

Title III – Federal Depository Institutions Supervision and Regulation Improvements Act of 2009

Section-by-Section Analysis

Section 301. Short Title

Section 302. Definitions

Subtitle A – National Bank Supervisor Established

Section 311. Establishment

This section establishes the National Bank Supervisor (“NBS”) as a bureau in the Department of the Treasury.

Section 312. Director

This section establishes the position of Director as head of the NBS, to be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years.

Section 313. Deputy Director

This section directs the Secretary of the Treasury to appoint a Deputy Director, who shall serve as acting Director during the absence or disability of the Director.

Section 314. Compensation

This section sets the compensation of the Director of the NBS at Executive Schedule Level III.

Section 315. Effective Date

This section provides that this subtitle shall become effective on the date of enactment of the Act.

Subtitle B – Powers and Duties Transferred to National Bank Supervisor

Section 321. Powers and Duties Transferred

This section transfers to the NBS all functions, powers, and duties of the Office of the Comptroller of the Currency (“OCC”) and the Office of Thrift Supervision (“OTS”), with the exception of OTS functions, powers, and duties relating to supervision of state savings associations, which are transferred to the Federal Deposit Insurance Corporation (“FDIC”). This section shall not affect the transfer of consumer financial protection functions of the OCC and OTS to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

Section 322. Transfer Date

This section specifies that the transfer of functions under section 321 shall occur 1 year after the date of enactment of the Act. The Secretary of the Treasury may extend the transfer date to 18 months after the date of enactment by submitting written notice and explanation to the

House Committee on Financial Services and Senate Committee on Banking, Housing, and Urban Affairs and publication of the new date in the Federal Register.

Section 323. Office of Comptroller of the Currency Abolished

This section abolishes the OCC and the position of the Comptroller of the Currency 90 days after the transfer date.

Section 324. Office of Thrift Supervision Abolished

This section abolishes the OTS and the position of Director of the OTS 90 days after the transfer date.

Section 325. Savings Provisions

This section clarifies that the abolition of the OCC and OTS and the transfer of functions from the OCC and OTS will not affect any outstanding rights, duties, or obligations, except by substituting the NBS for the OCC or either the NBS or FDIC for the OTS as party to any ongoing lawsuit. This section also clarifies that existing OCC and OTS regulations, orders, etc., will remain in effect according to their terms, and shall be enforceable by or against the NBS or FDIC. This section also requires the NBS and the FDIC to publish, not later than the transfer date, a list of the regulations that will be enforced by the NBS or FDIC. This section also clarifies that any regulation proposed by the OCC or OTS before the transfer date but not yet final shall be deemed a proposed regulation of the NBS.

Subtitle C – Operations of National Bank Supervisor

Section 331. Regulations and Orders

This section authorizes the Director of the NBS to prescribe regulations and issue orders as appropriate to carry out this title and the powers and duties transferred to the Director of the NBS by this title.

Section 332. Delegation of Authority

This section authorizes the Director of the NBS to delegate authority to any employee of the NBS.

Section 333. Personnel

In addition to the powers transferred to the Director of the NBS by this title, this section authorizes the Director to hire and compensate employees, without regard to classification under chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code. This section also authorizes the Director to provide additional compensation and benefits comparable to compensation and benefits provided by other federal banking agencies. This section requires the agency to report annually to Congress on the structure of its employees' pay and benefits.

Section 334. Funding

In addition to the powers transferred to the Director of the NBS by this title, this section establishes funding for the NBS through the collection of assessments, fees, and other charges on regulated institutions and entities, which, assessments and fees shall be set to meet the Director's expenses in carrying out authorized activities.

Section 335. Contracting and Leasing Authority

In addition to the powers transferred to the Director of the NBS by this title, this section authorizes the Director to enter into and perform contracts and leases and acquire goods, services, and property, without regard to the Federal Property and Administrative Services Act of 1949 and similar executive agency procurement laws.

Section 336. Effective Date

This section provides that this subtitle shall become effective on the date of enactment of the Act.

Subtitle D – Transitional Provisions

Section 341. Interim Authority of National Bank Supervisor

To facilitate orderly transfer of functions, this section provides for interim authority of the NBS between the date of enactment of the Act and the transfer date, and for NBS consultation and cooperation with the OCC and OTS.

Section 342. Interim Responsibilities of Office of the Comptroller of the Currency and Office of Thrift Supervision

This section provides for interim responsibilities of the OCC and OTS between the date of enactment of the Act and the transfer date to facilitate orderly transfer of functions, including providing interim funding for the transition, detail of personnel, administrative services, and transfer of property.

Section 343. Interim Authority of the Secretary

This section authorizes the Secretary of the Treasury to perform the functions of the Director of the NBS relating to implementing the establishment of the NBS until a Director is appointed, and authorizes the Department of the Treasury to provide interim administrative services.

Section 344. Employees Transferred

This section transfers the employees of the OCC to the NBS and the employees of the OTS to either the NBS or the FDIC. This section requires the Director of the OTS, the Comptroller of the Currency, the Chairperson of the FDIC, and, when appointed, the Director of the NBS to jointly determine the number of OTS employees necessary to support the OTS functions to be transferred to the NBS and FDIC and jointly identify employees for transfer to the NBS or FDIC. This section requires all employees to be placed in positions with the same status and tenure as they held on the day before the transfer date. This section generally prohibits involuntary separations or reassignments of permanent employees outside of the employees' locality pay area for 1 year from the transfer date.

Section 345. Property Transferred

This section transfers the property of the OCC and OTS to the NBS or FDIC, allocated in a manner consistent with section 344, not later than 90 days after the transfer date.

Section 346. Funds Transferred

This section transfers the available funds of the OCC and OTS to the NBS or FDIC, allocated in a manner consistent with section 344, on the transfer date.

Section 347. Incidental Transfers

This section directs the Director of the Office of Management and Budget (“OMB”), in consultation with the Director of the NBS, to make such additional incidental transfers and dispositions of assets and liabilities in connection with the functions transferred by this title as the Director of OMB may determine necessary to accomplish the purposes of this title, with this authority to terminate 5 years after the date of enactment of the Act.

Section 348. Disposition of Affairs

This section authorizes the Comptroller of the Currency and the Director of the OTS to continue operations for 90 days following the transfer date solely for the purpose of winding up the affairs of their respective agencies.

Section 349. Continuation of Services

This section provides that any federal agency providing support services to the OCC or OTS shall continue to provide those services until the transfer of functions is complete.

Subtitle E – Termination of Federal Thrift Charter**Section 351. Termination of Federal Savings Associations; Treatment of State Savings Associations as Banks for Purposes of Federal Banking Law**

This section terminates the federal savings association charter and requires currently chartered federal savings associations to notify the OTS, OCC, and NBS within 6 months after the date of enactment whether they elect to become a national bank, mutual national bank, state bank, or state savings association. Any federal savings association that does not make an election or has not received state bank charter approval within 1 year shall, by operation of law, be converted to a national bank or mutual national bank. This section also brings state savings associations within the definition of “state bank” for purposes of federal law.

Section 352. Transition Provisions for Activities of Savings Associations that Convert into or Become Treated as Banks

This section provides a 3-year transition period for federal or state savings associations that become national or state banks pursuant to this title to cease activities that would no longer be permissible under the new charter. This section also allows the appropriate federal regulator to grant up to two one-year extensions and impose such conditions on nonconforming activities or assets as appropriate to assure the safe and sound operation of the bank. This section also provides for a 5-year phase-in of new activities tied to asset size for federal and state savings associations that convert to become national or state banks.

Section 353. Additional Transitional Provisions for Mutual Savings Associations

This section authorizes the NBS to charter mutual national banks and provides a 3-year transition period following the date of enactment of the Act during which mutual national banks shall be subject to existing OTS regulations relating to mutual institutions. This section also

establishes procedures for converting from a mutual savings association to a mutual national bank.

Subtitle F – Conforming Amendments

This subtitle makes many amendments to existing laws, substituting references to the Director of the NBS for references to the Comptroller of the Currency or the Director of the OTS. The conforming amendments shall become effective on the transfer date.