quality of services offered by the existing competitors in the market.

The FDIC will also consider the extent to which the proposed merger would likely create a stronger, more efficient institution able to compete more vigorously in the relevant geographic market.

4. Consideration of the Public Interest

The FDIC will deny any proposed merger whose overall effect would be likely to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market(s), unless the anticompetitive effects of the proposed merger are clearly outweighed in the public interest by the convenience and needs of the community to be served. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits would be both substantial and incremental and generally available to seekers of banking services in the relevant geographic market. Moreover, the applicant must show that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a proposed merger is the only reasonable alternative to the probable failure of an insured depository institution, the FDIC may approve an otherwise anticompetitive merger. The FDIC will usually not consider a less anticompetitive alternative that is substantially more costly to the FDIC to be a reasonable alternative unless the potential costs to the public of approving the anticompetitive merger are clearly greater than those likely to be saved by the FDIC.

Prudential Factors

The FDIC does not wish to create larger weak institutions or to debilitate existing institutions whose overall condition, including capital, management, and earnings, is generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger where the resulting institution would fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect, or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the allowance for loan and lease losses. In evaluating management, the FDIC will rely to a great extent on the supervisory histories of the institutions involved and of the executive officers and directors that are proposed for the resultant institution. In addition, the FDIC may review the adequacy of management's disclosure to shareholders of the material aspects of the merger transaction to ensure that management has properly fulfilled their fiduciary duties.

Convenience and Needs Factor

The FDIC will consider the extent to which the proposed merger is likely to improve the service to the general public through such capabilities as higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means. In assessing the convenience and needs of the community served, the FDIC, as required by the Community Reinvestment Act, will also note and consider each institution's Community Reinvestment Act performance evaluation record. An unsatisfactory record may form the basis for denial or conditional approval of an application.

IV. Related Considerations

1. Interstate bank mergers. Where a proposed transaction is an interstate merger between insured banks, the FDIC will consider the additional factors provided for in section 44 of the Federal Deposit Insurance Act, 12 U.S.C. 1831u.

2. Interim merger transactions. An interim institution is a state- or federally-chartered institution that does not operate independently, but exists, normally for a very short period of time, solely as a vehicle to accomplish a merger transaction. In cases where the establishment of a new or interim institution is contemplated in connection with a proposed merger transaction, the applicant should contact the FDIC to discuss any relevant deposit insurance requirements. In general, a merger transaction (other than a purchase and assumption) involving an *insured* depository institution and a federal interim depository institution will not require an application for deposit insurance, even if the *federal* interim depository institution will be the surviving institution.

3. Optional conversion transactions. Section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(3), provides for ''optional conversions'' (commonly known as Oakar transactions) which, in general, are mergers that involve a member of the Bank Insurance Fund and a member of the Savings Association Insurance Fund. These transactions are subject to specific rules regarding deposit insurance coverage and premiums. Applicants may find additional guidance in § 327.31 of the FDIC rules and regulations (12 CFR 327.31).

4. Branch closings. Where banking offices are to be closed in connection with the proposed merger transaction, the FDIC will review the merging institutions' conformance to any applicable requirements of section 42 of the FDI Act concerning notice of branch closings as reflected in the Interagency Policy Statement Concerning Branch Closing Notices and Policies.

5. Legal fees and other expenses. The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application reflects adversely upon the management of the applicant institution. The FDIC will closely review expenses for professional or other services rendered by present or prospective board members, major shareholders, or other insiders for any indication of self-dealing to the detriment of the institution. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider. In no case will the FDIC approve an application where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

By order of the Board of Directors.

Dated at Washington, D.C., this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–26233 Filed 10–8–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications To Establish a Domestic Branch (Includes Remote Service Facilities); Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rescission of statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC proposes to rescind its Statement of Policy ''Applications to Establish a Domestic Branch (Includes Remote Service Facilities)'' (Statement of Policy).

The Statement of Policy provides information and guidance to state nonmember banks planning to establish

a domestic branch. However, the information and guidance contained in the Statement of Policy is out of date.

The FDIC proposes to rescind the Statement of Policy because the proposed revisions to its applications regulation, published elsewhere in today's **Federal Register** update requirements and sufficiently address all required application procedures.

DATES: Comments must be submitted on or before January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, (202) 898–6915, Division of Supervision; Susan van den Toorn, Counsel, (202) 898–8707, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks relative to the application process and the evaluation of statutory factors in establishing domestic branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, Related Acts (FDIC) 5105.

In the time since the Statement of Policy was last amended, the application process for establishing domestic branches has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement, which although general in nature, are now out-of-date.

As part of the FDIC's comprehensive review of its applications process, the FDIC is proposing to amend part 303 elsewhere in today's **Federal Register**. The proposed revisions to part 303 sufficiently address all required application procedures. Commenters are invited to review subpart C of part 303 in conjunction with the proposal to rescind the Statement of Policy.

For the above reasons, the FDIC proposes to rescind the following Statement of Policy:

Applications To Establish a Domestic Branch (Includes Remote Service Facilities)

A. Introduction

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d); hereafter the (Act) requires the prior written consent of the Corporation before any State nonmember insured bank may establish and operate any new domestic branch, as defined in section 3(o) of the Act (12 U.S.C. 1813(o)). In analyzing branch applications, the Corporation must evaluate each application in relation to the six statutory factors prescribed in section 6 of the Act (12 U.S.C. 1816) as well as the requirements of the National Historic Preservation Act, the National Environmental Policy Act of 1969, and the Community Reinvestment Act. The six statutory factors under section 6 of the Act are: the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether its corporate powers are consistent with the purposes of the Act.

Generally, the Corporation believes that active competition between banks and other financial institutions, when conducted within applicable law and in a safe and sound manner, is in the public interest. Accordingly, applications to establish branches by well managed and adequately capitalized banks with a record of responsive service to their communities will generally be approved.

Federal appellate court decisions have determined that the term ''branch'' includes remote service facilities. In March 1979, the Corporation adopted regulations which reflect these decisions and recognize remote service facilities as branches if they are owned or leased by the applicant. An abbreviated application form has been designed and procedures implemented which lessen the administrative burden for both the banks and the FDIC. Banks which enter a sharing arrangement, not involving leasing or ownership of the facility, do not have to obtain FDIC approval; shared facilities or shared systems of terminals are not regarded as branches for the sharing bank.

B. Procedures

Application forms to establish branches, including remote service facilities, and instructions for their completion may be obtained from the regional office of the FDIC region in which the main office of the applicant is located. Upon receipt of an application which is found complete, the regional director will notify the bank, in writing, that the application has been accepted for filing and the date thereof. The procedures governing the administrative processing of branch and remote service facility applications are contained in part 303 of the Corporation's rules and regulations (12 CFR part 303), particularly §§ 303.2, 303.10, 303.11, 303.12, and 303.14. Section 303.14 sets forth, among other things, the procedures controlling establishment of a public file, publication requirements, and consideration of comments and protests received in connection with an application.

The Corporation will normally not render a decision on any application for a branch or remote service facility which is subject to state approval until the state authority has approved or expressed its intent to approve the proposal; however, applicants are urged to submit their applications to the Corporation at the same time an application is forwarded to the state authority in order to promote concurrent and more timely processing of the proposal.

Notification of the granting or denial of an application will be provided together with a statement supporting the decision. Under § 303.10(e), within 15 days of receipt of notice that its application has been denied, an applicant may petition the Board of Directors for reconsideration of the application. Opinions will be published when the Corporation determines that the decision represents a new or change in policy or presents issues of general importance to the public or the banking industry.

Under § 303.14(i) of the Corporation's rules and regulations, where the Board of Directors, based upon available information at the time, plans to deny an application and no hearing has been held under § 303.14(e), the Director of the Division of Bank Supervision may

be instructed to notify the applicant in writing of the tentative denial. The applicant has 15 days from receipt of the notice to file a written request to amend the application or to submit information in rebuttal of the deficiencies noted. Upon filing of such a request, the applicant has 30 days to amend its application or to provide rebuttal information.

An application to establish a remote service facility is required to be filed only for the applicant's initial facility and the procedures for traditional branch applications are followed. In order to establish any subsequent remote service facility, the applicant need only notify the regional director of its intention and comply with the appropriate publication requirements. Unless otherwise notified by the regional director, the remote service facility may be established 30 days after the last publication date. If the regional director determines that the notification warrants further consideration, he shall advise the applicant within the 30-day period that additional information is needed and that the remote service facility may not be established until the Corporation issues a formal order.

C. Statutory Factors—Application To Establish a Domestic Branch Other Than Remote Service Facility

1. Financial History and Condition

In connection with applications for branches the emphasis will be placed on the financial history and condition of the existing bank rather than the proposed branch. The establishment of branches, particularly where these involve the development of new markets, normally encompasses risks or a degree of management attention which banks that are experiencing financial difficulties are not generally prepared to undertake. Banks with excessive volumes of subquality assets, significant liquidity problems, or other problems threatening the soundness of the institution would fall in this category.

Under this factor, as well as under the general character of management factor, the current asset condition of the bank and its compliance with applicable laws and regulations are primary areas of consideration. Other primary areas of consideration here are investment in fixed assets, including leases, and insider transactions, all of which also impact importantly on the evaluation of the general character of management factor. Lease transactions shall be reported in accordance with Financial Accounting Standards Board Statement 13 as required by the Instructions for the Preparation of Consolidated Report of Income and Condition.

(a) Investment in Fixed Assets and Leases—The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital and other pertinent bases for consideration. Except where state law obviates the need, lease agreements should contain a bankruptcy termination clause acceptable to the Corporation. An example of such clause may be obtained from the regional office.

It is recommended that applicants not purchase any fixed assets or enter into any noncancelable construction contracts, lease agreements, or other binding arrangements related to the proposed branch unless and until the Corporation approves the application. The Corporation expects applicants to follow closely the representations made in the application regarding fixed asset arrangements. If any substantive changes become necessary in fixed asset arrangements, including increases of 10% or more in the cost of any major category of fixed assets (such as land, building, or furniture fixtures and equipment), after submission of the application, applicant must promptly advise the regional director of these changes. Major changes could result in reconsideration.

(b) Insider Transactions—-Any financial arrangement or transaction involving the applicant, its directors, officers, 5% shareholders, or their associates and interests (hereafter referred to as ''insiders'') should ordinarily be avoided. If there are arrangements or transactions of that type, the applicant must demonstrate clearly that any proposed transactions with insiders are made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders and do not involve more than normal risk or present other unfavorable features to the applicant bank. In addition, full disclosure of any arrangements with an insider must be made to all directors and shareholders and, in the event any new capital offering is to be made, included in any new capital offering material distributed in connection with the application.

Whenever any transaction between the applicant and an insider involves the purchase of real property or a construction contract, the purchase price must be supported by an independent appraisal or in the case of a construction contract by competitive bids. Further, with respect to any lease arrangement between the applicant and an insider, the applicant must submit reliable evidence showing that the lease arrangement is as beneficial to the applicant as the purchase of the property and direct ownership. Normally, this type of lease arrangement will also be required to include terms protecting the bank against unreasonable escalation of payments under the lease and granting the bank the option to purchase the property during the life of the lease on appropriate terms.

2. Adequacy of Capital Structure

The establishment of branches generally involves an expansion of deposits and/or an increase in expenses not immediately offset by additional income. This normally results in some dissipation of relative capital strength. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In the case of capital deficiencies not considered overly extreme, the bank should set forth a plan which will improve capital to an extent which will more than offset any deterioration expected as a result of the branch proposed.

Generally, the applicant bank's adjusted capital and reserves, including written commitments for additional capital funds, should be adequate relative to its adjusted gross assets. In the case of a commercial bank, regional directors may approve an application to establish a branch where the applicant's adjusted capital and reserves, including written commitments for additional capital funds, is not less than 7.5% of its adjusted gross assets. For mutual or guaranty savings banks, regional directors may grant approval where the adjusted capital and reserves ratio is not less than 6%. Such factors as the quality of assets, earnings capacity, volume of risk assets, liquidity, capability of management, and other factors affecting the relative strength of a bank will exert either positive or negative influences on the level of capital protection needed. In all instances where the adjusted capital and reserves ratio of the applicant is less than the applicable level set forth above, the determination of the adequacy of that ratio will be made in the Washington Office.

3. Future Earnings Prospects

This factor will be measured in terms of the ability of overall bank earnings to absorb the anticipated expenses resulting from the proposal. In all cases, anticipated future earnings for the bank as a whole should be adequate, after expenses, to absorb normal losses, pay reasonable dividends, and provide some meaningful contribution to capital. In

the case of newly organized banks which are seeking branches, the proposed branch should not unduly delay the original forecast for achieving profitability.

4. General Character of Management

To be acceptable under this factor a management must have demonstrated, or be expected to demonstrate, an ability to operate the bank in a manner which is free of excessive criticism or concern as to the overall soundness and viability of the institution. The management must also display, or be willing to acquire, the degree of depth necessary to permit the establishment of additional offices. The appraisal of management ability and depth will take into consideration the size and activities of the existing bank, the expected scope of activity of the proposed branch, and the extent of impact the branch is expected to have on the bank's overall operation. In summary, the Corporation views the quality of a bank's management as critical to its overall success and will seriously question the expansion of the bank via the branch route if the quality of management is not considered adequate prior to the proposed expansion.

The Board of Directors of the Corporation has adopted a Statement of Policy regarding legal fees and other expenses incident to applications for deposit insurance, consent to establish branches or relocate main or branch offices, and mergers. In brief, this policy states that, since prudent management will not commit a bank seeking a new branch to excessive expenses, the payment of unreasonable or excessive fees incident to applications is considered by the Corporation to reflect adversely upon management of the applicant bank, irrespective of whether payments have been ratified or otherwise approved by formal action by the incorporators or shareholders. The Corporation will not question fees for legal services or other organizational expenses solely because of an amount but will consider the reasonableness of fees in relation to the services performed. Applicants are required to furnish the amounts of fees for such services which have been incurred and estimates of additional fees to be incurred in connection with the proposed transaction. All fees for legal, organizational or similar services should be disclosed whether directly or indirectly related to the application pending before the Corporation. If legal or other organizational fees appear to be excessive in relation to fees for comparable services, or if the volume of services performed exceeds that usually incurred with respect to comparable applications, supportive documentation will be required. In the case of legal fees, such documentation may consist of materials such as itemized time sheets showing the time actually expended by counsel on the applications concerned, the hourly rate charged, and the specific circumstances, including unusual complexities, the necessity for agency or court appearances, and the like necessitating the time expended. In reviewing legal fees for reasonableness, the following factors will ordinarily serve as guides:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the services obtained;

(b) The fee customarily charged in the locality for similar legal services;

(c) The time limitations imposed by the client or by the circumstances; and

(d) The experience and ability of the lawyer or lawyers performing the services.

Even though a fee may be wholly or partially absorbed by another entity such as a holding company, that fee or organizational expense will nonetheless be reviewed by the Corporation under the terms of this policy statement in view of the fact that the commitment for the fee or organizational expense is a commitment of management of the proposed or existing institution. Expenses for legal or other services rendered by organizers, present or prospective board members or major shareholders will receive special scrutiny in this regard for any evidence of self-dealing to the detriment of the bank and its other shareholders. As a matter of practice, the FDIC requires full disclosure to all directors and shareholders of any fee in excess of $5,000 paid to insiders or their interests. In no case, states the policy, will an FDIC application be approved when the payment of a fee, in whole or in part, is contingent upon any act or forebearance by the Corporation or by any other federal or state agency or official.

The applicant bank should at all times maintain sufficient surety bond coverage on its active officers and employees to conform with generally accepted banking practices and should at all times maintain an excess employee dishonesty bond in the amount of $1 million or more if the primary blanket bond coverage is less than $1 million.

5. Convenience and Needs of the Community To Be Served

It should be noted that the provisions of the Community Reinvestment Act are especially relevant in evaluating this statutory factor. Guidelines on the Community Reinvestment Act may be obtained from the appropriate regional office.

The essential considerations in evaluating this factor are the legitimate deposit and credit needs of the community to be served and the nature and extent of the banking opportunity available to the applicant in that location and the willingness and ability of the applicant to serve those needs.

In keeping with the Corporation's policy of promoting competition among financial institutions, this factor will generally be considered favorably when there is a reasonable assurance of successful operation of the branch (as measured by future earning prospects). However, competitive considerations will also include an assessment of whether the applicant is already a dominant bank in a particular market and has applied for the purpose of saturating that market as well as whether the potential viability of a newly organized bank within a market would be threatened significantly by a proposed branch.

The applicant bank must clearly define the community it intends to serve and provide the type of information on that community discussed below. It is emphasized, however, that the degree of detail that must be provided may vary depending on the size, type of service and location of the facility proposed. For example, the same amount of detail would not be required for an extension of an existing facility, or for the establishment of a limited service facility in the same community as an existing office of the bank, as would be required for the establishment of a full service branch in a different community.

(a) Economic Data—The economic condition and growth potential of the area in which the branch proposes to operate, both presently and in the near term, are important in evaluating the business potential available to the branch, the amount of that business it can reasonably expect to secure, and the probable success of the operation. Indicators of the available business would include, but not be limited to, a description of the principal industrial, trade, or agricultural activity as well as the annual value of the primary products in the geographic area. In addition, trends in employment, residential and commercial construction, sales, company payrolls, and businesses established are also important indicators.

(b) Demographic Data—Population figures within the community or trade area as well as the surrounding areas are

important determinants in considering convenience and needs. These population figures should include not only the present population but also data on population trends for the future. Population characteristics such as income, age distribution, educational level, occupation, and stability should be considered.

(c) Competition—Some consideration will be given to the adequacy or inadequacy of existing bank facilities in the community and in nearby communities. The growth rate and size of banks and other financial institutions in the community or trade area may provide meaningful indications of the economic condition of the area and the potential business for a branch. Other financial institutions such as savings and loan associations, credit unions, finance companies, mortgage companies and insurance companies may be considered competing institutions to the extent their services parallel those of the branch.

(d) Other Supporting Data—The extent of new or proposed residential, commercial and industrial development and construction is a significant secondary consideration in resolving the convenience and needs factor. Evidence of plans for development of shopping centers, apartment complexes and other residential subdivisions, factories, or other major facilities near the proposed site of the branch are also relevant.

6. Consistency of Corporate Powers

This factor will rarely be applicable to branch proposals, except in those instances where a bank may contemplate some additional corporate power, not normally exercised by banks, in connection with its application.

D. Statutory Factors—Application or Notification To Establish Remote Service Facility

In view of the nature of the remote service facility, including that it offers limited service and is generally an unmanned electronic unit, the six statutory factors will not be applied to the same degree and extent as in the case of a traditional branch. For instance, with respect to the earnings factor, detailed projections of deposits, income and expenses are not necessary. A determination that operating expenses of the facility will not burden the bank's future earnings will generally suffice. Similarly, detailed or extensive economic information and demographic data are not required when considering the convenience and needs factor.

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–26232 Filed 10–8–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Liability of Commonly Controlled Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed statement of policy.

SUMMARY: The FDIC is revising the Statement of Policy on Liability of Commonly Controlled Depository Institutions (Statement of Policy) which sets forth the procedures and guidelines the FDIC uses in assessing or waiving liability against commonly controlled depository institutions under section 5(e) of the Federal Deposit Insurance Act. The revised Statement of Policy removes the application procedures for requesting a conditional waiver of the cross-guaranty liability and incorporates those same procedures into a proposed section of the FDIC's applications regulation published for comment elsewhere in today's **Federal Register**.

DATES: Comments must be received by January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838; Internet address: comments@FDIC.gov). Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jesse Snyder, Assistant Director of Operations, Division of Supervision (202) 898–6915, or Grovetta N. Gardineer, Counsel, Legal Division, (202) 736–0665, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Effective April 1, 1997, the Board of Directors of the FDIC revised the Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions, 62 FR 15480. Such liability is a consequence of section 5(e) of the Federal Deposit Insurance Act (Act), 12 U.S.C. 1815(e), which was added by the passage of section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Section 5(e) created liability for commonly controlled insured depository institutions for losses incurred or anticipated by the FDIC in connection with (i) the default of a commonly controlled insured depository institution; or (ii) any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. The purpose of section 5(e) is to ensure that the assets of healthy depository institution subsidiaries within the same holding company structure, or of a healthy institution which controls a failing institution, will be available to the FDIC to help offset the cost of resolving the failed subsidiary. While the FDIC seeks to recover its losses associated with failing institutions, it also seeks to encourage the acquisition of troubled institutions by those capable of rehabilitating them and to avoid instances in which the assessment of liability against an otherwise healthy institution will cause its failure, thus exposing the FDIC and the insurance funds to greater loss.

The revised Statement of Policy contained information regarding the content of requests for conditional waiver of cross guaranty liability. The revised Statement of Policy also indicated that any changes in part 303 of the FDIC's rules may necessitate further revisions to the policy statement. The decision has been made by the FDIC that all information regarding applications be addressed in revised part 303 of the FDIC Rules and Regulations (Rules). Accordingly, the application procedures for requesting a conditional waiver of cross guaranty liability are being moved to part 303. The appropriate section of part 303 that discusses conditional waiver applications will be referenced in the revised Statement of Policy.

The Statement of Policy provides for the issuance of a Notice of Assessment of Liability, Findings of Fact and Conclusions of Law, an Order to Pay and a Notice of Hearing, a good faith estimate of the FDIC's loss, and the determination of the method and schedule of repayment. The liability under the statute attaches at the time of default of a commonly controlled depository institution. The FDIC, in its discretion, may assess liability for the losses incurred by the default or for any assistance provided by the FDIC to a commonly controlled institution in danger of default. Generally, liability