

**TITLE 12 - BANKS AND BANKING**  
**CHAPTER 16 - FEDERAL DEPOSIT INSURANCE CORPORATION**

**§ 1831o. Prompt corrective action**

**(a) Resolving problems to protect Deposit Insurance Fund**

**(1) Purpose**

The purpose of this section is to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund.

**(2) Prompt corrective action required**

Each appropriate Federal banking agency and the Corporation (acting in the Corporation's capacity as the insurer of depository institutions under this chapter) shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

**(b) Definitions**

For purposes of this section:

**(1) Capital categories**

**(A) Well capitalized**

An insured depository institution is "well capitalized" if it significantly exceeds the required minimum level for each relevant capital measure.

**(B) Adequately capitalized**

An insured depository institution is "adequately capitalized" if it meets the required minimum level for each relevant capital measure.

**(C) Undercapitalized**

An insured depository institution is "undercapitalized" if it fails to meet the required minimum level for any relevant capital measure.

**(D) Significantly undercapitalized**

An insured depository institution is "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure.

**(E) Critically undercapitalized**

An insured depository institution is "critically undercapitalized" if it fails to meet any level specified under subsection (c)(3)(A) of this section.

**(2) Other definitions**

**(A) Average**

**(i) In general**

The "average" of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

**(ii) Agency may permit weekly averaging for certain institutions**

In the case of insured depository institutions that have total assets of less than \$300,000,000 and normally file reports of condition reflecting weekly (rather than daily) averages of accounting items, the appropriate Federal banking agency may provide that the "average" of an accounting item during a given period means the sum of that item at the close of business on the relevant business day each week during that period divided by the total number of weeks in that period.

**(B) Capital distribution**

The term “capital distribution” means—

(i) a distribution of cash or other property by any insured depository institution or company to its owners made on account of that ownership, but not including—

(I) any dividend consisting only of shares of the institution or company or rights to purchase such shares; or

(II) any amount paid on the deposits of a mutual or cooperative institution that the appropriate Federal banking agency determines is not a distribution for purposes of this section;

(ii) a payment by an insured depository institution or company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance an affiliated company’s acquisition of those shares or interests; or

(iii) a transaction that the appropriate Federal banking agency or the Corporation determines, by order or regulation, to be in substance a distribution of capital to the owners of the insured depository institution or company.

**(C) Capital restoration plan**

The term “capital restoration plan” means a plan submitted under subsection (e)(2) of this section.

**(D) Company**

The term “company” has the same meaning as in section 1841 of this title.

**(E) Compensation**

The term “compensation” includes any payment of money or provision of any other thing of value in consideration of employment.

**(F) Relevant capital measure**

The term “relevant capital measure” means the measures described in subsection (c) of this section.

**(G) Required minimum level**

The term “required minimum level” means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the appropriate Federal banking agency by regulation.

**(H) Senior executive officer**

The term “senior executive officer” has the same meaning as the term “executive officer” in section 375b of this title.

**(I) Subordinated debt**

The term “subordinated debt” means debt subordinated to the claims of general creditors.

**(c) Capital standards**

**(1) Relevant capital measures**

**(A) In general**

Except as provided in subparagraph (B)(ii), the capital standards prescribed by each appropriate Federal banking agency shall include—

(i) a leverage limit; and

(ii) a risk-based capital requirement.

**(B) Other capital measures**

An appropriate Federal banking agency may, by regulation—

- (i) establish any additional relevant capital measures to carry out the purpose of this section; or
- (ii) rescind any relevant capital measure required under subparagraph (A) upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of this section.

**(2) Capital categories generally**

Each appropriate Federal banking agency shall, by regulation, specify for each relevant capital measure the levels at which an insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.

**(3) Critical capital**

**(A) Agency to specify level**

**(i) Leverage limit**

Each appropriate Federal banking agency shall, by regulation, in consultation with the Corporation, specify the ratio of tangible equity to total assets at which an insured depository institution is critically undercapitalized.

**(ii) Other relevant capital measures**

The agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which an insured depository institution is critically undercapitalized.

**(B) Leverage limit range**

The level specified under subparagraph (A)(i) shall require tangible equity in an amount—

- (i) not less than 2 percent of total assets; and
- (ii) except as provided in clause (i), not more than 65 percent of the required minimum level of capital under the leverage limit.

**(C) FDIC's concurrence required**

The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a level under subparagraph (A)(i) lower than that specified by the Corporation for State nonmember insured banks.

**(d) Provisions applicable to all institutions**

**(1) Capital distributions restricted**

**(A) In general**

An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.

**(B) Exception**

Notwithstanding subparagraph (A), the appropriate Federal banking agency may permit, after consultation with the Corporation, an insured depository institution to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

- (i) is made in connection with the issuance of additional shares or obligations of the institution in at least an equivalent amount; and
- (ii) will reduce the institution's financial obligations or otherwise improve the institution's financial condition.

**(2) Management fees restricted**

An insured depository institution shall pay no management fee to any person having control of that institution if, after making the payment, the institution would be undercapitalized.

**(e) Provisions applicable to undercapitalized institutions**

**(1) Monitoring required**

Each appropriate Federal banking agency shall—

- (A) closely monitor the condition of any undercapitalized insured depository institution;
- (B) closely monitor compliance with capital restoration plans, restrictions, and requirements imposed under this section; and
- (C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized insured depository institution to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

**(2) Capital restoration plan required**

**(A) In general**

Any undercapitalized insured depository institution shall submit an acceptable capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

**(B) Contents of plan**

The capital restoration plan shall—

- (i) specify—
  - (I) the steps the insured depository institution will take to become adequately capitalized;
  - (II) the levels of capital to be attained during each year in which the plan will be in effect;
  - (III) how the institution will comply with the restrictions or requirements then in effect under this section; and
  - (IV) the types and levels of activities in which the institution will engage; and
- (ii) contain such other information as the appropriate Federal banking agency may require.

**(C) Criteria for accepting plan**

The appropriate Federal banking agency shall not accept a capital restoration plan unless the agency determines that—

- (i) the plan—
  - (I) complies with subparagraph (B);
  - (II) is based on realistic assumptions, and is likely to succeed in restoring the institution's capital; and
  - (III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed; and
- (ii) if the insured depository institution is undercapitalized, each company having control of the institution has—
  - (I) guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of 4 consecutive calendar quarters; and
  - (II) provided appropriate assurances of performance.

**(D) Deadlines for submission and review of plans**

The appropriate Federal banking agency shall by regulation establish deadlines that—

- (i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 45 days after the institution becomes undercapitalized;

- (ii) require the agency to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted; and
- (iii) require the agency to submit a copy of any plan approved by the agency to the Corporation before the end of the 45-day period beginning on the date such approval is granted.

**(E) Guarantee liability limited**

**(i) In general**

The aggregate liability under subparagraph (C)(ii) of all companies having control of an insured depository institution shall be the lesser of—

- (I) an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized; or
- (II) the amount which is necessary (or would have been necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with a plan under this subsection.

**(ii) Certain affiliates not affected**

This paragraph may not be construed as—

- (I) requiring any company not having control of an undercapitalized insured depository institution to guarantee, or otherwise be liable on, a capital restoration plan;
- (II) requiring any person other than an insured depository institution to submit a capital restoration plan; or
- (III) affecting compliance by brokers, dealers, government securities brokers, and government securities dealers with the financial responsibility requirements of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and regulations and orders thereunder.

**(3) Asset growth restricted**

An undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

- (A) the appropriate Federal banking agency has accepted the institution's capital restoration plan;
- (B) any increase in total assets is consistent with the plan; and
- (C) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the institution to become adequately capitalized within a reasonable time.

**(4) Prior approval required for acquisitions, branching, and new lines of business**

An undercapitalized insured depository institution shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business unless—

- (A) the appropriate Federal banking agency has accepted the insured depository institution's capital restoration plan, the institution is implementing the plan, and the agency determines that the proposed action is consistent with and will further the achievement of the plan; or
- (B) the Board of Directors determines that the proposed action will further the purpose of this section.

**(5) Discretionary safeguards**

The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take actions described in any subparagraph of subsection (f)(2) of this section if the agency determines that those actions are necessary to carry out the purpose of this section.

**(f) Provisions applicable to significantly undercapitalized institutions and undercapitalized institutions that fail to submit and implement capital restoration plans**

**(1) In general**

This subsection shall apply with respect to any insured depository institution that—

- (A)** is significantly undercapitalized; or
- (B)** is undercapitalized and—
  - (i)** fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (e)(2)(D) of this section; or
  - (ii)** fails in any material respect to implement a plan accepted by the agency.

**(2) Specific actions authorized**

The appropriate Federal banking agency shall carry out this section by taking 1 or more of the following actions:

**(A) Requiring recapitalization**

Doing 1 or more of the following:

- (i)** Requiring the institution to sell enough shares or obligations of the institution so that the institution will be adequately capitalized after the sale.
- (ii)** Further requiring that instruments sold under clause (i) be voting shares.
- (iii)** Requiring the institution to be acquired by a depository institution holding company, or to combine with another insured depository institution, if 1 or more grounds exist for appointing a conservator or receiver for the institution.

**(B) Restricting transactions with affiliates**

- (i)** Requiring the institution to comply with section 371c of this title as if subsection (d)(1) of that section (exempting transactions with certain affiliated institutions) did not apply.
- (ii)** Further restricting the institution's transactions with affiliates.

**(C) Restricting interest rates paid**

**(i) In general**

Restricting the interest rates that the institution pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located, as determined by the agency.

**(ii) Retroactive restrictions prohibited**

This subparagraph does not authorize the agency to restrict interest rates paid on time deposits made before (and not renewed or renegotiated after) the agency acted under this subparagraph.

**(D) Restricting asset growth**

Restricting the institution's asset growth more stringently than subsection (e)(3) of this section, or requiring the institution to reduce its total assets.

**(E) Restricting activities**

Requiring the institution or any of its subsidiaries to alter, reduce, or terminate any activity that the agency determines poses excessive risk to the institution.

**(F) Improving management**

Doing 1 or more of the following:

**(i)** New election of directors

Ordering a new election for the institution's board of directors.

**(ii)** Dismissing directors or senior executive officers

Requiring the institution to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 1818 of this title.

**(iii)** Employing qualified senior executive officers

Requiring the institution to employ qualified senior executive officers (who, if the agency so specifies, shall be subject to approval by the agency).

**(G) Prohibiting deposits from correspondent banks**

Prohibiting the acceptance by the institution of deposits from correspondent depository institutions, including renewals and rollovers of prior deposits.

**(H) Requiring prior approval for capital distributions by bank holding company**

Prohibiting any bank holding company having control of the insured depository institution from making any capital distribution without the prior approval of the Board of Governors of the Federal Reserve System.

**(I) Requiring divestiture**

Doing one or more of the following:

**(i)** Divestiture by the institution

Requiring the institution to divest itself of or liquidate any subsidiary if the agency determines that the subsidiary is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

**(ii)** Divestiture by parent company of nondepository affiliate

Requiring any company having control of the institution to divest itself of or liquidate any affiliate other than an insured depository institution if the appropriate Federal banking agency for that company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

**(iii)** Divestiture of institution

Requiring any company having control of the institution to divest itself of the institution if the appropriate Federal banking agency for that company determines that divestiture would improve the institution's financial condition and future prospects.

**(J) Requiring other action**

Requiring the institution to take any other action that the agency determines will better carry out the purpose of this section than any of the actions described in this paragraph.

**(3) Presumption in favor of certain actions**

In complying with paragraph (2), the agency shall take the following actions, unless the agency determines that the actions would not further the purpose of this section:

**(A)** The action described in clause (i) or (iii) of paragraph (2)(A) (relating to requiring the sale of shares or obligations, or requiring the institution to be acquired by or combine with another institution).

(B) The action described in paragraph (2)(B)(i) (relating to restricting transactions with affiliates).

(C) The action described in paragraph (2)(C) (relating to restricting interest rates).

**(4) Senior executive officers' compensation restricted**

**(A) In general**

The insured depository institution shall not do any of the following without the prior written approval of the appropriate Federal banking agency:

(i) Pay any bonus to any senior executive officer.

(ii) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the institution became undercapitalized.

**(B) Failing to submit plan**

The appropriate Federal banking agency shall not grant any approval under subparagraph (A) with respect to an institution that has failed to submit an acceptable capital restoration plan.

**(5) Discretion to impose certain additional restrictions**

The agency may impose 1 or more of the restrictions prescribed by regulation under subsection (i) of this section if the agency determines that those restrictions are necessary to carry out the purpose of this section.

**(6) Consultation with other regulators**

Before the agency or Corporation makes a determination under paragraph (2)(I) with respect to an affiliate that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the agency or Corporation shall consult with the Securities and Exchange Commission and, in the case of any other affiliate which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such affiliate with respect to the proposed determination of the agency or the Corporation and actions pursuant to such determination.

**(g) More stringent treatment based on other supervisory criteria**

**(1) In general**

If the appropriate Federal banking agency determines (after notice and an opportunity for hearing) that an insured depository institution is in an unsafe or unsound condition or, pursuant to section 1818 (b)(8) of this title, deems the institution to be engaging in an unsafe or unsound practice, the agency may—

(A) if the institution is well capitalized, reclassify the institution as adequately capitalized;

(B) if the institution is adequately capitalized (but not well capitalized), require the institution to comply with 1 or more provisions of subsections (d) and (e) of this section, as if the institution were undercapitalized; or

(C) if the institution is undercapitalized, take any 1 or more actions authorized under subsection (f)(2) of this section as if the institution were significantly undercapitalized.

**(2) Contents of plan**

Any plan required under paragraph (1) shall specify the steps that the insured depository institution will take to correct the unsafe or unsound condition or practice. Capital restoration plans shall not be required under paragraph (1)(B).

**(h) Provisions applicable to critically undercapitalized institutions**

**(1) Activities restricted**

Any critically undercapitalized insured depository institution shall comply with restrictions prescribed by the Corporation under subsection (i) of this section.

**(2) Payments on subordinated debt prohibited**

**(A) In general**

A critically undercapitalized insured depository institution shall not, beginning 60 days after becoming critically undercapitalized, make any payment of principal or interest on the institution's subordinated debt.

**(B) Exceptions**

The Corporation may make exceptions to subparagraph (A) if—

- (i) the appropriate Federal banking agency has taken action with respect to the insured depository institution under paragraph (3)(A)(ii); and
- (ii) the Corporation determines that the exception would further the purpose of this section.

**(C) Limited exemption for certain subordinated debt**

Until July 15, 1996, subparagraph (A) shall not apply with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

**(D) Accrual of interest**

Subparagraph (A) does not prevent unpaid interest from accruing on subordinated debt under the terms of that debt, to the extent otherwise permitted by law.

**(3) Conservatorship, receivership, or other action required**

**(A) In general**

The appropriate Federal banking agency shall, not later than 90 days after an insured depository institution becomes critically undercapitalized—

- (i) appoint a receiver (or, with the concurrence of the Corporation, a conservator) for the institution; or
- (ii) take such other action as the agency determines, with the concurrence of the Corporation, would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

**(B) Periodic redeterminations required**

Any determination by an appropriate Federal banking agency under subparagraph (A)(ii) to take any action with respect to an insured depository institution in lieu of appointing a conservator or receiver shall cease to be effective not later than the end of the 90-day period beginning on the date that the determination is made and a conservator or receiver shall be appointed for that institution under subparagraph (A)(i) unless the agency makes a new determination under subparagraph (A)(ii) at the end of the effective period of the prior determination.

**(C) Appointment of receiver required if other action fails to restore capital**

**(i) In general**

Notwithstanding subparagraphs (A) and (B), the appropriate Federal banking agency shall appoint a receiver for the insured depository institution if the institution is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized.

**(ii) Exception**

Notwithstanding clause (i), the appropriate Federal banking agency may continue to take such other action as the agency determines to be appropriate in lieu of such appointment if—

- (I) the agency determines, with the concurrence of the Corporation, that (aa) the insured depository institution has positive net worth, (bb) the insured depository institution has been in substantial compliance with an approved capital restoration plan which requires consistent improvement in the institution's capital since the date of the approval of the plan, (cc) the insured depository institution is profitable or has an upward trend in earnings the agency projects as sustainable, and (dd) the insured depository institution is reducing the ratio of nonperforming loans to total loans; and
- (II) the head of the appropriate Federal banking agency and the Chairperson of the Board of Directors both certify that the institution is viable and not expected to fail.

**(i) Restricting activities of critically undercapitalized institutions**

To carry out the purpose of this section, the Corporation shall, by regulation or order—

- (1) restrict the activities of any critically undercapitalized insured depository institution; and
- (2) at a minimum, prohibit any such institution from doing any of the following without the Corporation's prior written approval:
  - (A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency.
  - (B) Extending credit for any highly leveraged transaction.
  - (C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order.
  - (D) Making any material change in accounting methods.
  - (E) Engaging in any covered transaction (as defined in section 371c (b) of this title).
  - (F) Paying excessive compensation or bonuses.
  - (G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas.

**(j) Certain Government-controlled institutions exempted**

Subsections (e) through (i) of this section (other than paragraph (3) of subsection (e) of this section) shall not apply—

- (1) to an insured depository institution for which the Corporation or the Resolution Trust Corporation is conservator; or
- (2) to a bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation or the Resolution Trust Corporation.

**(k) Review required when Deposit Insurance Fund incurs material loss**

**(1) In general**

If the Deposit Insurance Fund incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

- (A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—
  - (i) ascertain why the institution's problems resulted in a material loss to the Deposit Insurance Fund; and
  - (ii) make recommendations for preventing any such loss in the future; and
- (B) provide a copy of the report to—
  - (i) the Comptroller General of the United States;
  - (ii) the Corporation (if the agency is not the Corporation);

- (iii) in the case of a State depository institution, the appropriate State banking supervisor; and
- (iv) upon request by any Member of Congress, to that Member.

**(2) Material loss incurred**

For purposes of this subsection:

**(A) Loss incurred**

The Deposit Insurance Fund incurs a loss with respect to an insured depository institution—

- (i) if the Corporation provides any assistance under section 1823 (c) of this title with respect to that institution; and—
  - (I) it is not substantially certain that the assistance will be fully repaid not later than 24 months after the date on which the Corporation initiated the assistance; or
  - (II) the institution ceases to repay the assistance in accordance with its terms; or
- (ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

**(B) Material loss**

A loss is material if it exceeds the greater of—

- (i) \$25,000,000; or
- (ii) 2 percent of the institution's total assets at the time the Corporation initiated assistance under section 1823 (c) of this title or was appointed receiver.

**(3) Deadline for report**

The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

- (A) If the institution is described in paragraph (2)(A)(i), during the 6-month period beginning on the earlier of—
  - (i) the date on which the institution ceases to repay assistance under section 1823 (c) of this title in accordance with its terms, or
  - (ii) the date on which it becomes apparent that the assistance will not be fully repaid during the 24-month period described in paragraph (2)(A)(i).
- (B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

**(4) Public disclosure required**

**(A) In general**

The appropriate Federal banking agency shall disclose the report upon request under section 552 of title 5 without excising—

- (i) any portion under section 552(b)(5) of that title; or
- (ii) any information about the insured depository institution under paragraph (4) (other than trade secrets) or paragraph (8) of section 552(b) of that title.

**(B) Exception**

Subparagraph (A) does not require the agency to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could reasonably be ascertained.

**(5) GAO review**

The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate, review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section).

**(6) Transition rule**

During the period beginning on July 1, 1993, and ending on June 30, 1997, a loss incurred by the Corporation with respect to an insured depository institution—

(A) with respect to which the Corporation initiates assistance under section 1823 (c) of this title during the period in question, or

(B) for which the Corporation was appointed receiver during the period in question,

is material for purposes of this subsection only if that loss exceeds the greater of \$25,000,000 or the applicable percentage of the institution's total assets at that time, set forth in the following table:

The applicable

For the following period: percentage is:

July 1, 1993–June 30, 1994

7 percent

July 1, 1994–June 30, 1995

5 percent

July 1, 1995–June 30, 1996

4 percent

July 1, 1996–June 30, 1997

3 percent.

**(l) Implementation**

**(1) Regulations and other actions**

Each appropriate Federal banking agency shall prescribe such regulations (in consultation with the other Federal banking agencies), issue such orders, and take such other actions as are necessary to carry out this section.

**(2) Written determination and concurrence required**

Any determination or concurrence by an appropriate Federal banking agency or the Corporation required under this section shall be written.

**(m) Other authority not affected**

This section does not limit any authority of an appropriate Federal banking agency, the Corporation, or a State to take action in addition to (but not in derogation of) that required under this section.

**(n) Administrative review of dismissal orders**

**(1) Timely petition required**

A director or senior executive officer dismissed pursuant to an order under subsection (f)(2)(F)(ii) of this section may obtain review of that order by filing a written petition for reinstatement with the appropriate Federal banking agency not later than 10 days after receiving notice of the dismissal.

**(2) Procedure**

**(A) Hearing required**

The agency shall give the petitioner an opportunity to—

(i) submit written materials in support of the petition; and

(ii) appear, personally or through counsel, before 1 or more members of the agency or designated employees of the agency.

**(B) Deadline for hearing**

The agency shall—

- (i) schedule the hearing referred to in subparagraph (A)(ii) promptly after the petition is filed; and
- (ii) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

**(C) Deadline for decision**

Not later than 60 days after the date of the hearing, the agency shall—

- (i) by order, grant or deny the petition;
- (ii) if the order is adverse to the petitioner, set forth the basis for the order; and
- (iii) notify the petitioner of the order.

**(3) Standard for review of dismissal orders**

The petitioner shall bear the burden of proving that the petitioner’s continued employment would materially strengthen the insured depository institution’s ability—

- (A) to become adequately capitalized, to the extent that the order is based on the institution’s capital level or failure to submit or implement a capital restoration plan; and
- (B) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on subsection (g)(1) of this section.

**(o) Transition rules for savings associations**

Subsections (e)(2), (f), and (h) of this section shall not apply before July 1, 1994, to any insured savings association if—

- (1) before December 19, 1991—
  - (A) the savings association had submitted a plan meeting the requirements of section 1464 (t)(6)(A)(ii) of this title; and
  - (B) the Director of the Office of Thrift Supervision had accepted the plan;
- (2) the plan remains in effect; and
- (3) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

(Sept. 21, 1950, ch. 967, § 2[38], as added Pub. L. 102–242, title I, § 131(a), Dec. 19, 1991, 105 Stat. 2253; amended Pub. L. 102–550, title XVI, § 1603(d)(1), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 103–325, title VI, § 602(a)(64), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(AA)–(CC), Sept. 30, 1996, 110 Stat. 3009–494; Pub. L. 104–316, title I, § 106(d), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 109–171, title II, § 2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, § 8(a)(36)–(39), Feb. 15, 2006, 119 Stat. 3615; Pub. L. 110–289, div. A, title VI, § 1604(b)(1)(D), July 30, 2008, 122 Stat. 2829.)

## References in Text

The Securities Exchange Act of 1934, referred to in subsec. (e)(2)(E)(ii)(III), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

## Amendments

2008—Subsec. (j)(2). Pub. L. 110–289 substituted “bridge depository institution” for “bridge bank”.

2006—Subsec. (a). Pub. L. 109–173, § 8(a)(37), substituted “Fund” for “funds” in heading.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(14)(AA). See 1996 Amendment note below.

Subsec. (a)(1). Pub. L. 109–173, § 8(a)(36), substituted “the Deposit Insurance Fund” for “the deposit insurance fund”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (k)(1). Pub. L. 109–173, § 8(a)(38)(A), substituted “the Deposit Insurance Fund” for “a deposit insurance fund” in introductory provisions.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(14)(BB)(i). See 1996 Amendment note below.

Subsec. (k)(1)(A)(i). Pub. L. 109–173, § 8(a)(36), substituted “the Deposit Insurance Fund” for “the deposit insurance fund”.

Subsec. (k)(2)(A). Pub. L. 109–173, § 8(a)(38)(B), substituted “The Deposit Insurance Fund” for “A deposit insurance fund” in introductory provisions.

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(14)(BB)(ii). See 1996 Amendment note below.

Subsec. (k)(2)(A)(ii). Pub. L. 109–173, § 8(a)(38)(C), substituted “the outlays of the Deposit Insurance Fund” for “the deposit insurance fund’s outlays”.

Subsec. (k)(3)(B). Pub. L. 109–173, § 8(a)(38)(C), substituted “the outlays of the Deposit Insurance Fund” for “the deposit insurance fund’s outlays”.

Subsec. (o). Pub. L. 109–173, § 8(a)(39), struck out heading and text of par. (1) and designation and heading of par. (2), redesignated former subpars. (A) to (C) of par. (2) as pars. (1) to (3), respectively, and former cls. (i) and (ii) of par. (2)(A) as subpars. (A) and (B) of par. (1), respectively, and realigned margins. Prior to amendment, text of par. (1) read as follows:

“(A) In general.—In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 1441a (b)(3)(A) of this title.

“(B) Reports.—Subparagraph (A) does not require reports under subsection (k) of this section.”

Pub. L. 109–171 repealed Pub. L. 104–208, § 2704(d)(14)(CC). See 1996 Amendment note below.

1996—Subsec. (a). Pub. L. 104–208, § 2704(d)(14)(AA), which directed substitution of “fund” for “funds” in heading, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(1). Pub. L. 104–208, § 2704(d)(14)(BB)(i), which directed substitution of “the Deposit Insurance Fund” for “a deposit insurance fund”, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(2)(A). Pub. L. 104–208, § 2704(d)(14)(BB)(ii), which directed substitution of “The Deposit Insurance Fund” for “A deposit insurance fund” in introductory provisions and “the outlays of the Deposit Insurance Fund” for “the deposit insurance fund’s outlays” in cl. (ii), was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (k)(5). Pub. L. 104–316 amended heading and text of par. (5) generally. Prior to amendment, text read as follows: “The General Accounting Office shall annually—

“(A) review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section); and

“(B) verify the accuracy of 1 or more of those reports.”

Subsec. (o). Pub. L. 104–208, § 2704(d)(14)(CC), which directed the amendment of subsec. (o) by striking par. (1) and the par. designation and heading of par. (2), redesignating subpars. (A) to (C) as pars. (1) to (3), respectively, and cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigning margins, was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (f)(6). Pub. L. 103–325 substituted “Commission” for “Commissssion”.

1992—Subsec. (e)(2)(D)(i). Pub. L. 102–550, § 1603(d)(1)(A), struck out “and” after semicolon at end.

Subsec. (f)(6). Pub. L. 102–550, § 1603(d)(1)(B), (D), in heading substituted “other regulators” for “functional regulators” and in text substituted “appropriate regulator” for “functional regulator (as defined in section 1841 (s) of this title)”.

Subsec. (g)(1)(B). Pub. L. 102–550, § 1603(d)(1)(C), substituted “capitalized (but not well capitalized)” for “capitalized”.

### **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.

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 1996 Amendment**

Amendment by 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 1992 Amendment**

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

### **Effective Date**

Section effective 1 year after Dec. 19, 1991, see section 131(f) of Pub. L. 102–242, set out as an Effective Date of 1991 Amendment note under section 1464 of this title.

### **Regulations**

Section 131(b) of Pub. L. 102–242 provided that: “Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) (and the Corporation, acting in the Corporation’s capacity as insurer of depository institutions under that Act [12 U.S.C. 1811 et seq.]) shall, after notice and opportunity for comment, promulgate final regulations under section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831o] (as added by subsection (a)) not later than 9 months after the date of enactment of this Act [Dec. 19, 1991], and those regulations shall become effective not later than 1 year after that date of enactment.”

### **Deposit of Insurance Proceeds**

Pub. L. 105–18, title V, § 50003, June 12, 1997, 111 Stat. 211, provided that:

“(a) In General.—The appropriate Federal banking agency may, by order, permit an insured depository institution to subtract from the institution’s total assets, in calculating compliance with the leverage limit prescribed under section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831o], an amount not exceeding the qualifying amount attributable to insurance proceeds, if the agency determines that—

“(1) the institution—

“(A) had its principal place of business within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, on the day before the date of any such determination;

“(B) derives more than 60 percent of its total deposits from persons who normally reside within, or whose principal place of business is normally within, areas of intense devastation caused by the major disaster;

“(C) was adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act) before the major disaster; and

“(D) has an acceptable plan for managing the increase in its total assets and total deposits; and

“(2) the subtraction is consistent with the purpose of section 38 of the Federal Deposit Insurance Act.

“(b) Time Limit on Exceptions.—Any exception made under this section shall expire not later than February 28, 1999.

“(c) Definitions.—For purposes of this section:

“(1) Appropriate federal banking agency.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscsprint.html>).

“(2) Insured depository institution.—The term ‘insured depository institution’ has the same meaning as in section 3 of the Federal Deposit Insurance Act.

“(3) Leverage limit.—The term ‘leverage limit’ has the same meaning as in section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831o].

“(4) Qualifying amount attributable to insurance proceeds.—The term ‘qualifying amount attributable to insurance proceeds’ means the amount (if any) by which the institution’s total assets exceed the institution’s average total assets during the calendar quarter ending before the date of any determination referred to in subsection (a)(1)(A), because of the deposit of insurance payments or governmental assistance made with respect to damage caused by, or other costs resulting from, the major disaster.”

Similar provisions were contained in the following prior acts:

Pub. L. 103–76, § 3, Aug. 12, 1993, 107 Stat. 753.

Pub. L. 102–485, § 4, Oct. 23, 1992, 106 Stat. 2772.

### **Transition Rule Regarding Current Directors and Senior Executive Officers**

Section 131(e) of Pub. L. 102–242 provided that:

“(1) Dismissal from office.—Section 38(f)(2)(F)(ii) of the Federal Deposit Insurance Act [12 U.S.C. 1831o (f)(2)(F)(ii)] (as added by subsection (a)) shall not apply with respect to—

“(A) any director whose current term as a director commenced on or before the date of enactment of this Act [Dec. 19, 1991] and has not been extended—

“(i) after that date of enactment, or

“(ii) to evade section 38 (f)(2)(F)(ii); or

“(B) any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

“(i) after that date of enactment, or

“(ii) to evade section 38 (f)(2)(F)(ii).

“(2) Restricting compensation.—Section 38(f)(4) of the Federal Deposit Insurance Act [12 U.S.C. 1831o (f)(4)] (as added by subsection (a)) shall not apply with respect to any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act [Dec. 19, 1991] and whose contract of employment has not been renewed or renegotiated—

“(A) after that date of enactment, or

“(B) to evade section 38 (f)(4).”