

**§1111. -- application of earnings test**

In applying the earnings tests under this chapter to any institution for any period, whether or not in legal existence at the beginning of such period: [PL 1969, c. 132, §1 (NEW).]

1. Earnings from the beginning of such period may include, as determined in accordance with adjusted or pro forma consolidated earnings statements, earnings of any other institution the assets of which have been acquired substantially as an entirety by purchase, merger, consolidation or otherwise after the beginning of such period. If less than substantially all the assets of another institution have been so acquired, and such assets constitute either substantially all the assets of the acquiring institution immediately after such acquisition or substantially all the assets theretofore employed by such other institution in a divisional, branch or other unit operation, the earnings determined to be properly attributable to the assets so acquired may be so included, if certified by an independent accountant approved by the insurer to be earnings so attributable. If any such acquisition of assets has been made from a business enterprise other than an institution, the earnings determined to be attributable to the assets so acquired may likewise be so included if so certified. In the case of any such inclusion of earnings of assets so acquired, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period giving effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such acquisition, properly attributable to such acquisition, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or [PL 1969, c. 132, §1 (NEW).]

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such acquisition. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

2. If any institution has been reorganized pursuant to the bankruptcy law after the beginning of such period, earnings prior to such reorganization of the institution so reorganized may be so included. In the case of the inclusion of earnings prior to such a reorganization, fixed charges, contingent interest or dividends for the period of such inclusion shall be fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such reorganization.

[PL 1969, c. 132, §1 (NEW).]

3. If earnings are determined in reliance on consolidated earnings statements of parent and subsidiary institutions,

A. The provisions of this section may also be applied in determining earnings of any subsidiary institution and [PL 1969, c. 132, §1 (NEW).]

B. Any institution which has become a subsidiary institution after the beginning of such period may be included as a subsidiary institution from the beginning of such period. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

In the case of any such inclusion of a subsidiary institution, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period which give effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such subsidiary institution shall have become a subsidiary, properly attributable to the acquisition of stock or shares of such subsidiary institution, during such period

and before it became a subsidiary, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such subsidiary institution became a subsidiary. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

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