



**RIN 3064-ZA54**

## **Rescission of the Statement of Policy on Qualifications for Failed Bank Acquisitions**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Rescission of the Statement of Policy on Qualifications for Failed Bank Acquisitions.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is taking final action to rescind the Statement of Policy on Qualifications for Failed Bank Acquisitions issued in 2009 and related questions and answers posted on its website in 2010.

**DATES:** The rescission is effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Division of Risk Management Supervision: Sandra Macias, Chief, Risk Management Applications Section, (202) 898-3642, [smacias@fdic.gov](mailto:smacias@fdic.gov); Legal Division: Annmarie Boyd, Assistant General Counsel, (202) 898-3714, [aboyd@fdic.gov](mailto:aboyd@fdic.gov); Merritt Pardini, Counsel, (202) 898-6680, [mpardini@fdic.gov](mailto:mpardini@fdic.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

On September 2, 2009, the FDIC published a Statement of Policy on Qualifications for Failed Bank Acquisitions (Statement of Policy) following a 30-day comment period, with certain changes based on comments received.<sup>1</sup> In January 2010 and April 2010, the FDIC posted online questions and answers on aspects of the Statement of Policy.<sup>2</sup>

The Statement of Policy was issued to provide guidance to private capital investors interested in acquiring the deposit liabilities, or both the liabilities and assets, of failed insured depository institutions, regarding the terms and conditions for such investments or acquisitions. In so doing, it established extensive terms and conditions that private capital investors were

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<sup>1</sup> 74 FR 45440 (Sept. 2, 2009).

<sup>2</sup> See Federal Deposit Insurance Corporation, Statement of Policy on Qualifications for Failed Bank Acquisitions (last updated Mar. 15, 2024).

expected to satisfy before they could become eligible to bid on a failing institution. Since its publication, these standards have been applied to (1) private investors in certain companies that sought to assume deposit liabilities or both such deposit liabilities and assets from the resolution of a failed insured depository institution; and (2) private capital investors involved in applications for deposit insurance in conjunction with *de novo* charters issued in connection with the resolution of failed insured depository institutions.

The Statement of Policy included onerous and highly prescriptive measures, including capital standards that would not be applicable in any other failed bank acquisitions; imposition of an agreement to a cross guarantee with respect to substantially commonly-owned depository institutions; limits on transactions with affiliates that are more restrictive than Sections 23A and 23B of the Federal Reserve Act; and lengthy continuity of ownership requirements. The FDIC is concerned that these and other aspects of the Statement of Policy may discourage and potentially limit investments by nonbanks in connection with the resolution of failed depository institutions. Accordingly, the FDIC is rescinding the Statement of Policy.

## **II. Rationale for Rescission of the Statement of Policy**

The rapid speed of the failures of Silicon Valley Bank, Signature Bank, and First Republic in 2023 demonstrated the need for a practical shift toward advance preparation by financial regulators and proactive communication with potential acquirers. Although nonbanks participated in FDIC auctions for these failed banks in 2023, their options for bidding and the participation of additional nonbanks may have been limited by the restrictions imposed by the Statement of Policy. The FDIC recognizes that nonbank entities such as private equity firms can play a significant role in the resolution process, given their ability to access and deploy significant pools of capital. Because the Statement of Policy is more restrictive than certain statutory requirements, and also introduces another point of approval and uncertainty for nonbanks in the failed bank acquisition process, the FDIC believes that continuing to apply the

Statement of Policy may have a deterrent effect on private capital investment and inhibit the infusion of a potentially significant flow of capital into failed institutions. Given the increased speed with which a bank failure may occur, in part driven by the advancement of technology and ongoing evolution of the financial system, these impacts could, in turn, result in considerably increased costs of resolution and risk to the Deposit Insurance Fund. Potential investors will continue to be required to comply with existing laws and regulations—including those governing capital, control, affiliate transactions, and anti-money laundering/countering the financing of terrorism requirements—and will be expected to operate in a safe and sound manner following an acquisition. Rescinding the Statement of Policy will improve the ability of nonbanks to participate in the resolution process.

### **III. Administrative Law Matters**

#### *A. Administrative Procedure Act*

Under 5 U.S.C. 553(b)(A), federal agencies are exempt from the informal rulemaking provisions of the Administrative Procedure Act for "general statements of policy." The Statement of Policy rescinded in this notice provided guidance to private capital investors interested in acquiring the deposit liabilities, or both the liabilities and assets, of failed insured depository institutions regarding the way the FDIC would exercise its discretionary authorities. As such, it is a general statement of policy and exempt from the notice and comment requirements of the Administrative Procedure Act.

#### *B. Executive Order 12866*

Executive Order 12866 as amended by Executive Order 14219 directs certain agencies to assess costs and benefits of significant regulatory actions and to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Pursuant to section 3(f) of Executive Order 12866, the Office of Information and Regulatory Affairs within the Office of Management and Budget has

determined that the Rescission of the Statement of Policy on Qualifications for Failed Bank Acquisitions is not a “significant regulatory action.”

*C. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),<sup>3</sup> 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.

Rescission of the Statement of Policy does 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.

Federal Deposit Insurance Corporation.  
By order of the Board of Directors.  
Dated at Washington, DC on March 19, 2026.  
**Jennifer M. Jones,**  
*Deputy Executive Secretary.*

**BILLING CODE 6714-01-P**

[FR Doc. 2026-05646 Filed: 3/20/2026 8:45 am; Publication Date: 3/23/2026]

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<sup>3</sup> 44 U.S.C. 3501 *et seq.*