

1 **TITLE VI—FURTHER IMPROVEMENTS TO THE**
2 **REGULATION OF BANK HOLDING COMPANIES AND**
3 **DEPOSITORY INSTITUTIONS**

4 **SEC. 601. SHORT TITLE.**

5 This title may be cited as the “Bank Holding Company and Depository Institution
6 Regulatory Improvements Act of 2009”.

7 **SEC. 602. TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN**
8 **COMPANIES, THRIFTS, AND CERTAIN OTHER COMPANIES**
9 **UNDER THE BANK HOLDING COMPANY ACT.**

10 (a) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12
11 U.S.C. 1841), is amended—

12 (1) in subsection (a)(5), by striking subsections (E) and (F);

13 (2) in subsection (c)(1)(A), by striking “insured bank” and inserting “insured
14 depository institution”, and by striking “section 1813(h)” and inserting “section
15 1813(c)(2)”; and

16 (3) in subsection (c)(2), by striking subparagraphs (B), (D), (F) and (H), and
17 redesignating existing subparagraphs (C), (E), and (G) as subparagraphs (B), (C), and
18 (D).

19 (b) CEBA EXCEPTION.—Section 4 of the Bank Holding Company Act of 1956 (12
20 U.S.C. 1843), is amended—

21 (1) in subsection (f) by striking paragraphs (1) through (14) and inserting
22 “[reserved]”;

1 (2) in subsection (g) by striking paragraphs (1) and (2) and inserting “[reserved]”;

2 and

3 (3) in subsection (i) by striking paragraphs (1) through (7) and inserting

4 “[reserved]”.

5 (c) CONFORMING CHANGES.— Section 4(h) of the Bank Holding Company Act of 1956
6 (12 U.S.C. 1843(h)), is amended—

7 (1) in paragraph (1), by striking “subparagraph (D), (F), (G), or (H)” and inserting
8 “subparagraph (D)”; and

9 (2) in paragraph (2), by striking “subparagraph (D), (F), (G), or (H)” and inserting
10 “subparagraph (D)”.

11 (d) FOREIGN TIER 1 FINANCIAL HOLDING COMPANIES.—A Foreign Tier 1 financial holding
12 company shall be subject to the provisions of section 2(h)(2) (12 U.S.C. 1841(h)(2)) in the same
13 manner and to the same extent as if the Foreign Tier 1 financial holding company were a bank
14 holding company.

15 **SEC. 603. REGISTRATION OF CERTAIN COMPANIES AS BANK HOLDING**
16 **COMPANIES.**

17 Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by
18 adding at the end the following new subsection:

19 “(h) CONVERSION TO BANK HOLDING COMPANY BY OPERATION OF LAW.—

20 “(1) CONVERSION BY OPERATION OF LAW.—A company that, on the day before the
21 date of enactment of the Bank Holding Company and Depository Institution Regulatory
22 Improvements Act of 2009, was not a bank holding company but which, by reason of the
23 amendments made in section 602 of the Bank Holding Company and Depository

1 Institution Regulatory Improvements Act of 2009, becomes a bank holding company by
2 operation of law, shall register as a bank holding company with the Board in accordance
3 with section 5(a) within 90 days of the date of enactment of that Act.

4 “(2) COMPLIANCE WITH BANK HOLDING COMPANY ACT.—With respect to any
5 company described in paragraph (1), the Board may grant temporary exemptions or
6 provide other appropriate temporary relief to permit such company to implement
7 measures necessary to comply with the requirements under the Bank Holding Company
8 Act.”.

9 **SEC. 604. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES;**
10 **REGULATION OF FUNCTIONALLY REGULATED**
11 **SUBSIDIARIES.**

12 (a) REPORTS OF BANK HOLDING COMPANIES.—Section 5(c)(1)(B) of the Bank Holding
13 Company Act of 1956 (12 U.S.C. 1844(c)(1)(B)) is amended to read as follows:

14 “(B) USE OF EXISTING REPORTS.—The Board shall, to the fullest extent
15 possible, use:

16 “(I) reports that a bank holding company or any subsidiary of such
17 company has been required to provide to other Federal or State regulatory
18 agencies;

19 “(II) information that is otherwise required to be reported publicly;

20 and

21 “(III) externally audited financial statements.”.

22 (b) FUNCTIONALLY REGULATED SUBSIDIARY.—Section 5(c)(1) of the Bank Holding
23 Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by adding at the end the following new

1 subparagraph:

2 “(C) DEFINITION.—For purposes of this subsection and section 6, the term

3 ‘functionally regulated subsidiary’ means any:

4 “(i) national bank and Federal branch or Federal agency of a
5 foreign bank, for which the Office of the Comptroller of the Currency is
6 the Federal regulatory agency until the functions of the Office of the
7 Comptroller of the Currency are transferred to the National Bank
8 Supervisor, after which time the National Bank Supervisor will be the
9 Federal regulatory agency;

10 “(ii) State-chartered bank (other than a member bank of the Federal
11 Reserve System) and insured State branch of a foreign bank, for which the
12 Federal Deposit Insurance Corporation is the Federal regulatory agency;

13 “(iii) savings association, for which the Office of Thrift
14 Supervision is the Federal regulatory agency until the functions of the
15 Office of Thrift Supervision are transferred to the National Bank
16 Supervisor, after which time the National Bank Supervisor will be the
17 Federal regulatory agency;

18 “(iv) broker or dealer registered with the Securities and Exchange
19 Commission under the Securities Exchange Act of 1934, for which the
20 Securities and Exchange Commission is the Federal regulatory agency;

21 “(v) investment company registered with the Securities and
22 Exchange Commission under the Investment Company Act of 1940, for
23 which the Securities and Exchange Commission is the Federal regulatory

1 agency;

2 “(vi) investment adviser registered with the Securities and
3 Exchange Commission under the Investment Advisers Act of 1940, for
4 which the Securities and Exchange Commission is the Federal regulatory
5 agency; and

6 “(vii) futures commission merchant, commodity trading advisor,
7 and commodity pool operator registered with the Commodity Futures
8 Trading Commission under the Commodity Exchange Act, for which the
9 Commodity Futures Trading Commission is the Federal regulatory
10 agency.”.

11 (c) EXAMINATIONS OF BANK HOLDING COMPANIES.—Section 5(c)(2)(B) of the Bank
12 Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)(B)) is amended to read as follows:

13 “(B) FUNCTIONALLY REGULATED SUBSIDIARIES.— The Board shall, as far
14 as possible, use reports of examination of bank holding companies and their
15 functionally regulated subsidiaries made by other Federal or State regulatory
16 authorities.”.

17 (d) REGULATION OF FINANCIAL HOLDING COMPANIES.—Section 5(c) of the Bank Holding
18 Company Act of 1956 (12 U.S.C. 1844(c)) is amended by striking “(c) RESTRICTED FOCUS OF
19 EXAMINATIONS” and all that follows in that subsection (c).

20 (e) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK
21 HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841, *et seq.*) is
22 amended by striking section 10A (12 U.S.C. 1848a) in its entirety.

1 (f) ACQUISITIONS OF BANKS.—Section 3(c) of the Bank Holding Company Act of 1956
2 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

3 “(7) FINANCIAL STABILITY.—In every case, the Board shall take into consideration
4 the extent to which the proposed acquisition, merger, or consolidation would result in
5 greater or more concentrated risks to the stability of the United States financial system or
6 the economy of the United States.”.

7 **SEC. 605. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN**
8 **WELL CAPITALIZED AND WELL MANAGED**

9 Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)), is
10 amended—

11 (1) in subparagraph (B), by striking “and”;

12 (2) by redesignating subparagraph (C) as subparagraph (D);

13 (3) by adding after subparagraph (B) the following new subparagraph:

14 “(C) the bank holding company is well capitalized and well managed;
15 and”; and

16 (4) by amending redesignated subparagraph (D)(ii) to read as follows:

17 “(ii) a certification that the company meets the requirements of
18 subparagraphs A through C.”.

19 **SEC. 606. STANDARDS FOR INTERSTATE ACQUISITIONS.**

20 (a) Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C.
21 1842(d)(1)(A)) is amended—

22 (1) by striking “adequately capitalized” and inserting “well capitalized”; and

23 (2) by striking “adequately managed” and inserting “well managed”.

1 (b) Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B))
2 is amended to read as follows:

3 “(B) the responsible agency determines that the resulting bank will be well
4 capitalized and well managed upon the consummation of the transaction.”.

5 **SEC. 607. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS**
6 **WITH AFFILIATES.**

7 (a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c), is amended—

8 (1) in subsection (b)(1), by amending subparagraph (D) to read as follows:

9 “(D) any investment fund with respect to which a member bank or affiliate
10 thereof is an investment adviser; and”;

11 (2) in subsection (b)(7)(A), by adding after “affiliate” the following: “(including a
12 purchase of assets subject to an agreement to repurchase)”;

13 (3) in subsection (b)(7)(C), by striking “, including assets subject to an agreement
14 to repurchase,”;

15 (4) in subsection (b)(7)(D), by adding after “acceptance of securities” the
16 following: “or other debt obligations”, and by striking at the end “or”;

17 (5) in subsection (b)(7), by adding at the end the following:

18 “(F) securities borrowing and lending transactions with an affiliate to the
19 extent that the transactions create credit exposure of the member bank to
20 the affiliate; or

21 “(G) current and potential future credit exposure to the affiliate on
22 derivative transactions with the affiliate;”;

23 (6) in subsection (c)(1), by striking “at the time of the transaction,” and adding in

1 lieu thereof “at all times”;

2 (7) in subsection (c), by striking paragraph (2) and redesignating paragraphs (3)
3 through (5) as paragraphs (2) through (4), respectively;

4 (8) in subsection (c)(3) (as redesignated by paragraph (7)), by adding after
5 “securities” the following: “or other debt obligations”;

6 (9) in subsection (f)(2), by adding at the end the following: “The Board may not,
7 by regulation or order, grant an exemption under this section unless the Board obtains the
8 concurrence of the Chairman of the Federal Deposit Insurance Corporation.”; and

9 (10) in subsection (f), by redesignating paragraph (3) as paragraph (4) and adding
10 after paragraph (2) a new paragraph (3) as follows:

11 “(3) With respect to a transaction or relationship involving an individual national
12 bank, the Board may not grant an exemption under this section unless the Board obtains
13 the concurrence of the Director of the National Bank Supervisor (in addition to obtaining
14 the concurrence of the Chairman of the Federal Deposit Insurance Corporation under
15 paragraph (2)).”.

16 (b) Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371-1(e)), is amended by
17 adding at the end a new paragraph as follows:

18 “(3) The Board may not grant an exemption or exclusion under this section unless
19 the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance
20 Corporation.”.

21 **SEC. 608. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL**
22 **SUBSIDIARIES.**

23 Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended by striking

1 paragraph (3) in its entirety and redesignating the subsequent paragraphs accordingly.

2 **SEC. 609. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON**
3 **DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS,**
4 **REVERSE REPURCHASE AGREEMENTS, AND SECURITIES**
5 **LENDING AND BORROWING TRANSACTIONS.**

6 Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

7 (1) in subsection (b)(1), by striking “shall include all direct or indirect” and all
8 that follows in that paragraph through “commitment;” and adding in lieu the following:

9 “shall include—

10 (A) all direct or indirect advances of funds to a person made on the basis
11 of any obligation of that person to repay the funds or repayable from specific
12 property pledged by or on behalf of the person;

13 (B) to the extent specified by the National Bank Supervisor, such term
14 shall also include any liability of a national banking association to advance funds
15 to or on behalf of a person pursuant to a contractual commitment; and

16 (C) credit exposure to a person arising from a derivative transaction,
17 repurchase agreement, reverse repurchase agreement, securities lending
18 transaction, or securities borrowing transaction between the national banking
19 association and the person;”;

20 (2) in subsection (b) after “any similar entity or organization.”, by adding a new
21 paragraph (3) as follows:

22 “(3) the term “derivative transaction” means any transaction that is a contract,
23 agreement, swap, warrant, note, or option that is based, in whole or in part, on the value

1 of, any interest in, or any quantitative measure or the occurrence of any event relating to,
2 one or more commodities, securities, currencies, interest or other rates, indices, or other
3 assets.”; and

4 (3) in subsection (d), after “attributed to another person.”, by adding a new
5 paragraph (3) as follows:

6 “(3) The National Bank Supervisor shall prescribe rules to administer and carry
7 out the purposes of this section with respect to credit exposures arising from any
8 derivative transaction, repurchase agreement, reverse repurchase agreement, securities
9 lending transaction, or securities borrowing transaction. Rules required to be prescribed
10 under this paragraph (3) shall take effect, in final form, not later than 180 days after the
11 date of enactment of this section.”.

12 **SEC. 610. APPLICATION OF NATIONAL BANK LENDING LIMITS TO INSURED**
13 **STATE BANKS.**

14 Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding
15 at the end a new subsection (y) as follows:

16 “(y) APPLICATION OF LENDING LIMITS TO INSURED STATE BANKS.—Section 84 of this
17 title shall apply to every insured depository institution in the same manner and to the same extent
18 as if the insured depository institution were a national banking association.”.

19 **SEC. 611. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.**

20 (a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The
21 National Bank Consolidation and Merger Act (12 U.S.C. 215, *et seq.*) is amended by adding a
22 new section 7 and renumbering accordingly:

23 **“SEC. 7. PROHIBITION ON CONVERSION.**

1 “A national banking association may not convert to a State bank during any period of
2 time in which it is subject to a Cease and Desist order, memorandum of understanding, or other
3 enforcement action entered into with or issued by the National Bank Supervisor.”; and

4 (b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised
5 Statutes (12 U.S.C. 35) is amended by adding at the end the following new sentence:

6 “The National Bank Supervisor shall not approve the conversion of a State bank
7 to a national banking association during any period of time in which the State bank is
8 subject to a Cease and Desist order, memorandum of understanding, or other enforcement
9 action entered into or issued by a State bank supervisor, the Federal Deposit Insurance
10 Corporation, the Board of Governors of the Federal Reserve System or a Federal Reserve
11 Bank.”.

12 **SEC. 612. DE NOVO BRANCHING INTO STATES.**

13 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes (12 U.S.C.
14 36(g)(1)(A)) is amended to read as follows:

15 “(A) the law of the State where the branch is located, or is to be located,
16 would permit establishment of the branch if the national bank were a state bank
17 chartered by such State;”.

18 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance
19 Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

20 “(i) the law of the State where the branch is located, or is to be located,
21 would permit establishment of the branch if the bank were a State bank chartered
22 by such State;”.

1 **SEC. 613. LENDING LIMITS TO INSIDERS.**

2 Section 22(h)(9)(D)(ii) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(D)(ii)) is
3 amended by striking “.” and adding “, except that a member bank shall be deemed to have
4 extended credit to a person if the member bank has credit exposure to the person arising from a
5 derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending
6 transaction, or securities borrowing transaction between the member bank and the person.”.

7 **SEC. 614. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.**

8 (a) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by
9 adding at the end the following:

10 “(z) GENERAL PROHIBITION.—An insured depository institution shall not purchase an
11 asset from, or sell an asset to, one of its executive officers, directors, or principal shareholders or
12 any related interest of such person (as such terms are defined in 22(h) of Federal Reserve Act)
13 unless the transaction is on market terms and, if the transaction represents more than 10 percent
14 of the institution’s capital stock and surplus, the transaction has been approved in advance by a
15 majority of the institution’s board of directors (with interested directors of the insured depository
16 institution not participating in the approval of the transaction).”.

17 (b) FDIC RULEMAKING AUTHORITY.—The Federal Deposit Insurance Corporation may
18 prescribe rules to implement the requirements of section (a).

19 (c) AMENDMENTS TO THE FEDERAL RESERVE ACT.— Section 22(d) of the Federal Reserve
20 Act (12 U.S.C. 375) is amended by striking the section in its entirety.

21

1 **SEC. 615. ASSESSMENT OF FEES FOR EXAMINATIONS.**

2 Section 36 of the Federal Deposit Insurance Act (12 U.S.C. 1831m) is amended by
3 adding at the end the following:

4 “(k) Notwithstanding any other provision of law, the Board of Governors of the Federal
5 Reserve System, the Federal Deposit Insurance Corporation and the National Bank Supervisor
6 shall jointly adopt rules to coordinate the assessment of fees for the examination of banks subject
7 to their jurisdiction as follows—

8 “(1) BANKS WITH ASSETS IN EXCESS OF \$10 BILLION.—

9 “(A) The National Bank Supervisor shall assess fees on national banks
10 with total consolidated assets greater than \$10,000,000,000 in such amounts as are
11 necessary to fully defray the costs of examination, taking into account their size,
12 complexity, and financial condition, and to provide sufficient funds for the
13 agency’s operations, taking into account the fees collected pursuant to paragraph
14 (2).

15 “(B) The Board of Governors of the Federal Reserve System shall assess
16 fees on State member banks with total consolidated assets greater than
17 \$10,000,000,000 at a rate that is identical to the rate that is assessed by the
18 National Bank Supervisor.

19 “(C) The Federal Deposit Insurance Corporation shall assess fees on State
20 nonmember banks with total consolidated assets greater than \$10,000,000,000 at a
21 rate that is identical to the rate that is assessed by the National Bank Supervisor.

22 Any fees collected by the Federal Deposit Insurance Corporation under this

1 subsection and not used to defray the cost of examinations shall be deposited into
2 the Deposit Insurance Fund.

3 “(2) NATIONAL BANKS WITH ASSETS LESS THAN \$10 BILLION.—The fees to be
4 assessed by the National Bank Supervisor on national banks with total consolidated assets
5 less than \$10,000,000,000 shall not exceed the average fees assessed by the States for
6 examinations on State banks taking into account their size, complexity and financial
7 condition. In assessing fees, the National Bank Supervisor may provide for differential
8 fees depending on the asset size of banks, except that the rates shall not exceed the
9 average rate assessed by the States for examinations of State banks of comparable size.

10 “(3) HOLDING COMPANIES.—The Board of Governors of the Federal Reserve
11 System or the Federal Reserve Banks shall assess fees on bank holding companies,
12 including Tier 1 financial holding companies, sufficient to defray the cost of their
13 examination.”.

14 **SEC. 616. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING**
15 **COMPANIES.**

16 Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended
17 by adding after “evasions thereof” the following:

18 “, including regulations relating to the capital levels of bank holding companies.”.
19
20