



Billing Code: 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, and 347

RIN 3064-AF54

Branch Application Procedures

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to amend its application requirements for the establishment and relocation of branches and offices so that such applications would no longer require statements regarding the compliance of such proposals with the National Historic Preservation Act of 1966 (NHPA) and the National Environmental Policy Act of 1969 (NEPA). In connection with an ongoing and comprehensive review of the FDIC's existing regulations and guidance to identify rules or guidance that may be outdated, duplicative, or inconsistent, and after a careful analysis of applicable law, staff has concluded that continued consideration of the NHPA and the NEPA in the review of applications for the establishment of a branch and applications for the relocation of a branch or main office is not required under law and, therefore, consideration of these statutes during the processing of these applications is an unnecessary regulatory requirement for insured state nonmember banks and insured branches of foreign banks. Accordingly, the FDIC proposes to amend its regulations to remove NHPA and NEPA requirements embedded in its branch application procedures, and to rescind its statements of policy regarding the NHPA and the NEPA, consistent with branch application

procedures for national banks and insured state member banks supervised by the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System. These statements of policy respectively provide guidance regarding the FDIC's consideration of the NHPA and the NEPA in the context of the FDIC's review of applications for deposit insurance for *de novo* institutions, the establishment of branches, and relocation domestic branches or main offices.

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

ADDRESSES: You may submit comments, identified by RIN 3064-AF54, by any of the following methods:

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

- Agency Website:
<https://www.fdic.gov/regulations/laws/federal/index.html>. Follow the instructions for submitting comments on the website.

- Email: Comments@fdic.gov. Include RIN 3064-AF54 in the subject line of the message.

- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

- Hand Delivery / Courier: 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 7:00 a.m. and 5:00 p.m.

Instructions: All submissions for this rulemaking must include the agency name and RIN 3064-AF54. Comments received will be posted without change to <https://www.fdic.gov/regulations/laws/federal/index.html>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Navid Choudhury, Counsel, Consumer Compliance Unit, Legal Division, (202) 898–6526, nchoudhury@fdic.gov; Patricia A. Colohan, Associate Director, Risk Management Examination Branch; (202) 898-7283, pcolohan@fdic.gov.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the NHPA and the NEPA as discrete but related laws to limit the impact of Federal Government initiatives on historic properties and the environment, respectively. Both statutes apply broadly across the Federal Government but to a limited universe of Federal Government actions. Congress sought to incorporate historic preservation and environmental considerations into the Federal Government’s work and also to augment and support state and local laws that address historic preservation and environmental policy. The FDIC historically has interpreted the NHPA and NEPA as having limited application to deposit insurance and branch applications.

Section 106 of the NHPA requires Federal agencies to take into account the effects of their “undertakings” on historic properties.¹ Likewise, section 102(2)(C) of the NEPA requires that Federal agencies include, in every recommendation or report on major Federal actions significantly affecting the quality of the human environment, a detailed statement that addresses the environmental impact of the proposal.² For several years, the FDIC has interpreted the scope of the NHPA and the NEPA as limited to the potential impact on historic properties and the environment with respect to applications for deposit insurance for *de novo* institutions and applications by state non-member banks to establish a domestic branch and to relocate a domestic branch or main office (Covered Applications).

The FDIC has implemented its responsibilities under the NHPA and the NEPA with respect to Covered Applications by regulation and via three statements of policy. In relevant part, the FDIC’s regulations generally require applicants to furnish statements regarding compliance with NEPA and NHPA in connection with main office relocation applications by state nonmember banks,³ domestic and foreign branch establishment and relocation applications by state nonmember banks,⁴ and insured branch relocation applications by foreign banks.⁵ The three statements of policy are: the *Statement of Policy*

¹ 54 U.S.C. 306108. Section 402 (54 U.S.C. 307101) of the NHPA requires that federal undertakings outside of the United States take into account adverse effects on sites inscribed on the World Heritage List or on the foreign nation’s equivalent of the National Register for the purpose of avoiding or mitigating adverse effects. Congress added this provision to the NHPA in 1980 to govern federal undertakings outside the United States.

² 42 U.S.C. 4332(C).

³ 12 CFR 303.40 and 303.42(b)(4) and (5).

⁴ 12 CFR 303.40, 303.42(b)(4) and (5), and 303.182.

⁵ 12 CFR 303.184.

*Regarding the National Historic Preservation Act of 1966;*⁶ *the Statement of Policy Regarding the National Environmental Policy Act of 1969;*⁷ and *the Statement of Policy on Applications for Deposit Insurance.*⁸

Review of Regulations and Guidance

In an ongoing effort to streamline FDIC regulations and other supervisory materials issued to the public, and to ensure that such materials are timely, relevant, and effective, the FDIC initiated a comprehensive review of its statements of policy and related matters to identify those that could be rescinded. Additionally, as part of its 2017 decennial report to Congress required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA),⁹ the FDIC committed to review all published guidance in order to identify any guidance that should be revised or rescinded because such issuance is out-of-date or otherwise no longer relevant. In accordance with the EGRPRA, the FDIC regularly reviews its regulations to identify outdated or otherwise unnecessary regulatory requirements.

As noted above, the NHPA and NEPA are parallel but discrete statutes. Courts determining whether these laws apply to a particular Federal agency action have applied similar principles to both statutes. Section 106 of the NHPA applies only to a Federal “undertaking,” which, for the type of work the FDIC does, means an activity “requiring a

⁶ 71 FR 42399 (July 26, 2006).

⁷ 63 FR 63475 (Nov. 13, 1998).

⁸ 63 FR 44756 (Nov. 20, 1998); amended 67 FR 79278 (Dec. 27, 2002). The FDIC expects to update this Statement of Policy at a later date.

⁹ 12 U.S.C. 3311.

federal permit, license or approval.”¹⁰ Section 102(2)(C) of the NEPA applies only to a “major Federal action,” which includes actions with environmental effects that may be major and which are potentially subject to Federal control and responsibility. In reviewing the case law on what constitutes an “undertaking” under NHPA or a “major Federal action” under the NEPA, the FDIC does not believe that approval of a Covered Application constitutes a Federal undertaking under section 106 or section 402 of the NHPA or a major Federal action under section 102(2)(C) of the NEPA.

Section 18(d) of the Federal Deposit Insurance Act requires the FDIC’s consent in connection with: an insured state nonmember bank’s establishment of a domestic or foreign branch, an insured state nonmember bank’s relocation of its main office or a domestic branch, and a foreign bank’s relocation of an insured branch.¹¹ Section 3(o) defines a domestic branch as any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent.¹² These functions (receiving deposits, paying checks, and lending money) characterize a “domestic branch” and are generally referred to as the “core banking functions.” Section 3(o) likewise defines a “foreign branch” as any office or place of

¹⁰ Undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including: (1) those carried out by or on behalf of the Federal agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license or approval; and (4) those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. 54 U.S.C. 300320.

¹¹ 12 U.S.C. 1828(d)(1) & (2).

¹² 12 U.S.C. 1813(o).

business located outside the United States at which “banking operations are conducted,”¹³ and an insured branch of a foreign bank is defined as a branch of a foreign bank at which insured deposits are received.¹⁴ Section 18(d) therefore generally prohibits a state nonmember bank from engaging in specified activities at a location other than an FDIC-approved main office, domestic branch, or foreign branch, and prohibits a foreign bank from receiving insured deposits at a location other than an approved insured branch. Section 18(d) does not confer upon the FDIC the statutory authority to oversee the construction or acquisition of bank premises, but it governs the circumstances under which the FDIC may authorize a state nonmember bank or an insured branch of a foreign bank to engage in specified banking functions from bank premises. The FDIC’s approval of an application under section 18(d), as well as its consideration of NHPA and NEPA in connection with deposit insurance applications, only authorizes certain banking activities to occur at a particular geographic location – nothing more. Therefore, the FDIC’s approval of a Covered Application does not authorize any building construction or demolition – or any other activity that could affect historic properties or the environment.

The FDIC is currently the only Federal banking agency that requires consideration of the NHPA and NEPA in connection with branch applications. The Federal Reserve Board’s and the OCC’s regulatory requirements with respect to branch applications do not incorporate review of the NHPA and the NEPA requirements.¹⁵ After carefully reviewing the FDIC’s procedures for Covered Applications, the FDIC has

¹³ *Id.*

¹⁴ 12 U.S.C. 1813(s); *see also* 12 U.S.C. 3101(b)(6).

¹⁵ 84 FR 51711 (Sept. 30, 2019).

concluded that consideration of the NHPA and NEPA is not required by law and is an unnecessary regulatory requirement for insured state nonmember banks.

Proposed Rule; Rescission of Policy Statements

For the reasons discussed above, the FDIC proposes to make the following amendments to its regulations.

Establishment and Relocation of Domestic Branches and Main Offices of State Nonmember Banks

Part 303 subpart C of the FDIC's regulations sets forth the filing requirements applicable to a state nonmember bank that seeks the FDIC's consent to establish a domestic branch, relocate a domestic branch, or relocate its main office. For each such application, § 303.42 requires applicants to furnish a statement on the impact of the proposal on the human environment for the purposes of complying with the NEPA,¹⁶ and to furnish a statement regarding the eligibility of the proposed site for inclusion in the National Register of Historic Places for purposes of complying with the NHPA.¹⁷ The proposed rule would eliminate these filing requirements concerning the NEPA and the NHPA.

Establishment and Relocation of Foreign Branches of State Nonmember Banks

Section 303.182 of the FDIC's regulations sets forth the filing requirements applicable to a state nonmember bank that seeks the FDIC's consent to establish or relocate a foreign branch. For such an application, § 303.182 requires applicants to

¹⁶ 12 CFR 303.42(b)(4).

¹⁷ 12 CFR 303.42(b)(5).

furnish a statement regarding whether the proposed branch would be located on a site on the World Heritage List or on the foreign county's equivalent of the National Register of Historic Places for purposes of complying with the NHPA.¹⁸ The proposed rule would eliminate this filing requirement. In addition, § 347.117 of the FDIC's regulations grants general consent to eligible state nonmember banks to establish or relocate a foreign branch,¹⁹ but § 347.119 withholds such general consent if, among other things, the proposed foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places.²⁰ The proposed rule would eliminate this consideration as a basis for withholding general consent for the establishment or relocation of a foreign branch of an eligible state nonmember bank.

Relocation of an Insured Branch of a Foreign Bank

Section 303.184 of the FDIC's regulations sets forth the filing requirements applicable to a foreign bank that seeks the FDIC's consent to move an insured branch from one location to another. For such an application, § 303.184 requires applicants to furnish a statement on the impact of the proposal on the human environment for the purposes of complying with the NEPA,²¹ and to furnish a statement regarding the eligibility of the proposed site for inclusion in the National Register of Historic Places for purposes of complying with the NHPA.²² The proposed rule would eliminate these filing requirements concerning the NEPA and the NHPA. In addition, § 303.184(d) sets forth

¹⁸ 12 CFR 303.182(a) and (b)(2)(i).

¹⁹ 12 CFR 347.117.

²⁰ 12 CFR 347.119(b).

²¹ 12 CFR 303.184(a)(2)(iii).

²² 12 CFR 303.184(a)(2)(iv).

the approval criteria for a foreign bank's application to relocate an insured branch.²³

These criteria include, among other things, compliance with NEPA and NHPA.²⁴ The proposed rule would eliminate compliance with the NEPA and the NHPA as approval criteria for a foreign bank's relocation of an insured branch.

Other Amendments

Section 303.2 defines terms used throughout the FDIC's regulations. These defined terms include "NEPA"²⁵ and "NHPA."²⁶ Because the amendments to the FDIC's regulations proposed above would remove each additional instance where these terms appear in the FDIC's regulations, the proposed rule would remove "NEPA" and "NHPA" as defined terms from § 303.2.

Statements of Policy

As mentioned above, the FDIC has implemented its responsibilities under the NHPA and the NEPA via statements of policy as well. The *Statement of Policy Regarding the National Historic Preservation Act of 1966* provides general guidance regarding the FDIC's compliance with the NHPA and supplements procedures detailed in FDIC regulations and regulations implementing the NHPA. Similarly, the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC* addresses the FDIC's compliance with the NEPA with respect to applications, notices and requests submitted to the FDIC in accordance with governing regulations at 12 CFR 303. As a result of the amendments to the FDIC's regulation regarding branch

²³ 12 CFR 303.184(d).

²⁴ 12 CFR 303.184(d)(1)(iv).

²⁵ 12 CFR 303.2(w).

²⁶ 12 CFR 303.2(x).

applications with respect to compliance with the NHPA and the NEPA, the FDIC proposes to rescind these two Statements of Policy for the reasons discussed above.

The proposed amendments to 12 CFR parts 303 and 347 together with the proposed rescission of the two Statements of Policy regarding the NHPA and the NEPA, would eliminate requirements that are unnecessary for insured state nonmember banks and insured branches of foreign banks, as well as improve the efficiency of the Covered Application review process. Additionally, these actions would place the FDIC in alignment with the other Federal banking agencies and remove a competitive disadvantage insured state nonmember banks and insured branches of foreign banks now face relative to insured state member banks and national banks. Furthermore, insured state nonmember banks and insured branches of foreign banks would remain subject to any applicable state and local historic preservation and environmental laws.

Expected Effects

According to the most recent data, the FDIC supervises 3,344 depository institutions. The proposed rule could specifically affect 3,302 state nonmember depository institutions supervised by the FDIC and 10 insured branches of foreign banks.²⁷ As previously discussed, the proposed rule would (1) remove “NEPA” and “NHPA” as defined terms in 12 CFR 303.2(w) and (x); (2) amend the branch application filing procedures for state nonmember banks set forth in 12 CFR 303.42 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (b)(4) and (5); (3) amend the foreign branch application notice procedures for state nonmember banks

²⁷ FDIC Call Report data, December 31, 2019.

set forth in 12 CFR 303.182 by removing the requirements to provide a statement in accordance with NHPA set forth in paragraphs (a) and (b)(2)(i), and by removing NHPA compliance as a basis for withholding general consent to establish or relocate a foreign branch under 12 CFR 347.119(b); (4) amend the filing procedures for moving an insured branch of a foreign bank set forth in 12 CFR 303.184 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (a)(2)(iii) and (iv) and (d)(1)(iv); (5) rescind the *Statement of Policy Regarding the National Historic Preservation Act of 1966*; and (6) rescind the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC*. In so doing, the proposed rule would amend the required contents for applications for establishment of a branch and applications for relocation of a branch or main office. Between 2015 and 2018, the FDIC received 549 applications from 400 unique insured State nonmember banks per year to establish a branch, 177 applications from 152 unique insured State nonmember banks per year to relocate a branch or main office, and 1 application from insured branches of foreign banks per year to relocate a branch or main office, on average.²⁸ For purposes of this analysis, the FDIC is estimating that the number of unique respondents affected by the proposed rule would be consistent with this recent experience. Therefore, the FDIC estimates that the proposed rule would affect 400 insured State nonmember banks applying to establish a domestic branch, 152 insured State nonmember institutions applying to relocate a branch or main office, and 1 insured branch of a foreign bank applying to relocate a branch or main office, per year, on average.

²⁸ ViSION, FDIC Application Data.

The proposed rule would likely reduce the costs associated with filing branch applications for affected entities by making the process more efficient. Although the proposed rule is expected to reduce costs associated with Covered Applications for applicants dealing with historic properties or environmental issues, the FDIC does not believe the proposed rule will reduce the average hours per response for Covered Applications. Additionally, as previously discussed, the FDIC is currently the only Federal banking agency that requires consideration of the NHPA and NEPA in connection with branch applications. Therefore, the proposed rule is expected to remove a competitive disadvantage that insured state nonmember banks and insured branches of foreign banks now face relative to state member banks and national banks.

The FDIC believes that the associated reductions in costs and application information content are unlikely to generate significant effects on the U.S. economy. The estimated cost reductions are likely to be small because the number of entities affected is also estimated to be small. Further, as previously discussed, while covered applications of insured state nonmember banks and insured branches of foreign banks would no longer be subject to NHPA or NEPA review under federal law, they would remain subject to any applicable state and local historic preservation and environmental laws. Accordingly, outcomes for individual properties that are the subject of covered applications may differ in some states from what they would have been in the absence of the rule.

As previously discussed, after reviewing the case law on what constitutes an “undertaking” under NHPA or a “major Federal action” under the NEPA, the FDIC does not believe that approval of a Covered Application constitutes a federal undertaking

under section 106 of the NHPA or a major federal action under section 102(2)(C) of the NEPA. Therefore, concurrent with the amendment of 12 CFR parts 303 and 347, the FDIC is planning on rescinding the Statements of Policy entitled *Statement of Policy Regarding the National Historic Preservation Act of 1966*, and *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC*. The FDIC believes that the concurrent action to rescind these Statements of Policy will help simplify the application process by removing unnecessary information for applicants, thereby making it more efficient.

Alternatives Considered

The FDIC considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for affected entities. As discussed previously, after carefully reviewing the FDIC's procedures for Covered Applications, the FDIC has concluded that consideration of the NHPA and the NEPA is not required by law and is an unnecessary regulatory requirement of branch application review process. The FDIC considered the alternative of retaining the current regulations, but did not choose to do so because the regulations are unnecessary, require entities to incur unnecessary costs associated with submitting branch applications, and perpetuate a competitive disadvantage for insured state nonmember banks and insured branches of foreign banks relative to insured state member banks and national banks. Additionally, the FDIC considered retaining the Statements of Policy entitled, *Statement of Policy Regarding the National Historic Preservation Act of 1966*, the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC*,

but did not choose to do so because upon reevaluation of the applicability of what constitutes an “undertaking” under NHPA or a “major Federal action” under the NEPA, and deletion of requirements related to the NHPA and the NEPA in 12 CFR parts 303 and 347, these Statements of Policy would be unnecessary. Therefore, the FDIC is proposing to amend 12 CFR parts 303 and 347 by deleting the requirements related to the NHPA and the NEPA and to concurrently rescind the related Statements of Policy.

Request for Comments

The FDIC invites comment on all aspects of the proposal.

Regulatory Analysis

A. 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.²⁹ However, an initial 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, including a statement providing a factual basis for the certification, 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.³⁰ Generally, the

²⁹ 5 U.S.C. 601, *et seq.*

³⁰ 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

FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits, 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.

According to the most recent data, the FDIC supervises 3,344 insured depository institutions, of which 2,581 are considered small banking organizations for the purposes of RFA.³¹ As previously discussed, the proposed rule would (1) remove “NEPA” and “NHPA” as defined terms in 12 CFR 303.2(w) and (x); (2) amend the branch application filing procedures for state nonmember banks set forth in 12 CFR 303.42 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (b)(4) and (5); (3) amend the foreign branch application notice procedures for state nonmember banks set forth in 12 CFR 303.182 by removing the requirements to provide a statement in accordance with NHPA set forth in paragraphs (a) and (b)(2)(i), and by removing NHPA compliance as a basis for withholding general consent to establish or relocate a foreign branch under 12 CFR 347.119(b); (4) amend the filing procedures for moving an insured branch of a foreign bank set forth in 12 CFR 303.184 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (a)(2)(iii) and (iv) and (d)(1)(iv); (5)

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 the purposes of RFA.

³¹ FDIC Call Report data for the period ending December 31, 2019.

rescind the *Statement of Policy Regarding the National Historic Preservation Act of 1966*; and (6) rescind the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC*. In so doing, the proposed rule would amend the required contents for applications for establishment of a branch and applications for relocation of a branch or main office. The proposed rule could affect the 2,547 small state nonmember depository institutions supervised by the FDIC. No insured branches of foreign banks are considered small banking organizations for the purposes of RFA.³²

Between 2015 and 2018, the FDIC received applications from 195 unique small insured State nonmember banks per year to establish a branch and applications from 68 unique small insured State nonmember banks per year to relocate a branch or main office, on average.³³ For purposes of this analysis, the FDIC is estimating that the number of unique respondents affected by the proposed rule will be consistent with this recent experience. Therefore, the FDIC estimates that the proposed rule will affect approximately 195 small insured State nonmember banks applying to establish a domestic branch and approximately 68 small insured State nonmember institutions applying to relocate a branch or main office, per year. In total, these 263 affected entities represent no more than an estimated 10.2 percent of small FDIC-supervised institutions.

The proposed rule is likely to reduce the costs associated with filing Covered Applications for small entities, making the process more efficient. Although the proposed

³² FFIEC Reports of Condition and Income (Call Report), for the period ending December 31, 2019.

³³ ViSION, FDIC Application Data.

rule is expected to reduce costs associated with Covered Applications for small applicants dealing with historic properties or environmental issues, the FDIC does not believe the proposed rule will reduce the average hours per response for Covered Applications. Additionally, as previously discussed, the FDIC is currently the only Federal banking agency that requires consideration of the NHPA and NEPA in connection with branch applications. Therefore, the proposed rule is expected to remove a competitive disadvantage that small insured state nonmember banks and insured branches of foreign banks currently face relative to state member banks and national banks.

Based on the information above, and pursuant to section 605(b) of the RFA, 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 proposed rule have any significant effects that the FDIC has not identified on small entities?

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),³⁴ the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The proposed rule affects the FDIC's current information collection titled "Application for a Bank to Establish a Branch or Move its Main Office" (OMB Control No. 3064-0070). In particular, the proposed rule removes the requirements related to NHPA and NEPA therefore reducing the PRA

³⁴ 44 U.S.C. 3501-3521.

burden. However, the amount of hourly burden previously indicated in connection with the PRA information collection does not distinguish between the time to comply with the NHPA and NEPA and the other non-NHPA/NEPA notification requirements. For this reason, the FDIC is assuming that any allotted time dedicated to NHPA and NEPA is minimal and will result in a zero net change in the current estimated average hourly burden for the information collection. Therefore, no submission will be made to OMB for review. The FDIC, does, however, invite comments on its PRA determination.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),³⁵ 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 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, disclosures, 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.³⁶ The proposed rule would reduce burden and would not impose any reporting, disclosure, or other new requirements on insured depository institutions.

³⁵ 12 U.S.C. 4802(a).

³⁶ *Id.* at 4802(b).

Nevertheless, the FDIC invites comments that further will inform its consideration of RCDRIA.

D. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act³⁷ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

- Has the FDIC organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rules be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the FDIC incorporate to make the regulation easier to understand?

List of Subjects

³⁷ 12 U.S.C. 4809.

12 CFR Part 303

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

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. Investments abroad.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend 12 CFR parts 303 and 347 as follows:

PART 303—FILING PROCEDURES

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

Authority: 12 U.S.C. 378, 478, 1463, 1467a, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831i, 1831e, 1831o, 1831p-1, 1831w, 1831z, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601-1607.

§ 303.2 [Amended]

2. In § 303.2, remove paragraphs (w) and (x); and redesignate paragraphs (y) through (g)(g) as paragraphs (w) through (ee), respectively.

§ 303.42 [Amended]

3. In § 303.42, remove paragraphs (b)(4) and (5), and redesignate paragraphs (b)(6) through (8) as paragraphs (b)(4) through (6), respectively.

4. Amend § 303.182 by revising paragraphs (a) and (b)(2)(i) to read as follows:

§ 303.182 Establishing, moving or closing a foreign branch of an insured state nonmember bank.

(a) Notice procedures for general consent. Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.117(a) of this chapter must be provided to the appropriate FDIC office no later than 30 days after taking such action. The notice must include the location of the foreign branch, including a street address. The FDIC will provide written acknowledgment of receipt of the notice.

(b) * * *

(2) * * *

(i) The exact location of the proposed foreign branch, including the street address.

* * * * *

5. Amend § 303.184 by:

a. Removing paragraphs (a)(2)(iii) and (iv);

b. Redesignating paragraphs (a)(2)(v) and (vi) as paragraphs (a)(iii) and (iv), respectively; and

c. Revising paragraph (d)(1)(iv).

The revision reads as follows:

§ 303.184 Moving an insured branch of a foreign bank.

* * * * *

(d) * * *

(1) * * *

(iv) Compliance with the CRA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

* * * * *

PART 347—INTERNATIONAL BANKING

6. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109;

Pub. L. No. 111-203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o-7 note).

§ 347.119 [Amended]

7. Amend § 347.119 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on June 25, 2020.
James P. Sheesley,
Acting Assistant Executive Secretary.

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