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SUBCHAPTER I—ORGANIZATION AND GENERAL PROVISIONS

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Associations for carrying on the business of banking under title 62 of the Revised Statutes

may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.

(R.S. § 5133.)

Editorial Notes

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original "this Title" meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5133 derived from act June 3, 1864, ch. 106, §5, 13 Stat. 100, which was the National Bank Act. See section 38 of this title.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113-251, §1, Dec. 18, 2014, 128 Stat. 2888, provided that: "This Act [enacting section 1308 of Title 18, Crimes and Criminal Procedure, amending sections 25a, 339, 1463, and 1829a of this title and sections 1952, 1953, and 1955 of Title 18, and enacting provisions set out as a note under section 25a of this title] may be cited as the 'American Savings Promotion Act'."

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 21a. Amendment of articles of association

Except as otherwise specifically provided by law, or by the articles of association of the particular national banking association, the articles of association of a national banking association may be amended with respect to any lawful matter, and any action requiring the approval of the stockholders of such association may be had by the approving vote of the holders of a majority of the voting shares of the stock of the association obtained at a meeting of the stockholders called and held pursuant to notice given by mail at least ten days prior to the meeting or pursuant to a waiver of such notice given by all stockholders entitled to receive notice of such meeting. A certified copy of every amendment to the articles of association adopted by the shareholders of a national banking association shall be forwarded to the Comptroller

of the Currency, to be filed and preserved in his office.

(Pub. L. 86-230, § 13, Sept. 8, 1959, 73 Stat. 458.)

§ 22. Organization certificate

The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

First. The name assumed by such association; which name shall include the word “national”.

Second. The place where its operations of discount and deposit are to be carried on, designating the State, Territory, or District, and the particular county and city, town, or village.

Third. The amount of capital stock and the number of shares into which the same is to be divided.

Fourth. The names and places of residence of the shareholders and the number of shares held by each of them.

Fifth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of title 62 of the Revised Statutes.

(R.S. § 5134; Pub. L. 86-230, § 25, Sept. 8, 1959, 73 Stat. 466; Pub. L. 97-320, title IV, § 405(b), Oct. 15, 1982, 96 Stat. 1512.)

Editorial Notes

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in par. Fifth, was in the original “this Title” meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 23 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5134 derived from act June 3, 1864, ch. 106, § 6, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1982—Par. First. Pub. L. 97-320 struck out “and be subject to the approval of the Comptroller of the Currency” after “national”.

1959—Par. First. Pub. L. 86-230 substituted “which named shall include the word ‘national’ and be” for “which name shall be”.

§ 23. Acknowledgment and filing of certificate

The organization certificate shall be acknowledged before a judge of some court of record, or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office.

(R.S. § 5135.)

Editorial Notes

CODIFICATION

R.S. § 5135 derived from act June 3, 1864, ch. 106, § 6, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 24. Corporate powers of associations

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from February 25, 1927, or from the date of its organization if organized after February 25, 1927, until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, bylaws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of title 62 of the Revised Statutes. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock; *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actu-

ally paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on August 23, 1935. As used in this section the term "investment securities" shall mean marketable obligations, evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] or obligations which are insured by the Secretary of Housing and Urban Development (hereinafter in this sentence referred to as the "Secretary") pursuant to section 207 of the National Housing Act [12 U.S.C. 1713], if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association, or the Government National Mortgage Association, or mortgages, obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454 or 1455], or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority, or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary, and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in

the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (g) of section 6 of the United States Housing Act of 1937, as amended [42 U.S.C. 1437d(g)], and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 6(g) [42 U.S.C. 1437d(g)] shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937 [42 U.S.C. 1437d(g)], and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided*, That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank¹ Bank for Economic Cooperation and Development in the Middle East and North Africa,² the North American Development Bank, the Asian Development

¹ So in original. Probably should be followed by a comma.

² So in original.

Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation,² or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided*, That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968 [42 U.S.C. 3931 et seq.], and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act [42 U.S.C. 3937(a) or 3937(c)]. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided*, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further*, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies (as defined in section 1813 of this title) and such bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in pro-

viding correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a "banker's bank"), but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the association's capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5));³ (B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(53)]); or (C) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))).⁴ The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.

A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

In addition to the provisions in this paragraph for dealing in, underwriting, or purchasing secu-

³ See References in Text note below.

⁴ So in original. The period probably should be preceded by an additional closing parenthesis.

rities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of title 26) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 1831o of this title).

Eighth. To contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, such sums as its board of directors may deem expedient and in the interests of the association, if it is located in a State the laws of which do not expressly prohibit State banking institutions from contributing to such funds or instrumentalities.

Ninth. To issue and sell securities which are guaranteed pursuant to section 1721(g) of this title.

Tenth. To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association.

Eleventh. To make investments directly or indirectly, each of which is designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 15 percent of the association's capital stock actually paid in and unimpaired and 15 percent of the association's unimpaired surplus fund. The foregoing standards and limitations apply to investments under this paragraph made by a national bank directly and by its subsidiaries.

(R.S. §5136; July 1, 1922, ch. 257, §1, 42 Stat. 767; Feb. 25, 1927, ch. 191, §2, 44 Stat. 1226; June 16, 1933, ch. 89, §16, 48 Stat. 184; Aug. 23, 1935, ch. 614, title III, §308, 49 Stat. 709; Feb. 3, 1938, ch. 13, §13, 52 Stat. 26; June 11, 1940, ch. 301, 54 Stat. 261; June 29, 1949, ch. 276, §1, 63 Stat. 298; July 15, 1949, ch. 338, title VI, §602(a), 63 Stat. 439; Apr. 9, 1952, ch. 169, 66 Stat. 49; Aug. 2, 1954, ch. 649, title II, §203, 68 Stat. 622; Aug. 23, 1954, ch. 834, §2, 68 Stat. 771; July 26, 1956, ch. 741, title II, §201(c), 70

Stat. 667; Pub. L. 86-137, §2, Aug. 6, 1959, 73 Stat. 285; Pub. L. 86-147, §10, Aug. 7, 1959, 73 Stat. 301; Pub. L. 86-230, §1(a), Sept. 8, 1959, 73 Stat. 457; Pub. L. 86-278, Sept. 16, 1959, 73 Stat. 563; Pub. L. 86-372, title IV, §420, Sept. 23, 1959, 73 Stat. 679; Pub. L. 88-560, title VII, §701(c), Sept. 2, 1964, 78 Stat. 800; Pub. L. 89-369, §10, Mar. 16, 1966, 80 Stat. 72; Pub. L. 89-754, title V, §504(a)(1), Nov. 3, 1966, 80 Stat. 1277; Pub. L. 90-19, §27(a), May 25, 1967, 81 Stat. 28; Pub. L. 90-448, title VIII, §§804(c), 807(j), title IX, §911, title XVII, §1705(h), Aug. 1, 1968, 82 Stat. 543, 545, 550, 605; Pub. L. 91-375, §6(d), Aug. 12, 1970, 84 Stat. 776; Pub. L. 92-318, title I, §133(c)(1), June 23, 1972, 86 Stat. 269; Pub. L. 91-143, §12(b), Dec. 9, 1969, as added Pub. L. 92-349, title I, §101, July 13, 1972, 86 Stat. 466; Pub. L. 92-500, §12(n), Oct. 18, 1972, 86 Stat. 902; Pub. L. 93-100, §5(c), Aug. 16, 1973, 87 Stat. 344; Pub. L. 93-224, §14, Dec. 29, 1973, 87 Stat. 941; Pub. L. 93-234, title II, §207, Dec. 31, 1973, 87 Stat. 984; Pub. L. 93-383, title II, §206, title VIII, §805(c)(1), Aug. 22, 1974, 88 Stat. 668, 726; Pub. L. 96-221, title VII, §711, Mar. 31, 1980, 94 Stat. 189; Pub. L. 97-35, title XIII, §1342(a), Aug. 13, 1981, 95 Stat. 743; Pub. L. 97-320, title IV, §404(b), Oct. 15, 1982, 96 Stat. 1511; Pub. L. 97-457, §18, Jan. 12, 1983, 96 Stat. 2509; Pub. L. 98-440, title I, §105(c), Oct. 3, 1984, 98 Stat. 1691; Pub. L. 98-473, title I, §101(1) [title I, §101], Oct. 12, 1984, 98 Stat. 1884, 1885; Pub. L. 100-86, title I, §108, Aug. 10, 1987, 101 Stat. 579; Pub. L. 100-449, title III, §308, Sept. 28, 1988, 102 Stat. 1877; Pub. L. 101-513, title V, §562(c)(10)(B), (e)(1)(B), Nov. 5, 1990, 104 Stat. 2036, 2037; Pub. L. 102-485, §6(a), Oct. 23, 1992, 106 Stat. 2774; Pub. L. 103-182, title V, §541(h)(1), Dec. 8, 1993, 107 Stat. 2167; Pub. L. 103-325, title II, §206(c), title III, §§322(a)(1), 347(b), Sept. 23, 1994, 108 Stat. 2199, 2226, 2241; Pub. L. 104-208, div. A, title I, §101(c) [title VII, §710(b)], title II, §2704(d)(7), Sept. 30, 1996, 110 Stat. 3009-121, 3009-181, 3009-489; Pub. L. 106-102, title I, §151, Nov. 12, 1999, 113 Stat. 1384; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §9(a), Feb. 15, 2006, 119 Stat. 3616; Pub. L. 109-351, title III, §305(a), Oct. 13, 2006, 120 Stat. 1970; Pub. L. 110-289, div. B, title V, §2503(a), July 30, 2008, 122 Stat. 2857.)

AMENDMENT OF SECTION

For termination of amendment by section 501(c) of Pub. L. 100-449, see Effective and Termination Dates of 1988 Amendment note below.

Editorial Notes

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in par. Seventh, was in the original "this Title" meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22, 23, 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

Section 9 of the National Capital Transportation Act of 1969, referred to in par. Seventh, is section 9 of Pub. L. 91-143, as added by section 101 of title I of Pub. L. 92-349, July 13, 1972, 86 Stat. 464, which is not classified to the Code.

The Federal Farm Loan Act, referred to in par. Seventh, is act July 17, 1916, ch. 245, 39 Stat. 360, which was classified to section 641 et seq. of this title prior to its repeal by Pub. L. 92-181, § 5.26(a), Dec. 10, 1971, 85 Stat. 624. See chapter 23 (§ 2001 et seq.) of this title.

The National Housing Act, referred to in par. Seventh, is act June 27, 1934, ch. 847, 48 Stat. 1246. Title XI of the National Housing Act is title XI of act June 27, 1934, ch. 847, as added by act Nov. 3, 1966, Pub. L. 89-754, title V, § 502(a), 80 Stat. 1274, which is classified generally to subchapter IX-B (§ 1749aaa et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in par. Seventh, was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

The United States Housing Act of 1937, referred to in par. Seventh, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, Aug. 22, 1974, 88 Stat. 653, and is classified to chapter 8 (§ 1437 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Housing and Urban Development Act of 1968, referred to in par. Seventh, is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476. Title IX of the Housing and Urban Development Act is classified principally to chapter 49 (§ 3931 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

Section 4 of the Securities Act of 1933, referred to in par. Seventh, was amended by section 201(b), (c) of Pub. L. 112-106, and the provisions which formerly appeared in section 4 of the Act now appear in section 4(a) of the Act.

CODIFICATION

Amendment by Pub. L. 98-473 is based on section 211(a) of title II of S. 2416, as introduced in the Senate on Mar. 13, 1984, which was enacted into permanent law by section 101(1) of Pub. L. 98-473.

R.S. § 5136 derived from act June 3, 1864, ch. 106, § 8, 13 Stat. 101, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2008—Par. Eleventh. Pub. L. 110-289, which directed substitution of “is designed primarily to promote the public welfare, including the welfare of” for “promotes the public welfare by benefitting primarily” in first sentence, was executed by making the substitution for “promotes the public welfare by benefitting primarily” to reflect the probable intent of Congress.

2006—Par. Eleventh. Pub. L. 109-351 amended par. generally. Prior to amendment, par. read as follows: “Eleventh. To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). A national banking association may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association’s investments in any 1 project and an association’s aggregate investments under this paragraph. An association’s aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association’s capital stock actually paid in and unimpaired and 5 percent of the association’s unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the Deposit Insurance Fund, and the association is adequately capitalized. In no case shall an association’s aggregate investments under this para-

graph exceed an amount equal to the sum of 10 percent of the association’s capital stock actually paid in and unimpaired and 10 percent of the association’s unimpaired surplus fund.”

Pub. L. 109-173, in fifth sentence, substituted “Deposit Insurance Fund” for “affected deposit insurance fund”.

Pub. L. 109-171 repealed Pub. L. 104-208, § 2704(d)(7). See 1996 Amendment note below.

1999—Par. Seventh. Pub. L. 106-102 inserted at end “In addition to the provisions in this paragraph for dealing in, underwriting, or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank’s own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of title 26) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 1831o of this title).”

1996—Par. Seventh. Pub. L. 104-208, § 101(c) [§ 710(b)], in seventh sentence, inserted “Bank for Economic Cooperation and Development in the Middle East and North Africa,” after “the Inter-American Development Bank”.

Par. Eleventh. Pub. L. 104-208, § 2704(d)(7), which directed the amendment of the fifth sentence by substituting “Deposit Insurance Fund” for “affected deposit insurance fund”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Par. Seventh. Pub. L. 103-325, § 347(b), in last sentence of first par., substituted “(15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations” for “(15 U.S.C. 78c(a)(41))), subject to such regulations”.

Pub. L. 103-325, § 322(a)(1)(A), in fifth proviso inserted “or depository institution holding companies (as defined in section 1813 of this title)” after “(except to the extent directors’ qualifying shares are required by law) by depository institutions”.

Pub. L. 103-325, § 322(a)(1)(B), which directed substitution in fifth proviso of “services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a ‘banker’s bank’)” for “services for other depository institutions and their officers, directors and employees”, was executed by making the substitution for “services for other depository institutions and their officers, directors, and employees” to reflect the probable intent of Congress.

Pub. L. 103-325, § 206(c), substituted “(B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities” for “or (B) are mortgage related securities”.

1993—Par. Seventh. Pub. L. 103-182 inserted “the North American Development Bank,” after “Inter-American Development Bank.”.

1992—Par. Eleventh. Pub. L. 102-485 added par. Eleventh.

1990—Par. Seventh. Pub. L. 101-513 inserted “the European Bank for Reconstruction and Development,” before “the Inter-American Development Bank,” and substituted “the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation,” for “the African Development Bank or the Inter-American Investment Corporation.”.

1988—Par. Seventh. Pub. L. 100-449 temporarily inserted provisions authorizing national banking associations to deal in, underwrite, and purchase Canadian government obligations for the association’s own ac-

count. See Effective and Termination Dates of 1988 Amendment note below.

1987—Par. Tenth. Pub. L. 100-86 added par. Tenth.

1984—Par. Seventh. Pub. L. 98-473 inserted reference to the Inter-American Investment Corporation.

Pub. L. 98-440 inserted provision that the limitations and restrictions contained in this paragraph as to an association purchasing investment securities for its own account shall not apply to securities offered and sold pursuant to section 15 U.S.C. 77d(5), or that are mortgage related securities (as defined in 15 U.S.C. 78c(a)(41)), subject to such regulations as the Comptroller of the Currency may prescribe.

1983—Par. Seventh. Pub. L. 97-457 substituted "10 per centum of the association's" for "10 per centum of its" after "exceed at any time".

1982—Par. Seventh. Pub. L. 97-320 substituted "*Provided further*, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of its capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company" for "*Provided further*, That, notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent State law requires directors qualifying shares) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees, but in no event shall the total amount of such stock held by the association exceed at any time 10 per centum of its capital stock and paid in and unimpaired surplus, and in no event shall the purchase of such stock result in the association's acquiring more than 5 per centum of any class of voting securities of such bank".

1981—Par. Seventh. Pub. L. 97-35 inserted reference to the African Development Bank.

1980—Par. Seventh. Pub. L. 96-221 inserted proviso relating to purchase of stock in bankers' banks.

1974—Par. Seventh. Pub. L. 93-383 substituted "section 6(g) of the United States Housing Act of 1937" for references to section 1421a(b) of title 42 wherever appearing, struck out "either" before "(1)", "(which obligations shall have a maturity of not more than eighteen months)" in cl. (1) and "or" before "(2)", added cl. (3), and inserted reference to mortgages, obligations, or other securities sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title.

1973—Par. Seventh. Pub. L. 93-234 authorized investments by national banks in agricultural credit corporations.

Pub. L. 93-224 inserted "or obligations of the Federal Financing Bank" after "or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association".

Pub. L. 93-100 inserted provision that the association may purchase shares of stock issued by state housing corporations incorporated in the state in which the association is located and make investments in loans and commitments for loans to such corporations with certain limitations.

1972—Par. Seventh. Pub. L. 92-500 inserted "or obligations of the Environmental Financing Authority" after "Government National Mortgage Association".

Pub. L. 92-349 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969.

Pub. L. 92-318 included obligations or other instruments or securities of the Student Loan Marketing Association.

1970—Par. Seventh. Pub. L. 91-375 made limitations and restrictions contained in this section as to dealing in and underwriting investment securities inapplicable to bonds, notes and other obligations issued by the United States Postal Service.

1968—Par. Seventh. Pub. L. 90-448, §807(j), inserted "or the Government National Mortgage Association" after "Federal National Mortgage Association".

Pub. L. 90-448, §911, authorized the association to purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to sections 3931-3940 of title 42, and to make investments in a partnership, limited partnership, or joint venture formed pursuant to section 3937(a) or 3937(c) of title 42.

Pub. L. 90-448, §1705(h), included obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes.

Par. Ninth. Pub. L. 90-448, §804(c), added par. Ninth.

1967—Par. Seventh. Pub. L. 90-19 substituted "Secretary of Housing and Urban Development (hereafter in this sentence referred to as the 'Secretary')" for "Federal Housing Administrator"; and "Secretary" for "Housing and Home Finance Administrator" after "local public agency and the", for "Administrator" in two instances just before "agrees to lend", and for "Public Housing Administration" wherever appearing in cls. (1) and (2), respectively.

1966—Par. Seventh. Pub. L. 89-754 made limitations and restrictions for dealing, underwriting, and purchasing for its own account of investment securities inapplicable to obligations which are insured by Secretary of Housing and Urban Development under provisions relating to mortgage insurance for group practice facilities.

Pub. L. 89-369 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to obligations issued by the Asian Development Bank.

1964—Par. Seventh. Pub. L. 88-560 substituted "or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association" for "or obligations of the Federal National Mortgage Association".

1959—Par. Seventh. Pub. L. 86-372 substituted "monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments" for "prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity" after "local public agency".

Pub. L. 86-278 substituted "any" for "either" before "of said organizations" in last sentence.

Pub. L. 86-230 struck out "or the Home Owners' Loan Corporation" after "Federal Home Loan Banks".

Pub. L. 86-147 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not

apply to obligations issued by the Inter-American Development Bank.

Pub. L. 86-137 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to bonds, notes and other obligations issued by the Tennessee Valley Authority.

1959—Par. Seventh. Pub. L. 86-372 substituted “monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments” for “prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity” following “local public agency.”

Pub. L. 86-278 substituted “any” for “either” before “of said organizations” in last sentence.

Pub. L. 86-230 struck out “or the Home Owners’ Loan Corporation” after “Federal Home Loan Banks”.

Pub. L. 86-147 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to obligations issued by the Inter-American Development Bank.

Pub. L. 86-137 inserted provisions that limitations and restrictions contained in this section as to dealing in and underwriting investment securities shall not apply to bonds, notes and other obligations issued by the Tennessee Valley Authority.

1956—Par. Seventh. Act July 26, 1956, removed restriction which prohibited a national bank from investing in obligations of the thirteen banks for cooperatives an amount exceeding 10 percent of its capital stock actually paid in and unimpaired and 10 percent of its unimpaired surplus.

1954—Par. Seventh. Act Aug. 23, 1954, substituted “thirteen banks for cooperatives organized under the Farm Credit Act of 1933, or any of them” for “Central Bank for Cooperatives” in last sentence.

Act Aug. 2, 1954, substituted “or obligations of the Federal National Mortgage Association” for “or obligations of national mortgage associations” in sixth sentence.

1952—Par. Seventh. Act Apr. 9, 1952, enabled national banks and State member banks of the Federal Reserve System to receive compensation in the distribution of debentures issued by the Central Bank for Cooperation.

1949—Par. Seventh. Act July 15, 1949, inserted, in next to last sentence, “or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Housing and Home Finance Administrator in which the local public agency agrees to borrow from said Administrator, and said Administrator agrees to lend to said local public agency, prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured either (1) by an agreement between the public housing agency and the Public Housing Administration in which the public housing agency agrees to borrow from the Public Housing

Administration, and the Public Housing Administration agrees to lend to the public housing agency, prior to the maturity of such obligations (which obligations shall have a maturity of not more than eighteen months), monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, or (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment, which are requisite to provide for the payment when due of all installments of principal and interest on such obligations”.

Act June 29, 1949, inserted last sentence to permit national banks and State member banks of the Federal Reserve System to deal in and underwrite obligations issued by the International Bank subject to certain limitations.

1940—Par. Eighth. Act June 11, 1940, added par. Eighth.

1938—Par. Seventh. Act Feb. 3, 1938, inserted “or obligations of national mortgage associations” in last sentence.

1935—Par. Seventh. Act Aug. 23, 1935, amended second, fourth, and last sentences.

1933—Act June 16, 1933, among other changes, struck out closing paragraph prohibiting transaction of any business by association prior to authorization by Comptroller, except that necessarily preliminary to organization.

1927—Act Feb. 25, 1927, struck out definite period of succession in par. Second, and inserted provisos in par. Seventh.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-173, §9(j), Feb. 15, 2006, 119 Stat. 3618, provided that: “This section [amending this section and sections 338a, 347b, 1431, 1441, 1441a, 1441b, 1464, 1467a, 1723i, 1735f-14, 1828a, 1833a, 1841, 1842, and 3341 of this title] and the amendments made by this section shall take effect on the day of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund [Mar. 31, 2006, see 71 F.R. 20524] pursuant to the Federal Deposit Insurance Reform Act of 2005 [subtitle B (§§2101-2109) of title II of Pub. L. 109-171, see Short Title of 2006 Amendment note set out under section 1811 of this title].”

Amendment by Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-102, title I, §161, Nov. 12, 1999, 113 Stat. 1384, provided that: “This title [enacting sections 24a, 1820a, 1828a, 1828b, 1831v, 1831w, and 1848a of this title and section 6701 of Title 15, Commerce and Trade, amending this section, sections 25a, 335, 371c, 1821, 1835a, 1841 to 1844, 1849, 1850, 1864, 1971, 2903, 3101, 3106, and 3107 of this title, and section 18a of Title 15, repealing sections 78 and 377 of this title, and enacting provisions set out as notes under sections 252, 1843, and 4801 of this title and section 41 of Title 15] (other than section 104 [enacting section 6701 of Title 15]) and the amendments made by this title shall take effect 120

days after the date of the enactment of this Act [Nov. 12, 1999].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(7) of Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-325, title III, §347(d), Sept. 23, 1994, 108 Stat. 2241, provided that: “The amendments made by this section [amending this section and section 78c of Title 15, Commerce and Trade] shall become effective upon the date of promulgation of final regulations under subsection (c) [set out below].”

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1372 of Pub. L. 97-35, set out as an Effective Date note under section 290i of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93-224 effective Dec. 29, 1973, see section 20 of Pub. L. 93-224, set out as an Effective Date note under section 2281 of this title.

Amendment by Pub. L. 93-100 effective Aug. 16, 1973, see section 8 of Pub. L. 93-100, set out as an Effective Date note under section 1469 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-375, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 26, 1956, effective Jan. 1, 1957, see act July 26, 1956, ch. 741, title II, §202(a), 70 Stat. 667.

EFFECTIVE DATE OF 1933 AMENDMENT

Act June 16, 1933, ch. 89, §16, 48 Stat. 184, provided that restrictions of this section as to dealing in investment securities shall take effect one year after June 16, 1933.

REGULATIONS

Pub. L. 103-325, title III, §347(c), Sept. 23, 1994, 108 Stat. 2241, provided that: “Not later than 1 year after the date of enactment of this Act [Sept. 23, 1994], the Comptroller of the Currency shall promulgate final regulations, in accordance with the thirteenth sentence of Paragraph Seventh of section 5136 of the Revised Statutes [this section] (as amended by subsection (b)), to carry out the amendments made by this section [amending this section and section 78c of Title 15, Commerce and Trade].” [Final regulations implementing these amendments were published in the Federal Register on Dec. 2, 1996 [61 F.R. 63972], effective Dec. 31, 1996.]

ABOLITION OF HOME OWNERS’ LOAN CORPORATION

For dissolution and abolishment of Home Owners’ Loan Corporation, by act June 30, 1953, ch. 170, §21, 67 Stat. 126, see note set out under section 1463 of this title.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 24a. Financial subsidiaries of national banks

(a) Authorization to conduct in subsidiaries certain activities that are financial in nature

(1) In general

Subject to paragraph (2), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary.

(2) Conditions and requirements

A national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, only if—

(A) the financial subsidiary engages only in—

(i) activities that are financial in nature or incidental to a financial activity pursuant to subsection (b); and

(ii) activities that are permitted for national banks to engage in directly (subject to the same terms and conditions that govern the conduct of the activities by a national bank);

(B) the activities engaged in by the financial subsidiary as a principal do not include—

(i) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (except to the extent permitted under section 302 or 303(c) of the Gramm-Leach-Bliley Act [15 U.S.C. 6712 or 6713(c)]) or providing or issuing annuities the income of which is subject to tax treatment under section 72 of title 26;

(ii) real estate development or real estate investment activities, unless otherwise expressly authorized by law; or

(iii) any activity permitted in subparagraph (H) or (I) of section 1843(k)(4) of this title, except activities described in section 1843(k)(4)(H) of this title that may be permitted in accordance with section 122 of the Gramm-Leach-Bliley Act;

(C) the national bank and each depository institution affiliate of the national bank are well capitalized and well managed;

(D) the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of—

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) \$50,000,000,000;

(E) except as provided in paragraph (4), the national bank meets standards of creditworthiness established by the Comptroller of the Currency or other requirement set forth in paragraph (3); and

(F) the national bank has received the approval of the Comptroller of the Currency for the financial subsidiary to engage in such activities, which approval shall be based solely upon the factors set forth in this section.

(3) Requirement

(A) In general

A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.

(B) Consolidated total assets

For purposes of this paragraph, the size of an insured bank shall be determined on the basis of the consolidated total assets of the bank as of the end of each calendar year.

(4) Financial agency subsidiary

The requirement in paragraph (2)(E) shall not apply with respect to the ownership or control of a financial subsidiary that engages in activities described in subsection (b)(1) solely as agent and not directly or indirectly as principal.

(5) Regulations required

Before the end of the 270-day period beginning on November 12, 1999, the Comptroller of the Currency shall, by regulation, prescribe procedures to implement this section.

(6) Indexed asset limit

The dollar amount contained in paragraph (2)(D) shall be adjusted according to an indexing mechanism jointly established by regulation by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System.

(7) Coordination with section 1843(l)(2) of this title

Section 1843(l)(2) of this title applies to a national bank that controls a financial subsidiary in the manner provided in that section.

(b) Activities that are financial in nature

(1) Financial activities

(A) In general

An activity shall be financial in nature or incidental to such financial activity only if—

(i) such activity has been defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to section 1843(k)(4) of this title; or

(ii) the Secretary of the Treasury determines the activity is financial in nature or incidental to a financial activity in accordance with subparagraph (B).

(B) Coordination between the Board and the Secretary of the Treasury

(i) Proposals raised before the Secretary of the Treasury

(I) Consultation

The Secretary of the Treasury shall notify the Board of, and consult with the

Board concerning, any request, proposal, or application under this section for a determination of whether an activity is financial in nature or incidental to a financial activity.

(II) Board view

The Secretary of the Treasury shall not determine that any activity is financial in nature or incidental to a financial activity under this section if the Board notifies the Secretary in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Secretary determines to be appropriate under the circumstances) that the Board believes that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

(ii) Proposals raised by the Board

(I) Board recommendation

The Board may, at any time, recommend in writing that the Secretary of the Treasury find an activity to be financial in nature or incidental to a financial activity for purposes of this section.

(II) Time period for secretarial action

Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this section, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.

(2) Factors to be considered

In determining whether an activity is financial in nature or incidental to a financial activity, the Secretary shall take into account—

(A) the purposes of this Act¹ and the Gramm-Leach-Bliley Act;

(B) changes or reasonably expected changes in the marketplace in which banks compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

(D) whether such activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) efficiently deliver information and services that are financial in nature through the use of technological means,

¹ So in original.

including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(3) Authorization of new financial activities

The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act¹ and the Gramm-Leach-Bliley Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to a financial activity:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets.

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(c) Capital deduction

(1) Capital deduction required

In determining compliance with applicable capital standards—

(A) the aggregate amount of the outstanding equity investment, including retained earnings, of a national bank in all financial subsidiaries shall be deducted from the assets and tangible equity of the national bank; and

(B) the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the national bank.

(2) Financial statement disclosure of capital deduction

Any published financial statement of a national bank that controls a financial subsidiary shall, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in the manner provided in paragraph (1).

(d) Safeguards for the bank

A national bank that establishes or maintains a financial subsidiary shall assure that—

(1) the procedures of the national bank for identifying and managing financial and operational risks within the national bank and the financial subsidiary adequately protect the national bank from such risks;

(2) the national bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the national bank and the financial subsidiaries of the national bank; and

(3) the national bank is in compliance with this section.

(e) Provisions applicable to national banks that fail to continue to meet certain requirements

(1) In general

If a national bank or insured depository institution affiliate does not continue to meet

the requirements of subsection (a)(2)(C) or subsection (d), the Comptroller of the Currency shall promptly give notice to the national bank to that effect describing the conditions giving rise to the notice.

(2) Agreement to correct conditions

Not later than 45 days after the date of receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank shall execute an agreement with the Comptroller of the Currency and any relevant insured depository institution affiliate shall execute an agreement with its appropriate Federal banking agency to comply with the requirements of subsection (a)(2)(C) and subsection (d).

(3) Imposition of conditions

Until the conditions described in a notice under paragraph (1) are corrected—

(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the Comptroller of the Currency determines to be appropriate under the circumstances and consistent with the purposes of this section; and

(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of any relevant insured depository institution affiliate or any subsidiary of the institution as such agency determines to be appropriate under the circumstances and consistent with the purposes of this section.

(4) Failure to correct

If the conditions described in a notice to a national bank under paragraph (1) are not corrected within 180 days after the date of receipt by the national bank of the notice, the Comptroller of the Currency may require the national bank, under such terms and conditions as may be imposed by the Comptroller and subject to such extension of time as may be granted in the discretion of the Comptroller, to divest control of any financial subsidiary.

(5) Consultation

In taking any action under this subsection, the Comptroller shall consult with all relevant Federal and State regulatory agencies and authorities.

(f) Failure to meet standards of credit-worthiness meet² applicable criteria

(1) In general

A national bank that does not continue to meet standards of credit-worthiness established by the Comptroller of the Currency or other requirement of subsection (a)(2)(E) after acquiring or establishing a financial subsidiary shall not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank meets such requirements.

(2) Equity capital

For purposes of this subsection, the term “equity capital” includes, in addition to any

² So in original. Probably should be “or meet”.

equity instrument, any debt instrument issued by a financial subsidiary, if the instrument qualifies as capital of the subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

(g) Definitions

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

(1) Affiliate, company, control, and subsidiary

The terms “affiliate”, “company”, “control”, and “subsidiary” have the meanings given those terms in section 1841 of this title.

(2) Appropriate Federal banking agency, depository institution, insured bank, and insured depository institution

The terms “appropriate Federal banking agency”, “depository institution”, “insured bank”, and “insured depository institution” have the meanings given those terms in section 1813 of this title.

(3) Financial subsidiary

The term “financial subsidiary” means any company that is controlled by 1 or more insured depository institutions other than a subsidiary that—

(A) engages solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks; or

(B) a national bank is specifically authorized by the express terms of a Federal statute (other than this section), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.] or the Bank Service Company Act [12 U.S.C. 1861 et seq.].

(4) Eligible debt

The term “eligible debt” means unsecured long-term debt that—

(A) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(B) is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(5) Well capitalized

The term “well capitalized” has the meaning given the term in section 1831o of this title.

(6) Well managed

The term “well managed” means—

(A) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

(i) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

(ii) at least a rating of 2 for management, if such rating is given; or

(B) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

(R.S. § 5136A, as added Pub. L. 106–102, title I, § 121(a)(2), Nov. 12, 1999, 113 Stat. 1373; amended Pub. L. 111–203, title IX, § 939(d), July 21, 2010, 124 Stat. 1886.)

Editorial Notes

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in subsecs. (a)(2)(B)(iii), (b)(2)(A), (3), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Section 122 of the Act is set out as a note under section 1843 of this title. 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.

Section 25 of the Federal Reserve Act, referred to in subsec. (g)(3)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of this title. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of this title.

The Bank Service Company Act, referred to in subsec. (g)(3)(B), is Pub. L. 87–856, Oct. 23, 1962, 76 Stat. 1132, which is classified generally to chapter 18 (§1861 et seq.) of this title. For complete classification of this Act to the Code, see section 1861 of this title and Tables.

PRIOR PROVISIONS

A prior section 5136A of the Revised Statutes was renumbered section 5136B by Pub. L. 106–102 and is classified to section 25a of this title.

AMENDMENTS

2010—Subsec. (a)(2)(E). Pub. L. 111–203, §939(d)(1), substituted “standards of credit-worthiness established by the Comptroller of the Currency” for “any applicable rating”.

Subsec. (a)(3). Pub. L. 111–203, §939(d)(2), substituted “Requirement” for “Rating or comparable requirement” in heading.

Subsec. (a)(3)(A). Pub. L. 111–203, §939(d)(3), amended subpar. (A) generally. Prior to amendment, text read as follows: “A national bank meets the requirements of this paragraph if—

“(i) the bank is 1 of the 50 largest insured banks and has not fewer than 1 issue of outstanding eligible debt that is currently rated within the 3 highest investment grade rating categories by a nationally recognized statistical rating organization; or

“(ii) the bank is 1 of the second 50 largest insured banks and meets the criteria set forth in clause (i) or such other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish by regulation and determine to be comparable to and consistent with the purposes of the rating required in clause (i).”

Subsec. (f). Pub. L. 111–203, §939(d)(4), substituted “meet standards of credit-worthiness” for “maintain public rating or” in heading.

Subsec. (f)(1). Pub. L. 111–203, §939(d)(5), substituted “standards of credit-worthiness established by the Comptroller of the Currency” for “any applicable rating”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–203, title IX, §939(g), July 21, 2010, 124 Stat. 1887, provided that: “The amendments made by

this section [amending this section, sections 1817, 1831e, and 4519 of this title, sections 78c and 80a-6 of Title 15, Commerce and Trade, and section 286hh of Title 22, Foreign Relations and Intercourse] shall take effect 2 years after the date of enactment of this Act [July 21, 2010].”

EFFECTIVE DATE

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

§ 25. Omitted

Editorial Notes

CODIFICATION

Section, act July 1, 1922, ch. 257, §2, 42 Stat. 767, repealed all acts extending the period of succession of national banking associations for 20 years, and made paragraph Second of section 24 applicable in that respect.

§ 25a. Participation by national banks in lotteries and related activities

(a) Prohibited activities

A national bank may not—

- (1) deal in lottery tickets;
- (2) deal in bets used as a means or substitute for participation in a lottery;
- (3) announce, advertise, or publicize the existence of any lottery;¹
- (4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A national bank may not permit—

- (1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a), or
- (2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a).

(c) Definitions

As used in this section—

- (1) The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.
- (2) The term “lottery” includes any arrangement, other than a savings promotion raffle, whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—
 - (A) a random selection;
 - (B) a game, race, or contest; or
 - (C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.
- (3) The term “lottery ticket” includes any right, privilege, or possibility (and any ticket,

receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(4) The term “savings promotion raffle” means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest being subject to regulations that may from time to time be promulgated by the appropriate prudential regulator (as defined in section 5481 of this title).

(d) Lawful banking services connected with operation of lotteries

Nothing contained in this section prohibits a national bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

(e) Regulations; enforcement

The Comptroller of the Currency shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

(R.S. §5136B, formerly §5136A, as added Pub. L. 90-203, §1(a), Dec. 15, 1967, 81 Stat. 608; renumbered R.S. §5136B, Pub. L. 106-102, title I, §121(a)(1), Nov. 12, 1999, 113 Stat. 1373; amended Pub. L. 113-251, §3(a), Dec. 18, 2014, 128 Stat. 2889.)

Editorial Notes

AMENDMENTS

2014—Subsec. (c)(2). Pub. L. 113-251, §3(a)(1), inserted “, other than a savings promotion raffle,” before “whereby” in introductory provisions.

Subsec. (c)(4). Pub. L. 113-251, §3(a)(2), added par. (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 90-203, §6, Dec. 15, 1967, 81 Stat. 611, provided that: “The amendments made by this Act [adding this section, sections 339, 1730c, and 1829a of this title, and section 1306 of Title 18, Crimes and Criminal Procedure] shall take effect on April 1, 1968.”

FINDINGS

Pub. L. 113-251, §2, Dec. 18, 2014, 128 Stat. 2888, provided that: “Congress finds that—

“(1) the annual savings rate in the United States was 4.1 percent in 2012;

“(2) more than 40 percent of American households lack the savings to cover basic expenses for 3 months, if an unexpected event leads to a loss of stable income;

“(3) personal savings provide Americans with the financial resources to meet future needs, including higher education and homeownership, while also providing a safety net to weather unexpected financial shocks;

“(4) prize-linked savings products are typical savings products offered by financial institutions, like savings accounts, certificates of deposit, and savings bonds, with the added feature of offering chances to win prizes based on deposit activity;

¹ So in original. The word “or” probably should appear.

“(5) the State of Michigan was the first State to allow credit unions to offer prize-linked savings products, and in 2009 launched the first large-scale prize-linked savings product in the United States;

“(6) the States of Connecticut, Michigan, Maine, Maryland, Nebraska, North Carolina, Rhode Island, and Washington all have laws that allow financial institutions to offer prize-linked savings products;

“(7) in the States of Michigan and Nebraska, more than 42,000 individuals have opened prize-linked savings accounts and saved more than \$72,000,000;

“(8) prize-linked savings products have been shown to successfully attract non-savers, the asset poor, and low-to-moderate income groups, providing individuals with a new tool to build personal savings; and

“(9) encouraging personal savings is in the national interest of the United States.”

§ 25b. State law preemption standards for national banks and subsidiaries clarified

(a) Definitions

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

(1) National bank

The term “national bank” includes—

(A) any bank organized under the laws of the United States; and

(B) any Federal branch established in accordance with the International Banking Act of 1978 [12 U.S.C. 3101 et seq.].

(2) State consumer financial laws

The term “State consumer financial law” means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

(3) Other definitions

The terms “affiliate”, “subsidiary”, “includes”, and “including” have the same meanings as in section 1813 of this title.

(b) Preemption standard

(1) In general

State consumer financial laws are preempted, only if—

(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

(C) the State consumer financial law is preempted by a provision of Federal law other than title 62 of the Revised Statutes.

(2) Savings clause

Title 62 of the Revised Statutes and section 371 of this title do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

(3) Case-by-case basis

(A) Definition

As used in this section the term “case-by-case basis” refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

(B) Consultation

When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

(4) Rule of construction

Title 62 of the Revised Statutes does not occupy the field in any area of State law.

(5) Standards of review

(A) Preemption

A court reviewing any determinations made by the Comptroller regarding preemption of a State law by title 62 of the Revised Statutes or section 371 of this title shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

(B) Savings clause

Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

(6) Comptroller determination not delegable

Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

(c) Substantial evidence

No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State con-

sumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996).

(d) Periodic review of preemption determinations

(1) In general

The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 43 of this title.

(2) Reports to Congress

At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

(e) Application of State consumer financial law to subsidiaries and affiliates

Notwithstanding any provision of title 62 of the Revised Statutes or section 371 of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

(f) Preservation of powers related to charging interest

No provision of title 62 of the Revised Statutes shall be construed as altering or otherwise affecting the authority conferred by section 85 of this title for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of “interest” under such provision.

(g) Transparency of OCC preemption determinations

The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

(h) Clarification of law applicable to nondepository institution subsidiaries and affiliates of national banks

(1) Definitions

For purposes of this subsection, the terms “depository institution”, “subsidiary”, and “affiliate” have the same meanings as in section 1813 of this title.

(2) Rule of construction

No provision of title 62 of the Revised Statutes or section 371 of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).

(i) Visitorial powers

(1)¹ In general

In accordance with the decision of the Supreme Court of the United States in *Cuomo v. Clearing House Assn., L. L. C.* (129 S. Ct. 2710 (2009)), no provision of title 62 of the Revised Statutes which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

(j) Enforcement actions

The ability of the Comptroller of the Currency to bring an enforcement action under title 62 of the Revised Statutes or section 45 of title 15 does not preclude any private party from enforcing rights granted under Federal or State law in the courts.

(R.S. §5136C, as added and amended Pub. L. 111-203, title X, §§1044(a), 1045, 1047(a), July 21, 2010, 124 Stat. 2014, 2017, 2018.)

Editorial Notes

REFERENCES IN TEXT

The International Banking Act of 1978, referred to in subsec. (a)(1)(B), is Pub. L. 95-369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§3101 et seq.) and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 247, 611a, and 3101 of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

¹ So in original. No par. (2) has been enacted.

Title 62 of the Revised Statutes, referred to in subsecs. (b)(1)(C), (2), (4), (5)(A), (e), (f), (h)(2), (i)(1), and (j), was in the original a reference to “this title” or “This title” meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

For classification of title LXII of the Revised Statutes of the United States, referred to in subsec. (b)(5)(B), see note above.

AMENDMENTS

2010—Subsec. (h). Pub. L. 111-203, §1045, added subsec. (h).

Subsecs. (i), (j). Pub. L. 111-203, §1047(a), added subsecs. (i) and (j).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Enactment and amendment of section by Pub. L. 111-203 effective on the designated transfer date, see section 1048 of Pub. L. 111-203, set out as a note under section 5551 of this title.

§ 26. Comptroller to determine if association can commence business

Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in title 62 of the Revised Statutes, and the association transmitting the same notifies the Comptroller that all of its capital stock has been duly paid in, and that such association has complied with all the provisions of title 62 of the Revised Statutes required to be complied with before an association shall be authorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of title 62 of the Revised Statutes required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of banking.

(R.S. §5168; Pub. L. 86-230, §2, Sept. 8, 1959, 73 Stat. 457.)

Editorial Notes

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original “this Title” meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified this section and to sections 16, 21, 22 to 24a, 25a, 25b, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes

and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5168 derived from act June 3, 1864, ch. 106, §17, 13 Stat. 104, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1959—Pub. L. 86-230 substituted “all” for “at least 50 per centum” before “of its capital stock”.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 27. Certificate of authority to commence banking

(a) If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by title 62 of the Revised Statutes. A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.

(b)(1) The Comptroller of the Currency may also issue a certificate of authority to commence the business of banking pursuant to this section to a national banking association which is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies and is organized to engage exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a “banker's bank”).

(2) Any national banking association chartered pursuant to paragraph (1) shall be subject to such rules, regulations, and orders as the Comptroller deems appropriate, and, except as otherwise specifically provided in such rules, regulations, or orders, shall be vested with or subject to the same rights, privileges, duties, re-

strictions, penalties, liabilities, conditions, and limitations that would apply under the national banking laws to a national bank.

(R.S. § 5169; Pub. L. 95-630, title XV, § 1504, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 96-221, title VII, § 712(a), (c), Mar. 31, 1980, 94 Stat. 189, 190; Pub. L. 97-320, title IV, § 404(a), Oct. 15, 1982, 96 Stat. 1511; Pub. L. 103-325, title III, § 322(a)(2), Sept. 23, 1994, 108 Stat. 2227.)

Editorial Notes

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in subsec. (a), was in the original “this Title” meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. § 5169 derived from act June 3, 1864, ch. 106, §§ 12, 18, 13 Stat. 102, 104, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103-325, § 322(a)(2)(A), inserted “or depository institution holding companies” after “by other depository institutions”.

Pub. L. 103-325, § 322(a)(2)(B), which directed substitution of “services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a ‘banker’s bank’)” for “services for other depository institutions and their officers, directors and employees”, was executed by making the substitution for “services for other depository institutions and their officers, directors, and employees” to reflect the probable intent of Congress.

1982—Pub. L. 97-320 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96-221, § 712(a), (c), temporarily inserted provisions relating to treatment of national banking associations as additional banks within the contemplation of section 1842 of this title. See Termination Date of 1980 Amendment note below.

1978—Pub. L. 95-630 inserted provision that a National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto.

Statutory Notes and Related Subsidiaries

TERMINATION DATE OF 1980 AMENDMENT

Pub. L. 96-221, title VII, § 712(c), Mar. 31, 1980, 94 Stat. 190, provided that: “The amendments made by this section [amending this section and section 1842 of this title] are hereby repealed on October 1, 1981.”

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-630, title XV, § 1505, Nov. 10, 1978, 92 Stat. 3713, provided that: “This title [amending this section and sections 1715z-10 and 2902 of this title and amending provisions set out as a note under section 1666f of Title 15, Commerce and Trade] shall take effect upon enactment [Nov. 10, 1978].”

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 28. Repealed. Pub. L. 103-325, title VI, § 602(e)(1), Sept. 23, 1994, 108 Stat. 2291

Section, R.S. § 5170, required publication of certificate of authority to commence banking for 60 days after issuance.

Editorial Notes

CODIFICATION

R.S. § 5170 derived from act June 3, 1864, ch. 106, § 18, 13 Stat. 104, which was the National Bank Act. See section 38 of this title.

§ 29. Power to hold real property

A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

First. Such as shall be necessary for its accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years except as otherwise provided in this section.

For real estate in the possession of a national banking association upon application by the association, the Comptroller of the Currency may approve the possession of any such real estate by such association for a period longer than five years, but not to exceed an additional five years, if (1) the association has made a good faith attempt to dispose of the real estate within the five-year period, or (2) disposal within the five-year period would be detrimental to the association. Upon notification by the association to the Comptroller of the Currency that such conditions exist that require the expenditure of funds for the development and improvement of such real estate, and subject to such conditions and limitations as the Comptroller of the Currency shall prescribe, the association may expend such funds as are needed to enable such association to recover its total investment.

Notwithstanding the five-year holding limitation of this section or any other provision of title 62 of the Revised Statutes, any national banking association which on October 15, 1982, held, directly or indirectly, real estate, including any subsurface rights or interests therein, that since December 31, 1979, had not been valued on the books of such association for more than a nominal amount, may continue to hold

such real estate, rights, or interests for such longer period of time as would be permitted a State chartered bank by the law of the State in which the association is located if the aggregate amount of earnings from such real estate, rights, or interests is separately disclosed in the annual financial statements of the association.

(R.S. §5137; Feb. 25, 1927, ch. 191, §3, 44 Stat. 1227; Pub. L. 96-221, title VII, §701(a), Mar. 31, 1980, 94 Stat. 186; Pub. L. 97-25, title III, §302, July 27, 1981, 95 Stat. 145; Pub. L. 97-320, title IV, §413, Oct. 15, 1982, 96 Stat. 1521.)

Editorial Notes

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in last par., was in the original “this title” meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

CODIFICATION

R.S. §5137 derived from act June 3, 1864, ch. 106, §28, 13 Stat. 107, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1982—Pub. L. 97-320 substituted “Notwithstanding the five-year holding limitation of this section or any other provision of title 62 of the Revised Statutes, any national banking association which on October 15, 1982, held, directly or indirectly, real estate, including any subsurface rights or interests therein, that since December 31, 1979, had not been valued on the books of such association for more than a nominal amount, may continue to hold such real estate, rights, or interests for such longer period of time as would be permitted a State chartered bank by the law of the State in which the association is located if the aggregate amount of earnings from such real estate, rights, or interests is separately disclosed in the annual financial statements of the association” for “Notwithstanding any other provision of this section, any national banking association which, on July 27, 1981, held title to and possession of real estate which was carried on the association’s books at a nominal value on December 31, 1979, may continue to hold such real estate until December 31, 1982, if the earnings from such real estate are separately disclosed in the financial statements of the association”.

1981—Pub. L. 97-25 inserted provision that any national banking association which, on July 27, 1981, held title to and possession of real estate which was carried on the association’s books at a nominal value on December 31, 1979, may continue to hold such real estate until December 31, 1982, if the earnings from such real estate are separately disclosed in the financial statements of the association.

1980—Pub. L. 96-221 inserted provisions relating to authorization to hold real estate in the possession of a national banking association upon application by the association.

1927—Par. First. Act Feb. 25, 1927, struck out “immediate,” before “accommodation,” in par. First.

§ 30. Change of name or location

(a) Name change

Any national banking association, upon written notice to the Comptroller of the Currency,

may change its name, except that such new name shall include the word “National”.

(b) Location change

Any national banking association, upon written notice to the Comptroller of the Currency, may change the location of its main office to any authorized branch location within the limits of the city, town, or village in which it is situated, or, with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits.

(c) Coordination with section 36 of this title

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State from which the bank relocated such office only to the extent authorized in section 36(e)(2) of this title.

(d) Retention of “Federal” in name of converted Federal savings association

(1) In general

Notwithstanding subsection (a) or any other provision of law, any depository institution, the charter of which is converted from that of a Federal savings association to a national bank or a State bank after November 12, 1999, may retain the term “Federal” in the name of such institution if such institution remains an insured depository institution.

(2) Definitions

For purposes of this subsection, the terms “depository institution”, “insured depository institution”, “national bank”, and “State bank” have the meanings given those terms in section 1813 of this title.

(May 1, 1886, ch. 73, §2, 24 Stat. 18; Pub. L. 86-230, §3, Sept. 8, 1959, 73 Stat. 457; Pub. L. 97-320, title IV, §405(a), Oct. 15, 1982, 96 Stat. 1512; Pub. L. 97-457, §19(a), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 103-328, title I, §102(b)(2), Sept. 29, 1994, 108 Stat. 2350; Pub. L. 106-102, title VII, §723, Nov. 12, 1999, 113 Stat. 1471.)

Editorial Notes

AMENDMENTS

1999—Subsec. (d). Pub. L. 106-102 added subsec. (d).

1994—Subsec. (c). Pub. L. 103-328 added subsec. (c).

1983—Subsec. (b). Pub. L. 97-457 inserted “for a relocation outside such limits” after “stock of such association”.

1982—Pub. L. 97-320 designated existing provisions as subsec. (a), substituted provisions permitting a change of name upon written notice to the Comptroller, such new name to include “National”, for provisions permitting a change of name or location of the main office, with approval of the Comptroller, within city limits, etc., or outside such limits by vote of shareholders, such change to be validated by certificate of approval, and added subsec. (b).

1959—Pub. L. 86-230 required approval of Comptroller of the Currency before a national bank could change location of its main office within the limitations of the city, town, or village in which it is situated.

Executive Documents**EXCEPTION AS TO TRANSFER OF FUNCTIONS**

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 31. Rights and liabilities as affected by change of name

All debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under its new name.

(May 1, 1886, ch. 73, § 3, 24 Stat. 19.)

§ 32. Liabilities and suits as affected by change of name or location

Nothing contained in sections 30 and 31 of this title shall be so construed as in any manner to release any national banking association under its old name or at its old location from any liability, or affect any action or proceeding in law in which said association may be or become a party or interested.

(May 1, 1886, ch. 73, § 4, 24 Stat. 19.)

§§ 33 to 34c. Transferred**Editorial Notes****CODIFICATION**

Act Nov. 7, 1918, ch. 209, 40 Stat. 1043, as amended, formerly classified to sections 33 to 34c of this title, which related to consolidation and merger of national banking associations and such associations and State banks, was completely amended by Pub. L. 86-230, § 20, Sept. 8 1959 73 Stat. 460, and is classified to sections 215 to 215b of this title.

Section 33, acts Nov. 7, 1918, ch. 209, § 1, 40 Stat. 1043; June 16, 1933, ch. 89, § 24(a), 48 Stat. 190; Aug. 23, 1935, ch. 614, § 330, 49 Stat. 718, related to consolidation of national banks, capital stock, dissenting shareholders, notice and valuation of shares. See section 215 of this title.

Section 34, act Nov. 7, 1918, ch. 209, § 2, 40 Stat. 1044, related to effect of consolidation on rights and liabilities. See section 215 of this title.

Section 34a, act Nov. 7, 1918, ch. 209, § 3, as added Feb. 25, 1927, ch. 191, § 1, 44 Stat. 1225, and amended June 16, 1933, ch. 89 § 24, 48 Stat. 190; Aug. 23, 1935, ch. 614, § 331, 49 Stat. 719; July 14, 1952, ch. 722, § 2, 66 Stat. 601, related to consolidation of State bank, etc. with national bank, capital stock and dissenting shareholders. See section 215 of this title.

Section 34b, act Nov. 7, 1918, ch. 209, § 4, as added July 14, 1952, ch. 722, § 1, 66 Stat. 599, related to merger of national banking associations or State banks into national banking associations. See section 215a of this title.

Section 34c, act Nov. 7, 1918, ch. 209, § 5, as added July 14, 1952, ch. 722, § 1, 66 Stat. 601, related to definitions. See section 215b of this title.

§ 35. Organization of State banks as national banking associations

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders own-

ing not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the word "national": *Provided, however*, That said conversion shall not be in contravention of the State law. In such case the articles of association and organization certificate may be executed by a majority of the directors of the bank or banking institution, and the certificate shall declare that the owners of fifty-one per centum of the capital stock have authorized the directors to make such certificate and to change or convert the bank or banking institution into a national association. A majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a national association. The shares of any such bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the association until others are elected or appointed in accordance with the provisions of the statutes of the United States. When the Comptroller has given to such bank or banking association a certificate that the provisions of this Act have been complied with, such bank or banking association, and all its stockholders, officers, and employees shall have the same powers and privileges and shall be subject to the same duties, liabilities, and regulations, in all respects, as shall have been prescribed by the Federal Reserve Act [12 U.S.C. 221 et seq.] and the National Banking Act for associations originally organized as national banking associations.

The Comptroller of the Currency may, in his discretion and subject to such conditions as he may prescribe, permit such converting bank to retain and carry at a value determined by the Comptroller such of the assets of such converting bank as do not conform to the legal requirements relative to assets acquired and held by national banking associations. The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association or Federal savings association during any period in which the State bank or State savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State bank supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a State Attorney General.

(R.S. § 5154; Dec. 23, 1913, ch. 6, § 8, 38 Stat. 258; Aug. 23, 1935, ch. 614, title III, § 312, 49 Stat. 711; Pub. L. 97-457, § 19(b), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 111-203, title VI, § 612(b), July 21, 2010, 124 Stat. 1612.)

Editorial Notes**REFERENCES IN TEXT**

This Act, referred to in first par., may refer to the Federal Reserve Act, act Dec. 23, 1913, from which this wording is derived; or section 5154 of the Revised Stat-

utes which the Federal Reserve Act amended; or act June 3, 1864, from which R.S. § 5154 was derived; or Congress might have intended to refer to the preceding provisions of the 1913 amendment. Similar reference in R.S. § 5154 prior to 1913 amendment was to “this Title,” meaning title 62 of the Revised Statutes, which title comprised the National Bank Act (June 3, 1864, ch. 106, 13 Stat. 99). See section 38 of this title. Note also specific reference to the Federal Reserve Act and the National Banking Act in first par.

The Federal Reserve Act, referred to in text, is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The National Banking Act, referred to in text, is probably intended to be a reference to the National Bank Act, act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code see References in Text note set out under section 38 of this title.

CODIFICATION

R.S. § 5154 derived from act June 3, 1864, ch. 106, § 44, 13 Stat. 112, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2010—Pub. L. 111-203 inserted at end “The Comptroller of the Currency may not approve the conversion of a State bank or State savings association to a national banking association or Federal savings association during any period in which the State bank or State savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a State bank supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a State Attorney General.”

1983—Pub. L. 97-457 substituted “with a name that contains the word ‘national’” for “with any name approved by the Comptroller of the Currency” after “national banking association.”

1935—Act Aug. 23, 1935, added last par.

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.

EXCEPTION TO PROHIBITION ON APPROVAL OF CONVERSIONS

Pub. L. 111-203, title VI, § 612(d), July 21, 2010, 124 Stat. 1613, provided that: “The prohibition on the approval of conversions under the amendments made by subsections (a), (b), and (c) [enacting section 214d of this title and amending this section and section 1464 of this title] shall not apply, if—

“(1) the Federal banking agency that would be the appropriate Federal banking agency after the proposed conversion gives the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, written notice of the proposed conversion including a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution;

“(2) within 30 days of receipt of the written notice required under paragraph (1), the appropriate Federal banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as ap-

propriate, does not object to the conversion or the plan to address the significant supervisory matter;

“(3) after conversion of the insured depository institution, the appropriate Federal banking agency after the conversion implements such plan; and

“(4) in the case of a final enforcement action by a State Attorney General, approval of the conversion is conditioned on compliance by the insured depository institution with the terms of such final enforcement action.”

[For definitions of terms used in section 612(d) of Pub. L. 111-203, set out above, see section 5301 of this title.]

NOTIFICATION OF PENDING ENFORCEMENT ACTIONS

Pub. L. 111-203, title VI, § 612(e), July 21, 2010, 124 Stat. 1613, provided that:

“(1) COPY OF CONVERSION APPLICATION.—At the time an insured depository institution files a conversion application, the insured depository institution shall transmit a copy of the conversion application to—

“(A) the appropriate Federal banking agency for the insured depository institution; and

“(B) the Federal banking agency that would be the appropriate Federal banking agency of the insured depository institution after the proposed conversion.

“(2) NOTIFICATION AND ACCESS TO INFORMATION.—Upon receipt of a copy of the application described in paragraph (1), the appropriate Federal banking agency for the insured depository institution proposing the conversion shall—

“(A) notify the Federal banking agency that would be the appropriate Federal banking agency for the institution after the proposed conversion in writing of any ongoing supervisory or investigative proceedings that the appropriate Federal banking agency for the institution proposing to convert believes is likely to result, in the near term and absent the proposed conversion, in a cease and desist order (or other formal enforcement order) or memorandum of understanding with respect to a significant supervisory matter; and

“(B) provide the Federal banking agency that would be the appropriate Federal banking agency for the institution after the proposed conversion access to all investigative and supervisory information relating to the proceedings described in subparagraph (A).”

[For definitions of terms used in section 612(e) of Pub. L. 111-203, set out above, see section 5301 of this title.]

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 36. Branch banks

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) Lawful and continuous operation

A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) Converted State banks

(1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the

State bank immediately prior to conversion if such office—

(A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank on February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

(2) A national bank (referred to in this paragraph as the “resulting bank”), resulting from the consolidation of a national bank (referred to in this paragraph as the “national bank”) under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as—

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency approves of its continued operation after the consolidation;

(B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

(C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the State bank immediately prior to consolidation.

(3) As used in this subsection, the term “consolidation” includes a merger.

(c) New branches

A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time au-

thorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided*, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.

(d) Branches resulting from interstate merger transactions

A national bank resulting from an interstate merger transaction (as defined in section 1831u(f)(6)¹ of this title) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 1831u of this title.

(e) Exclusive authority for additional branches

(1) In general

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank’s home State (as defined in subsection (g)(3)(B)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under this section or section 1823(f), 1823(k), or 1831u of this title.

(2) Retention of branches

In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank’s home State (as defined in subsection (g)(3)(B)) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in

¹ See References in Text note below.

paragraph (1), to acquire, establish, or commence to operate a branch in such State if—

(A) the bank had no branches in such State; or

(B) the branch resulted from—

(i) an interstate merger transaction approved pursuant to section 1831u of this title; or

(ii) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Federal Deposit Insurance Corporation under section 1823(c) of this title.

(f) Law applicable to interstate branching operations

(1) Law applicable to national bank branches

(A) In general

The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except—

(i) when Federal law preempts the application of such State laws to a national bank; or

(ii) when the Comptroller of the Currency determines that the application of such State laws would have a discriminatory effect on the branch in comparison with the effect the application of such State laws would have with respect to branches of a bank chartered by the host State.

(B) Enforcement of applicable State laws

The provisions of any State law to which a branch of a national bank is subject under this paragraph shall be enforced, with respect to such branch, by the Comptroller of the Currency.

(C) Review and report on actions by Comptroller

The Comptroller of the Currency shall conduct an annual review of the actions it has taken with regard to the applicability of State law to national banks (or their branches) during the preceding year, and shall include in its annual report required under section 14 of this title the results of the review and the reasons for each such action. The first such review and report after July 3, 1997, shall encompass all such actions taken on or after January 1, 1992.

(2) Treatment of branch as bank

All laws of a host State, other than the laws regarding community reinvestment, consumer protection, fair lending, establishment of intrastate branches, and the application or administration of any tax or method of taxation, shall apply to a branch (in such State) of an out-of-State national bank to the same extent as such laws would apply if the branch were a national bank the main office of which is in such State.

(3) Rule of construction

No provision of this subsection may be construed as affecting the legal standards for pre-

emption of the application of State law to national banks.

(g) State “opt-in” election to permit interstate branching through de novo branches

(1) In general

Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a de novo branch in a State (other than the bank’s home State) in which the bank does not maintain a branch if—

(A) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State; and

(B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

(2) Conditions on establishment and operation of interstate branch

(A) Establishment

An application by a national bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(B) Operation

Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch of a national bank which is established and operated pursuant to an application approved under this subsection in the same manner and to the same extent such provisions of such section 1831u of this title apply to a branch of a national bank which resulted from an interstate merger transaction approved pursuant to such section 1831u of this title.

(3) Definitions

The following definitions shall apply for purposes of this section:

(A) De novo branch

The term “de novo branch” means a branch of a national bank which—

(i) is originally established by the national bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(B) Home State

The term “home State” means the State in which the main office of a national bank is located.

(C) Host State

The term “host State” means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(h) Repealed. Pub. L. 104-208, div. A, title II, § 2204, Sept. 30, 1996, 110 Stat. 3009-405

(i) Prior approval of branch locations

No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(j) “Branch” defined

The term “branch” as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent. The term “branch”, as used in this section, does not include an automated teller machine or a remote service unit.

(k) Branches in foreign countries, dependencies, or insular possessions

This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as amended [12 U.S.C. 601 et seq.], authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

(l) “State bank” and “bank” defined

The words “State bank,” “State banks,” “bank,” or “banks,” as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

(R.S. §5155; Feb. 25, 1927, ch. 191, §7, 44 Stat. 1228; June 16, 1933, ch. 89, §23, 48 Stat. 189; Aug. 23, 1935, ch. 614, title III, §305, 49 Stat. 708; July 15, 1952, ch. 753, §2(b), 66 Stat. 633; Pub. L. 87-721, Sept. 28, 1962, 76 Stat. 667; Pub. L. 103-328, title I, §§102(b)(1), 103(a), Sept. 29, 1994, 108 Stat. 2349, 2352; Pub. L. 104-208, div. A, title II, §2204, 2205(a), Sept. 30, 1996, 110 Stat. 3009-405; Pub. L. 105-24, §2(b), July 3, 1997, 111 Stat. 239; Pub. L. 111-203, title VI, §613(a), July 21, 2010, 124 Stat. 1614.)

Editorial Notes

REFERENCES IN TEXT

Section 1831u of this title, referred to in subsec. (d), was subsequently amended, and subsec. (f)(6) of section 1831u no longer defines the term “interstate merger transaction”. However, such term is defined elsewhere in that section.

Section 25 of the Federal Reserve Act, as amended, referred to in subsec. (k), is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

CODIFICATION

R.S. §5155 derived from act Mar. 3, 1865, ch. 78, §7, 13 Stat. 484.

AMENDMENTS

2010—Subsec. (g)(1)(A). Pub. L. 111-203 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “there is in effect in the host State a law that—

“(i) applies equally to all banks; and

“(ii) expressly permits all out-of-State banks to establish de novo branches in such State; and”.

1997—Subsec. (f)(1)(C). Pub. L. 105-24 added subpar. (C).

1996—Subsec. (h). Pub. L. 104-208, §2204, struck out subsec. (h) which read as follows: “The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.”

Subsec. (j). Pub. L. 104-208, §2205(a), inserted at end “The term ‘branch’, as used in this section, does not include an automated teller machine or a remote service unit.”

1994—Subsecs. (d) to (f). Pub. L. 103-328, §102(b)(1)(B), added subsecs. (d) to (f). Former subsecs. (d) to (f) redesignated (h) to (j), respectively.

Subsec. (g). Pub. L. 103-328, §103(a), added subsec. (g).

Pub. L. 103-328, §102(b)(1)(A), redesignated subsec. (g) as (k).

Subsecs. (h) to (l). Pub. L. 103-328, §102(b)(1)(A), redesignated subsecs. (d) to (h) as (h) to (l), respectively.

1962—Subsec. (b). Pub. L. 87-721 substituted provisions permitting a national bank resulting from the conversion of a State bank to retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office might be established as a new branch of the resulting national bank, and is approved by the Comptroller for continued operation as a branch of the resulting bank, or any office which was a branch of any bank on Feb. 25, 1927, or any office which is approved by the Comptroller for continued operation as a branch, and a national bank resulting from consolidation of a national bank under whose charter the consolidation is effected with another bank or banks to retain and operate any office which, immediately prior to consolidation, was in operation as a main office or branch office of any bank (other than the national bank) participating in the consolidation if it might be established as a new branch of the resulting bank, and if the Comptroller approves of its continued operation, or was in operation as a branch of any bank participating in the consolidation and which, on Feb. 25, 1927, was in operation as a branch of any bank, or was in operation as a branch of the national bank and which, on Feb. 25, 1927, was not in operation as a branch of any bank, if the Comptroller approves of its continued operation, for provisions which permitted State banks converted into or consolidated with national banking associations after Feb. 25, 1927, or two or more national banking associations which are consolidated, to retain and operate only those branches which may have been in lawful operation on Feb. 25, 1927, and inserted provisions prohibiting the Comptroller from granting approval under clauses (1)(C) and (2)(C) if a State bank resulting from the conversion or consolidation would be prohibited by law of the State from retaining and operating as a branch an identically situated office which was a branch of the national bank or State bank immediately prior to the conversion or consolidation.

1952—Subsec. (c). Act July 15, 1952, struck out the minimum capital requirement for the establishment of branches by national banks.

1935—Subsec. (c). Act Aug. 23, 1935, inserted second sentence and substituted “Except as provided in the immediately preceding sentence, no” for “No” in last sentence.

1933—Subsecs. (c), (d). Act June 16, 1933, amended subsecs. (c) and (d).

1927—Act Feb. 25, 1927, amended section generally.

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.

RIGHT OF STATE TO OPT OUT

Nothing in Pub. L. 105-24 to alter right of States under section 525 of Pub. L. 96-221, see section 3 of Pub. L. 105-24, set out as a note under section 1831a of this title.

APPLICABILITY OF MCFADDEN ACT TO PRESENT FINANCIAL ENVIRONMENT; REPORT AND RECOMMENDATIONS BY PRESIDENT TO CONGRESS

Pub. L. 95-369, §14, Sept. 17, 1978, 92 Stat. 625, provided for a report to Congress by the President, not later than one year after Sept. 17, 1978, containing recommendations concerning the applicability of the McFadden Act [Feb. 25, 1927, ch. 191, 44 Stat. 1224] to the then current financial, banking, and economic environment.

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 37. Associations governed by chapter

The provisions of chapters 2, 3, and 4 of title 62 of the Revised Statutes, which are expressed without restrictive words, as applying to “national banking associations,” or to “associations,” apply to all associations organized to carry on the business of banking under any Act of Congress.

(R.S. §5157.)

Editorial Notes

REFERENCES IN TEXT

Chapters 2, 3, and 4 of title 62 of the Revised Statutes, referred to in text, was in the original “chapters two, three, and four of this Title,” meaning chapters 2, 3, and 4 of title 62 of the Revised Statutes, consisting of R.S. §§5157 to 5244, which are classified to this section and sections 16, 26, 27, 43, 55, 56, 60, 62, 81, 83 to 86, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 481 to 485, 501, 541, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5157 to 5244 to the Code, see Tables.

§ 38. The National Bank Act

The Act entitled “An Act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof,” approved June 3, 1864, shall be known as “The National Bank Act.”

(June 20, 1874, ch. 343, §1, 18 Stat. 123.)

Editorial Notes

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99. The act was incorporated into the Revised Statutes as R.S. §§324 to 327, 328 to 331, 333, 380, 563, 629, 736, 884, 885, 3473, 3475, 3651, 5133 to 5136, 5137 to 5154, 5156, 5158 to 5170, 5172, 5173, 5175, 5177, 5182 to 5184, 5187, 5189, 5190 to 5192, 5195 to 5204, 5206, 5209 to 5211, 5214 to 5215, 5219 to 5222, 5224 to 5239, 5240 to 5242, 5417, which are classified to sections 1 to 4, 8, 11 to 14, 21, 22 to 24, 26, 27, 29, 35, 39, 52, 53, 56, 57, 59 to 62, 66, 71, 72 to 76, 81, 84 to 86, 90, 91, 93, 94, 141 to 144, 161, 165, 181, 182, 192 to 194, 196, 481 to 485, 541, and 548 of this title, section 197 of Title 19, Customs Duties, and section 543 of former Title 31, Money and Finance.

See, also, sections 8, 333, 334, 471, 472, 656, and 1005 of Title 18, Crimes and Criminal Procedure, and sections 507, 1348, 1394, and 1733 of Title 28, Judiciary and Judicial Procedure.

§ 39. Reservation of rights of associations organized under Act of 1863

Nothing in title 62 of the Revised Statutes shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June 1864, in or toward the organization of any national banking association under the act of February 25, 1863; but all associations which, on the third day of June 1864, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by title 62 of the Revised Statutes, notwithstanding all the steps prescribed by title 62 of the Revised Statutes for the organization of associations were not pursued, if such associations were duly organized under that act.

(R.S. §5156.)

Editorial Notes

REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in text, was in the original “this Title” meaning title LXII of the Revised Statutes, consisting of R.S. §§5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§5133 to 5244 to the Code, see Tables.

Act of February 25, 1863, referred to in text, was act Feb. 25, 1863, ch. 58, 12 Stat. 665, which was the original National Bank Act, and was repealed by act June 3, 1864, ch. 106, §62, 13 Stat. 118.

CODIFICATION

R.S. §5156 derived from act June 3, 1864, ch. 106, §62, 13 Stat. 118, which was the National Bank Act. See section 38 of this title.

§ 40. Virgin Islands; extension of National Bank Act

The National Bank Act, as amended [12 U.S.C. 21 et seq.], and all other Acts of Congress relating to national banks, shall, insofar as not locally inapplicable after July 19, 1932, apply to the Virgin Islands of the United States.

(July 19, 1932, ch. 508, 47 Stat. 703.)

Editorial Notes

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

§ 41. Guam; extension of National Bank Act

The National Bank Act [12 U.S.C. 21 et seq.], and all other Acts of Congress relating to national banks, shall, insofar as not locally inapplicable after August 1, 1956, apply to Guam.

(Aug. 1, 1956, ch. 852, § 2, 70 Stat. 908.)

Editorial Notes

REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§ 21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

§ 42. Territorial application

The provisions of all Acts of Congress relating to national banks shall apply in the several States, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(Pub. L. 86-230, § 14, Sept. 8, 1959, 73 Stat. 458.)

§ 43. Interpretations concerning preemption of certain State laws

(a) Notice and opportunity for comment required

Before issuing any opinion letter or interpretive rule, in response to a request or upon the agency's own motion, that concludes that Federal law preempts the application to a national bank of any State law regarding community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches, or before making a determination under section 36(f)(1)(A)(ii) of this title, the appropriate Federal banking agency (as defined in section 1813 of this title) shall—

(1) publish in the Federal Register notice of the preemption or discrimination issue that the agency is considering (including a description of each State law at issue);

(2) give interested parties not less than 30 days in which to submit written comments; and

(3) in developing the final opinion letter or interpretive rule issued by the agency, or making any determination under section 36(f)(1)(A)(ii) of this title, consider any comments received.

(b) Publication required

The appropriate Federal banking agency shall publish in the Federal Register—

(1) any final opinion letter or interpretive rule concluding that Federal law preempts the application of any State law regarding community reinvestment, consumer protection, fair lending, or establishment of intrastate branches to a national bank; and

(2) any determination under section 36(f)(1)(A)(ii) of this title.

(c) Exceptions

(1) No new issue or significant basis

This section shall not apply with respect to any opinion letter or interpretive rule that—

(A) raises issues of Federal preemption of State law that are essentially identical to those previously resolved by the courts or on which the agency has previously issued an opinion letter or interpretive rule; or

(B) responds to a request that contains no significant legal basis on which to make a preemption determination.

(2) Judicial, legislative, or intragovernmental materials

This section shall not apply with respect to materials prepared for use in judicial proceedings or submission to Congress or a Member of Congress, or for intragovernmental use.

(3) Emergency

The appropriate Federal banking agency may make exceptions to subsection (a) if—

(A) the agency determines in writing that the exception is necessary to avoid a serious and imminent threat to the safety and soundness of any national bank; or

(B) the opinion letter or interpretive rule is issued in connection with—

(i) an acquisition of 1 or more banks in default or in danger of default (as such terms are defined in section 1813 of this title); or

(ii) an acquisition with respect to which the Federal Deposit Insurance Corporation provides assistance under section 1823(c) of this title.

(R.S. § 5244, as added Pub. L. 103-328, title I, § 114, Sept. 29, 1994, 108 Stat. 2366.)

Editorial Notes

CODIFICATION

Another R.S. § 5244 is classified to section 8 of Title 33, Navigation and Navigable Waters.

SUBCHAPTER II—CAPITAL, STOCK, AND STOCKHOLDERS

§ 51. Repealed. Pub. L. 106-569, title XII, § 1233(c), Dec. 27, 2000, 114 Stat. 3037

Section. R.S. § 5138; Mar. 14, 1900, ch. 41, § 10, 31 Stat. 48; Feb. 25, 1927, ch. 191, § 4, 44 Stat. 1227; June 16, 1933, ch. 89, § 17(a), 48 Stat. 185; Aug. 23, 1935, ch. 614, title III, § 309, 49 Stat. 709, related to capital and surplus requirements.

§ 51a. Preferred stock; issuance authorized

Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail or by certified mail pursuant to action taken by its board of directors, issue preferred stock of one or more classes, in such amount and with such par value as shall be approved by said Comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, or cashier of said association, has been transmitted to the Comptroller of the Currency and his certificate obtained specifying the amount of such issue of preferred stock and his approval thereof and that the amount has been duly paid in as a part of the capital of such association;