

between the Federal Deposit Insurance Corporation and the Department of Justice, dated October 2, 1998.”

Similar provisions were contained in Pub. L. 105-277, div. A, § 101(b) [title I, § 130], Oct. 21, 1998, 112 Stat. 2681-50, 2681-77.

§ 1822. Corporation as receiver

(a) Bond not required; agents; fee

The Corporation as receiver of an insured depository institution or branch of a foreign bank shall not be required to furnish bond and may appoint an agent or agents to assist it in its duties as such receiver. All fees, compensation, and expenses of liquidation and administration shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver.

(b) Payment of insured deposit as discharge from liability

Payment of an insured deposit to any person by the Corporation shall discharge the Corporation, and payment of a transferred deposit to any person by the new depository institution or by an insured depository institution in which a transferred deposit has been made available shall discharge the Corporation and such new depository institution or other insured depository institution, to the same extent that payment to such person by the depository institution in default would have discharged it from liability for the insured deposit.

(c) Recognition of claimant not on depository institution records

Except as otherwise prescribed by the Board of Directors, neither the Corporation nor such new depository institution or other insured depository institution shall be required to recognize as the owner of any portion of a deposit appearing on the records of the depository institution in default under a name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of such depository institution in default as part owner of said deposit, if such recognition would increase the aggregate amount of the insured deposits in such depository institution in default.

(d) Withholding payments to meet liability to depository institution

The Corporation may withhold payment of such portion of the insured deposit of any depositor in a depository institution in default as may be required to provide for the payment of any liability of such depositor to the depository institution in default or its receiver, which is not offset against a claim due from such depository institution, pending the determination and payment of such liability by such depositor or any other person liable therefor.

(e) Disposition of unclaimed deposits

(1) Notices

(A) First notice

Within 30 days after the initiation of the payment of insured deposits under section 1821(f) of this title, the Corporation shall provide written notice to all insured depositors that they must claim their deposit from the Corporation, or if the deposit has been

transferred to another institution, from the transferee institution.

(B) Second notice

A second notice containing this information shall be mailed by the Corporation to all insured depositors who have not responded to the first notice, 15 months after the Corporation initiates such payment of insured depositors.

(C) Address

The notices shall be mailed to the last known address of the depositor appearing on the records of the insured depository institution in default.

(2) Transfer to appropriate State

If an insured depositor fails to make a claim for his, her, or its insured or transferred deposit within 18 months after the Corporation initiates the payment of insured deposits under section 1821(f) of this title—

(A) any transferee institution shall refund the deposit to the Corporation, and all rights of the depositor against the transferee institution shall be barred; and

(B) with the exception of United States deposits, the Corporation shall deliver the deposit to the custody of the appropriate State as unclaimed property, unless the appropriate State declines to accept custody. Upon delivery to the appropriate State, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 1821(g)(1) of this title.

(3) Refusal of appropriate State to accept custody

If the appropriate State declines to accept custody of the deposit tendered pursuant to paragraph (2)(B), the deposit shall not be delivered to any State, and the insured depositor shall claim the deposit from the Corporation before the receivership is terminated, or all rights of the depositor with respect to such deposit shall be barred.

(4) Treatment of United States deposits

If the deposit is a United States deposit it shall be delivered to the Secretary of the Treasury for deposit in the general fund of the Treasury. Upon delivery to the Secretary of the Treasury, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 1821(g)(1) of this title.

(5) Reversion

If a depositor does not claim the deposit delivered to the custody of the appropriate State pursuant to paragraph (2)(B) within 10 years of the date of delivery, the deposit shall be immediately refunded to the Corporation and become its property. All rights of the depositor against the appropriate State with respect to such deposit shall be barred as of the date of the refund to the Corporation.

(6) Definitions

For purposes of this subsection—

(A) the term “transferee institution” means the insured depository institution in which the Corporation has made available a transferred deposit pursuant to section 1821(f)(1) of this title;

(B) the term “appropriate State” means the State to which notice was mailed under paragraph (1)(C), except that if the notice was not mailed to an address that is within a State it shall mean the State in which the depository institution in default has its main office; and

(C) the term “United States deposit” means an insured or transferred deposit for which the deposit records of the depository institution in default disclose that title to the deposit is held by the United States, any department, agency, or instrumentality of the Federal Government, or any officer or employee thereof in such person’s official capacity.

(f) Conflict of interest

(1) Applicability of other provisions

(A) Clarification of status of Corporation

The Corporation is, and has been since its creation, an agency for purposes of title 18.

(B) Treatment of contractors

Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee of the Corporation for purposes of title 18 and this chapter. Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation, and who is not otherwise treated as an officer or employee of the United States for purposes of title 18 shall be deemed to be a public official for purposes of section 201 of title 18.

(2) Regulations concerning employee conduct

The officers and employees of the Corporation and those individuals under contract to the Corporation who are deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 shall be subject to the ethics and conflict of interest rules and regulations issued by the Office of Government Ethics, including those concerning employee conduct, financial disclosure, and post-employment activities. The Board of Directors may prescribe regulations that supplement such rules and regulations only with the concurrence of that Office.

(3) Regulations concerning independent contractors

The Board of Directors shall prescribe regulations applicable to those independent contractors who are not deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41. Any such regulations shall be in addition to, and not in lieu of, any other statute or regulation which may apply to the conduct of such independent contractors.

(4) Disapproval of contractors

(A) In general

The Board of Directors shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

(B) Prohibition from service on behalf of Corporation

The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

(i) entering into any contract with the Corporation; or

(ii) becoming employed by the Corporation or otherwise performing any service for or on behalf of the Corporation.

(C) Information required to be submitted

The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

(i) a list and description of any instance during the 5 years preceding the submission of such application in which the person or a company under such person’s control defaulted on a material obligation to an insured depository institution; and

(ii) such other information as the Board may prescribe by regulation.

(D) Subsequent submissions

(i) In general

No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless—

(I) all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation; and

(II) the Corporation does not disapprove of the direct or indirect employment of such person.

(ii) Finality of determination

Any determination made by the Corporation pursuant to this paragraph shall be in the Corporation’s sole discretion and shall not be subject to review.

(E) Prohibition required in certain cases

The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

(i) been convicted of any felony;

(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(iii) demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(iv) caused a substantial loss to the Deposit Insurance Fund (or any predecessor deposit insurance fund);

from performing any service on behalf of the Corporation.

(5) Abrogation of contracts

The Corporation may rescind any contract with a person who—

(A) fails to disclose a material fact to the Corporation;

(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation; or

(C) has been subject to a final enforcement action by any Federal banking agency.

(6) Priority of FDIC rules

To the extent that the regulations under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the regulations prescribed by the Board of Directors under this subsection when acting for or on behalf of the Corporation. Notwithstanding the preceding sentence, the rules of the Corporation shall not take priority over the ethics and conflict of interest rules and regulations promulgated by the Office of Government Ethics unless specifically authorized by that Office.

(Sept. 21, 1950, ch. 967, §2[12], 64 Stat. 887; Pub. L. 95-369, §6(c)(23), Sept. 17, 1978, 92 Stat. 619; Pub. L. 97-320, title I, §113(l), Oct. 15, 1982, 96 Stat. 1474; Pub. L. 101-73, title II, §§201(a), 216, Aug. 9, 1989, 103 Stat. 187, 254; Pub. L. 103-44, §1, June 28, 1993, 107 Stat. 220; Pub. L. 103-204, §19(a), Dec. 17, 1993, 107 Stat. 2402; Pub. L. 104-179, §4(b)(1), Aug. 6, 1996, 110 Stat. 1567; Pub. L. 109-173, §8(a)(18), Feb. 15, 2006, 119 Stat. 3613; Pub. L. 110-289, div. A, title VI, §1604(b)(1)(C), July 30, 2008, 122 Stat. 2829.)

PRIOR PROVISIONS

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

AMENDMENTS

2008—Subsecs. (b), (c). Pub. L. 110-289 substituted “new depository institution” for “new bank” wherever appearing.

2006—Subsec. (f)(4)(E)(iv). Pub. L. 109-173 substituted “the Deposit Insurance Fund (or any predecessor deposit insurance fund)” for “Federal deposit insurance funds”.

1996—Subsec. (f)(3). Pub. L. 104-179 struck out “, with the concurrence of the Office of Government Ethics,” after “The Board of Directors”.

1993—Subsec. (e). Pub. L. 103-44 inserted heading and amended text generally. Prior to amendment, text read as follows: “If, after the Corporation shall have given at least three months’ notice to the depositor by mailing a copy thereof to his last-known address appearing on the records of the depository institution in default, any depositor in the depository institution in default shall fail to claim his insured deposit from the Corporation within eighteen months after the appointment of the receiver for the depository institution in default, or

shall fail within such period to claim or arrange to continue the transferred deposit with the new bank or with the other insured depository institution which assumes liability therefor, all rights of the depositor against the Corporation with respect to the insured deposit, and against the new bank and such other insured depository institution with respect to the transferred deposit, shall be barred, and all rights of the depositor against the depository institution in default and its shareholders, or the receivership estate to which the Corporation may have become subrogated, shall thereupon revert to the depositor. The amount of any transferred deposits not claimed within such eighteen months’ period, shall be refunded to the Corporation.”

Subsec. (f). Pub. L. 103-204 added subsec. (f).

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

Subsec. (a). Pub. L. 101-73, §216(2), inserted heading and text of subsec. (a), and struck out former subsec. (a) which read as follows: “Notwithstanding any other provision of law, the Corporation as receiver of a closed national bank, branch of a foreign bank, insured Federal savings bank, or District bank shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such receiver, and all fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver.”

Subsecs. (b), (c). Pub. L. 101-73, §216(1), substituted “depository institution in default” for “closed bank” wherever appearing.

Subsec. (d). Pub. L. 101-73, §216(1), (3), substituted “depository institution in default” for “closed bank” in three places, struck out “as a stockholder of the depository institution in default, or of any liability of such depositor” after “payment of any liability of such depositor”, and substituted “such depository institution” for “such bank”.

Subsec. (e). Pub. L. 101-73, §216(1), substituted “depository institution in default” for “closed bank” wherever appearing.

1982—Subsec. (a). Pub. L. 97-320 inserted “insured Federal savings bank,” after “foreign bank.”

1978—Subsec. (a). Pub. L. 95-369 inserted “, branch of a foreign bank,” after “a closed national bank”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109-173, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Section 19(c) of Pub. L. 103-204 provided that: “The amendment made by subsection (a) [amending this section] shall apply after the end of the 6-month period beginning on the date of enactment of this Act [Dec. 17, 1993].”

Section 2 of Pub. L. 103-44 provided that:

“(a) IN GENERAL.—The amendments made by section 1 of this Act [amending this section] shall only apply with respect to institutions for which the Corporation has initiated the payment of insured deposits under section 11(f) of the Federal Deposit Insurance Act [12 U.S.C. 1821(f)] after the date of enactment of this Act [June 28, 1993].”

“(b) SPECIAL RULE FOR RECEIVERSHIPS IN PROGRESS.—Section 12(e) of the Federal Deposit Insurance Act [12 U.S.C. 1822(e)] as in effect on the day before the date of enactment of this Act [June 28, 1993] shall apply with respect to insured deposits in depository institutions for which the Corporation was first appointed receiver during the period between January 1, 1989 and the date of enactment of this Act, except that such section 12(e) shall not bar any claim made against the Corporation by an insured depositor for an insured or transferred deposit, so long as such claim is made prior to the termination of the receivership.

“(c) INFORMATION TO STATES.—Within 120 days after the date of enactment of this Act [June 28, 1993], the Corporation shall provide, at the request of and for the sole use of any State, the name and last known address of any insured depositor (as shown on the records of the institution in default) eligible to make a claim against the Corporation solely due to the operation of subsection (b) of this section.

“(d) DEFINITION.—For purposes of this section, the term ‘Corporation’ means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the Federal Savings and Loan Insurance Corporation, as appropriate.”

§ 1823. Corporation monies

(a) Investment of Corporation’s funds

(1) Authority

Funds held in the Deposit Insurance Fund or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) Limitation

The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of \$100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the Secretary may determine.

(b) Depository accounts

The depository accounts of the Corporation shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a depository institution designated as a depository or fiscal agent of the United States: *Provided*, That the Secretary of the Treasury may waive the requirements of this subsection under such conditions as he may determine: *And provided further*, That this subsection shall not apply to the establishment and maintenance in any depository institution for temporary purposes of depository accounts not in excess of \$50,000 in any one depository institution, or to the establishment and maintenance in any depository institution of any depository accounts to facilitate the payment of insured deposits, or the making of loans to, or the purchase of assets of, insured depository institutions. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depository of public moneys, except receipts from customs, under such regulations as may be prescribed by the said Secretary, and may also be employed as a financial agent of the Government. It shall perform all such reasonable duties as depository of public moneys and financial agent of the Government as may be required of it.

(c) Assistance to insured depository institutions

(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured depository institution—

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to an insured bank in default, such action is taken to restore such insured bank to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of another¹ insured depository institution described in subparagraph (B) with another insured depository institution or the sale of any or all of the assets of such insured depository institution or the assumption of any or all of such insured depository institution’s liabilities by another insured depository institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe—

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in, or purchase the securities of, such other insured depository institution or the company which controls or will acquire control of such other insured depository institution;

(iii) to guarantee such other insured depository institution or the company which controls or will acquire control of such other insured depository institution against loss by reason of such insured institution’s merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution—

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation, in its sole discretion, to require assistance under subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidat-

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