



6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064-AF13

Removal of Transferred OTS Regulations Regarding Regulatory Reporting Requirements, Reports and Audits of State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (“FDIC”) is adopting a final rule rescinding and removing from the Code of Federal Regulations the regulations regarding regulatory reporting standards.

DATES: The final rule is effective on [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

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SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the final rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary ones and thereby improving ease of reference and public understanding. The second is to promote parity between State savings associations and State nonmember banks by having the regulatory reporting requirements, regulatory reports and audits of both classes of institutions addressed in the same FDIC rules.

II. Background

Part 390, subpart R was included in the regulations that were transferred from the Office of Thrift Supervision ("OTS") to the FDIC on July 21, 2011, in connection with the implementation of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").¹ Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,² the powers, duties, and functions formerly performed by the OTS were divided among the FDIC for State savings associations, the Office of the Comptroller of the Currency ("OCC") for Federal savings associations, and the Board of Governors of the Federal Reserve System ("FRB") for savings and loan holding companies. Section 316(b) of the Dodd-Frank Act³ provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory issuances were in

¹ Pub L. 111-203, 124 Stat. 1376 (2010).

² 12 U.S.C. 5411.

³ 12 U.S.C. 5414(b).

effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

The Dodd-Frank Act directed the FDIC and the OCC to consult with one another and to publish a list of continued OTS regulations to be enforced by each respective agency that would continue to remain in effect until the appropriate Federal banking agency modified or removed the regulations in accordance with applicable law. The list was published by the FDIC and OCC as a Joint Notice in the *Federal Register* on July 6, 2011,⁴ and shortly thereafter, the FDIC published its transferred OTS regulations as new FDIC regulations in parts 390 and 391. When it republished the transferred OTS regulations, the FDIC noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred regulations into other FDIC rules, amending them, or rescinding them, as appropriate. Further, section 312(c)(1) of the Dodd-Frank Act⁵ amended the definition of “appropriate Federal banking agency” contained in section 3(q) of the FDI Act,⁶ to add State savings associations to the list of entities for which the FDIC is designated as the “appropriate Federal banking agency.” As a result, when the FDIC acts as the “appropriate Federal banking agency” for State savings associations, as it does today, it has the authority to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and State-licensed insured branches of foreign banks.

⁴ 76 FR 39246 (July 6, 2011).

⁵ 12 U.S.C. 5412(c)(1).

⁶ 12 U.S.C. 1813(q).

III. Proposed Rule

On October 2, 2019, the FDIC published a notice of proposed rulemaking (NPR) regarding the removal of part 390, subpart R (former OTS part 562), which addressed regulatory reporting requirements, regulatory reports and audits of State savings associations.⁷ The former OTS rule was transferred to the FDIC with only nominal changes. The NPR proposed removing part 390, subpart R, because, after careful review and consideration, the FDIC believed it was largely unnecessary, redundant or duplicative given other FDIC regulations that pertain to regulatory reporting requirements (12 CFR part 304, 12 CFR part 363 and its appendices A and B, and 12 CFR part 364 and its appendix A), regulatory reports (12 CFR part 304 and 12 CFR part 308), and audits of insured depository institutions (12 CFR part 363 and its appendices A and B and 12 CFR part 364 and its appendix A) that already apply to State savings associations.

IV. Comments

The FDIC issued the NPR on October 2, 2019, with a 30-day comment period. On October 9, 2019, the FDIC issued a supplemental notice of proposed rulemaking (SNPR) which, among other things, extended the deadline for comments on the FDIC's regulatory flexibility analysis until November 8, 2019. The FDIC received no comments on the NPR or the SNPR, and consequently the final rule is adopted without change.

⁷ See 84 FR 52387 (Oct. 2, 2019). The FDIC published a SNPR in the Federal Register relating to the FDIC's regulatory flexibility analysis on October 9, 2019. See 84 FR 54045 (Oct. 9, 2019).

V. Explanation of the Final Rule

As discussed in the NPR, 12 CFR part 390, subpart R, is being rescinded, in its entirety, because it is largely unnecessary, redundant or duplicative given the existence of other applicable FDIC regulations described in Part III above.

VI. Expected Effects

As explained in Part III of this Supplementary Information section, certain OTS regulations transferred to the FDIC by the Dodd-Frank Act relating to regulatory reporting requirements, regulatory reports, and audits of State savings associations are redundant or unnecessary in light of other applicable FDIC regulations. This rule would eliminate those transferred OTS regulations.

As of June 30, 2019, the FDIC supervises 3,424 insured depository institutions, of which 38 (1.1 percent) are State savings associations.⁸ The rule primarily would affect regulations that govern State savings associations.

As explained in the NPR, the rule would remove §§ 390.320, 390.321, and 390.332 of part 390, subpart R, because these sections are redundant of, or otherwise unnecessary in light of, applicable statutes and other FDIC regulations regarding audits, reporting, and safety and soundness. As a result, rescinding and removing these regulations will not have any substantive effects on FDIC-supervised institutions.

⁸ Based on data from the June 30, 2019, Call Report and FFIEC 002 Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

VII. Alternatives

The FDIC has considered alternatives to the final rule but believes that the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to regulatory reporting standards and audits of insured depository institutions, including 12 CFR part 304; 12 CFR part 308; 12 CFR part 363 and its appendices A and B; 12 CFR part 364 and its appendix A; and 12 CFR part 390, subpart R. The FDIC considered the status quo alternative of retaining the current regulations but did not choose to do so because the underlying purposes of those regulations are already accomplished through substantively similar regulations regarding regulatory reports, regulatory reporting requirements, and audits. Therefore, the FDIC is amending and streamlining the FDIC's regulations.

VIII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 ("PRA"),⁹ the FDIC may not conduct or sponsor, and the respondent is not required to

⁹ 44 U.S.C. 3501-3521.

respond to, an information collection unless it displays a currently valid Office of Management and Budget (“OMB”) control number.

The final rule rescinds and removes from FDIC regulations part 390, subpart R. The final rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.¹⁰

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.^{11, 12} 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

¹⁰ 5 U.S.C. 601, et seq.

¹¹ The SBA defines a small banking organization as having \$600 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, by 84 FR 34261, effective August 19, 2019). In its determination, “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 the RFA.

¹² The FDIC supplemented the RFA analysis in the NPR 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 54045 (Oct. 9, 2019).

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 rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2019, the FDIC supervised 3,424 insured depository institutions, of which 2,665 are considered small banking organizations for the purposes of RFA.¹³ The final rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.¹⁴

As explained in the NPR, the final rule would remove §§ 390.320, 390.321, and 390.332 of part 390, subpart R, because these sections are redundant or otherwise unnecessary in light of applicable statutes and other FDIC regulations. As a result, rescinding the regulations would not have any substantive effects on small FDIC-supervised institutions.

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

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule.¹⁵ If a rule is deemed a major rule by the

¹³ FDIC Call Report, June 30, 2019.

¹⁴ *Id.*

¹⁵ 5 U.S.C. 801 *et seq.*

OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹⁶

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in – (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.¹⁷

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and 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 Act¹⁸ requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

¹⁶ 5 U.S.C. 801(a)(3).

¹⁷ 5 U.S.C. 804(2).

¹⁸ Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.¹⁹ The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (“EGRPRA Report”), discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the agency will take to address issues that were identified.²⁰ As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart R, this final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (“RCDRIA”),²¹ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (“IDIs”), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository

¹⁹ Pub. L. 104–208, 110 Stat. 3900 (1996).

²⁰ 82 FR 15900 (March 31, 2017).

²¹ 12 U.S.C. 4802(a).

institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.²²

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply.

List of Subjects in 12 CFR Part 390

Regulatory reporting standards.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends title 12 CFR part 390 as follows:

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

1. Revise the authority citation for part 390 to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 et seq.

Subpart G also issued under 12 U.S.C. 2810 et seq., 2901 et seq.; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

²² 12 U.S.C. 4802.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C.1831o.

Subpart R—[Removed and Reserved]

2. Remove and reserve subpart R, consisting of §§ 390.320 through 390.322.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, D.C., on December 12, 2019.

Annamarie H. Boyd,

Assistant Executive Secretary.

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