

## 12 USC Ch. 18: BANK SERVICE COMPANIES

### From Title 12—BANKS AND BANKING

#### CHAPTER 18—BANK SERVICE COMPANIES

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### §1861. Short title and definitions

#### (a) Short title

This chapter may be cited as the "Bank Service Company Act".

#### (b) Definitions

For the purpose of this chapter—

(1) the term "appropriate Federal banking agency" shall have the meaning provided in section 1813(q) of this title;

(2) the term "bank service company" means—

(A) any corporation—

(i) which is organized to perform services authorized by this chapter; and

(ii) all of the capital stock of which is owned by 1 or more insured depository institutions; and

(B) any limited liability company—

(i) which is organized to perform services authorized by this chapter; and

(ii) all of the members of which are 1 or more insured depository institutions.

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "depository institution" means, except when such term appears in connection with the term "insured depository institution", an insured bank, a savings association, a financial institution subject to examination by the appropriate Federal banking agency or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board;

(5) INSURED DEPOSITORY INSTITUTION.—The terms "depository institution" and "savings association" have the same meanings as in section 1813 of this title;

(6) the term "invest" includes any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment;

(7) the term "limited liability company" means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 1813 of this title) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company;

(8) the term "principal investor" means the insured depository institution that has the largest dollar amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal dollar amounts invested in a bank service company, the company shall, prior to commencing operations, select one of the insured depository institutions as its principal investor and shall notify the depository institution's appropriate Federal banking agency of that choice within 5 business days of its selection; and

(9) the terms "State depository institution", "Federal depository institution", "State savings association" and "Federal savings association" have the same meanings as in section 1813 of this title.

(Pub. L. 87–856, §1, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1540; Pub. L. 97–457, §32(a), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104–208, div. A, title II, §2613(a), (b), Sept. 30, 1996, 110 Stat. 3009–476; Pub. L. 109–351, title VI, §602(b)(1), Oct. 13, 2006, 120 Stat. 1979; Pub. L. 111–203, title III, §357(1), (2), July 21, 2010, 124 Stat. 1547, 1548.)

#### AMENDMENTS

**2010**—Subsec. (b)(4). Pub. L. 111–203, §357(1), inserted "a savings association," after "an insured bank," substituted "appropriate Federal banking agency" for "Director of the Office of Thrift Supervision", and struck out ", the Federal Savings and Loan Insurance Corporation," after "Federal Deposit Insurance Corporation".

Subsec. (b)(5). Pub. L. 111–203, §357(2), substituted "terms 'depository institution' and 'savings association' have the same meanings as in section 1813" for "term 'insured depository institution' has the same meaning as in section 1813(c)".

**2006**—Subsec. (b)(2)(A)(ii), (B)(ii). Pub. L. 109–351, §602(b)(1)(F), substituted "insured depository institutions" for "insured banks".

Subsec. (b)(4). Pub. L. 109–351, §602(b)(1)(A), inserted ", except when such term appears in connection with the term 'insured depository institution'," after "means" and substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

Subsec. (b)(5). Pub. L. 109–351, §602(b)(1)(B), added par. (5) and struck out former par. (5) which defined "insured bank".

Subsec. (b)(8). Pub. L. 109–351, §602(b)(1)(G), substituted "means the insured depository institution" for "means the insured bank", "insured depository institutions" for "insured banks" in two places, and "the depository institution's appropriate" for "the bank's appropriate".

Subsec. (b)(9). Pub. L. 109–351, §602(b)(1)(C)–(E), added par. (9).

**1996**—Subsec. (a). Pub. L. 104–208, §2613(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "This chapter may be cited as the 'Bank Service Corporation Act'."

Subsec. (b)(2). Pub. L. 104–208, §2613(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the term 'bank service corporation' means a corporation organized to perform services authorized by this chapter, all of the capital stock of which is owned by one or more insured banks;"

Subsec. (b)(6). Pub. L. 104–208, §2613(b)(2), substituted "company" for "corporation" and struck out "and" after semicolon at end.

Subsec. (b)(7). Pub. L. 104–208, §2613(b)(3), added par. (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 104–208, §2613(b)(4), substituted "company" for "corporation" wherever appearing and "equity" for "capital stock".

Pub. L. 104–208, §2613(b)(3), redesignated par. (7) as (8).

**1983**—Subsec. (b)(4). Pub. L. 97–457 substituted "a" for "or another" after "insured bank," and inserted reference to a financial institution insured by State law and eligible to be insured by certain Federal agencies.

**1982**—Subsec. (a). Pub. L. 97–320 substituted provision that this chapter may be cited as the "Bank Service Corporation Act" for provision that term "Federal supervisory agency" meant the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Board of Directors of the Federal Deposit Insurance Corporation.

Subsec. (b). Pub. L. 97–320 substituted definitions of "appropriate Federal banking agency", "bank service corporation", "Board", "depository institution", "insured bank", "invest", and "principal investor" for provision that term "bank services" meant services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

Subsec. (c). Pub. L. 97–320 redesignated provisions of subsec. (c) defining "bank service corporation" as (b)(2), and revised definition.

Subsec. (d). Pub. L. 97–320 redesignated provisions of subsec. (d) as (b)(6).

## **EFFECTIVE DATE OF 2010 AMENDMENT**

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

## **§1862. Amount of investment in bank service company**

Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 1464(c)(4)(B) of this title, an insured depository institution may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank service company. No insured depository institution shall invest more than 5 per centum of its total assets in bank service companies.

(Pub. L. 87–856, §2, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1541; Pub. L. 104–208, div. A, title II, §2613(c), Sept. 30, 1996, 110 Stat. 3009–477; Pub. L. 109–351, title VI, §602(a), (b)(2), Oct. 13, 2006, 120 Stat. 1978, 1979.)

## **AMENDMENTS**

**2006**—Pub. L. 109–351 inserted "or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 1464(c)(4)(B) of this title" after "relating to banks" and substituted "insured depository institution" for "insured bank" in two places.

**1996**—Pub. L. 104–208 substituted "company" for "corporation" in section catchline and "company" and "companies" for "corporation" and "corporations", respectively, in text.

**1982**—Pub. L. 97–320 substituted provisions relating to the maximum permissible amount of investment in a bank service corporation by an insured bank for provisions which read as follows:

"(a) No limitation or prohibition otherwise imposed by any provision of Federal law exclusively relating to banks shall prevent any two or more banks from investing not more than 10 per centum of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation.

"(b) If stock in a bank service corporation has been held by two banks, and one of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it."

### **§1863. Permissible bank service company activities for depository institutions**

Without regard to the provisions of sections 1864 and 1865 of this title, an insured depository institution may invest in a bank service company that performs, and a bank service company may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

(Pub. L. 87–856, §3, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1541; Pub. L. 104–208, div. A, title II, §2613(d), Sept. 30, 1996, 110 Stat. 3009–477; Pub. L. 109–351, title VI, §602(a), Oct. 13, 2006, 120 Stat. 1978.)

### **AMENDMENTS**

**2006**—Pub. L. 109–351 substituted "insured depository institution" for "insured bank".

**1996**—Pub. L. 104–208 substituted "company" for "corporation" wherever appearing in section catchline and text.

**1982**—Pub. L. 97–320 substituted provisions relating to permissible bank service corporation activities for depository institutions for provisions that a bank service corporation must provide bank services to a bank that applied for them if the applying bank competed with a bank which held stock in the corporation unless comparable services were available elsewhere at competitive cost or furnishing the services would be beyond the practical capacity of the corporation.

### **§1864. Permissible bank service company activities for other persons**

#### **(a) Services permissible other than taking deposits**

A bank service company may provide to any person any service authorized by this section, except that a bank service company shall not take deposits.

#### **(b) Services to be performed in State where shareholders or members are located**

Except as permissible under subsection (c), (d), or (e) or with the prior approval of the Board under section 1865(b) of this title in accordance with subsection (f) of this section—

(1) a bank service company shall not perform the services authorized by this section in any State other than that State in which its shareholders or members are located; and

(2) all insured bank shareholders or members of a bank service company shall be located in the same State.

#### **(c) Performance where State bank or savings association is shareholder or member**

A bank service company in which a State bank or State savings association is a shareholder or member shall perform only those services that such State bank or State savings association shareholder or member is authorized to perform under the law of the State in which such State bank or State savings association operates and shall perform such services only at locations in the State in which such State bank or State savings association shareholder or member could be authorized to perform such services.

#### **(d) Performance where national bank or Federal savings association is shareholder or member**

A bank service company in which a national bank or Federal savings association is a shareholder or member shall perform only those services that such national bank or Federal savings association shareholder or member is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank or Federal savings association shareholder or member could be authorized to perform such services.

#### **(e) Performance where State bank and national bank are shareholders or members**

A bank service company may perform—

(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

(2) such services only at locations in a State in which each such shareholder or member is authorized to perform such services.

**(f) Geographic location**

Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks or savings associations to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 1843(c)(8) of this title as of the day before November 12, 1999.

(Pub. L. 87–856, §4, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 97–457, §32(b)(2), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104–208, div. A, title II, §2613(e), Sept. 30, 1996, 110 Stat. 3009–477; Pub. L. 106–102, title I, §102(b)(2), Nov. 12, 1999, 113 Stat. 1342; Pub. L. 109–351, title VI, §602(b)(3), Oct. 13, 2006, 120 Stat. 1979.)

**AMENDMENTS**

**2006**—Subsec. (b). Pub. L. 109–351, §602(b)(3)(A), inserted "as permissible under subsection (c), (d), or (e) or" after "Except" in introductory provisions.

Subsec. (c). Pub. L. 109–351, §602(b)(3)(B), inserted "or State savings association" after "State bank" wherever appearing.

Subsec. (d). Pub. L. 109–351, §602(b)(3)(C), inserted "or Federal savings association" after "national bank" wherever appearing.

Subsec. (e). Pub. L. 109–351, §602(b)(3)(D), inserted heading and amended text generally. Prior to amendment, text read as follows: "A bank service company that has both national bank and State bank shareholders or members shall perform only those services that may lawfully be performed by both any shareholder or member of the company which is a national bank under the law of the United States and any shareholder or member of the company which is a State bank under the law of the State in which any such State bank operate and shall perform such services only at locations in the State at which both its State bank and national bank shareholders or members could be authorized to perform such services."

Subsec. (f). Pub. L. 109–351, §602(b)(3)(E), inserted "or savings associations" after "location of banks".

**1999**—Subsec. (f). Pub. L. 106–102 inserted before period at end "as of the day before November 12, 1999".

**1996**—Pub. L. 104–208, §2613(e)(5), substituted "company" for "corporation" in section catchline.

Subsec. (a). Pub. L. 104–208, §2613(e)(1), substituted "company" for "corporation" in two places.

Subsec. (b). Pub. L. 104–208, §2613(e)(1), (2), inserted "or members" after "shareholders" wherever appearing in text and substituted "company" for "corporation" in two places.

Subsecs. (c), (d). Pub. L. 104–208, §2613(e)(1), (3), inserted "or member" after "shareholder" wherever appearing and substituted "company" for "corporation".

Subsec. (e). Pub. L. 104–208, §2613(e)(1), (4), substituted "company" for "corporation", "any shareholder or member of the company which is a national bank" for "its national bank shareholder or shareholders", "any shareholder or member of the company which is a State bank" for "its State bank shareholder or shareholders", and "any such State bank" for "such State bank or banks", and inserted "or members" after "national bank and State bank shareholders" and after "State bank and national bank shareholders".

Subsec. (f). Pub. L. 104–208, §2613(e)(1), substituted "company" for "corporation".

**1983**—Subsecs. (d), (e). Pub. L. 97–457 substituted "under the law of the United States" for "under this chapter".

**1982**—Pub. L. 97–320 substituted provisions relating to bank service corporation activities for other persons for provisions which read: "No bank service corporation may engage in any activity other than the performance of bank services for banks."

**EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

**§1865. Prior approval for investments in bank service companies**

**(a) Approval of Federal banking agency**

No insured depository institution shall invest in the capital stock of a bank service company that performs any service under authority of subsection (c), (d), or (e) of section 1864 of this title without prior notice, as determined by the appropriate Federal banking agency for the insured depository institution.



### **(b) Approval of Board**

No insured depository institution shall invest in the capital stock of a bank service company that performs any service authorized only under authority of section 1864(f) of this title and no bank service company shall perform any activity authorized only under section 1864(f) of this title without the prior approval of the Board.

### **(c) Considerations in determining approval**

In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of any insured depository institution and bank service company involved, including the financial capability of the insured depository institution to make a proposed investment under this chapter, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

### **(d) Failure to act on application for approval**

In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

(Pub. L. 87–856, §5, Oct. 23, 1962, 76 Stat. 1133; Pub. L. 95–630, title III, §308, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 103–325, title III, §323, Sept. 23, 1994, 108 Stat. 2227; Pub. L. 104–208, div. A, title II, §2613(f), Sept. 30, 1996, 110 Stat. 3009–478; Pub. L. 109–351, title VI, §602(b)(4), Oct. 13, 2006, 120 Stat. 1980.)

## **AMENDMENTS**

**2006**—Subsec. (a). Pub. L. 109–351, §602(b)(4)(A), substituted "insured depository institution" for "insured bank", struck out "bank's" before "appropriate Federal banking agency", and inserted "for the insured depository institution" before period at end.

Subsec. (b). Pub. L. 109–351, §602(b)(4)(B), substituted "insured depository institution" for "insured bank" and inserted "authorized only" after "performs any service" and "perform any activity".

Subsec. (c). Pub. L. 109–351, §602(b)(4)(C), substituted "any insured depository institution" for "the bank or banks" and "capability of the insured depository institution" for "capability of the bank".

**1996**—Pub. L. 104–208 substituted "companies" for "corporations" in section catchline and "company" for "corporation" wherever appearing in text.

**1994**—Subsec. (a). Pub. L. 103–325, §323(1), substituted "prior notice, as determined by" for "the prior approval of".

Subsec. (c). Pub. L. 103–325, §323(2), inserted "or whether to approve or disapprove any notice" after "approval".

**1982**—Pub. L. 97–320 substituted provisions relating to prior approval for investments in bank service corporations for provisions relating to regulation and examination of bank services for a regularly examined bank or its subsidiary or affiliate whether performed on or off its premises. See section 1867(c) of this title.

**1978**—Pub. L. 95–630 among other changes, substituted provisions requiring banks regularly examined by a Federal supervisory agency, which cause to be performed, by contract or otherwise, any bank service for itself, to notify such supervisory agency of the existence of a service relationship within 30 days after making such service contract or performance of service, whichever occurs first for provisions requiring that no bank subject to examination by a Federal supervisory agency may cause to be performed, by contract or otherwise, any bank service for itself unless satisfactory assurances are furnished to such supervisory agency by both the bank and the party performing such services that the performances thereof will be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself.

## **EFFECTIVE DATE OF 1978 AMENDMENT**

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

## **§1866. Services to nonstockholders or nonmembers**

No bank service company shall unreasonably discriminate in the provision of any services authorized under this chapter to any depository institution that does not own stock in or is not a member of the service company on the basis of the fact that such depository institution is in competition with an institution that owns stock in or is a member of the bank service company, except that—

(1) it shall not be considered unreasonable discrimination for a bank service company to provide services to a nonstockholding or nonmember institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(2) a bank service company may refuse to provide services to a nonstockholding or nonmember institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service company.

(Pub. L. 87–856, §6, Oct. 23, 1962, as added Pub. L. 97–320, [title VII, §709, Oct. 15, 1982](#), 96 Stat. 1543; amended Pub. L. 104–208, [div. A, title II, §2613\(g\), Sept. 30, 1996](#), 110 Stat. 3009–478.)

## AMENDMENTS

**1996**—Pub. L. 104–208, §2613(g)(1)–(4), (6), in section catchline, inserted "or nonmembers" after "nonstockholders", and in introductory provisions of text, substituted "company" for "corporation" wherever appearing and "such depository institution" for "the nonstockholding institution" and inserted "or is not a member of" after "does not own stock in" and "or is a member of" after "that owns stock in".

Pars. (1), (2). Pub. L. 104–208, §2613(g)(1), (5), substituted "company" for "corporation" wherever appearing and inserted "or nonmember" after "nonstockholding".

## §1867. Regulation and examination of bank service companies

### (a) Principal investor

A bank service company shall be subject to examination and regulation by the appropriate Federal banking agency of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder or principal member of such a bank service company may authorize any other Federal banking agency that supervises any other shareholder or member of the bank service company to make such an examination.

### (b) Applicability of section 1818 of this title

A bank service company shall be subject to the provisions of section 1818 of this title as if the bank service company were an insured depository institution. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service company.

### (c) Services performed by contract or otherwise

Notwithstanding subsection (a) of this section, whenever a depository institution that is regularly examined by an appropriate Federal banking agency, or any subsidiary or affiliate of such a depository institution that is subject to examination by that agency, causes to be performed for itself, by contract or otherwise, any services authorized under this chapter, whether on or off its premises—

(1) such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by the depository institution itself on its own premises, and

(2) the depository institution shall notify each such agency of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first.

### (d) Issuance of regulations and orders

The Board and the appropriate Federal banking agencies are authorized to issue such regulations and orders as may be necessary to enable them to administer and to carry out the purposes of this chapter and to prevent evasions thereof.

(Pub. L. 87–856, §7, Oct. 23, 1962, as added Pub. L. 97–320, [title VII, §709, Oct. 15, 1982](#), 96 Stat. 1543; amended Pub. L. 97–457, [§32\(b\)\(1\), Jan. 12, 1983](#), 96 Stat. 2511; Pub. L. 104–208, [div. A, title II, §2613\(h\), Sept. 30, 1996](#), 110 Stat. 3009–478; Pub. L. 109–351, [title VI, §602\(b\)\(5\), Oct. 13, 2006](#), 120 Stat. 1980; Pub. L. 111–203, [title III, §357\(3\), July 21, 2010](#), 124 Stat. 1548.)

## AMENDMENTS

**2010**—Subsec. (c)(2). Pub. L. 111–203 inserted "each" after "notify".

**2006**—Subsec. (b). Pub. L. 109–351, §602(b)(5)(A), substituted "insured depository institution" for "insured bank".

Subsec. (c). Pub. L. 109–351, §602(b)(5)(B), substituted "a depository institution" for "a bank" in two places in introductory provisions and "the depository institution" for "the bank" in pars. (1) and (2).

**1996**—Pub. L. 104–208, §2613(h)(3), substituted "companies" for "corporations" in section catchline.

Subsec. (a). Pub. L. 104–208, §2613(h)(1), (2), substituted "company" for "corporation" wherever appearing and inserted "or principal member" after "principal shareholder" and "or member" after "other shareholder".

Subsec. (b). Pub. L. 104–208, §2613(h)(1), substituted "company" for "corporation" wherever appearing.

**1983**—Subsec. (b). Pub. L. 97–457 substituted reference to section 1818 of this title for reference to the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(b) et seq.).

## EFFECTIVE DATE OF 2010 AMENDMENT

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