



**6714-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Parts 303 and 348**

**RIN 3064-AE92**

**Depository Institution Management Interlocks Act**

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

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This final rule is being promulgated in connection with an adjustment of the thresholds for the major assets prohibition of the Depository Institutions Management Interlocks Act (DIMIA) that has been proposed jointly by the FDIC with the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System (collectively, the “Agencies”) through a notice of proposed rulemaking (NPR) published in the *Federal Register* on January 31, 2019. The FDIC has decided to use this opportunity to make two purely technical corrections to FDIC Regulations, both pertaining to DIMIA implementation, by means of a separate final rule without notice and comment.

**DATES:** The final rule is effective [**Insert date of publication in the Federal Register**].

**FOR FURTHER INFORMATION CONTACT:** Karen J. Currie, Senior Examination Specialist, [KCurrie@fdic.gov](mailto:KCurrie@fdic.gov), Division of Risk Management Supervision, (202) 898-3981; Mark Mellon, Counsel, [mmellon@fdic.gov](mailto:mmellon@fdic.gov), Legal Division, (202) 898-3884; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The FDIC has concluded that good cause exists to publish this rule as final without a period of notice and comment and with an

effective date as of the date of its publication in the Federal Register because this final rule will only make purely technical corrections and in no way affects or changes any substantive requirements under the DIMIA or its implementing regulation.

## **I. Background**

The Agencies jointly proposed an adjustment of the thresholds for the major assets prohibition of the DIMIA through a NPR published at 84 FR 604 (Jan. 31, 2019). In addition to an adjustment of the thresholds for the major assets prohibition by means of the NPR, the FDIC will use this opportunity to make two technical corrections to FDIC Regulations, both relevant to DIMIA implementation. The first correction pertains to 12 CFR 303.249 and would remove an erroneous statement. The second pertains to 12 CFR 348.4(i) and would correct a citation. Both technical corrections are explained in further detail below.

### **A. Correct Erroneous Statement in 12 CFR 303.249(c)(3)**

12 CFR Part 303 of FDIC Regulations pertains to filing procedures. Section 303.249(c)(3) currently states that an applicant seeking an exemption under either § 348.5 or § 348.6 of the FDIC DIMIA regulation needs to provide certain information in connection with an application for an interlocks exemption. The reference to § 348.5 is wrong. This section pertains to the small market share exemption, which was specifically designed by the Federal depository institutions regulatory agencies to be self-executing, that is, an application to the FDIC is not required for the exemption to be effective.<sup>1</sup> The incorrect statement will therefore be removed.

### **B. Correct Erroneous Citation in 12 CFR 348.4(i)**

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<sup>1</sup> See 64 FR at 51676 (Sep. 24, 1999).

Section 348.4 pertains to statutory exemptions from the Interlocks Act prohibitions. Section 348.4(i) sets forth the exemption for a management interlock where a director of an unaffiliated depository organization serves as a management official of a diversified savings and loan holding company as that term is defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)). Section 348.4(i)(3) incorrectly refers to preceding paragraph (h) when it should refer to paragraph (i). This incorrect citation will therefore be corrected.

As noted previously, these two changes to the FDIC Regulations are purely technical, done to correct an erroneous statement and a citation. Since these are merely technical amendments, public notice and comment is unnecessary nor is there any need for a delayed effective date.

## **II. Administrative Procedure Act**

The Administrative Procedure Act (APA) does not require an agency to publish a notice of proposed rulemaking in the Federal Register if an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>2</sup> The FDIC finds that for purposes of making purely technical corrections, good cause exists to not publish a notice of proposed rulemaking in the Federal Register and, therefore, is issuing this rule as a final rule.

Section 553(d)(3) of the APA provides that, for good cause found and published with the rule, an agency does not have to comply with the requirement that a substantive

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<sup>2</sup> 5 U.S.C. 553(b).

rule be published not less than 30 days before its effective date.<sup>3</sup> The final rule will be effective immediately upon its publication in the Federal Register. The FDIC invokes the good cause exception to the APA's 30-day publication requirement for the reasons discussed above.

### **III. Regulatory Analyses**

#### **A. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of \$550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The RFA also requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Act (FRFA) analysis describing the impact of the final rule on small entities. Neither an IRFA nor FRFA is required, however, if the rule is issued under the APA provision allowing the agency to forego notice and comment rulemaking for good cause. Therefore, the FDIC has not prepared either an IRFA or an FRFA in connection with this final rule. Nevertheless, the FDIC notes that the final rule does not impose any burden on small banking entities as it only makes technical corrections to already existing requirements.

#### **B. Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), the FDIC may not conduct or sponsor, and a respondent is not

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<sup>3</sup> 5 U.S.C. 553(d)(3).

required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC reviewed the rule and determined that it does not create any new, or revise any existing, collection of information under section 3504(h) of the Paperwork Reduction Act of 1980. Consequently, no information collection request will be submitted to the OMB for review.

### **C. Small Business Regulatory Enforcement Fairness Act**

The Office of Management and Budget has determined that the final rule is not a “major rule” within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104-121).

### **D. The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

### **E. Plain Language**

Section 722 of the Gramm-Leach-Bliley Act requires the federal banking agencies to use plain language in all final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

### **F. Riegle Community Development and Regulatory Improvement Act of 1994**

Under the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802, (RCDRIA), there is a requirement that “[n]ew 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” absent a good cause determination by the agency.<sup>4</sup> The final rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions and therefore is not subject to the effective date requirement in RCDRIA.

### **List of Subjects**

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

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

#### **12 CFR Part 348**

Banks, banking, Savings associations.

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 303 and 348 as follows:

### **PART 303--FILING PROCEDURES**

1. The authority citation for part 303 continues 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(1), 3104, 3105, 3108, 3207, 5414; 15 U.S.C. 1601--1607.

2. In § 303.249, paragraph (c)(3) is revised to read as follows:

#### **§ 303.249 Management official interlocks.**

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<sup>4</sup> 12 U.S.C. 4802(b).

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(c) \*\*\*

(3) If the applicant is seeking an exemption set forth in § 348.6 of this chapter, a description of the particular exemption which is being requested and a statement of reasons as to why the exemption is applicable.

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### **PART 348--MANAGEMENT OFFICIAL INTERLOCKS**

3. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

4. In § 348.4, paragraph (i)(3) is revised to read as follows:

#### **§ 348.4 Interlocking relationships permitted by statute.**

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(i)\*\*\*

(3) The FDIC may require that any interlock permitted under this paragraph (i) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

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Dated at Washington, DC, on December 18, 2018.

By order of the Board of Directors.

**Valerie Best,**

*Assistant Executive Secretary.*

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