



6714-01-P

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Parts 303, 333, and 390**

**RIN 3064-AE23**

**Transferred OTS Regulations Regarding Fiduciary Powers of State Savings Associations and Consent Requirements for the Exercise of Trust Powers**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove regulations entitled *Fiduciary Powers of State Savings Associations*, from the Code of Federal Regulations, and to amend current FDIC regulations regarding consent to exercise trust powers to reflect the applicability of these parts to both State savings associations and State nonmember banks.

**DATES:** The final rule is effective January 1, 2019.

**FOR FURTHER INFORMATION CONTACT:**

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.<sup>1</sup> Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS) were divided between the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System, as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials, that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that, if such regulatory issuances were in effect on the day before the transfer date, they continue to be 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and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, 12 U.S.C. 5414(c), further directed the FDIC and OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by each agency. On June 14, 2011, the FDIC's Board of Directors approved a "List of OTS Regulations to be enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act."

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (12 U.S.C. 5301 *et seq.*).

This list was published by the FDIC and the OCC as a Joint Notice in the *Federal Register* on July 6, 2011.<sup>2</sup>

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act) and other laws as the "appropriate Federal banking agency" or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act, 12 U.S.C. 5412(c), amended the definition of "appropriate Federal banking agency" contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), 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 designated "appropriate Federal banking agency" for State savings associations and State nonmember banks, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such institutions.

On June 14, 2011, pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferred regulations of the former OTS as FDIC regulations. When these transferred OTS regulations were published as new FDIC regulations in the *Federal Register* on August 5, 2011,<sup>3</sup> the FDIC specifically noted that it would evaluate the transferred OTS regulations and might later incorporate them into other FDIC rules, amend them, or rescind them, as appropriate.

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<sup>2</sup> 76 FR 39247 (July 6, 2011).

<sup>3</sup> 76 FR 47652 (Aug. 5, 2011).

## **II. Part 390 Subpart J: Fiduciary Powers of State Savings Associations**

The OTS regulation formerly found at 12 CFR 550.10(b)(1), which covered the fiduciary powers (also known as trust powers) of State savings associations, was transferred to the FDIC with only nominal changes and is now found in the FDIC's rules at 12 CFR part 390, Subpart J (Subpart J). Subpart J provides that a State savings association must conduct its fiduciary operations in accordance with applicable State law and must exercise its fiduciary powers in a safe and sound manner.

## **III. State Nonmember Banks and Trust Powers**

Unlike the explicit requirement applicable to State savings associations in Subpart J, there is no express rule requiring State nonmember banks to conduct fiduciary operations in accordance with applicable State law and to exercise their fiduciary powers in a safe and sound manner. However, the FDIC has long recognized that State nonmember banks, like State savings associations, must comply with State law when exercising trust or fiduciary powers.<sup>4</sup> This reflects a widely understood industry principle that the trust powers of State chartered institutions are granted under State law and are primarily administered by the State chartering authority.<sup>5</sup>

State nonmember banks are generally required to file an application for consent to exercise trust powers.<sup>6</sup> Therefore, if a State nonmember bank seeks to change the nature of its current business to include trust activities, section 333.2 requires the bank to obtain

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<sup>4</sup> FDIC Trust Examination Manual, [http://www.fdic.gov/regulations/examinations/trustmanual/section\\_10/section\\_x.html#B1](http://www.fdic.gov/regulations/examinations/trustmanual/section_10/section_x.html#B1). (The trust powers of State nonmember banks are granted under State law and the administration of trust powers primarily rests with the State as a State nonmember bank's chartering authority.).

<sup>5</sup> *Id.*

<sup>6</sup> Banks granted trust powers by statute or charter prior to December 1, 1950, are considered grandfathered from the requirement to obtain consent to exercise trust powers. *See* 12 CFR 303.242(a).

the FDIC's prior written consent.<sup>7</sup> Under section 333.101(b), however, prior written consent is not required when a State nonmember bank seeks to act as trustee or custodian of certain qualified retirement, education, and health savings accounts, or other similar accounts in which the bank's duties are essentially custodial or ministerial in nature and the acceptance of such accounts without trust powers is not contrary to applicable State law.<sup>8</sup>

Section 303.242 contains application procedures that a State nonmember bank must follow to obtain the FDIC's prior written consent before engaging in trust activities.<sup>9</sup> Prior to granting such consent, the FDIC considers whether the bank will conduct trust operations in a safe and sound manner, consistent with State law.

#### **IV. The Proposed Rule**

On April 10, 2018, the FDIC issued a Notice of Proposed Rulemaking (NPR or Proposed Rule) entitled *Transferred OTS Regulations Regarding Fiduciary Powers of State Savings Associations and Consent Requirements for the Exercise of Trust Powers*.<sup>10</sup> The NPR proposed to: (1) rescind Subpart J in its entirety; (2) add a new section 333.3 explicitly providing that State savings associations and State nonmember banks must obtain the FDIC's prior written consent before exercising trust

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<sup>7</sup> A State nonmember bank is required to obtain the FDIC's prior written consent before changing its general character or type of business. 12 CFR 333.2.

<sup>8</sup> These accounts include Individual Retirement Accounts (IRAs), Self-Employed Retirement Plans, Roth IRAs, Coverdell Education Savings Accounts, Health Savings Accounts, and other accounts in which: (1) the bank's duties are essentially custodial or ministerial in nature; (2) the bank is required to invest the funds from such plans only in its own time or savings deposits or in any other assets at the direction of the customer; and (3) the bank's acceptance of such accounts without trust powers is not contrary to applicable State law. See 12 CFR 333.101(b).

<sup>9</sup> State nonmember banks must file an application to obtain the FDIC's prior written consent to exercise trust powers unless: (1) the bank received authority to exercise trust powers by its chartering authority prior to December 1, 1950; or (2) the insured depository institution continues to conduct trust activities pursuant to the authority granted to it by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System. 12 CFR 303.242(a).

<sup>10</sup> 83 FR 15327 (Apr. 10, 2018).

powers by following the procedures contained in section 303.242; (3) revise section 333.101 to provide that State savings associations, as well as State nonmember banks, are not considered to be exercising trust powers when acting as trustees or custodians for certain qualified retirement, education, and health savings accounts, or other similar accounts in which the bank's duties are essentially custodial or ministerial in nature and the acceptance of such accounts without trust powers is not contrary to applicable State law; and (4) revise section 303.242 to make its application procedures applicable to both State savings associations and State nonmember banks and incorporate a listing of documents required to be submitted with the application for consent to exercise trust powers.

#### **V. Comments**

The FDIC issued the NPR with a 60-day comment period that closed on June 11, 2018. The FDIC requested comments on all aspects of the Proposed Rule, including whether Subpart J should be retained and what positive or negative impacts could result from the proposed revisions to parts 333 and 303, including the impact on State savings associations not currently exercising trust powers that would need to obtain FDIC consent if they chose to do so in the future. The FDIC received no comments on the Proposed Rule. Accordingly, the FDIC is adopting the Proposed Rule largely as proposed, but without incorporating the listing of documents in section 303.242. As discussed further below, this change is intended to avoid unnecessary duplication or confusion with the existing application form and further regulatory revisions in the event of any future changes to the documentation listed on the form.

## **VI. Explanation of the Final Rule**

As discussed in the NPR, the FDIC concluded that the rescission of Subpart J would streamline the FDIC rules and regulations, and no comments were received on this issue. Therefore, the final rule removes and rescinds 12 CFR Part 390, Subpart J in its entirety.

The final rule adds a new section 333.3, unchanged from the NPR, explicitly requiring State savings associations and State nonmember banks to obtain the FDIC's prior written consent before exercising trust powers. For State nonmember banks, section 333.3 makes explicit the FDIC's existing requirement that State nonmember banks receive the FDIC's consent before initially exercising trust powers, as such an action would constitute a change in the bank's general character or business under 12 CFR 333.2. For State savings associations, Section 333.3 adds a new requirement to obtain the FDIC's prior written consent should they choose in the future to exercise trust powers granted by their State chartering authorities. In effect, section 333.3 makes the requirement to file an application consistent for both State savings associations and State nonmember banks.

The final rule, like the NPR, also revises section 333.101(b) to permit both State savings associations and State nonmember banks to act as custodians for qualifying retirement, education, and health savings accounts, or other similar accounts without being deemed to exercise trust powers, and therefore without obtaining the FDIC's prior written consent.

The final rule, like the NPR, makes the application procedures in section 303.242 applicable to both State savings associations and State nonmember banks. Accordingly,

under section 303.242(a) of the final rule, neither State savings associations nor State nonmember banks are required to receive the FDIC's prior written consent to exercise trust powers when: (1) the institution received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or (2) the institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System. The NPR originally proposed to amend section 303.242 (c) to list specific documents typically filed as part of an application to exercise trust powers.<sup>11</sup> Upon further consideration, the FDIC determined not to list these items in the final rule in order to avoid duplication with the items already listed in the instructions on the existing application form for consent to exercise trust powers and the need for additional, corresponding changes to section 303.242(c) to reflect any future updates to the existing form.<sup>12</sup> Accordingly, the final rule does not change section 303.242(c), which continues to provide that the required filing shall consist of the completed application form.<sup>13</sup>

## **VII. Regulatory Process**

### **A. *The Paperwork Reduction Act***

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995, codified at 44 U.S.C. 3501-3521. In accordance with the PRA, 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)

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<sup>11</sup> 83 FR 15327, 15320.

<sup>12</sup> FDIC, *Application for Consent to Exercise Trust Powers*, <https://www.fdic.gov/formsdocuments/6200-09.pdf>.

<sup>13</sup> 12 CFR 303.242(c).

control number. The OMB control number for this collection of information is 3064-0025.<sup>14</sup> As required by the PRA and OMB implementing regulations (5 CFR Part 1320), when the NPR was published, the FDIC submitted the information collection requirements contained in this final rulemaking to OMB for review and approval. OMB filed its Notice of Action preapproving this submission on May 16, 2018.

The final rule, like the NPR, would rescind and remove Part 390, Subpart J from Title 12 of the Code of Federal Regulations, amend Parts 303 and 333 to clarify the existing consent requirements for State nonmember banks, and incorporate references to State savings associations into those parts. These changes would not add additional burden to the FDIC's current information collection under OMB control number 3064-0025, *Application for Consent to Exercise Trust Powers*. However, the revision of Parts 303 and 333 to include State savings associations as potential filers would add additional burden to the FDIC's current information collection under OMB control number 3064-0025, as State savings associations would be required to complete the designated application and submit required documentation to comply with Parts 303 and 333. Currently, there are a total of forty one State savings associations. There is only one State savings association currently exercising trust powers, so there are forty State savings associations that would potentially need to seek the FDIC's consent pursuant to the proposed revisions to Parts 303 and 333 before exercising trust powers.<sup>15</sup>

In the NPR, the FDIC proposed to revise this information collection as follows:

*Title:* Application for Consent to Exercise Trust Powers

*OMB Number:* 3064-0025

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<sup>14</sup> The information collection for Application for Consent to Exercise Trust Powers, OMB No. 3064-0025, was renewed by OMB on August 30, 2017, and now expires on August 31, 2020.

<sup>15</sup> Call Report Data, June 2018.

Form Number: FDIC 6200/09

*Affected Public:* Insured State nonmember banks and insured State savings associations wishing to exercise trust powers

	Type of Burden	Estimated Number of Respondents	Estimated Hours per Response	Frequency of Response	Total Annual Estimated Burden
Eligible depository institutions	Reporting	9	8	On Occasion	72 hours
Not-eligible depository institutions	Reporting	4	24	On Occasion	96 Hours
<b>Totals</b>		13			168 Hours

The FDIC did not receive any comments on its proposed revisions to this information collection. Accordingly, the information collection revisions are adopted as proposed in the NPR and replicated in the chart above.

**B. *The Regulatory Flexibility Act***

The Regulatory Flexibility Act (RFA)<sup>16</sup> requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the United States Small Business Administration to include banking organizations with total assets of less than or equal to \$550 million). 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*

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<sup>16</sup> 5 U.S.C. 601 *et seq.*

together with the rule.<sup>17</sup> As discussed above and in the NPR, the FDIC has authority to issue, modify and rescind regulations as the appropriate Federal banking agency for State savings associations and State nonmember banks. In addition to the approach taken in the NPR and final rule, the FDIC also considered the alternative of maintaining the status quo, which would have retained the separate regulatory regimes for State savings associations and State non-member banks.

The final rule amends part 333 to state that both State savings associations and State nonmember banks seeking to exercise trust powers must obtain FDIC consent. The final rule is not expected to impact State nonmember banks, as it results in no substantive changes for those institutions. Prior to the final rule, State nonmember banks were subject to the longstanding interpretation that the initial exercise of trust powers granted by a chartering authority constituted a change in the character of the bank's business under 12 CFR 333.2, and thereby required the FDIC's prior written approval. The final rule clarifies this issue by explicitly stating the longstanding requirement that State nonmember banks obtain the FDIC's prior written approval before exercising trust powers for the first time.

As discussed above, the revisions to part 333 require a filing by those State savings associations that seek to exercise trust powers in the future. However, a State savings association's application for the FDIC's consent to exercise trust powers would be a one-time process that is not anticipated to create a significant economic impact. The information requested on the application form would require a State savings association to identify the type of trust power it seeks to exercise and to provide documentation that

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<sup>17</sup> The FDIC supervises 3,675 institutions, of which 2,850 are "small entities" according to the terms of RFA. There are 2,832 small state non-member banks and 38 small state savings associations. *See* Call Report Data, June 2018.

includes proof of the adoption of the FDIC's Statement of Principles of Trust Department Management, identification of the applicable trust officer, trust committee, trust counsel, servicing arrangements, proof of the requisite approvals by the appropriate State authority, a projection of the proposed trust activity's three-year performance, and a statement of its impact on the applicant.<sup>18</sup>

Based on the FDIC's supervisory experience, most of the documentation required, such as State approval, servicing arrangements, and designation of personnel to serve as appropriate trust counsel, trust officer, and trust committee directors, is based on information and resources that a State savings association applicant would already possess or have to establish in order to exercise trust powers, regardless of whether it seeks the FDIC's prior written consent. Submitting existing information is not expected to create significant, additional expenses for a State savings association seeking the FDIC's prior written consent to exercise trust powers. The FDIC estimates that it will receive relatively few applications, given the small overall number of State savings associations (40) that would be affected by the rule if they sought to exercise trust powers. In addition, no comments were received pertaining to the RFA discussion in the NPR.

For these reasons, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

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<sup>18</sup> FDIC 6200/09 (10-05).

**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).<sup>19</sup> 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<sup>20</sup> requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although no comments were received, the FDIC has sought to present the final rule in a simple and straightforward manner.

**E. *Riegle Community Development and Regulatory Improvement Act of 1994***

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),<sup>21</sup> in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, 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 institutions, as well as the benefits of such regulations. In addition, section 302(b) of

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<sup>19</sup> 5 U.S.C. 801 *et seq.*

<sup>20</sup> Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

<sup>21</sup> 12 U.S.C. 4802(a).

RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions 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.<sup>22</sup>

In accordance with these provisions, the FDIC considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. The final rule imposes a new requirement on State savings associations to obtain the FDIC's consent before exercising trust powers granted by State chartering authorities and, in accordance with RCDRIA and the Administrative Procedure Act<sup>23</sup>, will be effective no earlier than the first day of the calendar quarter that is at least 30 days following the date on which the final rule is published in the *Federal Register*. However, as discussed above, the application primarily requires submission of pre-existing documentation and is not expected to be burdensome for depository institutions or their customers. The final rule also provides greater clarity to FDIC-supervised institutions and results in greater consistency in the application process.

**F. *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 ten years in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.<sup>24</sup> The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (EGRPRA

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<sup>22</sup> 12 U.S.C. 4802.

<sup>23</sup> 5 U.S.C. 553(d).

<sup>24</sup> Pub. L. 104-208, 110 Stat. 3009 (1996).

Report), discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures to address issues identified during the review process. 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 Subpart J, and amending Parts 303 and 333, this rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

### **List of Subjects**

#### **12 CFR Part 303**

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

#### **12 CFR Part 333**

Banks, banking, Corporate powers, Savings associations, Trusts and trustees.

#### **12 CFR Part 390**

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

### **Authority and Issuance**

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 308, 333, and 390 as follows:

#### **PART 303—FILING PROCEDURES**

1. The authority citation for part 303 is revised to read as follows:

**Authority:** 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415 and 15 U.S.C. 1601-1607.

2. Revise § 303.242 to read as follows:

§ 303.242 Exercise of trust powers.

(a) *Scope.* This section contains the procedures to be followed by a State nonmember bank or State savings association that seeks to obtain the FDIC's prior written consent to exercise trust powers. The FDIC's prior written consent to exercise trust powers is not required in the following circumstances:

(1) Where a State nonmember bank or State savings association received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where the institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Where to file.* Applicants shall submit to the appropriate FDIC office a completed form, "Application for Consent to Exercise Trust Powers." This form may be obtained from any FDIC regional director.

(c) *Content of filing.* The filing shall consist of the completed trust application form.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be

acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

### **PART 333—EXTENSION OF CORPORATE POWERS**

3. The authority citation for part 333 is revised to read as follows:

**AUTHORITY:** 12 U.S.C. 1816; 1817(i); 1818; 1819(a) (“Seventh”, “Eighth”, and “Tenth”), 1828, 1828(m), 1831p-1(c), 5414 and 5415.

4. Add § 333.3 to read as follows:

§ 333.3 Consent required for exercise of trust powers.

Except as provided in 12 CFR 303.242(a), a State nonmember bank or State savings association seeking to exercise trust powers must obtain prior written consent from the FDIC. Procedures for obtaining the FDIC’s prior written consent are set forth in 12 CFR 303.242.

5. Revise § 333.101(b) to read as follows:

§333.101 Prior consent not required.

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(b) An insured State nonmember bank or State savings association, not exercising trust powers, may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts established pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts without the prior written consent of the Corporation provided:

(1) The bank's or savings association's duties as trustee or custodian are essentially custodial or ministerial in nature,

(2) The bank or savings association is required to invest the funds from such plans only

(i) In its own time or savings deposits, or

(ii) In any other assets at the direction of the customer, provided the bank or savings association does not exercise any investment discretion or provide any investment advice with respect to such account assets, and

(3) The bank's or savings association's acceptance of such accounts without trust powers is not contrary to applicable State law.

## **PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION**

6. The authority citation for part 390 is revised to read as follows:

AUTHORITY: 12 U.S.C. 1819.

**Subpart J – [Removed and reserved]**

7. Remove and reserve subpart J, consisting of § 390.190.

Dated at Washington, DC, on November 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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