior final adjudication

The Board shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Board as conservator or liquidating agent.

(B) Rights and remedies of conservator or liquidating agent

In the event of any appealable judgment, the Board as conservator or liquidating agent shall—

- (i) have all the rights and remedies available to the credit union (before the appointment of such conservator or liquidating agent) and the Board in its corporate capacity, including removal to Federal court and all appellate rights; and
- (ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the liquidating agent.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

- (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any credit union for which the Board has been appointed liquidating agent, including assets which the Board may acquire from itself as such liquidating agent; or
- (ii) any claim relating to any act or omission of such credit union or the Board as liquidating agent.

(14) Statute of limitations for actions brought by conservator or liquidating agent

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Board as conservator or liquidating agent shall be—

- (i) in the case of any contract claim, the longer of—
 - (I) the 6-year period beginning on the date the claim accrues; or
 - (II) the period applicable under State law; and
- (ii) in the case of any tort claim, the longer of—
 - (I) the 3-year period beginning on the date the claim accrues; or
 - (II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitation begins to run on any claim described in such subparagraph shall be the later of—

- (i) the date of the appointment of the Board as conservator or liquidating agent; or
- (ii) the date on which the cause of action accrues.

(15) Accounting and recordkeeping requirements

(A) In general

The Board as conservator or liquidating agent shall, consistent with the accounting and reporting practices and procedures established by the Board, maintain a full accounting of each conservatorship and liquidation or other disposition of credit unions in default.

(B) Annual accounting or report

With respect to each conservatorship or liquidation to which the Board was appointed, the Board shall make an annual accounting or report, as appropriate, available to the Comptroller General of the United States or, in the case of a State-chartered credit union, the authority which appointed the Board as conservator or liquidating agent.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Board upon request to any shareholder of the credit union for which the Board was appointed conservator or liquidating agent or any other member of the public.

(D) Recordkeeping requirement

(i) In general

Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Board is appointed as liquidating agent of an insured credit union, the Board may destroy any records of such credit union which the Board, in the

Board's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) Old records

Notwithstanding clause (i) the Board may destroy records of an insured credit union which are at least 10 years old as of the date on which the Board is appointed as liquidating agent of such credit union in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) Fraudulent transfers

(A) In general

The Board, as conservator or liquidating agent for any insured credit union, may avoid a transfer of any interest of an institution-affiliated party, or any person who the Board determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Board becomes conservator or liquidating agent if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured credit union or the Board.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Board may recover, for the benefit of the insured credit union, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- (i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or
- (ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The Board may not recover under subparagraph (B) from—

- (i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- (ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights of the Board under this paragraph shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(c) Provisions relating to contracts entered into before appointment of conservator or liquidating agent

(1) Authority to repudiate contracts

In addition to any other rights a conservator or liquidating agent may have, the conservator or liquidating agent for any insured credit union may disaffirm or repudiate any contract or lease—

- (A) to which such credit union is a party;
- (B) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs.

(2) Timing of repudiation

The conservator or liquidating agent appointed for any insured credit union shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or liquidating agent for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

- (i) limited to actual direct compensatory damages; and
- (ii) determined as of—
 - (I) the date of the appointment of the conservator or liquidating agent; or
 - (II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

- (i) punitive or exemplary damages;
- (ii) damages for lost profits or opportunity; or
- (iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

- (i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and
- (ii) paid in accordance with this subsection and subsection (f) except as otherwise specifically provided in this section.

(4) Leases under which the credit union is the lessee

(A) In general

If the conservator or liquidating agent disaffirms or repudiates a lease under which the credit union was the lessee, the conservator or liquidating agent shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (b).

(5) Leases under which the credit union is the lessor

(A) In general

If the conservator or liquidating agent repudiates an unexpired written lease of real property of the credit union under which the credit union is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the credit union under the lease after such date; and

(ii) the conservator or liquidating agent shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or liquidating agent repudiates any contract (which meets the requirements of each paragraph of section 1788(a)(3) of this title) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the credit union under the contract; and

(ii) the conservator or liquidating agent shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or liquidating agent to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the conservator or liquidating agent shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any insured credit union for which the Board has been appointed conservator or liquidating agent, any claim of such person for services performed before the appointment of the conservator or the liquidating agent shall be—

(i) a claim to be paid in accordance with subsection (b); and

(ii) deemed to have arisen as of the date the conservator or liquidating agent was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the conser-

vator or liquidating agent accepts performance by the other person before the conservator or liquidating agent makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or liquidation.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or liquidating agent of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or liquidating agent to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this chapter (other than subsection (b)(9) of this section and section 1788(a)(3) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured credit union which arises upon the appointment of the Board as liquidating agent for such credit union at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);¹

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (b)(12) shall apply in the case of any judicial action or proceeding brought against any liquidating agent referred to in subparagraph (A), or the credit union for which such liquidating agent was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such credit union.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Board, whether acting as such or as conservator or liquidating agent of an insured credit union, may not avoid any transfer

of money or other property in connection with any qualified financial contract with an insured credit union.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured credit union if the Board determines that the transferee had actual intent to hinder, delay, or defraud such credit union, the creditors of such credit union, or any conservator or liquidating agent appointed for such credit union.

(D) Certain contracts and agreements defined

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

(i) Qualified financial contract

The term “qualified financial contract” means any securities contract, forward contract, repurchase agreement, and any similar agreement that the Board determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage

¹ So in original. Probably should be followed by “or”.

loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including,² a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, ex-

² So in original. The comma probably should not appear.

cept that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement

that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term “qualified foreign government security” means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) Swap agreement

The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]) and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(vii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) Transfer

The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution’s equity of redemption.

(ix) Person

The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this chapter (other than subsections (b)(9)

and (c)(10) of this section, and section 1788(a)(3) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a credit union in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);¹

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of an insured credit union in default.

(ii) Limited suspension of certain obligations

In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the liquidating agent is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent.

(iii) Walkaway clause defined

For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency of an insured credit union or the appointment of or the exercise of rights or powers by a conservator or liquidating agent of such credit union, and not as a result of a party’s exercise of any

right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) Recordkeeping requirements

The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 1790a of this title).

(9) Transfer of qualified financial contracts

(A) In general

In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the credit union in default;

(II) all claims of such person or any affiliate of such person against such credit union under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such credit union);

(III) all claims of such credit union against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) Transfer to foreign bank, foreign financial institution, or branch or agency of a foreign bank or financial institution

In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or liquidating agent for the credit union shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement

related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) Transfer of contracts subject to the rules of a clearing organization

In the event that a conservator or liquidating agent transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) Definitions

For purposes of this paragraph—

(i) the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, a credit union, or any other institution, as determined by the Board by regulation to be a financial institution; and

(ii) the term “clearing organization” has the same meaning as in section 4402 of this title.

(10) Notification of transfer

(A) In general

If—

(i) the conservator or liquidating agent for an insured credit union in default makes any transfer of the assets and liabilities of such credit union; and

(ii) the transfer includes any qualified financial contract,

the conservator or liquidating agent shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.

(B) Certain rights not enforceable

(i) Liquidation

A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a liquidating agent for the credit union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Conservatorship

A person who is a party to a qualified financial contract with an insured credit

union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the credit union or³ the insolvency or financial condition of the credit union for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Treatment of bridge banks⁴

The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

- (i) A bridge depository institution.
- (ii) A credit union organized by the Board, for which a conservator is appointed either—
 - (I) immediately upon the organization of the credit union; or
 - (II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union in default.

(D) “Business day” defined

For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or liquidating agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

- (A) disaffirm or repudiate all qualified financial contracts between—
 - (i) any person or any affiliate of such person; and
 - (ii) the credit union in default; or
- (B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any le-

gally enforceable or perfected security interest in any of the assets of any credit union except where such an interest is taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the credit union or the creditors of such credit union.

(13) Authority to enforce contracts

(A) In general

The conservator or liquidating agent may enforce any contract, other than a director's or officer's liability insurance contract or a credit union bond, entered into by the credit union notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or liquidating agent.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or liquidating agent to enforce or recover under a directors or officers liability insurance contract or credit union bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the credit union is a party, or to obtain possession of or exercise control over any property of the credit union or affect any contractual rights of the credit union, without the consent of the conservator or liquidating agent, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the liquidating agent, as applicable.

(ii) Certain exceptions

No provision of this subparagraph shall apply to a director or officer liability insurance contract or a credit union bond, or to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or shall be construed as permitting the conservator or liquidating agent to fail to comply with otherwise enforceable provisions of such contract.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11.

(14) Exception for Federal Reserve and Federal home loan banks

No provision of this subsection shall apply with respect to—

- (A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

³ So in original. Probably should read “(or)”.

⁴ So in original. Probably should be “bridge depository institutions”.

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section (a)(47)⁵ of the Securities Exchange Act of 1934), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(d) Payment of insured deposits

(1) In general

In case of the liquidation of any insured credit union, payment of the insured deposits in such credit union shall be made by the Board as soon as possible, subject to the provisions of subsection (e) of this section, either by cash or by making available to each accountholder a transferred deposit in a new credit union in the same community or in another insured credit union in an amount equal to the insured deposit of such accountholder.

(2) Proof of claims

The Board, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

(3) Resolution of disputes

A determination by the Administration regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Board may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit. A final determination made by the Board regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5 by the United States district court for the Federal judicial district where the principal place of business of the credit union is located.

(4) Statute of limitations

Any request for review of a final determination by the Board regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(e) Subrogation of Board

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Board, upon the payment to any accountholder as provided in subsection (d) in connection with any insured credit union described in such subsection or

the assumption of any deposit in such credit union by another insured credit union pursuant to this section, shall be subrogated to all rights of the accountholder against such credit union to the extent of such payment or assumption.

(2) Dividends on subrogated amounts

The subrogation of the Board under paragraph (1) with respect to any insured credit union shall include the right on the part of the Board to receive the same dividends from the proceeds of the assets of such credit union as would have been payable to the accountholder on a claim for the insured deposit, but such accountholder shall retain such claim for any uninsured or unassumed portion of the deposit.

(f) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State, this subsection shall govern the rights of the creditors (other than insured accountholders) of such credit union.

(2) Maximum liability

The maximum liability of the Board, acting as liquidating agent or in any other capacity, to any person having a claim against the liquidating agent or the insured credit union for which such liquidating agent is appointed shall equal the amount such claimant would have received if the Board had liquidated the assets and liabilities of such credit union without exercising the Board's authority under subsection (n) of this section.

(3) Additional payments authorized

(A) In general

The Board may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Board shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) Manner of payment

The Board may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured credit union to induce the open insured credit union to accept liability for such claims.

(g) Limitation on court action

Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Board as a conservator or a liquidating agent.

(h) Liability of directors and officers

A director or officer of an insured credit union may be held personally liable for monetary dam-

⁵ So in original. Probably should be section "3(a)(47)".

ages in any civil action by, on behalf of, or at the request or direction of the Board, which action is prosecuted wholly or partially for the benefit of the Board—

(1) acting as conservator or liquidating agent of such insured credit union,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such liquidating agent 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 credit union or its affiliate in connection with assistance provided under section 1788 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, if any, of the Board under other applicable law.

(i) Damages

In any proceeding related to any claim against an insured credit union's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured credit union, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured credit union's assets shall include principal losses and appropriate interest.

(j) Board as liquidating agent of State-chartered credit unions

Whenever any insured State-chartered credit union shall have been closed by action of its board of directors or by the commission, board, or authority having supervision of such credit union, as the case may be, or by a court of competent jurisdiction, on account of bankruptcy or insolvency, the Board shall accept appointment as liquidating agent therefor, if such appointment is tendered by the commission, board, or authority having supervision of such credit union, or by a court of competent jurisdiction, and is authorized or permitted by State law. With respect to any such State-chartered credit union, the Board as such liquidating agent shall possess all the rights, powers, and privileges granted by State law to a liquidating agent of a State-chartered credit union. For the purposes of this subsection, the term "liquidating agent" includes a liquidating agent, receiver, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a credit union.

(k) Insured amounts payable

(1) Net insured amount

(A) In general

Subject to the provisions of paragraph (2), the net amount of share insurance payable to any member, or to any person with funds lawfully held in a member account, at an insured credit union shall not exceed the total amount of the shares or deposits in the name of the member (after deducting offsets), less

any part thereof which is in excess of the standard maximum share insurance amount, as determined in accordance with this paragraph, and consistently with actions taken by the Federal Deposit Insurance Corporation under section 1821(a) of this title.

(B) Aggregation

Determination of the net amount of share insurance under subparagraph (A), shall be in accordance with such regulations as the Board may prescribe, and, in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.

(C) Authority to define the extent of coverage

The Board may define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.

(2) Government depositors or members

(A) In general

Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of insurance available to any 1 depositor or member, deposits or shares of a government depositor or member shall be insured in an amount equal to the standard maximum share insurance amount, subject to subparagraph (C).

(B) Government depositor

In this paragraph, the term "government depositor" means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Panama Canal Zone, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the Commonwealth of Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing the same in a credit union insured in accordance with this subchapter.

(C) Authority to limit deposits

The Board may limit the aggregate amount of funds that may be invested or deposited in any credit union insured in accordance with this subchapter by any government depositor or member on the basis of the size of any such credit union in terms of its assets.

(3) Notwithstanding any limitation in this subchapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, funds invested in a credit union insured in accordance with this subchapter pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, and funds invested in such an insured credit union in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of “\$250,000⁶ (which amount shall be subject to inflation adjustments as provided under section 1821(a)(1)(F) of this title, except that \$250,000⁷ shall be substituted for \$100,000⁷ wherever such term appears in such section)”⁶ per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term “per account” means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) Coverage for certain employee benefit plan deposits

(A) Pass-through insurance

The Administration shall provide pass-through share insurance for the deposits or shares of any employee benefit plan.

(B) Prohibition on acceptance of deposits

An insured credit union that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(C) Definitions

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

(i) Capital standards

The terms “well capitalized” and “adequately capitalized” have the same meanings as in section 1790d(c) of this title.

(ii) Employee benefit plan

The term “employee benefit plan”—

(I) has the meaning given to such term in section 1002(3) of title 29;

(II) includes any plan described in section 401(d) of title 26; and

(III) includes any eligible deferred compensation plan described in section 457 of title 26.

(iii) Pass-through share insurance

The term “pass-through share insurance” means, with respect to an employee

benefit plan, insurance coverage based on the interest of each participant, in accordance with regulations issued by the Administration.

(D) Rule of construction

No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of an employee benefit plan in an amount greater than such credit union is authorized to accept under any other provision of Federal or State law.

(5) Coverage for interest on lawyers trust accounts (IOLTA) and other similar escrow accounts

(A) Pass-through insurance

The Administration shall provide pass-through share insurance for the deposits or shares of any interest on lawyers trust account (IOLTA) or other similar escrow accounts.

(B) Treatment of IOLTAs

(i) Treatment as escrow accounts

For share insurance purposes, IOLTAs are treated as escrow accounts.

(ii) Treatment as member accounts

IOLTAs and other similar escrow accounts are considered member accounts for purposes of paragraph (1), if the attorney administering the IOLTA or the escrow agent administering the escrow account is a member of the insured credit union in which the funds are held.

(C) Definitions

For purposes of this paragraph:

(i) Interest on lawyers trust account

The terms “interest on lawyers trust account” and “IOLTA” mean a system in which lawyers place certain client funds in interest-bearing or dividend-bearing accounts, with the interest or dividends then used to fund programs such as legal service organizations who provide services to clients in need.

(ii) Pass-through share insurance

The term “pass-through share insurance” means, with respect to IOLTAs and other similar escrow accounts, insurance coverage based on the interest of each person on whose behalf funds are held in such accounts by the attorney administering the IOLTA or the escrow agent administering a similar escrow account, in accordance with regulations issued by the Administration.

(D) Rule of construction

No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of an IOLTA or similar escrow account in an amount greater than such credit union is authorized to accept under any other provision of Federal or State law.

(6) Standard maximum share insurance amount defined

For purposes of this chapter, the term “standard maximum share insurance amount”

⁶ So in original. Quotation marks probably should not appear.

⁷ So in original. Probably should be set off by quotation marks.

means \$250,000, adjusted as provided under section 1821(a)(1)(F) of this title.

(l) Payment; discharge of liability

Payment of an insured account to any person by the Board shall discharge the Board to the same extent that payment to such person by the closed insured credit union would have discharged it from liability for the insured account.

(m) Undisclosed names

Except as otherwise prescribed by the Board, the Board shall not be required to recognize as the owner of any portion of an account appearing on the records of the closed credit union under a name other than that of the claimant any person whose name or interest as such owner is not disclosed on the records of such closed credit union as part owner of such account, if such recognition would increase the aggregate amount of the insured accounts in such closed credit union.

(n) Withholding of payment due to liability of credit union member

The Board may withhold payment of such portion of the insured account of any member of a closed credit union as may be required to provide for the payment of any direct or indirect liability of such member to the closed credit union or its liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by such member or any other person liable therefor.

(o) Unclaimed insured accounts; limitations

If, after the Board shall have given at least four months' notice to the member by mailing a copy thereof to his last-known address appearing on the records of the closed credit union, any member of the closed credit union shall fail to claim his insured account from the Board within 18 months after the appointment of the liquidating agent for the closed credit union, all rights of the member against the Board with respect to the insured accounts shall be barred, and all rights of the member against the closed credit union, or the estate to which the Board may have become subrogated, shall thereupon revert to the member.

(p) Sale of assets; security for loans; approval of court; agreements affecting interest of Board in any asset acquired by it

(1) Liquidating agents of insured credit unions closed for liquidation on account of bankruptcy or insolvency may offer the assets of such credit unions for sale to the Board or as security for loans from the Board, upon receiving permission from the commission, board, or authority having supervision of such credit union, in the case of an insured State-chartered credit union, in accordance with express provisions of State law. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such credit unions. The Board, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured credit union closed for liquidation on account of bankruptcy

or insolvency, but in any case in which the Board is acting as liquidating agent of a closed insured credit union, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.

(2) No agreement which tends to diminish or defeat the right, title, or interest of the Board in any asset acquired by it under this subsection, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been, continuously, from the time of its execution, an official record of the credit union.

(q) Prohibition on certain acquisitions of assets

(1) Convicted debtors

Except as provided in paragraph (2), any individual who—

(A) has been convicted of an offense under section 215, 657, 1006, 1014, 1032, 1341, 1343, or 1344 of title 18 or of conspiring to commit any such offense, affecting any insured credit union for which the Board is appointed conservator or liquidating agent; and

(B) is in default on any loan or other extension of credit from such insured credit union which, if not paid, will cause substantial loss to the credit union, the National Credit Union Share Insurance Fund, or the Board,

may not purchase any asset of such credit union from the conservator or liquidating agent.

(2) Settlement of claims

Paragraph (1) shall not apply to the sale or transfer by the Board of any asset of any insured credit union to any individual if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Board against the individual; or

(B) obligations owed by the individual to the insured credit union or the Board.

(r) Foreign investigations

The Board, as conservator or liquidating agent of any insured credit union and for purposes of carrying out any power, authority, or duty with respect to an insured credit union—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 1786(u) of this title; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(June 26, 1934, ch. 750, title II, §207, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1010;

amended Pub. L. 93-495, title I, §§101(c), 104(a), Oct. 28, 1974, 88 Stat. 1501, 1503; Pub. L. 95-630, title V, §502(b), title XIV, §1401(c), Nov. 10, 1978, 92 Stat. 3681, 3712; Pub. L. 96-153, title III, §323(c), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96-221, title III, §308(c)(1), Mar. 31, 1980, 94 Stat. 148; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-86, title VII, §714(a), (b), Aug. 10, 1987, 101 Stat. 654, 655; Pub. L. 101-73, title IX, §915(c), title XII, §1217(a), Aug. 9, 1989, 103 Stat. 486, 530; Pub. L. 101-647, title XXV, §§2521(a)(2), 2526(b), 2528(b), 2532(d), 2534(b), Nov. 29, 1990, 104 Stat. 4864, 4876, 4878, 4882, 4883; Pub. L. 103-394, title V, §501(c)(1), Oct. 22, 1994, 108 Stat. 4143; Pub. L. 105-219, title III, §301(b)(2), Aug. 7, 1998, 112 Stat. 930; Pub. L. 109-8, title IX, §§901(a)(2), (b)(2), (c)(2), (d)(2), (e)(2), (f)(2), (g)(2), (h)(2), (i)(2), 902(b), 903(b), 904(b), 905(b), 908(b), Apr. 20, 2005, 119 Stat. 147, 148, 150, 152, 154, 156-159, 162, 166, 183; Pub. L. 109-173, §2(d)(1), (2), Feb. 15, 2006, 119 Stat. 3602, 3604; Pub. L. 109-351, title VII, §§718(b), 720(b), 721(b), 722(b), 726(21)-(23), Oct. 13, 2006, 120 Stat. 1997-1999, 2003; Pub. L. 109-390, §§2(a)(2), (b)(2), (c)(2), 3(b), 6(b), Dec. 12, 2006, 120 Stat. 2693-2695, 2699; Pub. L. 110-289, div. A, title VI, §1604(b)(2), July 30, 2008, 122 Stat. 2829; Pub. L. 111-203, title III, §§335(b), 343(b)(1), (3), July 21, 2010, 124 Stat. 1540, 1545; Pub. L. 113-252, §2, Dec. 18, 2014, 128 Stat. 2893.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2)(G), (H), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Securities Exchange Act of 1934, referred to in subsec. (c)(8)(D)(v)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. Section 3(a)(47) of the Act is classified to section 78c of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Gramm-Leach-Bliley Act, referred to in subsec. (c)(8)(D)(vi), (15), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (c)(8)(D)(vi), (15), is title IV of H.R. 5660, as enacted by Pub. L. 106-554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A-457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (c)(8)(D)(vi), (15), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

For definition of Canal Zone, referred to in subsec. (k)(2)(B)(iv), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2014—Subsec. (k)(1)(A). Pub. L. 113-252, §2(1), inserted “, or to any person with funds lawfully held in a member account,” after “payable to any member” and struck out “and paragraphs (5) and (6)” after “this paragraph”.

Subsec. (k)(2)(A). Pub. L. 113-252, §2(2), struck out “(as determined under paragraph (5))” after “insurance amount”.

Subsec. (k)(5), (6). Pub. L. 113-252, §2(3), (4), added par. (5) and redesignated former par. (5) as (6).

2010—Subsec. (k)(1)(A). Pub. L. 111-203, §343(b)(3)(A), struck out cl. (i) designation and heading, substituted “Subject to the provisions of paragraph (2), the net amount” for “Subject to clause (ii) and the provisions of paragraph (2), the net amount”, and struck out cls. (ii) and (iii) which related to insurance for noninterest-bearing transaction accounts and defined “noninterest-bearing transaction account”, respectively.

Pub. L. 111-203, §343(b)(1)(A), designated existing provisions as cl. (i), inserted heading, substituted “Subject to clause (ii) and the provisions of paragraph (2), the net amount” for “Subject to the provisions of paragraph (2), the net amount”, and added cls. (ii) and (iii).

Subsec. (k)(1)(B). Pub. L. 111-203, §343(b)(3)(B), substituted “subparagraph (A)” for “subparagraph (A)(i)”.

Pub. L. 111-203, §343(b)(1)(B), substituted “subparagraph (A)(i)” for “subparagraph (A)”.

Subsec. (k)(5). Pub. L. 111-203, §335(b), substituted “\$250,000” for “\$100,000”.

2008—Subsec. (c)(10)(C)(i). Pub. L. 110-289 substituted “bridge depository institution” for “bridge bank”.

2006—Subsec. (b)(2)(K). Pub. L. 109-351, §720(b), added subpar. (K).

Subsec. (b)(15)(D). Pub. L. 109-351, §722(b), designated existing provisions as cl. (i), inserted cl. heading, substituted “Except as provided in clause (ii), after the end of the 6-year period” for “After the end of the 6-year period”, and added cl. (ii).

Subsec. (c)(5)(B)(i)(I). Pub. L. 109-351, §726(21), inserted “and” after semicolon.

Subsec. (c)(8)(D)(ii)(I). Pub. L. 109-390, §2(a)(2)(A), substituted “a mortgage loan,” for “a mortgage loan, or” after “certificate of deposit,” and inserted before semicolon at end “(whether or not such repurchase or reverse repurchase transaction is a ‘repurchase agreement’, as defined in clause (v))”.

Subsec. (c)(8)(D)(ii)(IV). Pub. L. 109-390, §2(a)(2)(B), inserted “(including by novation)” after “the guarantee” and “(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))” before semicolon at end.

Subsec. (c)(8)(D)(ii)(VI) to (VIII). Pub. L. 109-390, §2(a)(2)(D), (E), added subcls. (VI) and (VII) and redesignated former subcl. (VI) as (VIII). Former subcl. (VIII) redesignated (X).

Subsec. (c)(8)(D)(ii)(IX). Pub. L. 109-390, §2(a)(2)(D), redesignated subcl. (VII) as (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 109-390, §2(a)(2)(C), substituted “(VIII), (IX), or (X)” for “or (VIII)” in two places.

Subsec. (c)(8)(D)(ii)(X) to (XII). Pub. L. 109-390, §2(a)(2)(D), redesignated subcls. (VIII) to (X) as (X) to (XII), respectively.

Subsec. (c)(8)(D)(iv)(I). Pub. L. 109-390, §2(b)(2), substituted “or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ‘repurchase agreement’, as defined in clause (v))” for “transaction, reverse repurchase transaction”.

Subsec. (c)(8)(D)(vi). Pub. L. 109-390, §2(c)(2)(C), substituted in concluding provisions “the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act” for “the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000”.

Subsec. (c)(8)(D)(vi)(I). Pub. L. 109-390, §2(c)(2)(A), substituted “, precious metals, or other commodity” for “or precious metals” and “weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement” for “or a weather swap, weather derivative, or weather option”.

Subsec. (c)(8)(D)(vi)(II). Pub. L. 109-390, §2(c)(2)(B), inserted “or other derivatives” after “dealings in the swap” and substituted “future, option, or spot transaction” for “future, or option”.

Subsec. (c)(8)(D)(ix). Pub. L. 109-390, §3(b), added cl. (ix).

Subsec. (c)(8)(G)(ii), (iii). Pub. L. 109-390, §6(b), added cls. (ii) and (iii) and struck out former cl. (ii) which defined walkaway clause.

Subsec. (c)(13)(C). Pub. L. 109-351, §718(b), which directed addition of subpar. (C) to subsec. (c)(12), was executed to par. (13) to reflect the probable intent of Congress because par. (12) does not contain subpars. and par. (12) was redesignated (13) by Pub. L. 109-8, §904(b)(1). See 2005 Amendment note below.

Subsec. (d)(3). Pub. L. 109-351, §721(b), added par. (3) and struck out former par. (3) which related to resolution of dispute and adjudication of claims.

Subsec. (d)(3)(A). Pub. L. 109-351, §726(22), which directed substitution of “with” for “to” in heading, could not be executed because there is no subpar. (A) heading after the amendment by Pub. L. 109-351, §721(b). See above.

Subsec. (d)(4), (5). Pub. L. 109-351, §721(b), added par. (4) and struck out former pars. (4) and (5) which related to review of the Board’s final determination and the statute of limitations.

Subsec. (f)(3)(A). Pub. L. 109-351, §726(23), substituted “category of claimants.” for “category or claimants.” in last sentence.

Subsec. (k). Pub. L. 109-173, §2(d)(1)(A), inserted subsec. heading.

Subsec. (k)(1). Pub. L. 109-173, §2(d)(1)(A), added par. (1) and struck out former par. (1) which read as follows: “Subject to the provisions of paragraph (2), for the purposes of this subsection, the term ‘insured account’ means the total amount of the account in the member’s name (after deducting offsets) less any part thereof which is in excess of \$100,000. Such amount shall be determined according to such regulations as the Board may prescribe, and, in determining the amount due to any member, there shall be added together all accounts in the credit union maintained by him for his own benefit either in his own name or in the names of others. The Board may define, with such classifications and exceptions as it may prescribe, the extent of the insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.”

Subsec. (k)(2). Pub. L. 109-173, §2(d)(1)(B)(ii)–(iv), inserted par. heading, added subpar. (A), substituted subpar. (B) designation, heading, and introductory provisions for former subpar. (A) designation and introductory provisions which read “Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, in the case of a depositor or member who is—”, redesignated former subpar. (B) as (C), inserted heading, and substituted “government depositor or member” for “depositor or member referred to in subparagraph (A)”.

Subsec. (k)(2)(A). Pub. L. 109-173, §2(d)(1)(B)(i), substituted period for semicolon at end of cl. (v), realigned margins of cls. (i) to (v), and struck out concluding provisions which read as follows: “his account shall be insured in an amount not to exceed \$100,000 per account.”

Subsec. (k)(3). Pub. L. 109-173, §2(d)(2), substituted “\$250,000 (which amount shall be subject to inflation adjustments as provided under section 1821(a)(1)(F) of this title, except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such section)” for “\$100,000”.

Subsec. (k)(4), (5). Pub. L. 109-173, §2(d)(1)(C), added pars. (4) and (5).

2005—Subsec. (c)(8)(A). Pub. L. 109-8, §901(h)(2)(A)(i), substituted “paragraphs (9) and (10)” for “paragraph (12)” in introductory provisions.

Subsec. (c)(8)(A)(i). Pub. L. 109-8, §901(h)(2)(A)(ii), substituted “such person has to cause the termination, liquidation, or acceleration” for “to cause the termination or liquidation”.

Subsec. (c)(8)(A)(ii). Pub. L. 109-8, §901(h)(2)(A)(iii), added cl. (ii) and struck out former cl. (ii) which read as follows: “any right under any security arrangement relating to any contract or agreement described in clause (i); or”.

Subsec. (c)(8)(C)(i). Pub. L. 109-8, §901(i)(2), inserted “section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,” before “the Board”.

Subsec. (c)(8)(D). Pub. L. 109-8, §901(a)(2)(A), substituted “subsection, the following definitions shall apply:” for “subsection—” in introductory provisions.

Subsec. (c)(8)(D)(i). Pub. L. 109-8, §901(a)(2)(B), inserted “, resolution, or order” after “any similar agreement that the Board determines by regulation”.

Subsec. (c)(8)(D)(ii). Pub. L. 109-8, §901(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘securities contract’—

“(I) has the meaning given to such term in section 741 of title 11, except that the term ‘security’ (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 78c(a)(41) of title 15), and any interest in any mortgage loan or mortgage-related security; and

“(II) does not include any participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term.”

Subsec. (c)(8)(D)(iii). Pub. L. 109-8, §901(c)(2), amended heading and text of cl. (iii) generally. Prior to amendment, text read as follows: “The term ‘forward contract’ has the meaning given to such term in section 101 of title 11.”

Subsec. (c)(8)(D)(iv). Pub. L. 109-8, §901(d)(2), amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: “The term ‘repurchase agreement’—

“(I) has the meaning given to such term in section 101 of title 11, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 78c(a)(41) of title 15, any mortgage loan, and any interest in any mortgage loan; and

“(II) does not include any participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term.”

Subsec. (c)(8)(D)(v). Pub. L. 109-8, §901(e)(2), amended heading and text of cl. (v) generally. Prior to amendment, text read as follows: “The term ‘transfer’ has the meaning given to such term in section 101 of title 11.”

Subsec. (c)(8)(D)(vi). Pub. L. 109-8, §901(f)(2), added cl. (vi).

Subsec. (c)(8)(D)(vii). Pub. L. 109-8, §905(b), added cl. (vii).

Subsec. (c)(8)(D)(viii). Pub. L. 109-8, §901(g)(2), added cl. (viii).

Subsec. (c)(8)(E). Pub. L. 109-8, §902(b)(1)(A), substituted “other than subsections (b)(9) and (c)(10)” for “other than paragraph (12) of this subsection, subsection (b)(9)” in introductory provisions.

Subsec. (c)(8)(E)(ii). Pub. L. 109-8, §901(h)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: “any right under any security arrangement relating to such qualified financial contracts; or”.

Subsec. (c)(8)(F), (G). Pub. L. 109-8, §902(b)(1)(B), added subpars. (F) and (G).

Subsec. (c)(8)(H). Pub. L. 109-8, §908(b), added subpar. (H).

Subsec. (c)(9). Pub. L. 109-8, §903(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text related to the transfer of qualified financial contracts, claims, and property of a credit union in default.

Subsec. (c)(10)(A). Pub. L. 109-8, §903(b)(2), substituted concluding provisions for former concluding provisions which read as follows: “the conservator or liquidating agent shall use such conservator’s or liquidating

agent's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time), on the business day following such transfer."

Subsec. (c)(10)(B) to (D). Pub. L. 109-8, §903(b)(3), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

Subsec. (c)(11). Pub. L. 109-8, §904(b)(2), added par. (11). Former par. (11) redesignated (12).

Subsec. (c)(12). Pub. L. 109-8, §904(b)(1), redesignated par. (11) as (12). Former par. (12) redesignated (13).

Subsec. (c)(12)(A). Pub. L. 109-8, §902(b)(2), inserted "or the exercise of rights or powers by" after "the appointment of".

Subsec. (c)(13), (14). Pub. L. 109-8, §904(b)(1), redesignated pars. (12) and (13) as (13) and (14), respectively.

Subsec. (c)(15). Pub. L. 109-8, §904(b)(3), added par. (15).

1998—Subsec. (a)(1)(A). Pub. L. 105-219, §301(b)(2)(A), substituted "itself" for "himself".

Subsec. (a)(3). Pub. L. 105-219, §301(b)(2)(B), added par. (3).

1994—Subsec. (c)(8)(D). Pub. L. 103-394 substituted "section 741" for "section 741(7)" in cl. (ii)(I), "section 101" for "section 101(24)" in cl. (iii), "section 101" for "section 101(41)" in cl. (iv)(I), and "section 101" for "section 101(50)" in cl. (v).

1990—Subsec. (b)(2)(G), (H). Pub. L. 101-647, §2521(a)(2), added subpars. (G) and (H). Former subpar. (G) redesignated (I).

Subsec. (b)(2)(I). Pub. L. 101-647, §2534(b), added subpar. (I). Former subpar. (I) redesignated (J).

Pub. L. 101-647, §2521(a)(2), redesignated subpar. (G) as (I).

Subsec. (b)(2)(J). Pub. L. 101-647, §2534(b), redesignated subpar. (I) as (J).

Subsec. (b)(16). Pub. L. 101-647, §2528(b), added par. (16).

Subsec. (q). Pub. L. 101-647, §2526(b), added subsec. (q).

Subsec. (r). Pub. L. 101-647, §2532(d), added subsec. (r).

1989—Subsec. (a)(2), (3). Pub. L. 101-73, §1217(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which detailed the duties of the Board in serving as liquidating agent for bankrupt or insolvent credit unions.

Subsec. (b). Pub. L. 101-73, §1217(a)(3), (4), added subsec. (b) and redesignated former subsec. (b) as (j).

Subsec. (c). Pub. L. 101-73, §1217(a)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (k).

Subsec. (d). Pub. L. 101-73, §1217(a)(2), (4), added subsec. (d) and struck out former subsec. (d) which provided for subrogation by the Board to all rights of a member against a closed credit union to the extent of the Board's payment to the member.

Subsecs. (e) to (i). Pub. L. 101-73, §1217(a)(3), (4), added subsecs. (e) to (i) and redesignated former subsecs. (e) to (i) as (l) to (p), respectively.

Subsec. (j). Pub. L. 101-73, §1217(a)(2), (3), redesignated former subsec. (b) as (j) and struck out former subsec. (j) which provided that the power of the Board respecting liquidations was subject to the Board's own regulations or to regulations of other public authorities.

Subsec. (k). Pub. L. 101-73, §1217(a)(3), (5), redesignated former subsec. (c) as (k) and in par. (1), struck out first and fifth sentences which provided that, whenever an insured credit union was closed for liquidation on account of bankruptcy or insolvency, the Board was to pay insured accounts as soon as possible, and that in such cases the Board could investigate claims, require proof of them, and require determination by a court.

Subsec. (k)(1). Pub. L. 101-73, §915(c), inserted "may investigate said claims under section 1786(p) of this title," after "before paying the insured accounts," in last sentence.

Subsecs. (l) to (p). Pub. L. 101-73, §1217(a)(3), redesignated former subsecs. (e) to (i) as (l) to (p), respectively.

1987—Subsec. (a)(1). Pub. L. 100-86, §714(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (j). Pub. L. 100-86, §714(b), redesignated former section 1788(c) of this title as subsec. (j) of this

section and substituted "subject only to the regulation of the Board, or, in cases where the Board has been appointed liquidating agent solely by a public authority having jurisdiction over the matter other than said Board, subject only to the regulation of such public authority" for "subject to the regulation of the court or other public body having jurisdiction over the matter".

1986—Subsec. (c)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1980—Subsec. (c)(1). Pub. L. 96-221 substituted "\$100,000" for "\$40,000".

1979—Subsec. (c)(2)(A)(v). Pub. L. 96-153 added cl. (v).

1978—Subsecs. (a), (b). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, "it" for "he" and "him", and "its" for "his", where appropriate.

Subsec. (c). Pub. L. 95-630, §§502(b), 1401(c), substituted in pars. (1) and (2) "Board" for "Administrator" wherever appearing and "it" and "its" for "he" and "his", respectively, where appropriate, and added par. (3).

Subsecs. (d) to (i). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, and "it" and "its" for "him" and "his", respectively, where appropriate.

1974—Subsec. (c)(1). Pub. L. 93-495, §§101(c)(1), (2), 104(a), redesignated existing provisions as par. (1), substituted "Subject to the provisions of paragraph (2), for the purposes of this subsection" for "For the purposes of this subsection", and substituted "\$40,000" for "\$20,000". As enacted section 104(a) of Pub. L. 93-495 amended the first sentence; however the amendment was executed to the second sentence editorially since this would appear to be the probable intent of Congress.

Subsec. (c)(2). Pub. L. 93-495, §101(c)(3), added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 335(b) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

Pub. L. 111-203, title III, §343(b)(2), July 21, 2010, 124 Stat. 1545, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect upon the date of the enactment of this Act [July 21, 2010]."

Pub. L. 111-203, title III, §343(b)(3), July 21, 2010, 124 Stat. 1545, provided that the amendment made by section 343(b)(3) is effective Jan. 1, 2013.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109-390, set out as a note under section 101 of Title 11.

Amendment by Pub. L. 109-173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109-173, set out as a note under section 1785 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-221 effective on Mar. 31, 1980, see section 308(e) of Pub. L. 96-221, set out as a note under section 1817 of this title.

APPLICABILITY OF 1980 AMENDMENT

Pub. L. 96-221, title III, §308(c)(2), Mar. 31, 1980, 94 Stat. 148, provided that: "The amendment made by this subsection [amending this section] is not applicable to any claim arising out of the closing of a credit union for liquidation on account of bankruptcy or insolvency pursuant to section 207 of the Federal Credit Union Act (12 U.S.C. 1787) prior to the effective date of this section [see section 308(e) of Pub. L. 96-221, set out as an Effective Date of 1980 Amendment note under section 1817 of this title]."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-153 applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96-153, set out as an Effective and Termination Dates of 1979 Amendment note under section 1728 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 502(b) of Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

Pub. L. 95-630, title XIV, §1402, Nov. 10, 1978, 92 Stat. 3713, provided that: "This title [amending this section and sections 1728 and 1821 of this title] shall take effect upon enactment [Nov. 10, 1978]."

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by section 101(c)(1), (2) of Pub. L. 93-495 see section 101(g) of Pub. L. 93-495, set out as a note under section 1813 of this title.

Pub. L. 93-495, title I, §104(b), (c), Oct. 28, 1974, 88 Stat. 1503, provided that:

"(b) The amendment made by this section [amending this section] is not applicable to any claim arising out of the closing of a credit union for liquidation on account of bankruptcy or insolvency pursuant to section 207 of title II of the Federal Credit Union Act (12 U.S.C. 1787) prior to the effective date of this section.

"(c) The amendment made by this section shall take effect on the thirtieth day beginning after the date of enactment of this Act [Oct. 28, 1974]."

TEMPORARY ADJUSTMENT IN STANDARD MAXIMUM SHARE INSURANCE AMOUNT

Subsec. (k)(5) of this section to apply with "\$250,000" substituted for "\$100,000" during period beginning on Oct. 3, 2008, and ending on Dec. 31, 2009, see section 5241(b)(1) of this title.

§ 1788. Special assistance to avoid liquidation**(a) Loans; purchase of assets; accounts; agreements affecting interest of Board in any asset acquired by it**

(1) In order to reopen a closed insured credit union or in order to prevent the closing of an insured credit union which the Board has determined is in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union, the Board, in its discretion, is authorized to make loans to, or purchase the assets of, or establish accounts in such insured credit union upon such terms and conditions as it may prescribe. Except with respect to the voluntary liquidation of a solvent credit union, such loans shall be made and such accounts shall be established only when, in the opinion of the Board, such action is necessary to protect

the fund or the interests of the members of the credit union.

(2) Whenever in the judgment of the Board such action will reduce the risk or avert a threatened loss to the fund and will facilitate a merger or consolidation of an insured credit union with another insured credit union, or will facilitate the sale of the assets of an open or closed insured credit union to and assumption of its liability by another person, the Board may, upon such terms and conditions as it may determine, make loans secured in whole or in part by assets of an open or closed insured credit union, which loans may be in subordination to the rights of members and creditors of such credit union, or the Board may purchase any of such assets or may guarantee any person against loss by reason of its assuming the liabilities and purchasing the assets of an open or closed insured credit union. For purposes of this paragraph, the term "person" means any credit union, individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) No agreement which tends to diminish or defeat the right, title, or interest of the Board, in any asset acquired by it under this subsection, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been continuously, from the time of its execution, an official record of the credit union.

(b) Protection of Fund

For the protection of the Fund, the Board, without regard to chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, may—

(1) deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, sell for cash or credit, or lease, in its discretion, any real property acquired or held by it under this section; and

(2) assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security assigned to or held by it under this section.

Section 6101 of title 41 shall not apply to any purchase or contract for services or supplies made or entered into by the Board under this section if the amount thereof does not exceed \$1,000, or to any contract for hazard insurance on any real property acquired or held by it under this section.

(c) Money paid into Fund

Money received by the Board in carrying out this section shall be paid into the Fund.

(June 26, 1934, ch. 750, title II, §208, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1013;

amended Pub. L. 92-221, §3, Dec. 23, 1971, 85 Stat. 797; Pub. L. 93-383, title VII, §729, Aug. 22, 1974, 88 Stat. 721; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 100-86, title VII, §714(b), (c), Aug. 10, 1987, 101 Stat. 655.)

Editorial Notes

CODIFICATION

In subsec. (b), “chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “the Federal Property and Administrative Services Act of 1949” and “Section 6101 of title 41” substituted for “Section 3709 of the Revised Statutes of the United States” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1987—Subsecs. (c), (d). Pub. L. 100-86 redesignated subsec. (c) as section 1787(j) of this title and subsec. (d) as (c).

1978—Pub. L. 95-630 substituted “Board” for “Administrator” wherever appearing, “it” for “he” and “its” for “him”, and “its” for “his”, where appropriate.

1974—Subsec. (a)(1). Pub. L. 93-383 inserted provisions relating to the voluntary liquidation of a solvent credit union and struck out provisions subordinating loans and accounts to the rights of members and creditors of the credit union.

1971—Subsec. (a)(2). Pub. L. 92-221 substituted “assumption of its liability by another person” for “assumption of its liability by another insured credit union” and “may guarantee any person against loss by reason of his” for “may guarantee any other insured credit union against loss by reason of its” and inserted definition of “person” as that term is used in par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§ 1789. Administrative provisions

(a) In carrying out the purposes of this subchapter, the Board may—

(1) make contracts;

(2) sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Board shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy. The Board may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to which the Board is a party in its capacity as liquidating agent of a State-chartered credit union and which involves only the rights or obligations of members, creditors, and such State credit union under State law shall not be deemed to arise under the laws of the

United States. No attachment or execution shall be issued against the Board or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board shall designate an agent upon whom service of process may be made in any State, territory, or jurisdiction in which any insured credit union is located;

(3) pursue to final disposition by way of compromise or otherwise claims both for and against the United States (other than tort claims, claims involving administrative expenses, and claims in excess of \$5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials) which are not in litigation and have not been referred to the Department of Justice;

(4) to appoint such officers and employees as are not otherwise provided for in this chapter, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Administration of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof;

(5) employ experts and consultants or organizations thereof, as authorized by section 3109 of title 5;

(6) prescribe the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed;

(7) exercise all powers specifically granted by the provisions of this subchapter and such incidental powers as shall be necessary to carry out the power so granted;

(8) make examinations of and require information and reports from insured credit unions, as provided in this subchapter;

(9) act as liquidating agent;

(10) delegate to any officer or employee of the Administration such of its functions as it deems appropriate; and

(11) prescribe such rules and regulations as it may deem necessary or appropriate to carry out the provisions of this subchapter.

(b) With respect to the financial operations arising by reason of this subchapter, the Board shall—

(1) on an annual basis and prior to the submission of the detailed business-type budget required under paragraph (2)—

(A) make publicly available and publish in the Federal Register a draft of the detailed business-type budget; and

(B) hold a public hearing, with public notice provided of the hearing, during which the public may submit comments on the draft of the detailed business-type budget;

(2) prepare annually and submit a detailed business-type budget as provided for wholly owned Government corporations by chapter 91 of title 31, which shall address any comment submitted by the public under paragraph (1)(B); and

(3) maintain an integral set of accounts, which shall be audited by the Government Accountability Office in accordance with principles and procedures applicable to commercial corporate transactions, as provided by section 9105¹ of title 31.

(June 26, 1934, ch. 750, title II, §209, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1014; amended Pub. L. 93-604, title VII, §706, Jan. 2, 1975, 88 Stat. 1964; Pub. L. 95-630, title V, §502(b), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109-351, title VII, §726(24), Oct. 13, 2006, 120 Stat. 2003; Pub. L. 115-174, title II, §212, May 24, 2018, 132 Stat. 1319.)

Editorial Notes

REFERENCES IN TEXT

Section 9105 of title 31, referred to in subsec. (b)(3), was amended generally by Pub. L. 101-576, title III, §305, Nov. 15, 1990, 104 Stat. 2853, and as so amended no longer directs audits to be conducted in accordance with principles and procedures applicable to commercial corporate transactions.

CODIFICATION

In subsec. (a)(5), “section 3109 of title 5” substituted for “section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)” on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (b)(2), (3), “chapter 91 of title 31” and “section 9105 of title 31” substituted for “the Government Corporation Control Act [31 U.S.C. 841 et seq.]” and “section 105 of the Government Corporation Control Act [31 U.S.C. 850]”, respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-174 added par. (1), redesignated former pars. (1) and (2) as (2) and (3), respectively, and, in par. (2), inserted “detailed” after “submit a” and “, which shall address any comment submitted by the public under paragraph (1)(B)” after “title 31”.

2006—Subsec. (a)(8). Pub. L. 109-351 substituted a semicolon for period at end.

2004—Subsec. (b)(2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1978—Pub. L. 95-630 substituted “Board” for “Administrator” wherever appearing, “its” for “his”, and “it” for “he” and “him”, where appropriate.

1975—Subsec. (b)(2). Pub. L. 93-604 substituted “audited by the General Accounting Office” for “audited annually by the General Accounting Office”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

§ 1789a. Credit unions as depositaries of public money; fiscal agents; duties

Any credit union the accounts of which are insured under this subchapter shall be a depositary of public money and may be employed as fiscal agent of the United States. The Secretary

of the Treasury is authorized to deposit public money in any such insured credit union, and shall prescribe such regulations as may be necessary to enable such credit unions to become depositaries of public money and fiscal agents of the United States. Each credit union shall perform all such reasonable duties as depositaries of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States.

(June 26, 1934, ch. 750, title II, §210, as added Pub. L. 95-147, §2(c)(1), Oct. 28, 1977, 91 Stat. 1227.)

Editorial Notes

PRIOR PROVISIONS

A prior section 210 of act June 26, 1934, ch. 750, was renumbered section 211 and is classified to section 1790 of this title.

§ 1790. Nondiscriminatory provision

It is not the purpose of this subchapter to discriminate in any manner against State-chartered credit unions and in favor of Federal credit unions, but it is the purpose of this subchapter to provide all credit unions with the same opportunity to obtain and enjoy the benefits of this subchapter.

(June 26, 1934, ch. 750, title II, §211, formerly §210, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1015; renumbered §211, Pub. L. 95-147, §2(c)(2), Oct. 28, 1977, 91 Stat. 1228.)

§ 1790a. Board disapproval of directors, committee members, and senior executive officers of insured credit unions

(a) Prior notice required

An insured credit union shall notify the Board of the proposed addition of any individual to the board of directors or committee or the employment of any individual as a senior executive officer of such credit union at least 30 days before such addition or employment becomes effective, if the insured credit union—

(1) has been chartered less than 2 years; or

(2) is in troubled condition, as determined on the basis of such credit union’s most recent report of condition or report of examination.

(b) Disapproval by Board

An insured credit union may not add any individual to the board of directors or employ any individual as a senior executive officer if the Board issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the date the agency receives notice of the proposed action pursuant to subsection (a).

(c) Exception in extraordinary circumstances

(1) In general

The Board may prescribe by regulation conditions under which the prior notice requirement of subsection (a) may be waived in the event of extraordinary circumstances.

(2) No effect on disapproval authority of Board

Such waivers shall not affect the authority of the Board to issue notices of disapproval of

¹ See References in Text note below.

such additions or employment of such individuals within 30 days after each such waiver.

(d) Additional information

Any notice submitted to the Board by any insured credit union pursuant to subsection (a) shall include—

- (1) the information described in section 1817(j)(6)(A) of this title about the individual; and
- (2) such other information as the Board may prescribe by regulation.

(e) Standard for disapproval

The Board shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) 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 insured credit union or in the best interests of the public to permit the individual to be employed by, or associated with, such insured credit union.

(f) Definition regulations

The Board shall prescribe by regulation a definition for the terms “troubled condition” and “senior executive officer” for purposes of subsection (a).

(June 26, 1934, ch. 750, title II, §212, as added Pub. L. 101-73, title IX, §914(b), Aug. 9, 1989, 103 Stat. 485.)

Editorial Notes

CODIFICATION

Section 914(b) of Pub. L. 101-73, which directed that this section be added to title II of “the Federal Credit Union Insurance Act (12 U.S.C. 1781 et seq.)” was executed by adding this section to the Federal Credit Union Act, which comprises this chapter, as the probable intent of Congress.

§ 1790b. Credit union employee protection remedy

(a) In general

(1) Employees of credit unions

No insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or the Attorney General regarding any possible violation of any law or regulation by the credit union or any director, officer, or employee of the credit union.

(2) Employees of the Administration

The Administration may not discharge or otherwise discriminate against any employee (including any employee of the National Credit Union Central Liquidity Facility) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Administration or the Attorney General regarding any possible violation of any law or regulation by—

- (A) any credit union or the Administration;

- (B) any director, officer, committee member, or employee of any credit union; or

- (C) any officer or employee of the Administration.

(b) Enforcement

Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the Board.

(c) Remedies

If the district court determines that a violation of subsection (a) has occurred, it may order the credit union or the Administration which committed the violation—

- (1) to reinstate the employee to his former position,
- (2) to pay compensatory damages, or
- (3) take other appropriate actions to remedy any past discrimination.

(d) Limitations

The protections of this section shall not apply to any employee who—

- (1) deliberately causes or participates in the alleged violation of law or regulation, or
- (2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(June 26, 1934, ch. 750, title II, §213, as added Pub. L. 101-73, title IX, §932(b), Aug. 9, 1989, 103 Stat. 494; amended Pub. L. 102-242, title II, §251(b)(1), (2), Dec. 19, 1991, 105 Stat. 2332, 2333; Pub. L. 102-550, title XVI, §1604(d), Oct. 28, 1992, 106 Stat. 4084.)

Editorial Notes

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-550 substituted, in subpar. (A), “union or the” for “union the” and in subpar. (B), “committee member, or employee of any credit union” for “or employee of any depository institution or any such bank”.

1991—Subsec. (a). Pub. L. 102-242, §251(b)(1), substituted “In general” for “Prohibition against discrimination against whistleblowers” in heading and amended text generally. Prior to amendment, text read as follows: “No federally insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or to the Attorney General regarding a possible violation of any law or regulation by the credit union or any of its officers, directors, or employees.”

Subsec. (c). Pub. L. 102-242, §251(b)(2), inserted “or the Administration” after “the credit union”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

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, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-242, title II, §251(b)(3), Dec. 19, 1991, 105 Stat. 2333, provided that: “Paragraph (2) of section 213(a) of the Federal Credit Union Act [12 U.S.C. 1790b(a)(2)] (as added under the amendment made by paragraph (1)) shall be treated as having taken effect on January 1, 1987, and for purposes of any cause of action arising under such paragraph (as so effective) before the date of the enactment of this Act [Dec. 19, 1991], the 2-year period referred to in section 213(b) of such Act shall be deemed to begin on such date of enactment.”

§ 1790c. Reward for information leading to recoveries or civil penalties

The Board may pay rewards in connection with an offense affecting an insured credit union, under the same circumstances and subject to the same limitations that a Federal banking agency may pay rewards under section 1831j of this title in connection with an offense affecting a depository institution insured by the Federal Deposit Insurance Corporation.

(June 26, 1934, ch. 750, title II, §214, as added Pub. L. 101-73, title IX, §933(b), Aug. 9, 1989, 103 Stat. 496.)

§ 1790d. Prompt corrective action

(a) Resolving problems to protect Fund

(1) Purpose

The purpose of this section is to resolve the problems of insured credit unions at the least possible long-term loss to the Fund.

(2) Prompt corrective action required

The Board shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured credit unions.

(b) Regulations required

(1) Insured credit unions

(A) In general

The Board shall, by regulation, prescribe a system of prompt corrective action for insured credit unions that is—

- (i) consistent with this section; and
- (ii) comparable to section 1831o of this title.

(B) Cooperative character of credit unions

The Board shall design the system required under subparagraph (A) to take into account that credit unions are not-for-profit cooperatives that—

- (i) do not issue capital stock;
- (ii) must rely on retained earnings to build net worth; and
- (iii) have boards of directors that consist primarily of volunteers.

(2) New credit unions

(A) In general

In addition to regulations under paragraph (1), the Board shall, by regulation, prescribe a system of prompt corrective action that shall apply to new credit unions in lieu of this section and the regulations prescribed under paragraph (1).

(B) Criteria for alternative system

The Board shall design the system prescribed under subparagraph (A)—

(i) to carry out the purpose of this section;

(ii) to recognize that credit unions (as cooperatives that do not issue capital stock) initially have no net worth, and give new credit unions reasonable time to accumulate net worth;

(iii) to create adequate incentives for new credit unions to become adequately capitalized by the time that they either—

(I) have been in operation for more than 10 years; or

(II) have more than \$10,000,000 in total assets;

(iv) to impose appropriate restrictions and requirements on new credit unions that do not make sufficient progress toward becoming adequately capitalized; and

(v) to prevent evasion of the purpose of this section.

(c) Net worth categories

(1) In general

For purposes of this section the following definitions shall apply:

(A) Well capitalized

An insured credit union is “well capitalized” if—

(i) it has a net worth ratio of not less than 7 percent; and

(ii) it meets any applicable risk-based net worth requirement under subsection (d).

(B) Adequately capitalized

An insured credit union is “adequately capitalized” if—

(i) it has a net worth ratio of not less than 6 percent; and

(ii) it meets any applicable risk-based net worth requirement under subsection (d).

(C) Undercapitalized

An insured credit union is “undercapitalized” if—

(i) it has a net worth ratio of less than 6 percent; or

(ii) it fails to meet any applicable risk-based net worth requirement under subsection (d).

(D) Significantly undercapitalized

An insured credit union is “significantly undercapitalized”—

(i) if it has a net worth ratio of less than 4 percent; or

(ii) if—

(I) it has a net worth ratio of less than 5 percent; and

(II) it—

(aa) fails to submit an acceptable net worth restoration plan within the time allowed under subsection (f); or

(bb) materially fails to implement a net worth restoration plan accepted by the Board.

(E) Critically undercapitalized

An insured credit union is “critically undercapitalized” if it has a net worth ratio

of less than 2 percent (or such higher net worth ratio, not to exceed 3 percent, as the Board may specify by regulation).

(2) Adjusting net worth levels

(A) In general

If, for purposes of section 1831o(c) of this title, the Federal banking agencies increase or decrease the required minimum level for the leverage limit (as those terms are used in section 1831o of this title), the Board may, by regulation, and subject to subparagraph (B) of this paragraph, correspondingly increase or decrease 1 or more of the net worth ratios specified in subparagraphs (A) through (D) of paragraph (1) of this subsection in an amount that is equal to not more than the difference between the required minimum level most recently established by the Federal banking agencies and 4 percent of total assets (with respect to institutions regulated by those agencies).

(B) Determinations required

The Board may increase or decrease net worth ratios under subparagraph (A) only if the Board—

- (i) determines, in consultation with the Federal banking agencies, that the reason for the increase or decrease in the required minimum level for the leverage limit also justifies the adjustment in net worth ratios; and
- (ii) determines that the resulting net worth ratios are sufficient to carry out the purpose of this section.

(C) Transition period required

If the Board increases any net worth ratio under this paragraph, the Board shall give insured credit unions a reasonable period of time to meet the increased ratio.

(d) Risk-based net worth requirement for complex credit unions

(1) In general

The regulations required under subsection (b)(1) shall include a risk-based net worth requirement for insured credit unions that are complex, as defined by the Board based on the portfolios of assets and liabilities of credit unions.

(2) Standard

The Board shall design the risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.

(e) Earnings-retention requirement applicable to credit unions that are not well capitalized

(1) In general

An insured credit union that is not well capitalized shall annually set aside as net worth an amount equal to not less than 0.4 percent of its total assets.

(2) Board's authority to decrease earnings-retention requirement

(A) In general

The Board may, by order, decrease the 0.4 percent requirement in paragraph (1) with

respect to a credit union to the extent that the Board determines that the decrease—

- (i) is necessary to avoid a significant redemption of shares; and
- (ii) would further the purpose of this section.

(B) Periodic review required

The Board shall periodically review any order issued under subparagraph (A).

(f) Net worth restoration plan required

(1) In general

Each insured credit union that is undercapitalized shall submit an acceptable net worth restoration plan to the Board within the time allowed under this subsection.

(2) Assistance to small credit unions

The Board (or the staff of the Board) shall, upon timely request by an insured credit union with total assets of less than \$10,000,000, and subject to such regulations or guidelines as the Board may prescribe, assist that credit union in preparing a net worth restoration plan.

(3) Deadlines for submission and review of plans

The Board shall, by regulation, establish deadlines for submission of net worth restoration plans under this subsection that—

- (A) provide insured credit unions with reasonable time to submit net worth restoration plans; and
- (B) require the Board to act on net worth restoration plans expeditiously.

(4) Failure to submit acceptable plan within time allowed

(A) Failure to submit any plan

If an insured credit union fails to submit a net worth restoration plan within the time allowed under paragraph (3), the Board shall—

- (i) promptly notify the credit union of that failure; and
- (ii) give the credit union a reasonable opportunity to submit a net worth restoration plan.

(B) Submission of unacceptable plan

If an insured credit union submits a net worth restoration plan within the time allowed under paragraph (3), and the Board determines that the plan is not acceptable, the Board shall—

- (i) promptly notify the credit union of why the plan is not acceptable; and
- (ii) give the credit union a reasonable opportunity to submit a revised plan.

(5) Accepting plan

The Board may accept a net worth restoration plan only if the Board determines that the plan is based on realistic assumptions and is likely to succeed in restoring the net worth of the credit union.

(g) Restrictions on undercapitalized credit unions

(1) Restriction on asset growth

An insured credit union that is undercapitalized shall not generally permit its average total assets to increase, unless—

(A) the Board has accepted the net worth restoration plan of the credit union for that action;

(B) any increase in total assets is consistent with the net worth restoration plan; and

(C) the net worth ratio of the credit union increases at a rate that is consistent with the net worth restoration plan.

(2) Restriction on member business loans

Notwithstanding section 1757a(a) of this title, an insured credit union that is undercapitalized may not make any increase in the total amount of member business loans (as defined in section 1757a(c) of this title) outstanding at that credit union at any one time, until such time as the credit union becomes adequately capitalized.

(h) More stringent treatment based on other supervisory criteria

With respect to the exercise of authority by the Board under regulations comparable to section 1831o(g) of this title—

(1) the Board may not reclassify an insured credit union into a lower net worth category, or treat an insured credit union as if it were in a lower net worth category, for reasons not pertaining to the safety and soundness of that credit union; and

(2) the Board may not delegate its authority to reclassify an insured credit union into a lower net worth category or to treat an insured credit union as if it were in a lower net worth category.

(i) Action required regarding critically undercapitalized credit unions

(1) In general

The Board shall, not later than 90 days after the date on which an insured credit union becomes critically undercapitalized—

(A) appoint a conservator or liquidating agent for the credit union; or

(B) take such other action as the Board determines would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

(2) Periodic redeterminations required

Any determination by the Board under paragraph (1)(B) to take any action with respect to an insured credit union in lieu of appointing a conservator or liquidating agent shall cease to be effective not later than the end of the 180-day period beginning on the date on which the determination is made, and a conservator or liquidating agent shall be appointed for that credit union under paragraph (1)(A), unless the Board makes a new determination under paragraph (1)(B) before the end of the effective period of the prior determination.

(3) Appointment of liquidating agent required if other action fails to restore net worth

(A) In general

Notwithstanding paragraphs (1) and (2), the Board shall appoint a liquidating agent for an insured credit union if the credit union is critically undercapitalized on average during the calendar quarter beginning 18

months after the date on which the credit union became critically undercapitalized.

(B) Exception

Notwithstanding subparagraph (A), the Board may continue to take such other action as the Board determines to be appropriate in lieu of appointment of a liquidating agent if—

(i) the Board determines that—

(I) the insured credit union has been in substantial compliance with an approved net worth restoration plan that requires consistent improvement in the net worth of the credit union since the date of the approval of the plan; and

(II) the insured credit union has positive net income or has an upward trend in earnings that the Board projects as sustainable; and

(ii) the Board certifies that the credit union is viable and not expected to fail.

(4) Nondelegation

(A) In general

Except as provided in subparagraph (B), the Board may not delegate the authority of the Board under this subsection.

(B) Exception

The Board may delegate the authority of the Board under this subsection with respect to an insured credit union that has less than \$5,000,000 in total assets, if the Board permits the credit union to appeal any adverse action to the Board.

(j) Reviews required when share insurance fund experiences losses

(1) In general

If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

(ii) recommendations for preventing any such loss in the future; and

(B) submit a copy of the report under subparagraph (A) to—

(i) the Comptroller General of the United States;

(ii) the Corporation;

(iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and

(iv) to any Member of Congress, upon request.

(2) Material loss defined

For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—

(A) \$25,000,000; and

(B) an amount equal to 10 percent of the total assets of the credit union on the date

on which the Board initiated assistance under section 1788 of this title or was appointed liquidating agent.

(3) Public disclosure required

(A) In general

The Board shall disclose a report under this subsection, upon request under section 552 of title 5, without excising—

- (i) any portion under section 552(b)(5) of title 5; or
- (ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5.

(B) Rule of construction

Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information from which the identity of such customer could reasonably be ascertained.

(4) Losses that are not material

(A) Semiannual report

For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—

- (i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;
- (ii) for each loss to the Fund that is not a material loss, determine—
 - (I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for appointing the Board as the liquidating agent for any Federal or State credit union; and
 - (II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and
- (iii) prepare and submit a written report to the Board and to Congress on the results of the determinations of the Inspector General that includes—
 - (I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines that no review is warranted, an explanation of such determination; and
 - (II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

(B) Deadline for semiannual report

The Inspector General of the Board shall—

- (i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and
- (ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.

(5) GAO review

The Comptroller General of the United States shall, under such conditions as the

Comptroller General determines to be appropriate—

(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 419 of title 5 with respect to each such report; and

(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).

(k) Appeals process

Material supervisory determinations, including decisions to require prompt corrective action, made pursuant to this section by Administration officials other than the Board may be appealed to the Board pursuant to the independent appellate process required by section 4806 of this title (or, if the Board so specifies, pursuant to separate procedures prescribed by regulation).

(l) Consultation and cooperation with State credit union supervisors

(1) In general

In implementing this section, the Board shall consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions.

(2) Evaluating net worth restoration plan

In evaluating any net worth restoration plan submitted by a State-chartered insured credit union, the Board shall seek the views of the State official having jurisdiction over the credit union.

(3) Deciding whether to appoint conservator or liquidating agent

With respect to any decision by the Board on whether to appoint a conservator or liquidating agent for a State-chartered insured credit union—

(A) the Board shall—

- (i) seek the views of the State official having jurisdiction over the credit union; and
- (ii) give that official an opportunity to take the proposed action;

(B) the Board shall, upon timely request of an official referred to in subparagraph (A), promptly provide the official with—

- (i) a written statement of the reasons for the proposed action; and
- (ii) reasonable time to respond to that statement;

(C) if the official referred to in subparagraph (A) makes a timely written response that disagrees with the proposed action and gives reasons for that disagreement, the Board shall not appoint a conservator or liquidating agent for the credit union, unless the Board, after considering the views of the official, has determined that—

- (i) the Fund faces a significant risk of loss with respect to the credit union if a conservator or liquidating agent is not appointed; and
- (ii) the appointment is necessary to reduce—

(I) the risk that the Fund would incur a loss with respect to the credit union; or

(II) any loss that the Fund is expected to incur with respect to the credit union; and

(D) the Board may not delegate any determination under subparagraph (C).

(m) Corporate credit unions exempted

This section does not apply to any insured credit union that—

(1) operates primarily for the purpose of serving credit unions; and

(2) permits individuals to be members of the credit union only to the extent that applicable law requires that such persons own shares.

(n) Other authority not affected

This section does not limit any authority of the Board or a State to take action in addition to (but not in derogation of) any action that is required under this section.

(o) Definitions

For purposes of this section the following definitions shall apply:

(1) Federal banking agency

The term “Federal banking agency” has the same meaning as in section 1813 of this title.

(2) Net worth

The term “net worth”—

(A) with respect to any insured credit union, means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined;

(B) with respect to any insured credit union, includes, at the Board’s discretion and subject to rules and regulations established by the Board, assistance provided under section 1788 of this title to facilitate a least-cost resolution consistent with the best interests of the credit union system; and

(C) with respect to a low-income credit union, 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.

(3) Net worth ratio

The term “net worth ratio” means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.

(4) New credit union

The term “new credit union” means an insured credit union that—

(A) has been in operation for less than 10 years; and

(B) has not more than \$10,000,000 in total assets.

(June 26, 1934, ch. 750, title II, §216, as added Pub. L. 105-219, title III, §301(a), Aug. 7, 1998, 112

Stat. 923; amended Pub. L. 109-351, title V, §504, title VII, §726(25), Oct. 13, 2006, 120 Stat. 1975, 2003; Pub. L. 111-203, title IX, §988(a), July 21, 2010, 124 Stat. 1938; Pub. L. 111-382, §3, Jan. 4, 2011, 124 Stat. 4135; Pub. L. 117-286, §4(b)(33), Dec. 27, 2022, 136 Stat. 4346.)

Editorial Notes

AMENDMENTS

2022—Subsec. (j)(5)(A). Pub. L. 117-286 substituted “section 419 of title 5” for “section 8L of the Inspector General Act of 1978 (5 U.S.C. App.)”.

2011—Subsec. (o)(2). Pub. L. 111-382 amended par. (2) generally. Prior to amendment, text read as follows: “The term ‘net worth’—

“(A) with respect to any insured credit union, means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined; and

“(B) with respect to a low-income credit union, 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.”

2010—Subsec. (j). Pub. L. 111-203 amended subsec. (j) generally. Prior to amendment, text read as follows: “For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union (such that the inspector general of the Board must make a report), a loss is material if it exceeds the sum of—

“(1) \$10,000,000; and

“(2) an amount equal to 10 percent of the total assets of the credit union at the time at which the Board initiated assistance under section 1788 of this title or was appointed liquidating agent.”

2006—Subsec. (n). Pub. L. 109-351, §726(25), inserted “any action” before “that is required”.

Subsec. (o)(2)(A). Pub. L. 109-351, §504, inserted “the” before “retained earnings balance” and “, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined” before semicolon.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE

Pub. L. 105-219, title III, §301(e), Aug. 7, 1998, 112 Stat. 931, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), section 216 of the Federal Credit Union Act [12 U.S.C. 1790d] (as added by this section) shall become effective 2 years after the date of enactment of this Act [Aug. 7, 1998].

“(2) RISK-BASED NET WORTH REQUIREMENT.—Section 216(d) of the Federal Credit Union Act (as added by this section) shall become effective on January 1, 2001.”

REGULATIONS

Pub. L. 105-219, title III, §301(d), Aug. 7, 1998, 112 Stat. 930, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the Board shall—

“(A) publish in the Federal Register proposed regulations to implement section 216 of the Federal Credit Union Act [12 U.S.C. 1790d] (as added by subsection (a) of this section) not later than 270 days after the date of enactment of this Act [Aug. 7, 1998]; and

“(B) promulgate final regulations to implement section 216 not later than 18 months after the date of enactment of this Act.

“(2) RISK-BASED NET WORTH REQUIREMENT.—

“(A) ADVANCE NOTICE OF PROPOSED RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Board shall publish in the Federal Register an advance notice of proposed rulemaking, as required by section 216(d) of the Federal Credit Union Act, as added by this Act.

“(B) FINAL REGULATIONS.—The Board shall promulgate final regulations, as required by section 216(d) not later than 2 years after the date of enactment of this Act.”

CONSULTATION REQUIRED

Pub. L. 105-219, title III, §301(c), Aug. 7, 1998, 112 Stat. 930, provided that: “In developing regulations to implement section 216 of the Federal Credit Union Act [12 U.S.C. 1790d] (as added by subsection (a) of this section), the Board shall consult with the Secretary, the Federal banking agencies, and the State officials having jurisdiction over State-chartered insured credit unions.”

REPORT TO CONGRESS

Pub. L. 105-219, title III, §301(f), Aug. 7, 1998, 112 Stat. 931, provided that: “When the Board publishes proposed regulations pursuant to subsection (d)(1)(A) [set out above], or promulgates final regulations pursuant to subsection (d)(1)(B) [set out above], the Board shall submit to the Congress a report that specifically explains—

“(1) how the regulations carry out section 216(b)(1)(B) of the Federal Credit Union Act [12 U.S.C. 1790d(b)(1)(B)] (as added by this section), relating to the cooperative character of credit unions; and

“(2) how the regulations differ from section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831o], and the reasons for those differences.”

DEFINITIONS

Pub. L. 105-219, §3, Aug. 7, 1998, 112 Stat. 914, provided that: “As used in this Act [see Short Title of 1998 Amendment note set out under section 1751 of this title]—

“(1) the term ‘Administration’ means the National Credit Union Administration;

“(2) the term ‘Board’ means the National Credit Union Administration Board;

“(3) the term ‘Federal banking agencies’ has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813];

“(4) the terms ‘insured credit union’ and ‘State-chartered insured credit union’ have the same meanings as in section 101 of the Federal Credit Union Act [12 U.S.C. 1752]; and

“(5) the term ‘Secretary’ means the Secretary of the Treasury.”

§ 1790e. Temporary Corporate Credit Union Stabilization Fund

(a) Establishment of Stabilization Fund

There is hereby created in the Treasury of the United States a fund to be known as the “Temporary Corporate Credit Union Stabilization Fund.” The Board will administer the Stabilization Fund as prescribed by section 1789 of this title.

(b) Expenditures from Stabilization Fund

Money in the Stabilization Fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments for the purposes described in section 1783(a) of this title, subject to the following additional limitations:

(1) All payments other than administrative payments shall be connected to the conservatorship, liquidation, or threatened conservatorship or liquidation, of a corporate credit union.

(2) Prior to authorizing each payment the Board shall—

(A) certify that, absent the existence of the Stabilization Fund, the Board would have made the identical payment out of the National Credit Union Share Insurance Fund (Insurance Fund); and

(B) report each such certification to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) Authority to borrow

(1) In general

The Stabilization Fund is authorized to borrow from the Secretary of the Treasury from time-to-time as deemed necessary by the Board. The maximum outstanding amount of all borrowings from the Treasury by the Stabilization Fund and the National Credit Union Share Insurance Fund, combined, is limited to the amount provided for in section 1783(d)(1) of this title, including any authorized increases in that amount.

(2) Repayment of advances

(A) In general

The advances made under this section shall be repaid by the Stabilization Fund, and interest on such advance shall be paid, to the General fund of the Treasury.

(B) Variable rate of interest

The Secretary of the Treasury shall make the first rate determination at the time of the first advance under this section and shall reset the rate again for all advances on each anniversary of the first advance. The interest rate shall be equal to the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity equal to 12 months.

(3) Repayment schedule

The Stabilization Fund shall repay the advances on a first-in, first-out basis, with interest on the amount repaid, at times and dates determined by the Board at its discretion. All advances shall be repaid not later than the date of the seventh anniversary of the first advance to the Stabilization Fund, unless the Board extends this final repayment date. The Board shall obtain the concurrence of the Secretary of the Treasury on any proposed extension, including the terms and conditions of the extended repayment and any additional advances.

(d) Assessment authority

(1) Assessments relating to expenditures under subsection (b)

In order to make expenditures, as described in subsection (b), the Board may assess a special premium with respect to each insured credit union in an aggregate amount that is reasonably calculated to make any pending or

future expenditure described in subsection (b), which premium shall be due and payable not later than 60 days after the date of the assessment. In setting the amount of any assessment under this subsection, the Board shall take into consideration any potential impact on credit union earnings that such an assessment may have.

(2) Special premiums relating to repayments under subsection (c)(3)

Not later than 90 days before the scheduled date of each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and shall determine whether the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund is not likely to have sufficient funds to make the repayment, the Board shall assess with respect to each insured credit union a special premium, which shall be due and payable not later than 60 days after the date of the assessment, in an aggregate amount calculated to ensure that the Stabilization Fund is able to make the required repayment.

(3) Computation

Any assessment or premium charge for an insured credit union under this subsection shall be stated as a percentage of its insured shares, as represented on the previous call report of that insured credit union. The percentage shall be identical for each insured credit union. Any insured credit union that fails to make timely payment of the assessment or special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 1782 of this title.

(e) Distributions from Insurance Fund

At the end of any calendar year in which the Stabilization Fund has an outstanding advance from the Treasury, the Insurance Fund is prohibited from making the distribution to insured credit unions described in section 1782(c)(3) of this title. In lieu of the distribution described in that section, the Insurance Fund shall make a distribution to the Stabilization Fund of the maximum amount possible that does not reduce the Insurance Fund's equity ratio below the normal operating level and does not reduce the Insurance Fund's available assets ratio below 1.0 percent.

(f) Investment of Stabilization Fund assets

The Board may request the Secretary of the Treasury to invest such portion of the Stabilization Fund as is not, in the Board's judgment, required to meet the current needs of the Stabilization Fund. Such investments shall be made by the Secretary of the Treasury in public debt securities, with maturities suitable to the needs of the Stabilization Fund, as determined by the Board, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(g) Reports

The Board shall submit an annual report to Congress on the financial condition and the re-

sults of the operation of the Stabilization Fund. The report is due to Congress within 30 days after each anniversary of the first advance made under subsection (c)(1). Because the Fund will use advances from the Treasury to meet corporate stabilization costs with full repayment of borrowings to Treasury at the Board's discretion not due until 7 years from the initial advance, to the extent operating expenses of the Fund exceed income, the financial condition of the Fund may reflect a deficit. With planned and required future repayments, the Board shall resolve all deficits prior to termination of the Fund.

(h) Closing of Stabilization Fund

Within 90 days following the seventh anniversary of the initial Stabilization Fund advance, or earlier at the Board's discretion, the Board shall distribute any funds, property, or other assets remaining in the Stabilization Fund to the Insurance Fund and shall close the Stabilization Fund. If the Board extends the final repayment date as permitted under subsection (c)(3), the mandatory date for closing the Stabilization Fund shall be extended by the same number of days.

(June 26, 1934, ch. 750, title II, §217, as added Pub. L. 111-22, div. A, title II, §204(f)(1), May 20, 2009, 123 Stat. 1651; amended Pub. L. 111-382, §1, Jan. 4, 2011, 124 Stat. 4134.)

Editorial Notes

AMENDMENTS

2011—Subsec. (c)(3). Pub. L. 111-382, §1(a), inserted “and any additional advances” before period at end.

Subsec. (d). Pub. L. 111-382, §1(b), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows:

“At least 90 days prior to each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and determine if the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund might not have sufficient funds to make the repayment, the Board shall assess each federally insured credit union a special premium due and payable within 60 days in an aggregate amount calculated to ensure the Stabilization Fund is able to make the repayment. The premium charge for each credit union shall be stated as a percentage of its insured shares as represented on the credit union's previous call report. The percentage shall be identical for each credit union. Any credit union that fails to make timely payment of the special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 1782 of this title.”

SUBCHAPTER III—CENTRAL LIQUIDITY FACILITY

§ 1795. Congressional findings

The Congress finds that the establishment of a National Credit Union Central Liquidity Facility is needed to improve general financial stability by meeting the liquidity needs of credit unions and thereby encourage savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy.

(June 26, 1934, ch. 750, title III, formerly subch. III, §301, as added Pub. L. 95-630, title XVIII, §1802, Nov. 10, 1978, 92 Stat. 3719; amended Pub.