



## FEDERAL RESERVE SYSTEM

### 12 CFR Part 262

[Docket No. R-1886]

RIN 7100-AH19

#### Rules of Procedure; Correction

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

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

**SUMMARY:** The Board is revising its Rules of Procedure to make certain technical corrections.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jonah Kind, Senior Counsel, (202) 309-5287; Evan Hechtman, Senior Counsel, (202) 897-7694, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, D.C. 20551. For users of TTY-TRS, please call 711 from any telephone, anywhere in the United States.

#### SUPPLEMENTARY INFORMATION:

The Board is making technical corrections to provisions of its Rules of Procedure<sup>1</sup> regarding the newspaper notice requirements associated with certain applications submitted to the Board.<sup>2</sup> In particular, the Board is correcting two provisions of the Rules of Procedure, which set forth the communities in which an applicant must cause the publication of a newspaper

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<sup>1</sup> 12 CFR part 262.

<sup>2</sup> 12 CFR 262.3(b)(1). This action was approved by the Secretary of the Board, acting under delegated authority. 12 CFR 265.5(a)(4).

notice in the case of an application under section 3 of the Bank Holding Company Act (BHC Act)<sup>3</sup> or under section 10 of the Home Owners' Loan Act (HOLA).<sup>4</sup>

Prior to 1980, with regard to applications under section 3 of the BHC Act, the Board's Rules of Procedure required publication of a newspaper notice in "the community or communities in which the head offices of the largest subsidiary bank, if any, of an applicant and of each bank, shares of which are to be directly or indirectly acquired, are located."<sup>5</sup> In 1980, the Board published in the *Federal Register* a notice (1980 Notice) amending its Rules of Procedure to "require[e] the use of a standardized form of notice; specify[ ] that notices appear in the classified legal notices section of the newspaper; and require[ ] submission of the application immediately after the first notice is published."<sup>6</sup> However, in the 1980 Notice, the word "of" was inadvertently changed to "or" in one instance, and the relevant language was changed to "the community or communities in which the head offices of the largest subsidiary bank, if any, or an applicant and of each bank, shares of which are to be directly or indirectly acquired, are located."<sup>7</sup>

In 2011, after the responsibility for supervision and regulation of savings and loan holding companies was transferred from the Office of Thrift Supervision to the Board, the Board made technical changes to its Rules of Procedure, including the addition of a provision regarding the communities in which a newspaper notice must be published in connection with an application under section 10 of HOLA.<sup>8</sup> The wording of this provision was copied, with relevant changes regarding entity type (*i.e.*, references to "bank" were changed to "savings association"),

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<sup>3</sup> 12 CFR 262.3(b)(1)(ii)(E).

<sup>4</sup> 12 CFR 262.3(b)(1)(ii)(F).

<sup>5</sup> See 43 FR 47157 (October 12, 1978) (emphasis added).

<sup>6</sup> 45 FR 81543 (December 11, 1980).

<sup>7</sup> 45 FR 81543, 81544 (December 11, 1980) (emphasis added).

<sup>8</sup> 76 FR 56508 (September 13, 2011).

directly from the provision regarding applications under section 3 of the BHC Act. Therefore, this provision also includes the use of the word “or” rather than “of.”<sup>9</sup>

The use of “or” rather than “of” in these two provisions of the Rules of Procedure results in unclear and grammatically incorrect language, which has resulted in confusion among some applicants. It does not appear that the Board intended to change this aspect of its rules regarding applications under section 3 of the BHC Act in connection with the 1980 Notice; rather, the change appears to have been a typographical error, which was subsequently introduced to the provision regarding applications under section 10 of HOLA. This final rule corrects these technical errors by replacing the word “or” with “of” in the relevant instance in both of these provisions.

## **Administrative Law**

### **A. Administrative Procedure Act**

The Board is issuing this final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).<sup>10</sup> Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>11</sup>

The Board believes that the public interest is best served by implementing the final rule as soon as possible. Public comment is unnecessary, as the technical edits discussed here merely correct drafting errors.

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<sup>9</sup> 12 CFR 262.3(b)(1)(ii)(F) (“The community or communities in which the head offices of the largest subsidiary savings association, if any, or an applicant and of each savings association, shares of which are to be directly or indirectly acquired, are located . . . .”) (emphasis added).

<sup>10</sup> 5 U.S.C. 553.

<sup>11</sup> 5 U.S.C. 553(b)(B).

The corrections made by this final rule will reduce ambiguity and ensure that newspaper publications associated with applications submitted under section 3 of the BHC Act and section 10 of HOLA are published in a consistent manner.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.<sup>12</sup> The Board finds good cause to publish the final rule correction with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

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

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The information collection requirements associated with this final rule are implemented through the Board's FR Y-3 (Application to Become a Bank Holding Company and/or Acquire an Additional Bank or Bank Holding Company) (OMB No. 7100-0121) and FR LL-10(e) (Application to Become a Savings and Loan Holding Company or to Acquire a Savings Association or Savings and Loan Holding Company) (OMB No. 7100-0336), both of which provide detailed instructions regarding the newspaper publication requirement associated with an application. The Board is not proposing revisions to either the FR Y-3 or the FR LL-10(e) at this time.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA)<sup>13</sup> requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.<sup>14</sup>

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<sup>12</sup> 5 U.S.C. 553(d).

<sup>13</sup> 5 U.S.C. 601 *et seq.*

<sup>14</sup> Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$850 million or less. *See* 13 CFR 121.201.

The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary and contrary to the public's interest, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

#### **D. Plain Language**

Section 722 of the Gramm-Leach-Bliley Act<sup>15</sup> requires the Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner.

#### **List of Subjects in 12 CFR Part 262**

Administrative practice and procedure, Banks, banking, Federal Reserve System.

#### **Authority and Issuance**

For the reasons stated in the preamble the Board of Governors of the Federal Reserve System amends 12 CFR part 262 as follows:

#### **PART 262—RULES OF PROCEDURE**

1. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248, 321, 325, 326, 483, 602, 611a, 625, 1467a, 1828(c), 1842, 1844, 1850a, 1867, 3105, 3106, 3108, 5361, 5368, 5467, and 5469.

2. In § 262.3, revise paragraphs (b)(1)(ii)(E) and (F) to read as follows:

#### **§ 262.3 Applications.**

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<sup>15</sup> 12 U.S.C. 4809.

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(E) The community or communities in which the head offices of the largest subsidiary bank, if any, of an applicant and of each bank, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 3 of the Bank Holding Company Act, or

(F) The community or communities in which the head offices of the largest subsidiary savings association, if any, of an applicant and of each savings association, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 10 of the Home Owners' Loan Act.

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By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

**Benjamin W. McDonough,**

*Secretary of the Board.*