



**Federal Deposit Insurance Corporation**

Division of Risk Management Supervision

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December 3, 2020

**TO:** The Board of Directors

**FROM:** Doreen R. Eberley  
Director, Division of Risk Management Supervision (“RMS”)

**SUBJECT:** Final Rule: Removal of Transferred OTS Regulations Regarding Application Processing Procedures for State Savings Associations and Conforming Amendments to Other Regulations

**Summary:** Staff recommends that the FDIC Board of Directors (“Board”) approve and authorize for publication in the *Federal Register* the attached final rule to rescind and remove 12 CFR part 390, subpart F, entitled *Application Processing Procedures*, and amend the following FDIC regulations to make them applicable to State savings associations:

- 12 CFR part 303, subpart A (rules of general applicability), section 303.7 (public notice requirements) and section 303.15 (certain limited liability companies deemed incorporated under state law);
- 12 CFR part 303, subpart K (prompt corrective action), section 204 (applications for acquisitions, branching and new lines of business) and section 205 (applications for bonuses and increased compensation for senior executive officers); and
- 12 CFR part 303, subpart M (other filings), and section 303.249 (management official interlocks).

Staff is requesting that the Board approve the final rule adopting, without change, the Notice of Proposed Rulemaking (“NPR”) published on October 15, 2020, which received no comments.

Concur:

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Nicholas J. Podsiadly  
General Counsel

## **I. Background – OTS Rule Transfer to FDIC**

### The Dodd-Frank Act

Effective July 21, 2011, section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) transferred to the FDIC the powers, duties and functions formerly performed by the Office of Thrift Supervision (“OTS”) with respect to state savings associations. Section 316(b) of the Dodd-Frank Act<sup>1</sup> provided the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that were issued, made, prescribed, or allowed to become effective by the OTS, and further provided that OTS regulatory issuances in effect as of the transfer date would continue in effect and be enforceable by the appropriate Federal banking agency until modified, terminated, set aside, or superseded.

Section 316(c) of the Dodd-Frank Act<sup>2</sup> further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the Board 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.”<sup>3</sup>

Although section 312 of the Dodd-Frank Act<sup>4</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 FDI Act and other laws as the “appropriate Federal banking agency” or under similar authority. Section 312(c) of the Dodd-Frank Act amended the definition of “appropriate Federal banking agency” contained in section

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<sup>1</sup> 12 U.S.C. § 5414(b).

<sup>2</sup> 12 U.S.C. § 5414(c).

<sup>3</sup> 76 FR 39247 (July 6, 2011).

<sup>4</sup> See 312(b)(2)(B)(i)(II).

3(q) of the FDI Act to add State savings associations to the list of entities for which the FDIC is designated the “appropriate Federal banking agency.” As a result, when the FDIC acts as the “appropriate Federal banking agency” for State savings associations, it has the authority to issue, modify, and rescind regulations involving such institutions.

On June 14, 2011, operating pursuant to this authority, the Board reissued and re-designated certain transferred regulations of the former OTS as new FDIC regulations.<sup>5</sup> In the preamble to this interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into existing FDIC regulations, amending them, or rescinding them, as appropriate.

#### Part 390, Subpart F – Application Processing Procedures

The 1996 OTS regulations concerning application processing procedures, formerly found at 12 CFR part 516, sections 516.1 through 516.290<sup>6</sup>, were transferred to the FDIC with nominal changes and are now found in the FDIC regulations at part 390, subpart F, *Application Processing Procedures* (subpart F).

## **II. Proposal to Rescind Part 390, Subpart F**

On October 15, 2020, the FDIC published a notice of proposed rulemaking (NPR or proposal) proposing the removal of subpart F.<sup>7</sup> The NPR resulted from an analysis and comparison of the provisions of subpart F with those of existing part 303 of the FDIC regulations – Filing Procedures (“part 303”) which “describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices (filings) required to be filed by statute or regulation.”<sup>8</sup> Part 303 is applicable to filings by state nonmember banks and, generally, state savings associations. After careful review and consideration, the NPR proposed

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

<sup>6</sup> 61 FR 66561 (Dec. 18, 1996).

<sup>7</sup> 85 FR 65270 (Oct. 15, 2020).

<sup>8</sup> 12 C.F.R. 303.0(a).

removing subpart F from the Code of Federal Regulations (CFR) due to the existence of substantially similar FDIC regulations, particularly part 303. The *Federal Register* notice contains full descriptions of the requirements of subpart F and the justifications for rescinding and removing each of the subpart's sections. For ease of reference, a section-by-section comparison for subpart F is included in this memorandum as Exhibit 1. In addition, in the *Federal Register* notice for the final rule, staff directs the reader to the explanations for rescission and removal provided in the NPR,<sup>9</sup> which staff references in the final rule as the basis for finalizing the regulations as proposed.

One section of subpart F deserves further discussion and explanation. Section 390.134 provides for approval of a filing if the FDIC fails to approve or deny the filing before expiration of the applicable review period. Part 303 regulations similarly provide that, for certain matters, particularly matters that receive expedited processing, an institution may proceed with an activity if the FDIC fails to object. However, that is not the case for standard applications under part 303. A review of other sections of subpart F, including section 390.133, demonstrates that the evident difference between the two processing procedures is not material. Under subpart F, the FDIC has substantial ability to extend the review period as needed prior to taking final action on an application, rendering the "deadline" largely immaterial. Staff concluded that substantive effect of subpart F and part 303 are substantially similar in that respect.

It is also important to note that for most types of filings, whether for banks or savings associations, the FDIC has separately established timeframe guidelines for processing filings based on statutes, regulations, or internal business rules. These timeframe guidelines have been issued publicly, posted to the FDIC's public website, and incorporated into the RMS procedural manuals.

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<sup>9</sup> 85 FR 65270 (Oct. 15, 2020).

The FDIC received no comments on the NPR with respect to the removal of subpart F, and staff recommends that the Board approve its removal in the final rule.

### **III. Proposal to Amend Certain Sections of Part 303**

In several instances, the NPR proposed to revise certain sections of subparts A, K and M of part 303 in order to make those sections applicable to State savings associations. Those revisions are discussed below.

#### 12 CFR 303.7 Public Notice Requirements

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>10</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. Section 303.7 of the FDIC regulations, a part of subpart A---Rules of General Applicability, addresses public notice requirements for filings with respect to mergers, changes in control, and requests for deposit insurance.

With one exception, section 303.7 makes no distinction between banks and savings associations. However, section 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.” In order to clarify that the provision is applicable to savings associations, consistent with section 5 of the FDI Act and part 303, and to make the requirement consistent for both types of depository institutions, of the proposal would have revised section 303.7(c)(1)(i) to replace “bank” with “depository institution,” a term used elsewhere in the section.

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<sup>10</sup> 12 CFR 303.20.

12 CFR 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>11</sup> Section 303.15 of the FDIC regulations provides that a bank chartered as an LLC under State law would be deemed “incorporated” for purposes of the FDI Act definition if it met four traditional corporate characteristics of perpetual succession, centralized management, limited liability, and free transferability of interests, which are now required by section 303.15(a) for a state bank.<sup>12</sup> Section 303.15 further provides that the terms “stockholder,” “shareholder,” “director,” “officer,” “voting stock,” “voting shares,” and “voting securities,” for banks chartered as LLCs, shall encompass the functional or substantially similar term or concept as employed with regard to LLCs.<sup>13</sup>

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 law requirement).<sup>14</sup> The proposal would have revised references to “bank” in section 303.15(b) to “depository institution.” The impact of the revisions would be to make the terms “stockholder,” “shareholder,” “director,” “officer,” “voting stock,” “voting shares,” and “voting securities,” encompass or have substantially the same meaning with respect to savings associations chartered as LLCs as for those chartered as corporations.

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<sup>11</sup> 12 U.S.C. 1813(a)(2).

<sup>12</sup> See 68 FR 7308, February 13, 2003; 12 CFR 303.15(a).

<sup>13</sup> 12 CFR 303.15(b).

<sup>14</sup> See 12 U.S.C. 1813(b)(3).

Subpart K---Prompt Corrective Action:

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

§303.205 – Applications for bonuses and increased compensation for senior executive officers

Part 303, subpart K of the FDIC's regulations includes procedures to implement the filing requirements for certain activities or transactions relative to undercapitalized depository institutions, and implements certain elements of section 38 of the FDI Act.<sup>15</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, significantly undercapitalized, or critically undercapitalized.<sup>16</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.

Sections 303.204 and 303.205 of the FDIC regulations implement the above provisions of section 38. 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

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<sup>15</sup> 12 U.S.C. 1831o.

<sup>16</sup> 12 U.S.C. 1831o(e)(4) and

acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer.

Section 38 and other sections of subpart K of part 303, by their terms, apply to all insured depository institutions. However, section 303.204, in part, and section 303.205 apply only to State nonmember banks and insured branches of foreign banks. The proposal would have revised sections 303.204 and 303.205 to insert “insured state savings association” following the term “insured state nonmember bank” in order to make those sections expressly apply to insured State savings associations to the same extent as they currently apply to insured State nonmember banks.

#### §303.249 – Management Official Interlocks

Part 348<sup>17</sup> of the FDIC regulations implements the Deposit Insurance Management Interlocks Act (“Interlocks Act”).<sup>18</sup> The Interlocks Act applies 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 insured state nonmember banks and state savings associations, sections 3206-3207 of the Interlocks Act provide the FDIC with administrative and enforcement authority, as well as authority to prescribe regulations, to carry out its provisions.<sup>19</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

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<sup>17</sup> 12 CFR 348.

<sup>18</sup> 12 U.S.C. 3201-3208.

<sup>19</sup> 12 U.S.C. 3206, 3207.



that such authorization would lessen the risk to the FDIC.<sup>20</sup> Subpart F of part 390 does not apply to a transaction under section 13(k) of the FDI Act.<sup>21</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 rule, formerly found at 12 CFR part 563f, was transferred to the FDIC with only minor, non-substantive 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, 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>22</sup>

However, section 303.249 of the FDIC regulations addresses the "procedures to be followed by an insured state nonmember *bank* (emphasis 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>23</sup> The proposal would have revised section 303.249(a) to insert "or an insured state savings association" following "bank," in order to clarify that State savings associations may use the procedures contained in section 303.249 to apply for approval to establish interlocks.

The FDIC received no comments on the proposed changes to subparts A, K and M of part 303, and staff recommends that the Board approve these conforming amendments.

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<sup>20</sup> 12 U.S.C. 1823(k)(1)(A)(v).

<sup>21</sup> 12 CFR 390.100(b)(1).

<sup>22</sup> 80 Fed. Reg. 79252 (Dec. 21, 2015).

<sup>23</sup> 12 CFR 303.249(a).

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

The final rule would adopt the NPR without any changes. It would rescind and remove 12 CFR part 390, subpart F and amend 12 CFR part 303, subpart A (section 303.7 and 303.15), subpart K (sections 303.204 and 202.205), and subpart M (section 303.249), to make those regulatory provisions applicable to State savings associations, as proposed in the NPR.

#### **V. Conclusion**

Based on the foregoing, staff recommends that the Board adopt the attached final rule and authorize its publication in the *Federal Register* with an effective date 30 days from the date of publication.

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## EXHIBIT 1

### COMPARISON OF PART 390 / SUBPART F to PART 303

<b>Section 390 – Subpart F (Application Processing Procedures) – To Be removed</b>	<b>Part 303 – Filing Procedures – To Be Retained with Conforming Amendments</b>
<b>Section 390.100 – This subpart (subpart F – Application Processing Procedures) explains the FDIC’s procedures for processing applications, notices, or filings (applications) under parts 390 and 391 for state savings associations.</b>	Subpart A of part 303, which covers 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 process of considering a filing, including public notice and comment. This subpart explains the availability of expedited processing for eligible depository institutions.
<b>Section 390.101 identifies criteria for determining which filings receive expedited treatment versus standard treatment for state savings associations.</b>	Part 303, subpart A, sections 303.2(r), 303.11(c), and other substantive subparts of part 303, when applicable, specify the criteria and conditions for expedited and standard processing, removal of filings from expedited processing and extension of time periods.
<b>Section 390.102 addresses computing time periods.</b>	Under part 303, section 303.4, the FDIC begins computing the relevant period on the day after an event occurs ( <i>e.g.</i> , the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period.
<b>Section 390.103 addresses pre-filing meetings and possible meeting requirements for change of control filings.</b>	Pre-filing meetings are not addressed in FDIC regulations, but guidance is provided in the Applications Procedures Manual (APM) under Notice of Acquisition of Control (pages 5.5-6). Pre-filing meetings are specifically encouraged for deposit insurance applications. In addition to the assigned case manager, the FDIC has designated subject matter experts in each regional office that are available to assist any applicant.
<b>Section 390.104 addresses business plan requirements.</b>	The FDIC does not require a specific format for a business plan, nor do the FDIC’s regulations address specific business plan requirements. However, the Handbook for Organizers – Applying for Deposit Insurance includes sections on developing a business plan and business plan content. In addition, information regarding business plan content is available in the interagency charter and federal deposit insurance application form. Business plans, for matters for which business plans are required or requested, are generally addressed through pre-filing communications with the applicant.
<b>Section 390.105 addresses scope and form of expedited and</b>	Various sections in subpart A of part 303 explain scope and processing. The most common sections cover deposit

<p><b>standard processing treatment, sources for required information, and waiver requests.</b></p>	<p>insurance, branches (both establishment and relocation), mergers, change in bank control, change in director or senior executive officer, activities of state banks and state savings associations, mutual-to-stock conversions, retirement of capital, trust powers, brokered deposit waivers, and golden parachute payments. <i>See</i> sections 303.22, 303.64, 303.82-303.84, 303.86, 303.102-303.103, 303.142, 303.241, 303.242, 303.243, 303.244.</p> <p>Under section 303.12, the FDIC Board may waive the applicability of any regulation in Title 12, Chapter III, including part 303. In addition, various sections within part 303 applicable to savings associations also address waiver requests, including: 303.85(a)(2), 303.102(c)(1), 303.102(c)(2), 303.243 and 303.245.</p>
<p><b>Section 390.106 addresses filing content and form.</b></p>	<p>Various sections in part 303 address content and form of filings. Section 303.3 states that forms and instructions may be obtained from any FDIC regional director. In addition, content requirements are found in many substantive subparts of part 303. The most common sections apply to deposit insurance, branches (both establishment and relocation), mergers, change in bank control, change in director or senior executive officer, activities of state banks and state savings associations, mutual-to-stock conversions, section 19, retirement of capital, trust powers, brokered deposit waivers, and golden parachute payments. <i>See, for example</i>, sections 303.21, 303.42, 303.63, 303.85, 303.102, 303.121, 303.141, 303.161, 303.221, 303.241, 303.242, 303.243, 303.244.</p>
<p><b>Section 390.107 addresses application confidentiality, including identification of information that the FDIC will or will not treat as confidential.</b></p>	<p>Section 303.8 of the FDIC rules identifies information that will generally be treated as confidential. It also provides the applicant may submit requests that information be treated as confidential and that the FDIC may determine on its own initiative that information should be treated as confidential.</p>
<p><b>Section 390.108 addresses where to file applications, specifically providing regional office addresses.</b></p>	<p>Section 303.3 directs applicants to transmit filings to the appropriate office unless specifically stated otherwise. Section 303.2 defines the appropriate office, although specific regional office addresses are not included in the regulation, but rather are available on the FDIC’s public website. In addition, the APM includes a section on filings requiring Washington Office action.</p>
<p><b>Section 390.109 explains determination of the application filing date, the date from which time periods for actions by the FDIC and the applicant begin to run.</b></p>	<p>Under part 303 of the FDIC’s rules, section 303.4, processing time periods are computed, unless otherwise specifically provided, from the date on which “a substantially complete filing is received by the FDIC or the day after publication begins.” The substantially complete determination is not defined in subpart A of part 303 or other FDIC regulations; however, it is explained in the Applications Overview of the APM (pages 1.1.6-7).</p>

<p><b>Section 390.110 explains the requirements for amending or supplementing an application.</b></p>	<p>The FDIC has no similar rule under part 303 but believes that the rule is unnecessary because the FDIC’s practice has been to allow supplemental filings to be filed with the appropriate FDIC regional office and applicants frequently do so.</p>
<p><b>Section 390.111 – 390.115 addresses public notice requirements. Section 390.112 identifies the information required to be contained in public notices. Section 390.113 requires that a public notice be published no earlier than seven days before and no later than the date of filing of the application. Section 390.114 requires providing the public notice in a newspaper of general circulation in the communities indicated in the particular rule. Section 390.115 requires that public notices be published in a newspaper printed in the English language and, upon FDIC determination, simultaneous publication in another appropriate language.</b></p>	<p>Public notice requirements are encompassed in part 303 of the FDIC regulations, including in section 303.7 and throughout various substantive subparts and sections of part 303, specifically for deposit insurance in section 303.23, branches (domestic and foreign) in section 303.44 and section 303.184(c), mergers in section 303.65, and change in bank control in section 303.87. Section 390.112 and section 303.7(c) are substantially identical. Unlike section 390.113, section 303.7(a) requires public notice to be given pursuant to the appropriate subpart for the type of application involved. In addition, unlike section 390.113, time intervals at which public notice must be given for an application vary within the specific subparts of part 303. The FDIC prefers the degree of specificity contained in the public notice provisions in part 303 over the general public notice requirement contained in section 390.113.</p> <p>Both section 390.114 of subpart F and part 303 require providing the public notice in a newspaper of general circulation in the communities indicated in the particular rule.</p> <p>Part 303 does not have a procedural rule similar to section 390.115; however, the FDIC’s practice is consistent with that section and believes that the language of publication is better addressed on a case-by-case basis between the applicant and the appropriate FDIC regional office.</p>
<p><b>Section 390.116 – 390.120 addresses submission of public comments.</b></p> <p><b>Section 390.117 permits any person to submit a written comment supporting or opposing an application.</b></p> <p><b>Section 390.118(a) specifies the type of information that should be contained in a comment. Section 390.118(b) allows a commenter to include a request for a meeting</b></p>	<p>Submission of public comments are addressed in section 303.9, including extension of the comment period and solicitation of comments, as well as throughout various substantive subparts and sections of part 303, including for deposit insurance in section 303.23, branches (domestic and foreign) in sections 303.44 and 303.184(c), mergers in section 303.65, and change in bank control in 303.87.</p> <p>Section 303.9(a) is substantially the same as section 390.117.</p> <p>Part 303 does not have a provision similar to section 390.118. The FDIC believes there is minimal benefit, if any, from such a provision and that the potential burden on commenters of such a detailed rule may outweigh any</p>

<p><b>under section 390.122 in its comment and requires the request to contain a description of the nature of the issues or facts to be discussed and why written submissions are insufficient.</b></p> <p><b>Section 390.119 directs comments to be filed with the appropriate FDIC regional office.</b></p> <p><b>Section 390.120 generally requires that comments be filed within 30 calendar days after the publication of the initial public notice and provides the FDIC may consider late-filed comments if it determines that the comment will assist in the disposition of the application.</b></p>	<p>benefit, and that such a rule may discourage the filing of comments.</p> <p>Section 309(a) directs comments to be filed with the appropriate FDIC regional director.</p> <p>The rules for public comment deadlines in part 303 are contained in the relevant substantive subpart for the particular type of filing at issue. Depending on the type of filing involved, public comments are generally solicited for 15-30 days.<sup>24</sup> The FDIC believes that the public comment period required by section 390.120 is duplicative, to an extent, of the regulations contained in part 303. In addition, the regulations contained in part 303 are preferable to the single comment period contained in section 390.120 because they are better calibrated to the types of filings that are at issue.</p>
<p><b>Section 390.121 – Section 390.125 addresses meeting procedures for applications. Section 390.122, addresses when the FDIC can call a meeting, limitation of the issues to be discussed, and notice of the meeting to the commentators and applicants. Section 390.123 allows the FDIC to conduct a meeting in any format and states the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure and the FDIC’s Rules of Practice and Procedure do not apply to meetings under the section. Section 390.124 states the FDIC will not approve or deny an application at a meeting under section 390.121 through 390.125. Under section 390.125, if it decides to conduct a meeting, the FDIC</b></p>	<p>Section 303.6 provides that 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. Section 303.10 addresses “Hearings and other meetings.”</p> <p>Section 303.10(l) is less detailed than section 390.122 and the FDIC prefers the level of flexibility it provides to the FDIC, applicants, and other interested parties.</p> <p>Section 303.10 distinguishes between hearings and informal proceedings. Generally, a hearing is a more formal proceeding and is usually only granted if the FDIC determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest. An informal proceeding under the rule is a less formal proceeding and 303.10(l) provides that it may take any form. Like section 390.123(b), section 303.10(h)(3) provides that the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure and the FDIC’s Rules of Practice and Procedure do not</p>

<sup>24</sup> See e.g. 12 CFR 303.23(a) (30 days following date of publication); 12 CFR 303.44(b) (within 15 days after the date of the last publication required by the section); and 12 CFR 303.65(d) (30 days after the first publication of the notice).

<p><b>may suspend all time frames for determining that the application is substantially complete and the application approval time frames in sections 390.126 through 390.135. Time periods resume when the FDIC determines that a record has been developed that sufficiently supports a determination on the issues considered at the meeting.</b></p>	<p>apply to hearings. Section 303.10(l) does not provide authority to approve or disapprove a filing at an informal proceeding, consistent with section 390.124.</p> <p>Part 303 has no provision similar to section 390.125 and the FDIC does not believe one is necessary because, unlike in subpart F of part 390, processing time frames do not run from the date an application is filed. Because the processing time frames under the part 303 regulation run from the date that the FDIC determines the application is substantially complete, there is no need to suspend and resume the processing period.</p>
<p><b>Section 390.126 addresses expedited treatment, including removal from expedited processing, additional information requests, suspension of the processing period, and when the applicant can proceed with the activity if the FDIC has not acted.</b></p>	<p>In part 303, expedited processing issues, including those generally addressed in subpart F, are addressed in section 303.11(c) and, as applicable, the substantive subparts of section 303 such as sections 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.</p>
<p><b>Sections 390.127 and 303.128 address whether applications are complete or not complete, including a complicated sequence of filing actions by the applicant and FDIC response, such as requests for additional information, waiver and extension requests, and the consequences of various responses by the applicant and the FDIC.</b></p>	<p>Part 303 addresses the same filing completeness issues as sections 390.127 and 390.128, but uses an approach that is simpler and easier to navigate. That is in large part due to the use of the substantially complete filing procedure used in part 303, which eliminates the necessity for the complex sequencing of the subpart F sections. 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.</p>
<p><b>Section 390.129 addresses eligibility examinations, and the authority of the FDIC to require them and to request additional information.</b></p>	<p>Section 303.6 authorizes the FDIC to 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. The FDIC utilizes field investigations when processing deposit insurance applications and eligibility examinations when processing certain federal to state conversion applications that are filed pursuant to 12 U.S.C. 1464(i)(5). The fact that the FDIC considers this information when deciding whether an application is substantially complete renders a provision like section 390.129 unnecessary. 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.</p>
<p><b>Section 390.130 addresses FDIC requests for additional information from state savings associations in order to resolve or clarify issues presented by a filing.</b></p>	<p>Sections 303.3 and 303.11(e) provide general authorization to the FDIC to require additional information from applicants. Additional authority is provided by certain of the substantive subparts of part 303 for filings under those subparts. The FDIC may request additional information on</p>

<p><b>In addition, section 390.130(b) provides that, if the FDIC determines that a major issue of law or a change in circumstances arose after the application was filed, and it substantially affects the application, the FDIC may notify the applicant that the application is now incomplete and require the applicant to submit additional information under the procedures contained in section 390.128. The FDIC also may, to the extent necessary, require the applicant to publish a new notice under 390.131.</b></p>	<p>an application until it makes a decision, and information requests delay the beginning of the processing period until receipt of a substantially complete filing. The FDIC has not found it necessary or useful to include a section such as 390.130(b) in part 303. It believes that the possibility of a major change in law or circumstances following the filing of an application does not warrant coverage by a special regulation and that those issues may be addressed under part 303 in its current form. <i>See also</i>, sections 303.42, 303.85, 303.102, 303.121, 303.141, 303.161, 303.221, 303.241, 303.242, 303.243, and 303.244.</p>
<p><b>Section 390.131 sets forth the circumstances under which the FDIC may require a State savings association applicant subject to publication requirements to publish new public notices.</b></p>	<p>Section 303.7(f) states that, when a public notice is required, the FDIC may determine on a case-by-case basis that unusual circumstances surrounding a particular filing warrant modification of the publication requirements.</p>
<p><b>Section 390.132 addresses, or the reasons stated therein, suspend an application by the FDIC.</b></p>	<p>Part 303 has no comparable provision to section 390.132 and the FDIC believes that situations envisioned by that section can be effectively addressed on a case-by-case basis, without the need for a regulation, or do not require a regulation because the processing period under part 303 does not begin until the FDIC receives a substantially complete filing and, thus, no suspension is necessary.</p>
<p><b>Section 390.133 addresses the FDIC review period, extensions of the review period as well as processing multiple applications and approving applications. Section 389.133(a) defines the applicable FDIC review period as 60 days after the date the application is deemed complete, unless otherwise provided. Section 390.133(b) provides that, if an applicant submits more than one application in connection with a proposed action, or if two or more applicants submit related applications, the review period for all applications would be the time frame for the application with the longest review period. Section 390.133(c) addresses extensions of the review period. Section</b></p>	<p>Part 303 contains provisions that bear on the same issues and are comparable in respects to section 390.133. Section 303.11(d) states that, when the FDIC is considering related transactions, one or more of which have expedited processing, the longest processing time will govern for all related transactions. The processing time period for notices and applications may be extended for most matters subject to part 303 processing. However, the length of the processing time periods often varies by matter type as found in the various substantive subparts of part 303, including for deposit insurance, branches, mergers, change in bank control, change in director or senior executive officer, activities of state banks and state savings associations, mutual-to-stock conversions by state mutual savings banks, retirement of capital, trust powers, and brokered deposit waivers.</p> <p>The FDIC has established timeframes for processing applications that are based on, as appropriate, statutes, regulations, or internal business rules. These prescribed</p>



<p><b>390.133(c)(1) allows the FDIC to extend the review period for up to 30 calendar days for any reason. The FDIC must notify the applicant in writing of the extension before the end of the applicable review period. Also, under section 390.133(c)(2), the FDIC can extend the review period of any application as needed for a significant issue, and must notify the applicant in writing. The FDIC must issue its written extension before the review period expires, including any extension granted under paragraph (c)(1) of the section.</b></p>	<p>timeframes have been issued publicly, posted to the FDIC’s public website, and incorporated into the APM.</p>
<p><b>Under section 390.134(a), the FDIC will approve or deny an application before the expiration of the applicable review period, including any extensions of the review period, and notify the applicant, in writing, of its decision. If the FDIC fails to approve or deny an application within the review period under section (a), then the application is approved pursuant to section 390.134(b). However, the FDIC may extend the review period as needed, in order to address significant issues, under section 390.133(c), permitting it to avoid the operation of subsection (a).</b></p>	<p>In comparison to section 390.134, section 303.11 provides that the FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial. Contrary to section 390.134, section 303.11 does not include an automatic approval for an application if the FDIC fails to approve or deny it. However, the discretion of the FDIC to extend the processing period under subpart F, though not unlimited, renders any difference with part 303, to a great extent, immaterial. In addition, the FDIC does not consider “automatic” or “default” approvals (other than as already specified in the part 303 regulations) to be an appropriate method for making decisions on applications.</p>
<p><b>Section 390.135 addresses withdrawal of an application if it has not been acted on within two calendar years. The FDIC will notify the applicant in writing that the application is withdrawn</b></p>	<p>FDIC regulations do not address withdrawal if an application is not acted on within two calendar years. However, the Applications Overview section of the APM states that the FDIC’s goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation.<sup>25</sup> To assist management in realizing this</p>

<sup>25</sup> Section 343(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires the federal banking agencies to take final action on applications before the end of the one-year period beginning the day after a substantially complete filing is received. Section 343(b) of the Riegle Act provides that the applicant may grant a waiver of this one-year limitation. Since the Riegle Act is not prescribed in FDIC Regulations, it is not material for purposes of part 390, subpart F.

<b>under those circumstances, unless the FDIC determines that the applicant is actively pursuing a final FDIC determination.</b>	goal, RMS, the Division of Depositor and Consumer Protection, and the Legal Division issued Financial Institution Letter 81-2018 entitled <i>FDIC Re-issues its Processing Timeframe Guidelines for Applications, Notices, and Other Requests.</i>
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