



## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Part 390**

### **RIN 3064-AF07**

### **Removal of Transferred OTS Regulation Regarding Deposits**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of proposed rulemaking; supplemental notice.

**SUMMARY:** On August 26, 2019, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to deposits that apply to State savings associations. The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards, which were adjusted for inflation as of August 19, 2019.

**DATES:** Comments on the updated regulatory flexibility analysis must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- *FDIC Website:* <https://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.
- *E-mail:* [Comments@fdic.gov](mailto:Comments@fdic.gov). Include RIN 3064-AF07 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please include your name, affiliation, address, e-mail address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

*Public Inspection:* All comments received will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

On August 26, 2019, the FDIC issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to deposits that apply to State savings associations. (See 84 FR 44558 (August 26, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration’s monetary-based size

standards, which were adjusted for inflation as of August 19, 2019. (See 84 FR 34261 (July 18, 2019).)

### **Updated Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.<sup>1</sup> However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the Federal Register, together with the rule. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$600 million.<sup>2</sup> Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

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<sup>1</sup> 5 U.S.C. 601, *et seq.*

<sup>2</sup> The SBA defines a small banking organization as having \$600 million or less in assets, where “a financial institution’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 by 84 FR 34261, effective August 19, 2019). “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 FDIC-supervised institution is “small” for purposes of the RFA.

As of March 31, 2019, the FDIC supervised 3,465 insured depository institutions, of which 2,705 are considered small banking organizations for purposes of the RFA. The proposed rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for purposes of the RFA.<sup>3</sup>

The proposed rule would remove §§ 390.230 and 390.231, part 390, subpart M, because these sections are unnecessary, redundant of, or otherwise duplicative of other statutes and regulations, including safety and soundness standards. Therefore, rescinding subpart M would not have any substantive effects on small FDIC-supervised institutions.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 26, 2019.

**Robert E. Feldman,**  
*Executive Secretary.*

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<sup>3</sup> Based on data from the March 31, 2019, Call Report and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

