

# Legislation and Regulations

Although Congress did not enact comprehensive banking legislation in 1998, lawmakers approved several measures directly affecting the FDIC or insured depository institutions. Among the topics addressed in laws enacted in 1998 were legislation on the Year 2000 computer issue, private mortgage insurance, and the termination of the Thrift Depositor Protection Oversight Board. Congress also appropriated funds for the FDIC Office of Inspector General and for judgments and settlements of “goodwill” lawsuits related to savings and loan association failures.

### The Year 2000 Computer Issue

The Examination Parity and Year 2000 Readiness for Financial Institutions Act (Public Law 105-164) was signed into law on March 20, 1998. The Act requires the FDIC, as well as the other federal banking agencies and the National Credit Union Administration (NCUA), to offer seminars to all institutions under its jurisdiction on the safety and soundness implications of the Year 2000 computer issue. The law also requires the agencies to give insured depository institutions model approaches to common Year 2000 challenges in such areas as project management, vendor contracts, testing regimes and business continuity planning. The Act also amends the Home Owners’ Loan Act and the Federal Credit Union Act to give express authority to the Office of Thrift Supervision and the NCUA to examine and regulate service companies and third-party service providers such as data processing firms.

### Private Mortgage Insurance

The Homeowners Protection Act of 1998 (Public Law 105-216) was signed into law on July 29, 1998. The Act provides a statutory framework for canceling or automatically terminating private mortgage insurance (PMI). PMI is an insurance policy that protects the lender from losses when a mortgage with a low down payment is in default. In general, most PMI requirements in connection with a residential mortgage transaction entered into after July 29, 1999, will terminate when the mortgage is scheduled to reach 78 percent of the original value of the property. A mortgagor with a good payment history and who meets other requirements of the Act may request the cancellation when the mortgage balance reaches 80 percent of the property’s value. The federal banking agencies, the NCUA, and the Farm Credit Administration are directed to enforce these requirements.

### Thrift Depositor Protection Oversight Board

Also as part of the Homeowners Protection Act, Congress abolished the Thrift Depositor Protection Oversight Board, which was created in 1991 to monitor the operations of the Resolution Trust Corporation. The Act transfers the Oversight Board’s authority over the Resolution Funding Corporation—an entity created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to provide funding for use in thrift resolutions—to the Secretary of the Treasury. The Act also amended provisions governing the frequency and location of the Affordable Housing Advisory Board’s (AHAB) meetings. The AHAB, which terminated by law on September 30, 1998, advised the FDIC and the Oversight Board on policies and programs related to the provision on affordable housing.

### FDIC Employees’ Health Insurance

The Federal Employees Health Care Protection Act of 1998 (Public Law 105-266) was signed into law on October 19, 1998. The Act includes provisions permitting FDIC retirees and employees who are within five years of retirement to participate in the Federal Employees Health Benefits Program during retirement.

### Appropriations

Congress provided funding for the FDIC Office of Inspector General as part of the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Public Law 105-276), enacted on October 21, 1998. The Act appropriates approximately \$34.6 million from the Bank Insurance Fund, the Savings Association Insurance Fund and the FSLIC Resolution Fund for necessary expenses of the Office of Inspector General in fiscal year 1999.

Also, Congress appropriated funds for payments of judgments and settlements related to the *Winstar* (goodwill) cases in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law 105-277), enacted on October 21, 1998. **For more information about these cases, see Pages 39–40.**

Publication date refers to the date published in the *Federal Register*.

### Final Rules

#### **Interest on Deposits**

The FDIC amended Part 329 of its regulations relating to interest on deposits. The Federal Deposit Insurance Act requires that the FDIC prohibit insured nonmember banks and insured branches of foreign banks from paying interest or dividends on demand deposits. Under the amended rule, these institutions automatically become subject to exceptions to the prohibition adopted by the Federal Reserve Board for demand deposits in its member banks, regardless of whether the FDIC authorized the specific exception.

**Approved: February 10, 1998**

**Published: February 19, 1998**

#### **Determination of Economically Depressed Regions**

The FDIC amended Part 357 of its regulations used to determine whether an insured savings association is in an "economically depressed region" and therefore qualifies for financial assistance to prevent default. The FDIC changed the manner in which it defines geographic units as "economically depressed regions" for an institution to a case-by-case basis, rather than the previous statewide designation. After an institution's geographic market is defined, the FDIC will determine whether that market falls within an "economically depressed region." This revision to Part 357 will apply to cases where an institution's geographic market is limited to some portion of a state, or crosses two or more states.

**Approved: February 10, 1998**

**Published: March 3, 1998**

#### **Expanded Examination Cycle for Certain Small Insured Institutions**

The FDIC, along with the other bank and thrift regulatory agencies, amended Part 337 of its regulations to implement section 306 of the Riegle Community Development and Regulatory Improvement Act of 1994, and section 2221 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The amendment increases from \$100 million to \$250 million the asset size of certain financial institutions that may be examined once every 18 months instead of every 12 months, if certain other criteria are met. In effect, the amendment increases the number of institutions that are eligible for the 18-month examination schedule.

**Approved: March 24, 1998**

**Published: April 2, 1998**

#### **Disclosure of Information**

The FDIC amended Part 309 of its regulations regarding the public disclosure of information under changes in the Freedom of Information Act (FOIA) made by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The amendment implements expedited and "multi-track" FOIA processing procedures and the processing deadlines and appeal rights created by electronic FOIA. The amendment also notes the expanded range of records available through the FDIC's Internet site.

**Approved: March 24, 1998**

**Published: April 3, 1998**

#### **Consolidation and Simplification of International Banking Regulations**

The FDIC amended Part 347 of its regulations to consolidate, update and streamline rules that apply to foreign banking operations. The FDIC's international rules, which had been in effect since 1979 without significant revision, were divided into three separate parts. Those rules were consolidated into a new Part 347. In particular, the amendment: reduces filing requirements for most banks wishing to open a foreign branch or make a foreign investment; defines permissible activities in which bank branches, foreign joint ventures and subsidiaries may engage, within specific dollar limits; eliminates a general limit on foreign investment of 25 per cent of capital; simplifies accounting for fees on international loans; and requires banks to either establish reserves to account for transfer risk in international assets, or use an alternate method consistent with generally accepted accounting principles (GAAP).

**Approved: March 24, 1998**

**Published: April 8, 1998**

#### **Deposit Insurance Simplification**

The FDIC clarified and simplified its deposit insurance regulations to benefit both consumers and bankers. The amended Part 330 of the FDIC's regulation now contains plainer, more understandable language as well as examples illustrating the rules that govern the most basic types of consumer accounts. The amendment also relaxed the FDIC's recordkeeping requirements for certain agency or fiduciary accounts, created a six-month grace period for the restructuring of accounts after a depositor's death, and clarified the insurance coverage of revocable trust accounts.

**Approved: April 28, 1998**

**Published: May 11, 1998**

## Final Rules

### Resolution and Receivership Rules

The FDIC amended Part 360 of its regulations regarding resolution and receivership rules. The amendment made only clarifying, technical modifications to the regulation, correcting an erroneous statutory reference and amending certain sections to achieve uniform language throughout the regulation.

**Approved: July 7, 1998**

**Published: July 14, 1998**

### Capital Treatment of Servicing Assets

The FDIC, along with the other bank and thrift regulatory agencies, amended Part 325 of its regulations regarding capital treatment of "servicing assets," which arise from contracts to service loans or other financial assets. The amendment relaxes the regulatory capital limitations on servicing assets and modifies certain terms used in the agencies' capital rules to be more consistent with accounting standards prescribed by the Financial Accounting Standards Board. Specifically, the final rule increases the amount of mortgage servicing assets recognized for regulatory capital purposes and, for the first time, recognizes limited amounts of nonmortgage servicing assets in regulatory capital calculations.

**Approved: July 7, 1998**

**Published: August 10, 1998**

### Applications, Filing Procedures and Delegations of Authority

The FDIC amended Part 303 of its regulations and related statements of policy regarding applications, notice and request procedures, and delegations of authority. The final rule provides qualifying well-capitalized and well-managed insured depository institutions expedited processing procedures for several types of filings, including deposit insurance, branch, and merger applications. For ease of reference, the amendment also centralizes within Part 303 substantially all filing procedures found throughout the FDIC's regulations.

**Approved: July 7, 1998**

**Published: August 20, 1998**

### Capital Treatment of Unrealized Gains on Available-for-Sale Equity Securities

The FDIC, along with the other bank and thrift regulatory agencies, amended Part 325 of its regulations regarding the treatment of unrealized gains on equity securities. The amendment permits institutions holding equity securities that have appreciated in value since the institution purchased them to include up to 45 percent of these gains as a component of Tier 2 capital. For the gains to be eligible for inclusion in Tier 2 capital, the equity securities must be available-for-sale and have readily determinable fair values in accordance with GAAP. If an institution holds equity securities meeting the rule's requirements, the institution's total risk-based capital ratio will improve as a result of this rule change.

**Approved: August 25, 1998**

**Published: September 1, 1998**

### Activities of Insured State Banks and Insured Savings Associations

The FDIC amended Part 362 of its regulations, which requires a state bank to obtain the FDIC's approval before engaging in an activity or making an equity investment that would not be authorized for a national bank. Several rules covering state bank and savings association activities were combined with Part 362, establishing greater consistency among the activities authorized under each rule and greater consistency among restrictions on conducting the activities. Part 362 now includes rules previously located in Part 303, requiring state savings associations to obtain the FDIC's approval before engaging in activities or equity investments that would not be authorized for a federal savings association, and rules previously located in Part 337, applicable to state nonmember banks that engage in securities underwriting, dealing, and public sale. The amendments also allow qualifying well-capitalized and well-managed state banks and savings associations to obtain the FDIC's approval to engage in some activities covered by the rules through an expedited notice process, if the institution conducts the activity in the manner spelled out in the rule.

**Approved: November 5, 1998**

**Published: December 1, 1998**

## Interim Rules

### **Extended Examination Cycle for U.S. Branches and Agencies of Foreign Banks**

The FDIC, along with the other bank and thrift agencies, issued an interim amendment to Part 347 of its regulations regarding examination cycles for U.S. branches and agencies of foreign banks. This interim rule reduces the regulatory burden on certain branches and agencies of foreign banks with total assets of \$250 million or less by making them eligible for an 18-month examination cycle, as opposed to a 12-month cycle. To be eligible, the branches or agencies must meet criteria involving asset size, supervisory rating, and management.

**Approved: July 7, 1998**

**Published: August 28, 1998**

### **Year 2000 Safety and Soundness Standards**

The FDIC, along with the other bank and thrift agencies, issued an interim amendment to Part 364 of its regulations to incorporate appropriate references to the interagency Year 2000 safety and soundness guidelines. The guidelines establish standards for bank management and boards of directors in developing and managing their institutions' Year 2000 project plans for achieving Y2K readiness, validating remediation efforts, and planning for contingencies.

**For more information about the FDIC's Year 2000 initiatives, please see Pages 13–15, 25.**

**Approved: October 8, 1998**

**Published: October 15, 1998**

## Proposed Rules

### **Simplification of Insurance Rules for Joint Accounts and Payable-on-Death Accounts**

The FDIC issued proposed amendments to Part 330 of its regulations that would simplify the agency's deposit insurance rules governing the coverage of joint accounts and "payable-on-death" accounts. The FDIC is considering the changes because the current rules are frequently misunderstood by both consumers and bankers. That confusion can create losses for depositors if their insured institution fails and they mistakenly believed their funds were within the \$100,000 insurance limits. The proposed rule would eliminate the first step in the current two-step process for determining the insurance coverage of joint accounts. The proposed rule also would change the insurance coverage of payable-on-death accounts by adding parents and siblings to the current list of qualifying beneficiaries.

**Approved: July 7, 1998**

**Published: July 17, 1998**

### **Management Official Interlocks**

The FDIC, along with the other bank and thrift agencies, proposed amendments to Part 348 of its regulations that generally prohibit bank managers from serving simultaneously with two unaffiliated depository institutions or their holding companies. The proposed amendments would provide an exemption from the general prohibition against any management interlock between insured depository institutions located in the same community if their combined share of the total deposits in the community is 20 percent or less. Another provision reflects a statutory change that prohibits management officials of depository institutions with total assets of \$2.5 billion from serving as management officials of unaffiliated depository institutions with assets exceeding \$1.5 billion. These thresholds were raised from \$1 billion and \$500 million, respectively. The proposed rule would also create a general exemption that would allow an otherwise prohibited management interlock if dual service would not create a monopoly, substantially lessen competition, or threaten safety and soundness.

**Approved: May 18, 1998**

**Published: August 11, 1998**

## Proposed Rules

### **“Know Your Customer”**

The FDIC, along with the other federal bank and thrift regulatory agencies, proposed an amendment to Part 326 of its regulations that is designed to deter and detect financial crimes, such as money laundering and fraud at banks and savings institutions. The proposed rule would require banks to adopt compliance measures such as having adequate internal controls, using independent testing, and training personnel to be sensitive to possibly fraudulent or illicit transactions. Insured nonmember banks would be asked to obtain only the information necessary to comply with the regulation, and would safeguard the information gathered to minimize the risk of invasion of the customer’s privacy. (The FDIC and the other regulatory agencies withdrew the proposal effective March 29, 1999.)

**Approved: October 27, 1998**

**Published: December 7, 1998**

### **Activities of Insured State Banks and Insured Savings Associations**

The FDIC issued proposed amendments to Parts 303, 337 and 362. The amendments to Part 362 would add safety and soundness standards to govern insured state nonmember banks. These standards would govern those banks that engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities through a subsidiary, if those activities are permissible for a national bank subsidiary but are not permissible for the national bank itself. Insured state nonmember banks also would be required to notify the FDIC prior to conducting any other activities that are not permissible for a national bank itself. To avoid duplication, the FDIC also proposed removing and reserving the provisions concerning insured state banks’ securities activities found in section 337.4 of the FDIC’s regulations. Part 303 currently contains all of the filing content and processing information and would be amended to cover these new filings. These amendments would complete the consolidation of the FDIC’s securities activities regulations.

**Approved: November 5, 1998**

**Published: December 1, 1998**

## Withdrawal of Proposed Rules

### **Determination of Economically Depressed Regions**

The FDIC withdrew a proposed amendment to Part 357 of its regulations regarding determination of economically depressed regions. The proposed rule, published in 1992, would have updated the list of states designated as “economically depressed regions.” No comments were received, and the rule was never finalized. On the same date that this proposed rule was withdrawn, the FDIC issued a final rule that provides criteria to determine which regions are “economically depressed” rather than identifying particular states. **For a description of that final rule, see Page 50.**

**Approved: February 10, 1998**

**Published: March 3, 1998**