

## **Section-by-section Analysis of the Financial Services Regulatory Relief Act of 2006**

### *Section 101*

This section directs the SEC to consult with and seek the concurrence of the Federal banking agencies in implementing rules under Section 201 of the Gramm-Leach-Bliley Act. In addition, this section specifies that such rulemaking shall supersede any existing proposed or final rules issued by the SEC.

### *Section 201*

This section authorizes the payment of interest on balances held by depository institutions at a Federal reserve bank.

### *Section 202*

This section provides the Federal Reserve with greater flexibility to set the ratio of reserves a depository institution must maintain against its transaction accounts, allowing a zero reserve ratio, if appropriate.

### *Section 301*

This section permits a national bank to provide in its articles of association which method of electing its directors best suits its business goals and needs – a national bank could choose whether to allow cumulative voting, which is mandated by the current law.

### *Section 302*

This section provides more flexibility than current law to a national bank to pay dividends as deemed appropriate by its board of directors. Consistent with safety and soundness, the amendment retains the current requirements that OCC approval is necessary if the dividend exceeds a certain amount. These same dividend approval requirements also apply to State member banks except the FRB and not the OCC is the approval authority.

### *Section 303*

This section gives the OCC the same removal authority as the other banking agencies to remove an institution-affiliated party (IAP) from the banking business.

### *Section 304*

This section deletes references to two obsolete provisions regarding capital requirements, but would make no changes to the requirements that a national bank cannot reduce its capital unless approved by two-thirds of its shareholders and by the OCC (technical amendment).

#### *Section 401*

This section amends the definitions of *bank* and *applicable regulatory agency* to include expressly savings associations and the OTS, respectively (thereby subjecting such associations to the same investment adviser and broker-dealer registration requirements as banks).

#### *Section 402*

This section eliminates a cap on the valuation of purchased mortgage servicing rights at 90% of fair value and thereby permits savings associations to value PMSRs, for purposes of certain capital and leverage requirements, at more than 90% up to 100% of fair market value, if the banking agencies jointly find that doing so would not have an adverse effect on the insurance funds or the safety and soundness of insured institutions, consistent with section 475 of FDICIA, as amended by section 1208 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. No. 106-569).

#### *Section 403*

This section expressly provides that a Federal savings association is only a citizen of the State in which its main office is located for purposes of determining diversity jurisdiction.

#### *Section 404*

This section eliminates the limitation in the Loans to One Borrower provision applicable to thrifts that restricts loans to develop domestic residential housing units to units with a purchase price that does not exceed \$500,000.

#### *Section 501*

This section gives military and civilian authorities responsible for buildings erected on Federal property the discretion to extend to credit unions that finance the construction of credit union facilities on Federal land real estate leases at minimal charge.

#### *Section 502*

This section increases the 12-year maturity limitation on Federal credit union loans to 15 years.

#### *Section 503*

This section expands current check selling and cashing authority to persons eligible for membership, and allows Federal credit unions to receive EFTs for anyone eligible to become a member.

#### *Section 504*

This section redefines regulatory capital to address unintended consequences of impending FASB rule change. The new FASB rule would apply purchase accounting to credit union mergers with the unintended result that the merging credit union's capital would not flow forward as capital to the combined continuing credit union (pre-merger "retained earnings" (capital) becomes post-merger "acquired equity" (not capital)). To follow both the new FASB rule while still allowing the capital of both credit unions to flow forward as regulatory capital and thus preserve the incentive for desirable credit union mergers, the redefinition of regulatory capital for purposes of prompt corrective action is necessary.

#### *Section 601*

This section repeals the requirements that:

- executive officers of banks report to their board of directors indebtedness to other banks;
- each bank must update its report of covered loans to executive officers as of each report of condition; and
- executive officers and principal shareholders report to their board of directors loans from correspondent banks.

#### *Section 602*

This section provides parallel investment authority for banks and thrifts to participate in both bank service companies and thrift service companies, while preserving existing activity limits and maximum investment rules, as well as the roles of the Federal regulatory agencies with respect to subsidiary activities of the institutions under their primary jurisdiction.

#### *Section 603*

This section permits banks that are members of the Federal Reserve System to count as reserves the deposits in other banks that are "passed through" by those banks to the Federal Reserve as required reserve balances. Nonmember banks already are able to use such pass-through reserve accounts.

#### *Section 604*

This section directs all federal banking agencies to conduct a review of Call Report requirements every five years to determine which data requirements are no longer necessary or appropriate.

#### *Section 605*

This section increases the small institution exemption in the examination cycle provision from \$250 million to \$500 million.

### *Section 606*

This section eliminates the requirement that the responsible agency request a competitive factors report from the other Federal banking agencies. It also requires the responsible agency to request a report from the Attorney General and provide a copy of the request to the FDIC (when the FDIC is not the responsible agency).

This section also exempts merger transactions between insured depository institutions and their affiliates, which are generally accepted as not presenting any competitive issues, from competitive factors review by the Attorney General and other banking agencies and the post-approval waiting period.

### *Section 607*

This section provides that when a depository institution submits information to a Federal, State, or foreign bank regulator as part of the supervisory process, the institution does not waive any privilege it may claim with respect to that information.

### *Section 608*

This section clarifies that conversions, which result in more than one bank, would continue to require deposit insurance applications from the resulting institutions, as well as review and approval by the appropriate Federal banking agency. In addition, the amendment would clarify that no applications under the Bank Merger Act would be required for such conversions.

### *Section 609*

This section exempts certified public accountants from compliance with the disclosure requirements of section 503(a) of the Gramm-Leach-Bliley Act.

### *Section 610*

This section increases the small depository institution exemption limit under DIMIA from \$20 million in assets to \$50 million in assets. Unless the institutions have less than \$20 million in assets, DIMIA currently prohibits a management official of one institution from serving as a management official of any other nonaffiliated depository institution or depository institution holding company if the institutions or an affiliate of such institutions have offices that are located in the same MSA. The amendment would increase this exemption threshold to \$50 million in assets.

### *Section 611*

This section allows depository institution subsidiaries of an FHC to engage in cross-marketing activities with portfolio companies that are held under the GLB Act's merchant

banking authority to the same extent as such activities are currently permissible for portfolio companies held under the GLB Act's insurance company investment authority.

#### *Section 701*

This section provides greater consistency in Federal law governing how much time is available to challenge the determination by the OCC to appoint a receiver for a national bank by expressly providing for a 30-day period for a party to judicially challenge a determination by the OCC to appoint a receiver for a national bank.

This section amends the Bank Conservation Act and the Federal Deposit Insurance Act to provide greater consistency regarding the time an insured depository institution has to challenge the appointment of a receiver.

#### *Section 702*

This section clarifies the discretionary authority of the Federal banking agencies to enforce (1) any condition imposed in writing in connection with any action on any application, notice, or other request, or (2) any written agreement between the agency and an IAP, particularly those in which an IAP or controlling shareholder agrees to provide capital to the depository institution, without showing unjust enrichment or limiting recovery to 5% of the institution's assets at the time it became undercapitalized. Also, this section clarifies existing FDIC authority as receiver or conservator to enforce written conditions or agreements. This section eliminates the requirement that the insured depository institution receiving the transfer be undercapitalized at the time of the transfer.

#### *Section 703*

This section clarifies the scope of cross guarantee liability to include all insured depository institutions commonly controlled by the same company.

#### *Section 704*

This section clarifies that authority to prohibit golden parachute payments includes nonbank holding companies, as well as depository institution holding companies.

#### *Section 705*

This section amends the Change in Bank Control Act to clarify the bases for which change-in-control notices may be disapproved and to expand the bases for extensions of time for consideration of certain notices raising novel or significant issues.

#### *Section 706*

This section permits the Board to waive the attribution rule in section 2(g)(2) of the BHC Act (12 U.S.C. 1841(g)(2)) in appropriate circumstances. This attribution rule currently provides

that, for purposes of the Bank Holding Company Act, a company is deemed in all circumstances to own or control any shares that are held by a trust (such as an employee benefit plan) for the benefit of the company or its shareholders or employees.

#### *Section 707*

This section gives all Federal banking agencies the same discretionary authority as the FRB has to share confidential supervisory information.

#### *Section 708*

This section clarifies that the appropriate Federal banking agency may suspend or prohibit individuals charged with certain crimes from participation in the affairs of *any* depository institution and not solely the insured depository institution with which the institution affiliated party is or was associated. This section further clarifies that the section 8(g) remedy may be imposed even where the institution with which the individuals were associated ceases to exist. The proposed amendment also allows the appropriate Federal banking agency to suspend or remove an individual who attempts to become involved in the affairs of an insured depository institution after being charged with a crime involving dishonesty or a breach of trust and clarifies the standards and process for issuing a suspension or removal order in situations where an individual terminates his or her affiliation with one depository institution after being charged with a crime, but then becomes or seeks to become affiliated with another.

#### *Section 709*

This section provides that a Federal banking agency may not be compelled to disclose information received from a foreign regulatory or supervisory authority if public disclosure of the information would violate the laws applicable to that authority and the agency obtained the information in connection with the administration and enforcement of Federal banking laws or under a memorandum of understanding between the authority and the agency. This section also provides that such information would be exempt under FOIA, but does not authorize an agency to withhold information from Congress or in response to a court order.

#### *Section 710*

This section extends the prohibition to include noninsured national and State member banks and uninsured offices of foreign banks, but the OCC would have authority with respect to noninsured national banks and Federal branches and agencies and the FRB with respect to noninsured State member banks and State branches and agencies.

This section prohibits a person convicted of a criminal offense involving dishonesty, breach of trust or money laundering from participating in the affairs of a bank holding company (other than a foreign bank) or an Edge or Agreement Corporation without the consent of the Board. The amendment also would provide the Board greater discretion to prevent convicted individuals from participating in the affairs of a nonbank subsidiary of a bank holding company.

### *Section 711*

This section would:

- Underscore authority of the State regulators for the institutions that they charter (i.e., “home” State regulators).
- Require both the home and host State bank supervisors to exercise authority in compliance with the applicable cooperative agreements, thus encouraging coordination among the States.
- Unless otherwise provided in a cooperative agreement, allow only a home State to assess supervisory fees on the banks it charters.
- Authorize the host State supervisor, upon written notice to the home State, to examine for compliance with applicable host State laws subject to the terms of any applicable cooperative agreement with the home State. (Replaces a blanket authorization for the host State supervisor to examine for compliance with host State laws without regard to the home State supervisor).
- For the purposes of safety and soundness supervision, clarify that the chartering State is the primary State supervisor and limit host State supervisors to the express terms of any applicable cooperative agreement. However, host States may act unilaterally and examine the branch of an out-of-state State bank if that bank is determined to be “troubled” (i.e., a 4 or 5 CAMELS rating).
- Authorize a host State supervisor to enforce applicable host State law, subject to the terms of any cooperative agreement and with written notice to the home State supervisor.

### *Section 712*

This section authorizes the Treasury Secretary to appoint one or more individuals within the OTS to serve as OTS Acting Director in order to assure agency continuity during a vacancy in the office of the Director of the OTS or in the absence or disability of the Director of the OTS, and modernize the existing statutory appointment authority for the OTS Director by permitting an appointee a new five-year term.

### *Section 713*

This section amends ILSA to give the OTS equal representation on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland (a/k/a/ the Basel Committee).

### *Section 714*

This section adds a representative State regulator as a full voting member on the Federal Financial Institutions Examination Council.

### *Section 715*

This section clarifies that a Federal banking agency may take enforcement action against a person for conduct that occurred during his or her affiliation with a banking organization even if the person resigns from the organization, regardless of whether the enforcement action is initiated through a notice or an order. This section also makes a parallel amendment to the FCU Act.

### *Section 716*

This section amends section 8 of the Federal Deposit Insurance Act to clarify authority to enforce conditions imposed in connection with a notice, including a change-in-control notice. Section 206 of the FCU Act has parallel sections to portions of Section 8 of the FDI Act. It also amends the FCU Act in the same manner as the FDI Act.

### *Section 717*

This section amends section 8 of the Federal Deposit Insurance Act to provide each of the other three appropriate Federal banking agencies with express authority to enforce conditions imposed in writing in connection with the approval of an institution's application for deposit insurance.

### *Section 718*

This section requires the consent of the receiver or conservator before a party to a contract to which the depository institution is a party could exercise any right or power to terminate, accelerate, or declare a default under any contract, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution.

This section also requires the consent of the receiver or conservator before a party to a contract to which the credit union is a party could exercise any right or power to terminate, accelerate, or declare a default under any contract, or to obtain possession of or exercise control over any property of the credit union or affect any contractual rights of the credit union.

### *Section 719*

This section amends the Fair Credit Reporting Act to define an FDIC request for FICO scores as part of its preparation for a resolution as a permissible purpose, enabling the FDIC to obtain FICO scores by contacting credit reporting agencies and to obtain current consumer credit reports.

This section amends the Fair Credit Reporting Act to define a NCUA request for FICO scores as part of its preparation for a resolution as a permissible purpose, enabling the NCUA to obtain FICO scores by contacting credit reporting agencies and to obtain current consumer credit reports.

### *Section 720*

This section amends the Federal Deposit Insurance Act to require that any criminal indictment against a bank be dismissed, if the FDIC is appointed receiver of that bank.

This section amends the Federal Credit Union Act to require that any criminal indictment against a credit union be dismissed, if the NCUA is appointed receiver of that credit union.

### *Section 721*

This section clarifies that the APA standard of review, the 60-day limitation period, and U.S. district court jurisdiction apply to the FDIC's final determination of insurance coverage whether made pursuant to procedural regulations or not.

Section 207(d) of the FCU Act (12 U.S.C. 1787(d)) parallels Section 11(f) of the FDI Act. The FCU Act should be amended in the same manner as the FDI Act.

### *Section 722*

This section permits the FDIC and NCUA to destroy records that are 10 or more years old at the time of its appointment as receiver, unless directed not to do so by a court or a government agency or prohibited by law.

### *Section 723*

This section provides that the FDIC and NCUA may rely upon records preserved electronically, such as optically imaged or computer scanned images.

### *Section 724*

This section amends section 11(t) of the Federal Deposit Insurance Act to clarify that the FDIC is a "covered agency" for purposes of privilege, regardless of the type of failed depository institution to which transferred information pertains.

### *Section 725*

This section makes technical and conforming amendments reflecting the transfer of authority for the supervision and regulation of District banks from the Office of the Comptroller of the Currency to the Federal Deposit Insurance Corporation.

### *Section 726*

This section makes technical corrections to the Federal Credit Union Act.

### *Section 727*

This section eliminates certain outdated provisions of the Bank Holding Company Act that no longer have any effect.

### *Section 728*

This section directs the agencies to finalize a proposal for a uniform simplified privacy notice to satisfy the requirements of the Gramm-Leach-Bliley Act.

### *Section 801*

Background: Over five hundred State or district attorneys across the country operate pre-trial diversion programs for alleged bad check offenders so that those individuals can avoid criminal prosecution if they voluntarily participate in these programs. These programs have been in operation for over twenty years. The programs typically require restitution to the harmed merchant, a class designed to discourage the writing of bad checks in the future, and the payment of a fee to cover the class and the administrative burden on the State or district attorneys. The average restitution rate of those that participate in these programs is below 5% nationally, and in some states, such as Maryland, is approximately 1%. While the contact between the State or district attorneys and the alleged offenders incidentally involves restitution to the harmed merchants, the Fair Debt Collection Practices Act (FDCPA) does not apply to these activities due to its state actor exemption.

In some instances, however, the State or District attorneys contract with private entities to help administer these programs and several lawsuits have been filed contending that the private entities are in violation of the FDCPA. This provision amends the FDCPA to exempt those entities provided they comply with the safeguards outlined in the provision.

Section 901(a) adds a new Section 818 to the FDCPA. Section 818(a) authorizes State or district attorneys to establish bad check pre-trial diversion programs and enter into an administrative support services contract with private entities to administer the programs. The private entities are required to operate under the direction, supervision, and control of the State or district attorneys and in the course of performing their duties must:

- (A) comply with the penal laws of the state in which they operate;
- (B) conform their activities to the terms of their contract and the directives of the State or district attorney;
- (C) not exercise any independent prosecutorial discretion;
- (D) contact alleged offenders only as a result of a determination by the State or district attorney that there is probable cause of a bad check violation under State penal law and that contact with the offender is appropriate, and where the alleged offender has failed to pay the bad check after demand for payment has been made as required by state law;
- (E) communicate in writing a clear and conspicuous statement that the alleged offender may dispute the validity of alleged bad check violation, and assert via a crime report that the alleged bad check was actually stolen, forged, or related to identity theft or some

other fraud; and

(F) charge only fees in connection with the services that have been authorized by the contract with the State or district attorney.

If the alleged offender disputes the validity of the allegation under 818(a)(E) and notifies either the private entity or State or district attorney in writing within 30 days after demand for payment has been sent, then restitution efforts have to be halted unless the State or district attorney or their authorized employees determine there is probable cause to believe a crime has nonetheless been committed. In that instance, restitution efforts can continue.

If the private entity complies with these requirements, it shall not be considered a debt collector as defined by Section 803(6) of the FDCPA (15 U.S.C. 1692) with respect to its operation of the pre-trial diversion programs under the contract it has entered into with the State or district attorney.

Section 818(b) excludes from the programs checks that involve:

(1) a postdated check presented in connection with payday loans or similar transactions where the payee knew the issuer had insufficient funds when the check was written;

(2) a stop payment order where the issuer acted in good faith and had reasonable cause to stop payment;

(3) a check dishonored because of an adjustment to the issuer's account by his or her financial institution without notice to the issuer of the adjustment;

(4) a partial payment check where the payee had accepted that form of payment previously;

(5) a check issued by a person who was incompetent or not of legal age to issue checks;

or  
(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney.

Section 818(c) defines 'State or district attorney' and clarifies that the term 'check' has the meaning given in Section 3(6) of the Check Clearing for the 21st Century Act. A 'bad check violation' is defined by the applicable state criminal law in each instance, provided, as required by state law, that the alleged offender received written or oral notice from the payee or holder that payment was received by the drawee financial institution.

### *Section 901*

This section makes statutory changes to 31 U.S.C. 9301 and 31 U.S.C. 9303 that would allow the Secretary of the Treasury to determine the types of securities that may be pledged in lieu of surety bonds, and requires that the securities be valued at current market rates.

### *Section 1001*

This section requires a study by the Comptroller General on the volume of CTRs filed with the Treasury, including, if appropriate, recommendations for changes to the filing system.

*Section 1002*

This section requires a study by the Comptroller General on the cost and overall regulatory regime of the financial services industry.