



This document is scheduled to be published in the Federal Register on 02/03/2021 and available online at [federalregister.gov/d/2020-28453](https://www.federalregister.gov/d/2020-28453), and on [govinfo.gov](https://www.govinfo.gov)

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Parts 303 and 390**

#### **RIN 3064-AF36**

### **Removal of Transferred OTS Regulations Regarding Application Processing Procedures of State Savings Associations and Conforming Amendments to Other Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule (final rule) to rescind and remove certain regulations transferred to the FDIC from the Office of Thrift Supervision (OTS) in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These regulations generally concern the supervision and governance of State savings associations, including the application processing procedures for certain applications, notices and filings by State savings associations. In addition to the removal of our regulations, the FDIC is making technical changes to our regulations that do not currently apply to State savings associations. Following the rescission, the filing regulations pertaining to State savings associations and all other FDIC-supervised institutions will be substantially the same.

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

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**SUPPLEMENTARY INFORMATION:**

## **I. Policy Objective**

The policy objective of the final rule is to remove unnecessary and duplicative regulations in order to simplify and improve the public's understanding of the FDIC's regulations, and to promote parity between State savings associations and State nonmember banks by applying the same filing requirements to both classes of institutions. Thus, as further detailed in this section, the FDIC is rescinding and removing, from the Code of Federal Regulations (CFR), 12 CFR part 390, subpart F (subpart F).

As discussed below, the FDIC is making technical changes to certain sections of part 303. The rescission of subpart F, with the accompanying revisions to 12 CFR part 303, simplifies and streamlines the FDIC's regulations by removing unnecessary provisions that are adequately provided for in other existing statutes and regulations.

## **II. Background**

### ***A. The Dodd-Frank Act***

The Dodd-Frank Act, signed into law on July 21, 2010, 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,<sup>2</sup> the powers, duties, and functions formerly performed by the OTS were divided among 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 (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act<sup>3</sup> provides the manner of treatment of all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> Codified at 12 U.S.C. 5411.

<sup>3</sup> Codified at 12 U.S.C. 5414(b).

provides that if such materials were in 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.

Pursuant to section 316(c) of the Dodd-Frank Act,<sup>4</sup> 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." This list was published by the FDIC and the OCC as a Joint Notice in the *Federal Register* on July 6, 2011.<sup>5</sup>

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act<sup>6</sup> 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)<sup>7</sup> and other laws as the "appropriate Federal banking agency" or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act<sup>8</sup> revised the definition of "appropriate Federal banking agency" contained in section 3(q) of the FDI Act<sup>9</sup> 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" (or similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured State-licensed branches of foreign banks.

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<sup>4</sup> Codified at 12 U.S.C. 5414(c).

<sup>5</sup> 76 FR 39247 (July 6, 2011).

<sup>6</sup> Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

<sup>7</sup> 12 U.S.C. 1811 *et seq.*

<sup>8</sup> Codified at 12 U.S.C. 5412(c)(1).

<sup>9</sup> 12 U.S.C. 1813(q).

As noted, on July 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. On that same date, the FDIC Board reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the *Federal Register* on August 5, 2011.<sup>10</sup> When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.<sup>11</sup>

***B. 12 CFR Part 516 – Application Processing Procedures***

A subset of the regulations transferred to the FDIC from the OTS concern application processing procedures. The OTS regulations, formerly found at 12 CFR part 516, §§ 516.1 through 516.290, were transferred to the FDIC with only nomenclature changes and now comprise part 390, subpart F (subpart F). Subpart F governs the FDIC's procedures for processing applications, notices or filings under part 390 and, prior to its rescission, part 391 for State savings associations.<sup>12</sup>

**III. The Proposal**

***A. Removal of Part 390, Subpart F—Application Processing Procedures***

Section 316(b)(3) of the Dodd-Frank Act in pertinent part, provides that the regulations of the former OTS, as they apply to State savings associations, will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law.<sup>13</sup> Consistent with the FDIC's stated intention to evaluate transferred OTS regulations before taking action on them, the FDIC conducted a careful

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<sup>10</sup> 76 FR 47652 (Aug. 5, 2011).

<sup>11</sup> See 76 FR 47653.

<sup>12</sup> 12 CFR part 390, subpart F.

<sup>13</sup> 12 U.S.C. 5414(b)(3).

review of subpart F and related Federal statutes, regulations, and statements of policy relevant to subordinate organizations of State savings associations.

On October 15, 2020, the FDIC published a notice of proposed rulemaking (NPR or proposal) regarding the removal of subpart F, which concerns the FDIC's procedures for processing applications, notices or filings under part 390 and, prior to its rescission, part 391 for State savings associations.<sup>14</sup> The NPR proposed removing subpart F from the Code of Federal Regulations (CFR) because, after careful review and consideration, the FDIC believed the provisions contained in subpart F to be unnecessary in light of the applicability of other provisions of Federal statutes and regulations, specifically 12 CFR part 303 (part 303) or guidance that produce substantially the same supervisory results. The FDIC received no comments on those aspects of the proposal.

Rather than restate the rationale for rescission and removal of each section of subpart F, the reader is referred to the explanations for rescission and removal provided in the NPR,<sup>15</sup> which the FDIC references here as the basis for finalizing the regulations as proposed. In the NPR the FDIC also proposed to amend certain sections of part 303, subparts A, K, and M, of the FDIC's regulations. Those amendments are discussed below.

### ***B. Revision of Certain Sections of Part 303, Filing Procedures***

Part 303 of the FDIC Rules and Regulations (12 CFR part 303) provides a framework for filing requirements for various applications, notices, and requests (collectively, "filings" as defined in § 303.2(s)) (12 CFR 303.2(s)). Subpart A of part 303, Rules of General Applicability, prescribes the general procedures for submitting filings to the FDIC that are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants, and interested parties during the

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<sup>14</sup> 85 FR 65270 (Oct. 15, 2020).

<sup>15</sup> *Id.*

process of considering a filing, including public notices and comment when required.

This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)) for matters subject to expedited processing. Specific filings are detailed in subpart B through subpart M of part 303.

The FDIC is making technical changes in certain sections of part 303, subparts A, K, and M. The revisions make those sections applicable on their terms to State savings associations.

1. *Section 303.7 – Public notice requirements*

Section 5 of the FDI Act,<sup>16</sup> generally and in part, provides that any depository institution engaged in the business of receiving deposits other than trust funds, upon application to and examination by the FDIC and approval by its Board of Directors, may become an insured depository institution. The term "depository institution" means any bank or savings association pursuant to section 3(c)(1) of the FDI Act.<sup>17</sup> Subpart B-- Deposit Insurance, of part 303 of the FDIC regulations, sets forth the procedures for applying for deposit insurance by certain applicants, including for a proposed depository institution under section 5 of the FDI Act, and applies to savings associations.<sup>18</sup> Section 303.23(a) of subpart B states that, in addition to other requirements, the applicant "shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located."

Subpart F of part 390 of the FDIC regulations addresses public notice requirements, stating that §§ 390.111 through 390.115 apply whenever a FDIC regulation requires an applicant to follow the public notice procedures.<sup>19</sup> The FDIC is rescinding §§ 390.111 through 390.115 because part 303 substantively addresses the same

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<sup>16</sup> 12 U.S.C. 1815.

<sup>17</sup> 12 U.S.C. 1813(c)(1).

<sup>18</sup> 12 CFR 303.20.

<sup>19</sup> 12 CFR 390.111.

requirements, including, for deposit insurance applications, §§ 303.7, subpart A, and 303.23, subpart B.

Section 303.7 of the FDIC regulations, of part 303, subpart A, addresses public notice requirements for filings with respect to mergers, changes in control, and requests for deposit insurance. With one exception, § 303.7 makes no distinction between banks and savings associations. However, § 303.7(c)(1)(i) states, in part: “[i]n the case of an application for deposit insurance for a *de novo bank* (emphasis added), include the names of all organizers or incorporators.” The NPR proposed to amend § 303.7(c)(1)(i) to replace “bank” with “depository institution,” a term used elsewhere in the section. The revision would clarify that § 303.7(c)(1)(i) is applicable to savings associations, consistent with section 5 of the FDI Act and part 303, including subpart B--Deposit Insurance, and would make the requirement consistent for both types of depository institutions.

The FDIC received no comments on these aspects of the proposal.

2. *Section 303.15 - Certain limited liability companies deemed incorporated under State law*

Pursuant to section 5 of the FDI Act, the FDIC may approve deposit insurance for certain depository institutions. One of the statutory requirements for a State bank to be eligible for Federal deposit insurance is that it must be “incorporated under the laws of any State.”<sup>20</sup> That requirement effectively limited the approval of deposit insurance to State banks chartered under the traditional corporate form, despite the creation and increased use of limited liability entities other than corporations, such as limited liability companies (LLCs). Section 303.15 of the FDIC regulations is found in part 303, subpart A. Section 303.15(a) was promulgated to provide that a bank chartered as an LLC under State law would be deemed “incorporated” if it met four requirements, thus permitting

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<sup>20</sup> 12 U.S.C. 1813(a)(2).

the entity to be eligible to apply and be approved for deposit insurance.<sup>21</sup> To be deemed incorporated, the LLC must possess the four traditional corporate characteristics of perpetual succession, centralized management, limited liability, and free transferability of interests.<sup>22</sup>

Section 303.15(b) further provides that, for purposes of the FDI Act and the FDIC regulations, the terms “stockholder,” “shareholder,” “director,” “officer,” “voting stock,” “voting shares,” and “voting securities,” for banks chartered as LLCs, shall encompass or have substantially the same meaning as those terms have for banks chartered as corporations. The definition of “State savings association” under the FDI Act, which uses the phrase “organized and operating according to the laws of the State” instead of “incorporated,” does not limit State savings associations to the corporate charter form (absent a state requirement).<sup>23</sup> In order to clarify that the terms in § 303.15(b) apply to savings association chartered as LLCs as they do for banks so chartered, the NPR proposed to revise references to “bank” in § 303.15(b) to “depository institution.” The revisions would make the terms “stockholder,” “shareholder,” “director,” “officer,” “voting stock,” “voting shares,” and “voting securities,” with respect to savings associations chartered as LLCs, encompass or have substantially the same meaning with respect to savings associations chartered as LLCs as for those chartered as corporations.

The FDIC received no comments on these aspects of the proposal.

3. Subpart K---Prompt Corrective Action: *Section 303.204 – Applications for acquisitions, branching, and new lines of business*  
*Section 303.205 – Applications for bonuses and increased compensation for senior executive officers*

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<sup>21</sup> See 68 FR 7308, February 13, 2003.

<sup>22</sup> 12 CFR 303.15(a)(1) through (4). See also, 68 FR 7308.

<sup>23</sup> 12 U.S.C. 1813(b)(3).

Part 303 of the FDIC's regulations includes procedures to implement the filing requirements for certain activities or transactions relative to undercapitalized or weaker depository institutions, and implements certain elements of section 38 of the FDI Act.<sup>24</sup> Section 38 applies to all insured depository institutions. Among other things, section 38 generally prohibits an insured depository institution, without application and approval, from engaging in acquisitions, branching, or new lines of business, if the institution is undercapitalized or weaker, significantly undercapitalized, or critically undercapitalized.<sup>25</sup> It also prohibits an insured depository institution, without application and approval, from payment of bonuses or increased compensation to senior executive officers, if the institution is significantly or critically undercapitalized, or is undercapitalized and has failed to submit or implement an acceptable capital restoration plan.<sup>26</sup>

Sections 303.204 and 303.205 of the FDIC regulations implement the provisions of section 38 described above. Section 303.204 requires any insured State nonmember bank and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. This section clarifies that new lines of business include "any new activity exercised which, although it may be permissible, has not been exercised by the institution." It also specifies the content of the filing, including information regarding whether the institution's primary Federal regulator has accepted the institution's capital restoration plan, and whether the institution has implemented that plan.

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<sup>24</sup> 12 U.S.C. 1831*o*.

<sup>25</sup> See 12 U.S.C. 1831*o*(e)(4).

<sup>26</sup> See 12 U.S.C. 1831*o*(f)(4). 12 U.S.C. 1831*o*(f) contains additional, discretionary restrictions that may be imposed by a financial regulator.

Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer. The section specifies the content of the filing, including information regarding the acceptance and implementation of the institution's capital restoration plan.

Although section 38 and other sections of subpart K of part 303 by their terms apply to all insured depository institutions, § 303.204, in part, and § 303.205 apply by their terms only to insured State nonmember banks and insured branches of foreign banks. The NPR proposed to revise §§ 303.204 and 303.205 to make those sections expressly apply to State savings associations to the same extent as they do to insured State nonmember banks. The final rule revises those sections to add “insured State savings associations.”

The FDIC received no comments on these aspects of the proposal.

#### 4. *Section 303.249 – Management official interlocks*

Part 348<sup>27</sup> of the FDIC regulations implements the Deposit Insurance Management Interlocks Act (Interlocks Act).<sup>28</sup> The purpose of the Interlocks Act and part 348 are to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations when the management interlock likely would have an anti-competitive effect.<sup>29</sup> The Interlocks Act is applicable to both insured State nonmember banks and State savings associations, and part 348 applies to management officials of FDIC-supervised institutions and their affiliates. With regard to

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<sup>27</sup> 12 CFR part 348.

<sup>28</sup> 12 U.S.C. 3201-3208.

<sup>29</sup> 12 CFR 348.1(b).

insured State nonmember banks and State savings associations, the Interlocks Act provides the FDIC with administrative and enforcement authority under section 3206, as well as authority to prescribe regulations to carry out the Interlocks Act.<sup>30</sup>

Under section 13(k) of the FDI Act, and notwithstanding any provision of State law, the FDIC may authorize dual service that would otherwise be prohibited by the Interlocks Act upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, and that such authorization would lessen the risk to the FDIC.<sup>31</sup> Subpart F of part 390 does not apply to a transaction under section 13(k) of the FDI Act.<sup>32</sup>

As discussed above, the FDIC transferred various OTS regulations into FDIC regulations. One of the transferred OTS regulations governed OTS oversight of management official interlocks in the context of State savings associations. The OTS regulation, formerly found at 12 CFR part 563f, was transferred to the FDIC with only minor, nonsubstantive changes, and was found in the FDIC's regulations at 12 CFR part 390, subpart V (part 390, subpart V), entitled "Management Official Interlocks." Before the transfer of the OTS regulations and continuing today as noted above, the FDIC's regulations contained part 348. After review and comparison of part 390, subpart V, and part 348, effective January 20, 2016, the FDIC rescinded part 390, subpart V, because the FDIC found it to be substantially redundant to existing part 348, considering technical conforming edits to part 348.<sup>33</sup>

However, § 303.249, found in part 303, subpart M, of the FDIC regulations, addresses the "procedures to be followed by an insured State nonmember *bank* (emphasis

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<sup>30</sup> 12 U.S.C. 3206, 3207.

<sup>31</sup> 12 U.S.C. 1823(k)(1)(A)(v).

<sup>32</sup> 12 CFR 390.100(b)(1).

<sup>33</sup> 80 FR 79252 (Dec. 21, 2015).

added) to seek the approval of the FDIC to establish an interlock pursuant to” the Interlocks Act, section 13(k) of the FDI Act, and part 348 of the FDIC regulations.<sup>34</sup> The NPR proposed to revise § 303.249(a) to insert, following “bank” in the language quoted immediately above, “or an insured State savings association.” The revision clarifies that State savings associations may use the procedures contained in § 303.249 to apply for approval to establish interlocks as provided therein.

The FDIC received no comments on these aspects of the proposal.

#### **IV. The Final Rule**

For the reasons stated herein and in the NPR, the FDIC is adopting the amendments as proposed.

#### **V. Expected Effects**

As of June 30, 2020, the FDIC supervised 3,270 depository institutions, of which 35 (1.1 percent) were State savings associations.<sup>35</sup> The final rule primarily affects regulations that govern State savings associations. Therefore, the final rule is expected to affect 35 FDIC-supervised institutions.

As previously discussed, the final rule rescinds part 390, subpart F, because most of its elements are duplicative of substantively similar provisions of FDIC regulations, principally part 303. Additionally, the final rule amends certain elements of part 303 so that the provisions are applicable to State savings associations. In doing so, the final rule makes elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary. As such, the FDIC does not believe the final rule will have substantive effects on State savings associations.

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<sup>34</sup> 12 CFR 303.249(a).

<sup>35</sup> Call Report data, June 30 2020.

Section 390.100 sets forth application processing procedures for State savings associations. However, existing statutes<sup>36</sup> and regulations already “prescribe the general procedures for submitting filings to the FDIC and the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing”<sup>37</sup> for FDIC-supervised institutions, including State savings associations. Therefore, rescinding § 390.100 is not expected to have any substantive effects on State savings associations.

Section 390.101 specifies the criteria for determining which filings receive expedited treatment and which receive standard treatment. State savings associations are already subject to substantively similar requirements in §§ 303.2(r) and 303.11(c), as well as the substantive subparts of part 303 of the FDIC regulations. Therefore, rescinding § 390.101 is not expected to have any substantive effects on State savings associations.

Section 390.102 addresses the computation of time periods for State savings associations. State savings associations are subject to regulations that address the computation of relevant time periods at § 303.4 of the FDIC regulations. Therefore, rescinding § 390.102 is not expected to have any substantive effects on State savings associations.

Section 390.103 addresses pre-filing meetings and FDIC contacts for filings to acquire control of State savings associations. Pre-filing meetings are not addressed in FDIC regulations, but are addressed in the Applications Procedures Manual (APM), in which a substantively similar description of pre-filing meetings is given. Additionally, the APM states that a Case Manager will be assigned by the FDIC to the application in order to facilitate communication and engagement with the applicant. Therefore, the FDIC believes that rescinding § 390.103 is unlikely to have any substantive effects on State savings associations or change in control applicants.

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<sup>36</sup> 12 U.S.C. 1831a.

<sup>37</sup> 12 CFR 303.1.

Section 390.104 addresses certain requirements for business plans submitted by State savings associations under subpart F, which permits the FDIC to require additional business plan information during processing of the filing. Under part 303, business plans are required for certain filings, though the FDIC may request additional information for any filing. In this regard, the FDIC's review processes include, as appropriate, pre-filing and other activities to ensure institutions' understanding of the FDIC's filing requirements and information needs. In certain cases, the content for business plans is addressed in filing forms or other FDIC resources. For example, the Inter-agency Charter and Deposit Insurance Application Form contains detailed instructions for the development of the business plan; and those instructions may assist institutions when submitting business plans as part of other filings. The FDIC has also provided a Handbook for Organizers – Applying for Deposit Insurance, which aids all applicants for deposit insurance and includes sections on developing a business plan and business plan content. Generally, the FDIC believes it is appropriate to provide an institution with flexibility to tailor the content of the business plan to reflect its unique circumstances, strategies, and challenges. Therefore, in light of the discussion above, the FDIC believes that rescinding § 390.104 is unlikely to have any substantive effects on State savings associations or change in control applicants.

Section 390.105 addresses expedited and standard processing, as well as waiver requests for State savings associations. Expedited and standard processing, as well as waiver requirements, are encompassed in FDIC regulations applicable to State savings associations found throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.105 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.106 addresses the content of filings for State savings associations. It directs State savings associations to the applicable forms and the content requirements.

The required content of filings is encompassed in FDIC regulations applicable to State savings associations throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.106 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.107 addresses application confidentiality for State savings associations. FDIC regulations found at § 303.8 and applicable to FDIC-supervised institutions, including State savings associations, includes confidential treatment regulations that are substantively similar to those in § 390.107. Therefore, the FDIC believes that rescinding § 390.107 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.108 addresses where to file applications, specifically providing regional office addresses. General application filing procedures for all FDIC-supervised institutions, including State savings associations, are encompassed in regulations found at § 303.3 of the FDIC regulations. Further, although specific regional office addresses are not included in the regulation, they are available on the FDIC's public website. Therefore, the FDIC believes that rescinding § 390.108 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.109 explains the application filing date. The FDIC does not have substantively similar regulations governing the filing date of an application. However, FDIC regulations operate on the basis of the date on which a substantially complete filing is submitted. Further, the FDIC's APM, which is accessible to all FDIC-supervised institutions, including State savings associations, addresses the date on which an application is considered to be substantively complete. Therefore, the FDIC believes that rescinding § 390.109 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.110 discusses amending or supplementing an application. The FDIC does not have substantively similar regulations governing amending or supplementing an application. However, the FDIC relies on determinations as to when an application is substantially complete. In addition, the FDIC's APM, which is applicable to all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete, as well as how to supplement information. Further, the APM states that an applicant may modify and update an application throughout the review process until final disposition, and that applicants often supplement their applications throughout the review process. Therefore, the FDIC believes that rescinding § 390.110 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.111 through 390.115 address public notice requirements. FDIC-supervised institutions, including State savings associations, are subject to substantively similar public notice requirements in § 303.7 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.111 through 390.115 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.116 through 390.120 address procedures for submission of public comments. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding procedures for submission of public comments in § 303.9 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.116 through 390.120 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.121 through 390.125 contain meeting procedures. Meetings are addressed generally in FDIC regulations found at 12 CFR 303.6 and 303.10 for FDIC-

supervised institutions, including State savings associations. Although §§ 303.6 and 303.10 of the FDIC regulations are generally less specific than §§ 390.121 through 390.125, the FDIC believes the language in § 303.6 is generally inclusive of the substance of §§ 390.121 through 390.125 by stating that “[t]he FDIC may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.” Therefore, the FDIC believes that rescinding §§ 390.121 through 390.125 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.126 addresses expedited treatment, including removal of the filing to standard processing, additional information requests, suspension of the processing period, and when the applicant can proceed with the activity if the FDIC has not acted. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements for matters receiving expedited treatment in § 303.11(c) of the FDIC regulations, as well as §§ 303.122 and 303.142. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that rescinding § 390.126 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.127 and 390.128 address application completeness. The FDIC does not have corresponding regulations addressing application completeness. Instead, the application processing time periods under part 303 are triggered by the FDIC’s receipt of a substantially complete filing.<sup>38</sup> The FDIC believes that the substantially complete filing step of part 303 permits the procedures for processing a filing under part 303, while essentially addressing the same issues, to be simpler and easier to navigate than those of §§ 390.127 and 390.128. Sections 303.3 and 303.11(e) of the FDIC regulations, as well

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<sup>38</sup> 12 CFR 303.304.

as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete. Therefore, the FDIC believes that rescinding §§ 390.127 and 390.128 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.129 addresses eligibility examinations, as well as the authority of the FDIC to require such examinations and to request additional information. Under § 303.6 of the FDIC regulations, the FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that a separate eligibility determination provision is unneeded, and rescinding § 390.129 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.130 addresses potential FDIC requests for additional information or actions from applicants. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding potential FDIC requests for additional information or actions from applicants through various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.130 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.131 explains requirements to publish new public notices. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding publishing new public notices in § 303.7(f) of the FDIC regulations. Therefore, the FDIC believes that rescinding § 390.131 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.132 addresses suspension of an application. Part 303 has no such provision. However, the FDIC believes that situations envisioned by § 390.132 can be effectively addressed on a case-by-case basis without need of a regulation, or that a regulation is not needed because the processing period under part 303 does not begin until the FDIC receives a substantially complete filing and, thus, no suspension is necessary. Therefore, the FDIC believes that rescinding § 390.132 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.133 addresses the applicable review period for an application. The FDIC's part 303 regulations contain provisions that bear on the same issues and are similar in substantive effect as the § 390.133 provisions. Thus, while part 303 addresses review periods in a different manner than subpart F, the FDIC believes that the substantive effect is similar and that rescinding § 390.133 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.134 requires the FDIC to approve or deny an application before the expiration of the applicable review period, including any extensions, and notify the applicant, in writing, of its decision. If the FDIC does not act under paragraph (a)(1) of the section, the application is deemed approved. The FDIC's part 303 procedures do not contain such a requirement for applications (as opposed to some notice filings). However, when read in conjunction with § 390.133, the FDIC has significant, though not complete, discretion under subpart F to extend the review period for applications until a determination is issued. The substantial ability of the FDIC to extend the processing period under subpart F, to a great extent, renders any difference with part 303 immaterial. As such, the application review periods and notification procedures for State savings associations are subject to substantively similar requirements under both subpart F and part 303. Therefore, the FDIC believes that rescinding § 390.134 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.135 addresses withdrawal if an application is not acted on within two calendar years. The FDIC does not have substantively similar regulations addressing withdrawal if an application is not acted on. However, the FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, states that the FDIC's goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation. Additionally, the FDIC has established timeframes for processing each type of filing, which have been published in Financial Institution Letter 81-2018.<sup>39</sup> It is also, generally, the FDIC's practice to provide an applicant with an opportunity to withdraw its application if FDIC staff propose an unfavorable recommendation. Therefore, the FDIC believes that rescinding § 390.135 is unlikely to have any substantive effects on State savings associations or future applicants.

The final rule amends certain elements of part 303, specifically §§ 303.7(c)(1)(i) and 303.15(b)(1) through (4), so that the provisions are applicable to State savings associations. In so doing, the final rule makes elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The final rule amends §§ 303.204 and 303.205 of part 303's subpart K (Prompt Corrective Action). Section 303.204 requires any insured State nonmember bank and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an

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<sup>39</sup> [www.fdic.gov/news/financial-institution-letters/2018/fil18081.html](http://www.fdic.gov/news/financial-institution-letters/2018/fil18081.html).

application to pay a bonus or increase compensation to any senior executive officer. The final rule makes these sections applicable to State savings associations. The provisions of section 38 of the FDI Act,<sup>40</sup> which establishes the statutory authority for §§ 303.204 and 303.205, contain the restrictions at issue and are applicable to all insured depository institutions. Thus, the final rule should not have a material impact on State savings associations.

Section 303.249 of the FDIC regulations addresses the “procedures to be followed by an insured State nonmember bank to seek the approval of the FDIC to establish an interlock pursuant to” the Interlocks Act, section 13(k) of the FDI Act, and part 348 of the FDIC regulations. The final rule amends § 303.249(a) to apply to State savings associations. Although the amendment sets forth more explicit requirements for State savings associations seeking approval for establishing an interlock, State savings associations would not realize any effects because they are already subject to the Interlocks Act, and part 348. Therefore, State savings associations would currently need to undertake similar procedures, and provide substantively similar information, to those outlined in § 303.249.

By removing duplicative or unnecessary regulations, the FDIC believes that the final rule will benefit State savings associations by clarifying regulations and improving the ease of references.

## **VI. Alternatives**

The FDIC has considered alternatives to the rule, but believes the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred to the FDIC certain powers, duties, and functions formerly performed by the OTS. The FDIC’s Board reissued and redesignated certain

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<sup>40</sup> 12 U.S.C. 1831*o*.

transferred regulations from the OTS, but noted that it would evaluate and might later, as appropriate, rescind, amend, or incorporate the regulations into other FDIC regulations.

The FDIC has evaluated the existing regulations related to application processing procedures. The FDIC considered the status quo alternative of retaining the current regulations, but believes it would be procedurally complex and unnecessary for FDIC-supervised institutions to continue to refer to the separate sets of regulations. Therefore, the FDIC is amending the specified sections of part 303 and rescinding subpart F.

## **VII. Regulatory Analysis and Procedure**

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

In accordance with the requirements of the Paperwork Reduction Act of 1995 (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) control number. The final rule rescinds and removes from FDIC regulations subpart F and makes technical revisions to certain sections of part 303. 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.<sup>41</sup> However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the *Federal Register* together with the rule. The Small Business Administration (SBA) has defined “small

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<sup>41</sup> 5 U.S.C. 601, *et seq.*

entities” to include banking organizations with total assets of less than or equal to \$600 million.<sup>42</sup> Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest 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 final rule will 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 2020, the FDIC supervised 3,270 insured depository institutions, of which 2,492 are considered small banking organizations for the purposes of RFA. The final rule primarily affects regulations that govern State savings associations.<sup>43</sup> There are 33 State savings associations considered to be small banking organizations for the purposes of the RFA.<sup>44</sup>

As previously discussed, the final rule rescinds part 390, subpart F, because most of its elements are duplicative of substantively similar provisions of FDIC regulations, specifically part 303. Additionally, the final rule amends §§ 303.7(c)(1)(i) and 303.15(b)(1) through (4) of part 303 so that the provisions are applicable to State savings associations. In doing so, the final rule makes elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The final rule amends §§ 303.204 and 303.205 to make the provisions applicable

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<sup>42</sup> 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). “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 RFA.

<sup>43</sup> FDIC Call Report, March 31, 2020.

<sup>44</sup> *Id.*

to all insured depository institutions, including small, State savings associations. The revisions to §§ 303.204 and 303.205 provide a procedure for State savings associations to apply to the FDIC for relief from the restrictions of section 38 of the FDI Act.<sup>45</sup>

Finally, the final rule amends § 303.249(a) to make the provisions applicable to all insured depository institutions, including small, State savings associations. The FDIC believes that the amendment will not have any substantive effects on small, State savings associations because it will not result in any substantive change in the procedures for, or content associated with seeking approval for establishing an interlock. Thus, the FDIC does not believe the final rule will substantially impact small, FDIC-supervised institutions or future applicants.

The FDIC received no comments on the information provided in the Regulatory Flexibility Act section of the NPR.

Based on the information above, the FDIC certifies that the final rule will 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.<sup>46</sup> If a rule is deemed a major rule by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.<sup>47</sup>

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

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<sup>45</sup> 12 U.S.C. 1831*o*.

<sup>46</sup> 5 U.S.C. 801 *et seq.*

<sup>47</sup> 5 U.S.C. 801(a)(3).

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.<sup>48</sup>

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 Act<sup>49</sup> requires each Federal banking agency to use plain language in all of its proposed and final regulations published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the final rule to rescind subpart F and make technical revisions to certain sections of part 303 in a simple and straightforward manner.

***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.<sup>50</sup> 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 that will be taken to address issues that were identified. 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 F, the final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the

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<sup>48</sup> 5 U.S.C. 804(2).

<sup>49</sup> Pub. L. 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

<sup>50</sup> Pub. L. 104–208, 110 Stat. 3009 (1996).

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 of 1994 (RCDRIA),<sup>51</sup> 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, 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.<sup>52</sup>

As previously stated, the final rule removes subpart F from the Code of Federal Regulations because, after careful review and consideration, the FDIC believes it is largely unnecessary in light of the applicability of other provisions of Federal statutes and regulations, specifically 12 CFR part 303 (part 303) or guidance that produce substantially the same supervisory results. In addition, the final rule also includes amendments to certain sections of part 303, subparts A, K, and M, of the FDIC's regulations make those sections applicable by their terms to State savings associations. Those amendments do not impose any additional reporting, disclosure, or other requirements on IDIs. Because the final rule does not impose additional reporting,

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<sup>51</sup> 12 U.S.C. 4802(a).

<sup>52</sup> 12 U.S.C. 4802.

disclosure, or other new requirements on IDIs, section 302 of the RCDRIA does not apply.

## **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 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 303 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, 1463, 1467a, 1813, 1815, 1817, 1818, 1819(a) (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.

2. Revise § 303.7(c)(1) to read as follows:

#### **§ 303.7 Public notice requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) In the case of an application for deposit insurance for a de novo depository

institution, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the current and proposed address of the branch.

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director;

(v) The address of the appropriate FDIC office where comments may be sent (the same location where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart of this part; and

(vii) That the nonconfidential portions of the application are on file in the appropriate FDIC office and are available for public inspection during regular business hours; photocopies of the nonconfidential portion of the application file will be made available upon request.

\* \* \* \* \*

3. Revise § 303.15(b) to read as follows:

**§ 303.15 Certain limited liability companies deemed incorporated under State law.**

\* \* \* \* \*

(b) For purposes of the Federal Deposit Insurance Act and this chapter:

(1) Each of the terms “stockholder” and “shareholder” includes an owner of any interest in a depository institution chartered as an LLC, including a member or

participant;

(2) The term “director” includes a manager or director of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of a director of a corporation;

(3) The term “officer” includes an officer of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms “voting stock,” “voting shares,” and “voting securities” includes ownership interests in a depository institution chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

4. Revise § 303.204 to read as follows:

**§ 303.204 Applications for acquisitions, branching, and new lines of business.**

(a) *Scope.* (1) Any insured State nonmember bank, any insured State savings association, and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary Federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary Federal regulator, the application also should state whether approval has been requested from the applicant's primary Federal regulator, the date of such request and the

disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

5. Revise § 303.205(a) to read as follows:

**§ 303.205 Applications for bonuses and increased compensation for senior executive officers.**

(a) *Scope.* Any insured State nonmember bank, insured State savings association, or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured State nonmember bank, any insured State savings association, or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

\* \* \* \* \*

6. Revise § 303.249(a) to read as follows:

**§ 303.249 Management official interlocks.**

(a) *Scope.* This section contains the procedures to be followed by an insured State nonmember bank or an insured State savings association to seek the approval of FDIC to establish an interlock pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207), section 13 of the FDI Act (12 U.S.C. 1823(k)), and part 348 of this chapter.

\* \* \* \* \*

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

7. The authority citation for part 390 continues to read as follows:

**Authority:** 12 U.S.C. 1819.

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

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

**Subpart F—[Removed and Reserved]**

8. Remove and reserve subpart F, consisting of §§ 390.100 through 390.135.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about December 15, 2020.

**James P. Sheesley,**

*Assistant Executive Secretary.*

**BILLING CODE 6714-01-P**

[FR Doc. 2020-28453 Filed: 2/2/2021 8:45 am; Publication Date: 2/3/2021]