



6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 350

RIN 3064-AE65

Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations by rescinding and removing its regulations entitled *Disclosure of Financial and Other Information By FDIC-Insured State Nonmember Banks*. Upon the removal of the regulations, all insured state nonmember banks and insured state-licensed branches of foreign banks (collectively, “banks”) would no longer be subject to the annual disclosure statement requirement set out in the existing regulations. The financial and other information that has been subject to disclosure by individual banks under the regulations is publicly available through the FDIC’s website.

DATES: This rule will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the final rule is to simplify the FDIC's regulations by removing unnecessary or redundant regulations. The final rule rescinds and removes part 350 from the Code of Federal Regulations. Technological advancements over the past 30 years provide the public with ready access to more extensive and timely information on the condition and performance of individual banks, obviating the need for the annual disclosure statement requirements in part 350.

II. Background

Part 350 was adopted by the FDIC Board of Directors on December 17, 1987, and took effect February 1, 1988.¹ In general, part 350 requires FDIC-insured state nonmember banks and FDIC-insured state-licensed branches of foreign banks (collectively, "banks") to prepare, and make available on request, annual disclosure statements consisting of: (1) required financial data comparable to specified schedules in the Consolidated Reports of Condition and Income (Call Report) filed for the previous two year-ends; (2) information that the FDIC may require of particular banks, which could include disclosure of enforcement actions; and (3) other information at a bank's option. Part 350 also permits the use of certain alternatives to the Call Report as a

¹ See 52 FR 49379 (December 31, 1987).

disclosure statement. Part 350 does not apply to the insured state savings associations that are supervised by the FDIC.

The annual disclosure statement for a particular year must be prepared, and made available to the public, by March 31 of the following year, or the fifth day after an organization's annual report covering the year is sent to shareholders, whichever occurs first. Banks are required to announce the availability of the disclosure statements in lobby notices in each of their offices and in notices of annual meetings sent to shareholders.

In adopting part 350, the FDIC's intent was to improve public awareness and understanding of the financial condition of individual banks. In the preamble to the December 1987 final rule, the FDIC stated that "improved financial disclosure should reduce the likelihood of the market or bank customers overreacting to incomplete information." The FDIC also said it believed the disclosure requirement "will complement its supervisory efforts and enhance public confidence in the banking system." With limited resources available for the public to gather, analyze, and understand information about the financial condition of individual banks before and during the 1980s, the FDIC's adoption of part 350 provided the public with an opportunity to obtain certain basic bank financial information.

After the FDIC adopted part 350, the Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (FRB) adopted similar disclosure regulations. When initially adopted, the disclosure regulations adopted by the FDIC (12 CFR part 350), the FRB (12 CFR 208.17), and the OCC (12 CFR part 18) were substantially uniform. These regulations required institutions to make almost identical information

available to the public upon request. The former Office of Thrift Supervision (OTS) had a similar, but not identical, disclosure regulation (12 CFR 562.3). As a result of its review of regulations pursuant to Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, the OTS repealed 12 CFR 562.3 as unnecessary in 1995.² In 1998, the FRB eliminated 12 CFR 208.17, Disclosure of Financial Information by State Member Banks, from its regulations on the basis that Call Report information for banks had become available through the internet.³ In 2017, the OCC removed 12 CFR part 18 from its regulations, noting that the information it required national banks to disclose is contained in other publicly available documents, which meant that 12 CFR part 18 is duplicative and unnecessary.⁴

With advancements in information technology since part 350 was adopted, including widespread public access to the internet (including through public libraries for individuals without their own direct personal access to the internet), information about the financial condition of individual insured depository institutions is now reliably and directly offered to the public through the FDIC's and the Federal Financial Institutions Examination Council's (FFIEC) websites. For example, information about the financial condition and performance of all insured depository institutions is publicly available each quarter through the Call Report and the Uniform Bank Performance Report (UBPR). In addition, enforcement actions taken by the FDIC are readily available to the public from the FDIC's website.

The Call Report contains an institution's balance sheet, income statement, and supplemental schedules that disclose additional details about the major categories of

² See 60 FR 66866 (December 27, 1995).

³ See 63 FR 37630 (July 13, 1998).

⁴ See 82 FR 8082 (January 23, 2017).

assets and liabilities, regulatory capital, and other financial information. Since the successful deployment of the FFIEC's Central Data Repository (CDR) Public Data Distribution (PDD) website,⁵ the public has had ready access to financial information for each insured depository institution. The public is able to obtain more current Call Report data for individual institutions in various formats from the FFIEC's CDR PDD website than the financial information available in the annual disclosure statement required by part 350. Individual institution Call Report data generally are posted on this website within 24 hours after the data have been submitted to and accepted by the CDR.

The UBPR is an analytical tool created for bank supervisory, examination, and management purposes that shows the impact of management decisions and economic conditions on a bank's performance and balance-sheet composition. The content of the UBPR is calculated each quarter primarily from Call Report data. UBPRs for individual institutions are available to the public via the CDR PDD website. An institution's UBPR is usually published online within a day after its Call Report has been filed with and accepted by the CDR. Online access to an institution's UBPR each quarter complements the public's use of the institution's Call Report and further expands upon the amount of publicly available financial data for an institution beyond the limited financial information provided in the annual disclosure statement required by part 350. The public is able to easily locate the Call Report and the UBPR for a bank through the FDIC BankFind tool, which is available on the FDIC's website.⁶

In addition, on a monthly basis, the FDIC publishes a press release listing the administrative enforcement actions it has taken against banks and individuals during the

⁵ <https://cdr.ffiec.gov/public/ManageFacsimiles.aspx>.

⁶ <https://research.fdic.gov/bankfind/>.

preceding month. Enforcement actions taken by the FDIC since 1990 are available to the public on the FDIC's website.⁷ Interested parties may also obtain administrative orders through the FDIC's Public Information Center.

III. The Proposal

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),⁸ the FDIC is required to conduct a review at least once every 10 years to identify any outdated or otherwise unnecessary regulations. As part of the EGRPRA review completed in 2017, part 350 was included in the third EGRPRA Federal Register notice of regulatory review.⁹ The FDIC did not receive any comments on this regulation in response to that notice. Nevertheless, upon review, the FDIC has determined that part 350 is outdated and no longer necessary and therefore should be eliminated. Part 350 places a burden on insured state nonmember banks and insured state-licensed branches of foreign banks by requiring them to prepare an annual disclosure statement and make available to the public a potentially unlimited number of copies of these statements. This burden was justified in the past because disclosure statements were an effective means for the public to obtain information concerning a bank's financial condition. However, with widespread public access to the internet where more extensive and timely financial information about individual banks, as well as administrative enforcement actions, can be readily obtained, the incremental burden on banks of providing an annual disclosure statement in accordance with a regulation that has become outdated is no longer justified. Furthermore, because part 350 does not apply

⁷ <https://www5.fdic.gov/EDO/index.html>.

⁸ Pub. L. 104-208 (1996), codified at 12 U.S.C. 3311.

⁹ See 80 FR 32046 (June 5, 2015).

to insured state savings associations, for which the FDIC became the primary federal regulatory agency in 2011, the proposal would eliminate a difference in the regulatory requirements and resulting regulatory burden imposed on insured state nonmember banks and insured state-licensed branches of foreign banks compared to insured state savings associations. Finally, because regulations similar to part 350 have been rescinded by the FRB and the OCC (as well as the former OTS), the preparation and availability of annual disclosure statements are no longer required by the other federal banking agencies for the institutions under their supervision.

IV. Comments

Consistent with the objectives of section 2222 of EGRPRA, on October 17, 2018, the FDIC Board authorized publication of a notice of proposed rulemaking (NPR) to rescind and remove part 350 from the Code of Federal Regulations. The NPR was published in the Federal Register on October 25, 2018, with a 30-day comment period.¹⁰

The FDIC received nine comments addressing the proposed rescission and removal of part 350 from bankers, banking associations, and a consultant. The nine commenters fully supported the proposal. One additional comment was received from an individual, but it did not specifically address the proposed rescission and removal. After considering the comments received, the FDIC is adopting as proposed the rescission and removal of part 350 from the Code of Federal Regulations.

¹⁰ See 83 FR 53829 (October 25, 2018).

V. Expected Effects

The removal of the requirement that each FDIC-insured state nonmember bank and insured state-licensed branch of a foreign bank prepare, and make available on request, annual disclosure statements will lessen the burden the FDIC imposes on these institutions. As of September 30, 2018, there were 3,493 FDIC-insured state nonmember banks and insured state-licensed branches of foreign banks that would be affected by this final rule.¹¹

The final rule is expected to reduce recordkeeping, reporting, and disclosure requirements for FDIC-insured state nonmember banks and insured state-licensed branches of foreign banks. As discussed in Section III: The Proposal, part 350 requires institutions to prepare an annual disclosure statement and make it available to the public. By removing part 350, the final rule will remove this disclosure burden. The FDIC assumes that 15 percent of the institutions covered by part 350 provide a management discussion and analysis in their annual disclosure statement, and estimates that preparing this material takes each institution 1.5 hours. Assuming the time spent preparing the material is divided equally between a financial analyst and a manager, each earning the 75th percentile wage for their occupation, the estimated annual cost per institution to prepare the material is \$157.82.¹² Based on the FDIC's estimation that 15 percent of

¹¹ Data from the September 30, 2018, Call Report and FFIEC 002 report.

¹² The annual cost per institution is estimated using the 75th percentile hourly wage for financial analysts and management occupations in the depository credit intermediation industry as of May 2017. This hourly wage is adjusted for inflation, and grossed-up to include benefits, through June 2018. The 75th percentile inflation and benefit-adjusted hourly wage of management occupations as of June 2018 is \$125.21, and for financial analysts is \$85.21. Assuming the 1.5 hours are equally divided between a manager and an analyst, this yields an estimated total annual cost per institution of $(0.75 * \$125.21) + (0.75 * \$85.21) = \$157.82$.

Hourly wages are from the Bureau of Labor Statistics (BLS) May 2017 National Industry-Specific Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/current/oesrci.htm>. Wages are adjusted for inflation through June 2018 using the Seasonally Adjusted All-items Consumer Price Index for

institutions prepare this material, the total annual cost is estimated to be \$82,695, or approximately 0.0001 percent of noninterest expenses for covered institutions.¹³

In addition to the directly measurable cost savings, another potential benefit of the final rule is that it frees up institution staff time that would otherwise have been spent complying with part 350. Theoretically, time previously spent complying with part 350 may now be spent on another task of higher value to the institution. This potential effect is difficult to accurately estimate with available information, but it is likely to be small given that the disclosure burden imposed by part 350 is a relatively small percentage of noninterest expenses.

The final rule removes a disclosure requirement for affected institutions; however, the FDIC believes that the reduction will not have material effects for customers, investors, or counterparties. As discussed in Section III: The Proposal, extensive and timely financial information about individual banks, as well as administrative enforcement actions, can be readily obtained by the public on the internet. Therefore, the FDIC believes that removal of this disclosure requirement will not have substantive effects on financial market participants.

VI. Alternatives Considered

The FDIC considered alternatives, but believes that the rescission and removal of part 350 represents the most appropriate option. In particular, the FDIC considered

All Urban Consumers, <https://data.bls.gov/PDOWeb/cu>. The hourly wages are grossed-up to include benefits based on Employer Cost for Employee Compensation data as of June 2018, <https://www.bls.gov/news.release/pdf/ecec.pdf>. June 2018 is the latest available period of Employer Cost for Employee Compensation data. The data on hourly wages, inflation, and employer cost for employee compensation was extracted on December 14, 2018.

¹³ This equals $524 * \$157.82$, i.e., $(3,493 * 0.15) * \$157.82$, rounded to the nearest dollar. Noninterest expenses are calculated from data reported in the September 30, 2018, Call Report, and annualized.

whether to (1) retain the existing disclosure statement requirement, but to extend it to the insured state savings associations now supervised by the FDIC, (2) require that disclosure statements be updated quarterly instead of annually, and/or (3) require the inclusion in disclosure statements of either the entire Call Report (excluding a limited number of items accorded confidential treatment) or financial data comparable to a greater number of specified Call Report schedules. However, with the timely public availability of each institution's quarterly Call Report and UBPR via the FDIC's and the FFIEC's websites, and with the public disclosure of information about enforcement actions taken by the FDIC routinely made available on the FDIC's website, the FDIC believes any extension of part 350 to other institutions, increase in the frequency of disclosure, increase in the scope of disclosure, or combination of these alternatives, imposes additional cost without any corresponding public benefit in terms of access to financial and other information on institutions. Moreover, the FDIC is not aware of any difficulties encountered by the public in obtaining current financial and enforcement action information on institutions supervised by the FRB and the OCC (and those institutions previously supervised by the OTS) via public websites since these agencies eliminated their respective disclosure statement requirements.

VII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid

Office of Management and Budget (OMB) control number. Part 350 is currently an approved information collection with OMB Control No. 3064-0090. Removing part 350 obviates the need for this collection of information pursuant to the PRA, and FDIC will seek to discontinue its use.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the final rule on small entities.¹⁴ A regulatory flexibility analysis is not required; however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets less than or equal to \$550 million.¹⁵

As of September 30, 2018, there are 3,493 FDIC-insured state nonmember banks and FDIC-insured state-licensed branches of foreign banks.¹⁶ Of these, 2,689 are considered small entities for the purposes of RFA. Thus, the FDIC concludes the proposed rule will affect a substantial number of small entities.

The final rule is expected to reduce recordkeeping, reporting, and disclosure requirements for small FDIC-supervised banks. As discussed in Section III: The Proposal, part 350 requires institutions to prepare an annual disclosure statement and

¹⁴ 5 U.S.C. 601 et seq.

¹⁵ The SBA defines a small banking organization as having \$550 million or less in assets, where an organization's “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended, effective December 2, 2014). In its determination, the “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

¹⁶ Data from the September 30, 2018, Call Report and FFIEC 002 report.

make it available to the public. By removing part 350, the final rule will remove this disclosure burden. As discussed in Section IV: Expected Effects, the FDIC estimates the annual cost per institution to prepare the material is \$157.82.¹⁷ Based on the FDIC's estimation that 15 percent of institutions prepare this material, the total annual cost for small FDIC-supervised institutions is estimated to be \$63,599, or less than 0.0005 percent of noninterest expenses for such institutions.¹⁸

Also as described in Section IV above, in addition to the directly measurable cost savings, another potential benefit of the final rule is that it frees up institution staff time that would otherwise have been spent complying with part 350. While this potential effect is difficult to accurately estimate with available information, it is likely to be small given that the disclosure burden imposed by part 350 is a relatively small percentage of noninterest expenses for small FDIC-supervised institutions.

The final rule removes a disclosure requirement for affected institutions; however, the FDIC believes that the reduction will not have material effects for customers, investors, or counterparties. As discussed in Section III: The Proposal, extensive and timely financial information about individual banks, as well as administrative

¹⁷ The annual cost per institution is estimated using the 75th percentile hourly wage for financial analysts and management occupations in the depository credit intermediation industry as of May 2017. This hourly wage is adjusted for inflation, and grossed-up to include benefits, through June 2018. The 75th percentile inflation and benefit-adjusted hourly wage of management occupations as of June 2018 is \$125.21, and for financial analysts is \$85.21. Assuming the 1.5 hours are equally divided between a manager and an analyst, this yields an estimated total annual cost per institution of $(0.75 * \$125.21) + (0.75 * \$85.21) = \$157.82$.

Hourly wages are from the Bureau of Labor Statistics (BLS) May 2017 National Industry-Specific Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/current/oesrci.htm>. Wages are adjusted for inflation through June 2018 using the Seasonally Adjusted All-items Consumer Price Index for All Urban Consumers, <https://data.bls.gov/PDOWeb/cu>. The hourly wages are grossed-up to include benefits based on Employer Cost for Employee Compensation data as of June 2018, <https://www.bls.gov/news.release/pdf/ecec.pdf>. June 2018 is the latest available period of Employer Cost for Employee Compensation data. The data on hourly wages, inflation, and employer cost for employee compensation was extracted on December 14, 2018.

¹⁸ This equals $403 * \$157.82$, i.e., $(2,689 * 0.15) * \$157.82$, rounded to the nearest dollar. Noninterest expenses are calculated from data reported in the September 30, 2018, Call Report, and annualized.

enforcement actions, can be readily obtained by the public on the internet. Therefore, the FDIC believes that removal of this disclosure requirement will have not substantive effects on financial market participants.

Based on the information above, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the final rule is not a “major rule” within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).¹⁹ As required by SBREFA, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the final rule to rescind part 350 in a simple and straightforward manner.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of EGRPRA, the FDIC is required to conduct a review at least once every 10 years to identify any outdated or otherwise unnecessary regulations. The FDIC completed its most recent comprehensive review of its regulations under EGRPRA in 2017 and did not receive any comments from the public concerning part 350. The burden reduction evidenced in this final rule is consistent with the objectives of the EGRPRA review process.

¹⁹ 5 U.S.C. 801 *et seq.*

F. Riegle Community Development and Regulatory Improvement Act

Under section 302(b) of the Riegle Community Development and Regulatory Improvement Act, 12 U.S.C. 4802(b), new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. Because this rule rescission does not impose additional reporting, disclosures, or other requirements, but rather relieves banks of a disclosure requirement, this rule may take effect prior to the start of the next calendar quarter.

List of Subjects in 12 CFR Part 350

Accounting, Banks, banking, Reporting and recordkeeping requirements.

Authority and Issuance

PART 350 — [REMOVED AND RESERVED]

For the reasons stated in the preamble, and under the authority of 12 U.S.C 1817(a)(1), 1819 “Seventh” and “Tenth,” the Board of Directors of the Federal Deposit Insurance Corporation removes and reserves 12 CFR part 350.

Dated at Washington, DC, on March 12, 2019.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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