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[BILLING CODES: 4810-33-P; 6714-01-P]

DEPARTMENT OF THE TREASURY
12 CFR Chapter I
Office of the Comptroller of the Currency
Docket ID OCC-2011-0017

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Chapter III
RIN 3064-ZA01 _____

List of Office of Thrift Supervision Regulations to be Enforced by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), transfers to the OCC the functions of the Office of Thrift Supervision (OTS) relating to Federal savings associations and also transfers to the OCC rulemaking authority of the OTS and the Director of the OTS, respectively, relating to all savings associations. Functions of the OTS relating to State savings associations are transferred to the FDIC. Section 316(c) of the Act requires the OCC and the FDIC, after consultation with one another, to identify those regulations of the OTS that are continued under Section 316(b) of the Act that the OCC, with respect to Federal savings associations, and the FDIC, with respect to State savings associations, will enforce, and to publish a list of those regulations in the Federal Register. This joint notice sets out the required lists of both the OCC and the FDIC.

FOR FURTHER INFORMATION CONTACT:

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OCC: Andra Shuster, Special Counsel, Heidi Thomas, Special Counsel, or Mary Gottlieb, Regulatory Specialist, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FDIC: A. Ann Johnson, Counsel, (202) 898-3573; Rodney D. Ray, Counsel, (202) 898-3556; or Martin P. Thompson, Senior Review Examiner, (202) 898-6767, Federal Deposit Insurance Corporation, 550 17 St. NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Act, signed into law on July 21, 2010,¹ transfers all functions of the OTS and the Director as well as all of the powers, authorities, rights, and duties vested in the OTS and the Director of the OTS relating to the transferred functions to the OCC, FDIC and the Board of Governors of the Federal Reserve System (the Board). All functions, powers, authorities, rights, and duties relating to Federal savings associations are transferred to the OCC and the Comptroller of the Currency; all functions, powers, authorities, rights, and duties relating to State savings associations are transferred to the FDIC; and all functions, powers, authorities, rights, and duties relating to the supervision of savings and loan holding companies (SLHCs) and any subsidiaries of such SLHCs other than depository institutions are transferred to the Board. The Act transfers rulemaking authority of the OTS and the Director of the OTS relating to savings associations to the OCC and the Comptroller of the Currency, and transfers rulemaking authority of the OTS and the Director of the OTS relating to SLHCs to the Board.² The transfer of OTS functions will take place on July 21, 2011. The Act abolishes the OTS 90 days after the transfer date.

Section 316(b) of the Act provides for the continuation of OTS regulations and enforcement of such regulations that have been issued in performance of the functions transferred by Title III of the

¹ Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010).

² Section 312(c) of the Act designated the FDIC as the “appropriate Federal banking agency” for State savings associations. Under those statutes (and others using similar terminology) for which the “appropriate Federal banking agency” is authorized to issue regulations, the FDIC will issue regulations for State savings associations.

Act. Section 316(c) of the Act requires the OCC and FDIC, after consultation with each other, to identify those regulations of the OTS that are continued under Section 316(b) of the Act that will be enforced by each agency and publish a list of those regulations in the Federal Register.³ This list must be published no later than the transfer date.

This joint notice sets out both the OCC's and the FDIC's lists of OTS regulations that each agency will enforce beginning on the transfer date: the OCC, with respect to Federal savings associations; and the FDIC, with respect to State savings associations.⁴ This joint notice is not intended to have any substantive effect on the regulations at issue; rather it provides a reference for Federal savings associations that will be regulated and supervised by the OCC beginning on the transfer date and for State savings associations that will be regulated and supervised by the FDIC beginning on the transfer date.⁵ Separately, the OCC also plans to issue an interim final rule with a request for comment, effective on the transfer date, that republishes those OTS regulations the OCC will enforce as of the transfer date. These regulations will be added to Chapter I of Title 12 of the Code of Federal Regulations and renumbered accordingly as OCC rules, with nomenclature and other technical amendments to reflect OCC supervision. The OCC will consider more comprehensive substantive amendments to former OTS regulations, as appropriate, with the opportunity for public comment, after the transfer date.⁶

³ Separately, the Act requires the Board to identify the OTS regulations continued under Section 316(b) that the Board will enforce after the transfer date and to publish a list in the Federal Register.

⁴ As set out in the tables below, certain provisions have been excluded because they relate to the supervision of SLHCs, which will be supervised by the Board, or are superseded by the Act.

⁵ Further, publication of this list should not be construed to restrict the OCC or the FDIC from enforcing violations of OTS regulations by Federal savings associations or State savings associations, respectively, that occurred prior to the transfer date.

⁶ The OCC also has issued a notice of proposed rulemaking to revise a number of OCC regulations to reflect the OCC's supervision of Federal savings associations and other changes necessitated by the Act. 76 FR 30557 (May 26, 2011).

The FDIC also plans to issue an interim rule with a request for comment, effective on the transfer date, which republishes certain OTS rules for which the FDIC has rulemaking authority. These regulations will be renumbered and added to Chapter III of Title 12 of the Code of Federal Regulations with nomenclature and other technical amendments. After the transfer date, and with the opportunity for public comment, the FDIC will consider incorporating these rules into its existing rules, amending them in a more substantive manner, or rescinding them, as appropriate. A second interim rule with request for comment will revise a number of existing FDIC administrative and procedural rules to reflect the FDIC’s supervision of State savings associations and to make other clarifying amendments to those rules. The FDIC’s second interim rule also will be effective on the transfer date.

OTS REGULATIONS THAT WILL BE ENFORCED BY THE OCC
Title 12

Part or Section	Chapter V – Office of Thrift Supervision, Department of the Treasury
Part 508	Removals, Suspensions and Prohibitions where a Crime is Charged
Part 509 (except 509.100(b) and Subparts C and D)	Rules of Practice and Procedure in Adjudicatory Proceedings
Part 512	Rules for Investigative Proceedings and Formal Examination Proceedings
Part 516	Application Processing Procedure
Part 528	Nondiscrimination Requirements
Part 533	Disclosure and Reporting of CRA-related Agreements
Part 536	Consumer Protection in Sales of Insurance
Part 541	Definitions for Federal Savings Association Regulations
Part 543	Federal Mutual Savings Associations – Incorporation, Organization and Conversion
Part 544	Federal Mutual Savings Associations -- Charter and Bylaws
Part 545 (except 545.2 and 545.92(c))	Federal Savings Associations – Operations
Part 546	Federal Mutual Savings Associations -- Merger, Dissolution, Reorganization, and Conversion
Part 550 (except 550.10(b))	Fiduciary Powers of Savings Associations
Part 551	Recordkeeping for Securities Transactions
Part 552	Federal Stock Associations – Incorporation, Organization, and Conversion

Part 555 (except 555.310(b))	Electronic Operations
Part 557 (except 557.12 and .13)	Deposits
Part 559	Subordinate Organizations
Part 560 (except Subpart C)	Lending and Investment
Part 561	Definitions for Regulations Affecting All Savings Associations
Part 562 (except 562.4(b)(2))	Regulatory Reporting Standards
Part 563 ⁷ (except 563.143(b), 563.171, and 563.172(b))	Savings Associations – Operations
Part 563b	Conversions from Mutual to Stock Form
Part 563c	Accounting Requirements
Part 563d	Securities of Savings Associations
Part 563e	Community Reinvestment
Part 563f	Management Official Interlocks
Part 563g	Securities Offerings
Part 564	Appraisals
Part 565	Prompt Corrective Action
Part 567	Capital
Part 568	Security Procedures
Part 569	Proxies
Part 570	Safety and Soundness Guidelines Establishing Standards for Safety and Soundness
Part 571 ⁸ (except 571.30(a)(1)(iii) and (iv))	Fair Credit Reporting
Part 572	Loans in Areas Having Special Flood Hazards
Part 573 ⁹	Privacy of Consumer Information

⁷ Pursuant to section 1025 of the Act, the OCC will enforce subpart D of this rule for Federal savings associations with assets of \$10 billion or less. The Consumer Financial Protection Bureau will enforce this rule for institutions with assets of more than \$10 billion.

⁸ Pursuant to section 1025 of the Act, the OCC will enforce this rule for Federal savings associations with assets of \$10 billion or less. The Consumer Financial Protection Bureau will enforce this rule for institutions with assets of more than \$10 billion.

⁹ Pursuant to section 1025 of the Act, the OCC will enforce this rule for Federal savings associations with assets of \$10 billion or less. The Consumer Financial Protection Bureau will enforce this rule for institutions with assets of more than \$10 billion.

Part 574 (except provisions only applicable to SLHCs)	Acquisition of Control of Savings Associations
Part 575 (except provisions only applicable to SLHCs)	Mutual Holding Companies
Part 583 (as applicable to Federal savings associations)	Definitions for Regulations Affecting Savings and Loan Holding Companies
Part 584 (as applicable to Federal savings associations)	Savings and Loan Holding Companies
Part 590	Preemption of State Usury Laws
Part 591	Preemption of Due-on-Sale Laws

OTS REGULATIONS THAT WILL BE ENFORCED BY THE FDIC

Title 12

Part or Section	Chapter V – Office of Thrift Supervision, Department of the Treasury
Part 507 (except 507.3(b))	Restrictions on Post-Employment Activities of Senior Examiners
Part 508	Removals, Suspensions and Prohibitions where a Crime is Charged
Part 509 (except 509.1(e)(3), 509.100(b) and Subparts C and D)	Rules of Practice and Procedure in Adjudicatory Proceedings
Part 512	Rules for Investigative Proceedings and Formal Examination Proceedings
Part 513	Practice Before the Office
Part 516 (except 516.46 (a)(3), 516.200(c) and 516.290(b))	Application Processing Procedure
Part 528 (except 533.10)	Nondiscrimination Requirements
Part 533 (except 533.1(b)(2) and 533.10)	Disclosure and Reporting of CRA-related Agreements
Part 536	Consumer Protection in Sales of Insurance
Part 550 (only)	Fiduciary Powers of Savings Associations

550.10(b))	
Part 551	Recordkeeping for Securities Transactions
Part 555 (only Subpart B, except 555.310(b))	Electronic Operations
Part 557 (only Subpart C)	Deposits
Part 558	Possession by Conservators and Receivers for Federal and State Savings Associations
Part 559 (only Subpart B)	Subordinate Organizations
Part 560 (only 560.1, 560.3 and Subpart B)	Lending and Investment
Part 561 (except 561.18(b) and 561.34)	Definitions for Regulations Affecting All Savings Associations
Part 562 (except 562.4(b)(2))	Regulatory Reporting Standards
Part 563 ¹⁰ (except 563.74, 563.80, 563.161 as to service corporations, 563.172(b)(1), 563.180(d)(4), 563.555 (“Troubled condition” (2))	Savings Associations – Operations
Part 563b	Conversions from Mutual to Stock Form
Part 563c	Accounting Requirements
Part 563d	Securities of Savings Associations
Part 563e	Community Reinvestment
Part 563f (except 563.2(o)(1))	Management Official Interlocks
Part 563g	Securities Offerings
Part 564	Appraisals
Part 565 (except 565.5(h))	Prompt Corrective Action
Part 567	Capital

¹⁰ Pursuant to section 1025 of the Dodd-Frank Act, the FDIC will enforce subpart D of this rule for State savings associations with assets of \$10 billion or less. The Consumer Financial Protection Bureau will enforce this rule for institutions with assets of more than \$10 billion.

(except 575.5(b)(1)(ii))	
Part 568	Security Procedures
Part 569	Proxies
Part 570	Safety and Soundness Guidelines Establishing Standards for Safety and Soundness
Part 571 ¹¹ (except 571.30(a)(1)(iii), (iv), and (v))	Fair Credit Reporting
Part 572	Loans in Areas Having Special Flood Hazards
Part 573 ¹²	Privacy of Consumer Information
Part 574 (except provisions applicable to SLHCs)	Acquisition of Control of Savings Associations
Part 590	Preemption of State Usury Laws
Part 591	Preemption of Due-on-Sale Laws

¹¹ Pursuant to section 1025 of the Dodd-Frank Act, the FDIC will enforce this rule for State savings associations with assets of \$10 billion or less. The Consumer Financial Protection Bureau will enforce this rule for institutions with assets of more than \$10 billion.

¹² Pursuant to section 1025 of the Dodd-Frank Act, the FDIC will enforce this rule for State savings associations with assets of \$10 billion or less. The Consumer Financial Protection Bureau will enforce this rule for institutions with assets of more than \$10 billion.

Draft 6/9/11

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE TO FEDERAL AND STATE SAVINGS ASSOCIATIONS OF OTS REGULATIONS THAT WILL BE ENFORCED BY THE OCC AND THE FDIC BEGINNING ON JULY 21, 2011]

Dated:

John Walsh,
Acting Comptroller of the Currency.

Draft 6/9/11

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE TO FEDERAL AND STATE SAVINGS ASSOCIATIONS OF OTS REGULATIONS THAT WILL BE ENFORCED BY THE OCC AND THE FDIC BEGINNING ON JULY 21, 2011]

By order of the Board of Directors

Dated at Washington, DC, this __ day of June, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

Interim Rule A

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 309, 310

RIN 3064-AD83

Disclosure of Information; Privacy Act Regulations; Notice and Amendments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), abolished the Office of Thrift Supervision (OTS) and redistributed, as of July 21, 2011, the statutorily prescribed transfer date (Transfer Date), the functions and regulations of the OTS relating to savings and loan holding companies, Federal savings associations, and State savings associations to the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the FDIC, respectively. The Board of Directors has determined that, effective on the Transfer Date, the OTS Freedom of Information Act (FOIA) and Privacy Act (PA) regulations will not be enforced by the FDIC and that, instead, all FOIA and PA issues will be addressed under the FDIC's regulations involving disclosure of information and the PA, as amended. In taking this action the FDIC's goal is to avoid potential confusion and uncertainty that may arise regarding information concerning State savings associations after the Transfer Date.

DATES: The effective date of the Interim Rule is July 21, 2011. Written comments must be received by the FDIC no later than August 22, 2011.

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ADDRESSES: You may submit comments by any of the following methods:

Agency Web Site: <http://www.fdic.gov/regulations/laws/federal>.

Follow instructions for submitting comments on the Agency Web Site.

E-mail: Comments@FDIC.gov. Include RIN 3064-AD83 in the subject line of the message.

Mail: Robert E. Feldman, Executive Secretary, Attention:

Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to

<http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at 1-(877) 275-3342 or 1-(703) 562-2200.

FOR FURTHER INFORMATION CONTACT: A. Ann Johnson, Counsel, Legal Division, (202) 898-3573 or aajohnson@fdic.gov; Rodney D. Ray, Counsel, Legal Division, (202) 898-3556 or rray@fdic.gov; or Martin P. Thompson, Senior Review Examiner, Division of Risk Management Supervision, (202) 898-6767 or marthompson@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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The Act, signed into law on July 21, 2010, provides for a substantial reorganization of the regulation of savings associations and their holding companies. Beginning July 21, 2011, the Transfer Date established in Dodd-Frank, functions formerly performed by the OTS will be divided among the FRB, OCC, and FDIC. Section 316(b) of the Act provides that all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the OTS that were in effect on the day before the Transfer Date continue in effect and are enforceable by the appropriate successor Federal banking agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law. Section 323(b) also provides for the transfer on the Transfer Date of OTS property, including books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence relating to such reports, to the respective agencies, that were used by the OTS on the day before the Transfer Date to support OTS functions.

Section 316(c) of the Act further provides for the identification of OTS regulations relating to the supervision of State savings associations to be transferred to the FDIC. On June [insert publication date], 2011, the OCC and FDIC published a Joint Notice (Notice) in the Federal Register identifying OTS regulations that will be continued and enforced by each agency. As indicated in the Notice, the FDIC does not intend to continue or enforce existing OTS regulations regarding the Freedom of Information Act or Privacy Act.

II. The Interim Rule

The OTS regulations governing Freedom of Information Act and Privacy Act issues are contained in 12 CFR parts 503 and 505. Because the OTS, unlike the FDIC, is a component part of the Department of the Treasury (Treasury), the OTS rules supplement Treasury's FOIA and

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PA regulations. 12 CFR parts 309 and 310 of the FDIC's regulations also implement the relevant provisions of the FOIA and PA, but do not rely on Treasury's regulations. Both the OTS and FDIC rules describe the agency processes and procedures regarding FOIA and PA issues.

The Act provides for a 90 day "wind down" period for the OTS beginning on the Transfer date and it will cease operating as a Federal banking agency on July 21, 2011. Because the OTS' functions and property relating to State savings associations will transfer to the FDIC on the Transfer Date, the FDIC believes that the existence of two sets of regulations addressing the same subject areas would lead to confusion concerning which rules and procedures govern FOIA and PA issues applicable to State savings associations. Therefore, the FDIC is providing the public with notice that the FDIC intends to apply the FDIC's existing FOIA and PA regulations to all records or other matters transferred from the OTS to the FDIC, as well as FDIC matters, as of the Transfer Date. In addition, the FDIC is making certain technical amendments to the FDIC's existing regulations to correct addresses and other matters that have changed since the FDIC's rules involving disclosure of information and the PA were last revised. Finally, the FDIC is substituting the Bureau of Consumer Financial Protection for the OTS in section 309.06(b)(3) as a Federal financial institution supervisory agency, for purposes of section 309.6, to whom exempt records may be disclosed.

III. Section-By-Section Description of the Interim Rule

The Interim Rule revises parts 309 and 310 of the FDIC's regulations as follows:

PART 309 – DISCLOSURE OF INFORMATION

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§ 309.1 Purpose and scope. Section 309.1 is revised to indicate that the FDIC's disclosure regulations apply to the disclosure of information transferred to the FDIC from the OTS pursuant to sections 312 and 323 of the Act.

§ 309.4 Publicly available records. Section 309.4(b) is revised to change the address of the FDIC's Public Information Center.

§ 309.5 Procedures for requesting records. Section 309.5(b)(ii) is revised to change the facsimile number for the FDIC FOIA/PA Group. Section 309.5(b)(iii), (f)(4)(ii), and (h)(1) are revised to make changes to the FDIC FOIA/PA Group address.

§ 309.6 Disclosure of exempt records. Section 309.6 (b)(3) is revised to substitute the Bureau of Consumer Financial Protection and the Financial Stability Oversight Council for the OTS and section 309.6 (b)(5) to replace the reference to "bank" with "depository institution" and make other non-substantive conforming changes.

PART 310 – PRIVACY ACT REGULATIONS

§ 310.1 Purpose and scope. Section 310.1 is revised to indicate that the FDIC's disclosure regulations apply to the disclosure of information transferred to the FDIC from the OTS pursuant to sections 312 and 323 of the Act.

§ 310.3 Procedures for requests pertaining to individual records in a system of records. Section 310.3(b) is revised to make changes to the FDIC FOIA/PA Group address.

§ 310.4 Times, places, and requirements for identification of individuals making requests. Section 310.4(a) is revised to make changes to the FDIC FOIA/PA Group address.

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§ 310.7 Request for amendment of record. Section 310.7 is revised to make changes to the FDIC FOIA/PA Group address.

§ 310.8 Agency review of request for amendment of record. Section 310.8(a) is revised to delete the “Senior Attorney” references.

§ 310.9 Appeal of adverse initial agency determination on access or amendment. 310.9(a) is revised to make changes to the FDIC FOIA/PA Group address.

IV. Effective Date of the Interim Rule

The Interim Rule will apply to all existing and future FOIA and PA issues involving State savings associations as of the Transfer Date. In this regard, the FDIC invokes the good cause exception to the requirements in the Administrative Procedure Act (“APA”) that, before a rulemaking can be finalized, it must first be issued for public comment and, once finalized, must have a delayed effective date of 30 days from the publication date.¹

The FDIC believes good cause exists for making the Interim Rule effectively immediately on the Transfer Date. Since the OTS will continue to function as a Federal banking agency until the Transfer Date and is a component part of the Department of Treasury, its existing rules will need to remain in place until the Transfer Date. On the Transfer Date, however, the OTS will cease functioning as a Federal banking agency and its responsibility for FOIA and PA issues relating to State savings associations will transfer to the FDIC. As indicated above, the FDIC believes that the existence of essentially duplicate FOIA and PA regulations on the Transfer Date creates the possibility of public confusion. Therefore, the FDIC is providing

¹ 5 U.S.C. 553.

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this Interim Rule before the Transfer Date to provide clarity on this issue to the public and to facilitate a smooth transition of covered matters from the OTS to the FDIC.

For these reasons, in accordance with section 553(b)(B) of the Administrative Procedure Act (APA), the FDIC has determined that good cause exists to waive the general notice and opportunity for public comment requirements of the APA. Similarly, the FDIC has determined that good cause exists to make this Interim Rule effective as of the Transfer Date.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the FDIC has determined that good cause exists in this case to waive the general notice and opportunity for public comment requirements of the APA; therefore, pursuant to 5 U.S.C. 601(2), the RFA does not apply.

VI. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Interim Rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (“SBREFA”) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Interim Rule may be reviewed.

List of Subjects in 12 CFR Parts 309 and 310

Banks, banking, Freedom of Information, Privacy, Savings associations

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For the Reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 309 and 310 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 309 – DISCLOSURE OF INFORMATION

1. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 “Seventh” and “Tenth.”

2. Revise § 309.1 to read as follows:

§ 309.1 Purpose and scope.

This part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information, including disclosure of information transferred to Federal Deposit Insurance Corporation from the Office of Thrift Supervision pursuant to section 312 and 323 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203. Section 309.2 sets forth definitions applicable to this part 309. Section 309.3 describes the types of information and documents typically published in the Federal Register. Section 309.4 explains how to access public records maintained on the Federal Deposit Insurance Corporation's World Wide Web page and in the Federal Deposit Insurance Corporation's Public Information Center or “PIC,” and describes the categories of records generally found there. Section 309.5 implements the Freedom of Information Act (5 U.S.C. 552). Section 309.6 authorizes the discretionary disclosure of exempt

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records under certain limited circumstances. Section 309.7 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the FDIC.

3. Revise § 309.4(b) to read as follows:

§ 309.4 Publicly available records.

* * * * *

(b) Public Information Center. The FDIC maintains a Public Information Center or “PIC” that contains Corporate records that the Freedom of Information Act requires be made available for regular inspection and copying, as well as any records or information the FDIC, in its discretion, has regularly made available to the public. The PIC has extensive materials of interest to the public, including many Reports, Summaries and Manuals used or published by the Corporation that are made available, by appointment, for inspection and copying. The PIC is open from 9:00 AM to 4:00 PM, Monday through Friday, excepting federal holidays. It is located at 3501 North Fairfax Drive, Room E-1005, Arlington, VA 22226. The PIC may be reached during business hours by calling 1-(877) 275-3342 or 1-(703) 562-2000.

* * * * *

4. Revise paragraphs (b)(ii)-(iii), (f)(4)(ii), and (h)(1) of § 309.5 to read as follows:

§ 309.5 Procedures for requesting records.

* * * * *

(b) * * *

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(i) * * *

(ii) By facsimile clearly marked Freedom of Information Act Request to the FOIA/PA Group:

(703) 562-7977; or

(iii) By sending a letter to: Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429.

* * * * *

(f) * * *

(4) * * *

(i) * * *

(ii) The fee schedule will be set forth in the “Notice of Federal Deposit Insurance Corporation Records Fees” issued in December of each year or in such “Interim Notice of Federal Deposit Insurance Corporation Records Fees” as may be issued. Copies of such notices may be obtained at no charge from the Federal Deposit Insurance Corporation, FOIA/PA Group, 550 17th Street NW., Washington, DC 20429, and are available on the FDIC's World Wide Web page as noted in paragraph (f)(4)(i) of this section.

* * * * *

(h) Appeals. (1) Appeals should be addressed to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, FDIC, 550 17th Street, NW., Washington, DC 20429.

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5. Revise paragraphs (b)(3) and (b)(5) of § 309.6 to read as follows:

§ 309.6 Disclosure of exempt records.

* * * * *

(b) * * *

(3) Disclosure to federal financial institutions supervisory agencies and certain other agencies. The Director of the Corporation's Division having primary authority over the exempt records, or designee, may in his or her discretion and for good cause, disclose to any authorized officer or employee of any federal financial institution supervisory agency including the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, Bureau of Consumer Financial Protection, the Financial Stability Oversight Council, the Securities and Exchange Commission, the National Credit Union Administration, or any other agency included in section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et. seq.) (RFPA), any exempt records for a legitimate depository institution supervisory or regulatory purpose. The Director, or designee, may in his or her discretion and for good cause, disclose exempt records, including customer financial records, to certain other federal agencies as referenced in section 1113 of the RFPA for the purposes and to the extent permitted therein, or to any foreign bank regulatory or supervisory authority as provided, and to the extent permitted, by section 206 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 3109). Finally, the Director, or designee, may in his or her discretion and for good cause, disclose reports of examination or other confidential supervisory information concerning any depository institution or other entity

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examined by the Corporation under authority of Federal law to: any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity; any officer, director, or receiver of such depository institution or entity; and any other person that the Corporation determines to be appropriate.

* * * * *

(5) Disclosure to servicers and serviced institutions. The Director of the Corporation's Division having primary authority over the exempt records, or designee, may disclose copies of any exempt record related to a depository institution data center, service corporation, or any other data center that provides data processing or related services to an insured institution (hereinafter referred to as “data center”) to:

* * * * *

PART 310 – PRIVACY ACT REGULATIONS

6. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

7. Revise § 301.1 to read as follows:

§ 310.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. These regulations delineate the procedures that an individual must follow in

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exercising his or her access or amendment rights under the Privacy Act to records maintained by the Corporation in systems of records, including information transferred to Federal Deposit Insurance Corporation from the Office of Thrift Supervision pursuant to sections 312 and 323 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203.

* * * * *

8. Revise § 310.3(b) to read as follows:

§ 310.3 Procedures for requests pertaining to individual records in a system of records.

* * * * *

(b) Requests by individuals for access to records pertaining to them and maintained within one of the Corporation's designated systems of records should be submitted in writing to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, N.W., Washington, D.C. 20429. Each such request should contain a reasonable description of the records sought, the system or systems in which such record may be contained, and any additional identifying information, as specified in the Corporation's Federal Register "Notice of Systems of Records" for that particular system, copies of which are available upon request from the FOIA/PA Group.

* * * * *

9. Revise § 310.4(a) to read as follows:

§ 310.4 Times, places, and requirements for identification of individuals making requests.

DRAFT

(a) Individuals may request access to records pertaining to themselves by submitting a written request as provided in §310.3 of these regulations, or by appearing in person on weekdays, other than official holidays, at the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429, between the hours of 8:30 a.m. and 5 p.m.

* * * * *

10. Revise § 310.7 to read as follows:

§ 310.7 Request for amendment of record.

The Corporation will maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Corporation amend any portion of a record pertaining to that individual which the Corporation maintains in a designated system of records. Such a request should be submitted in writing to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429 and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system and category thereof) sufficient to enable the Corporation to identify the particular record or portion thereof with respect to which amendment is sought.

11. Revise § 310.8(a) to read as follows:

§ 310.8 Agency review of request for amendment of record.

DRAFT

(a) Requests by individuals for the amendment of records will be acknowledged by the FOIA/PA Group, and referred to the system manager of the system of records in which the record is contained for determination, within ten business days following receipt of such requests. Promptly thereafter, the FOIA/PA Group will notify the individual of the system manager's decision to grant or deny the request to amend.

* * * * *

12. Revise § 310.9(a) to read as follows:

§ 310.9 Appeal of adverse initial agency determination on access or amendment.

(a) A system manager's denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Corporation's General Counsel (or designee) within 30 business days following receipt of notification of the denial. Such an appeal should be addressed to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street NW., Washington, DC 20429, and contain all the information specified for requests for access in §310.3 or for initial requests to amend in §310.7, as well as any other additional information the individual deems relevant for the consideration by the General Counsel (or designee) of the appeal.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC this XXth day of June, 2011.

Federal Deposit Insurance Corporation

DRAFT

Robert E. Feldman,
Executive Secretary

Interim Rule B

DRAFT

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapters III

RIN 3064-AD82

**TRANSFER AND REDESIGNATION OF CERTAIN REGULATIONS INVOLVING
STATE SAVINGS ASSOCIATIONS PURSUANT TO THE DODD-FRANK WALL
STREET REFORM AND CONSUMER PROTECTION ACT OF 2010.**

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim Rule with request for comments.

SUMMARY: Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act or the Act) provided that the functions, powers, and duties of the Office of Thrift Supervision (OTS) relating to State savings associations will transfer to the FDIC effective one year after July 21, 2010, the date that the Dodd-Frank Act was enacted. The Act also amended section 3 of the Federal Deposit Insurance Act (FDI Act) to designate the FDIC as the “appropriate Federal banking agency” for State savings associations. The FDIC is authorized to issue regulations pursuant to the FDI Act and other existing laws as the “appropriate Federal banking agency” (or under similar statutory terminology). As a result, pursuant to those laws, the FDIC, the newly-designated “appropriate Federal banking agency” for State savings associations, is authorized to issue certain regulations involving State savings associations.

Consistent with the authority provided to the FDIC by the Dodd-Frank Act, the FDI Act, and other statutory authorities, the FDIC is reissuing and redesigning certain transferring OTS regulations currently found in Title 12, chapter V of the Code of Federal Regulations to the FDIC’s regulations in Title 12, chapter III, Parts 390 and 391, of the Code of Federal Regulations. In republishing these rules, the FDIC is making only technical changes to existing

OTS regulations (such as nomenclature or address changes). The FDIC is not republishing those OTS regulations for which other appropriate Federal banking agencies are authorized to act. In the future, the FDIC may take other actions related to the transferred rules: incorporating them into other FDIC regulations contained in Title 12, Chapter III, amending them, or rescinding them, as appropriate.

DATES: The Interim Rule becomes effective on July 21, 2011. Comments on the Interim Rule must be received by September 19, 2011 .

ADDRESSES:

You may submit comments on the Interim Rule by any of the following methods:

- Agency Web Site: <http://www.FDIC.gov/regulations/laws/federal/notices.html>. Follow instructions for submitting comments on the Agency Web Site.
E-mail: Comments@FDIC.gov. Include RIN 3064-AD82 on the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- Federal eRulemaking Portal: <http://www.regulations.gov>

Instructions: All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at 1-(877) 275-3342 or 1-(703) 562-2200,

FOR FURTHER INFORMATION CONTACT: A. Ann Johnson, Counsel, Legal Division, (202) 898-3573 or aaajohnson@fdic.gov; Rodney D. Ray, Counsel, Legal Division, 202 898-3556 or rray@fdic.gov; or Martin P. Thompson, Senior Review Examiner, Division of Risk Management Supervision, 202 898-6767 or marthompson@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. General

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, the powers, duties, and functions formerly performed by the OTS will be divided among the FDIC, as to State savings associations, the Office of Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act provided that all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the OTS that were in effect on the day before the transfer date continue in effect and are enforceable by the appropriate successor agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act further directed the FDIC and the OCC to consult with one another and to publish a list of the OTS regulations continued which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC approved the publication in the *Federal Register* of a Joint Notice of a List of Regulations of the OTS that will be Enforced by the OCC and the FDIC, and the Joint Notice was published in the Federal Register on [insert date of publication of the Joint Notice in the Federal Register].¹ (The FRB is directed by the same section of the Act to identify and publish a list of OTS regulations relating to savings and loan holding companies that the FRB will enforce.)

Apart from providing for the continuation and enforcement of regulations previously issued by the OTS, section 312 of the Dodd-Frank Act provided rulemaking authority to the OCC, with respect to both State and Federal savings associations, and to the FRB with respect to

¹ [Insert *Federal Register* citation for Joint Notice.]

savings and loan holding companies. Although the Dodd-Frank Act did not provide the FDIC with specific rulemaking authority over State savings associations, the FDIC was named the “appropriate Federal banking agency” for State savings associations by section 312(c) of the Act. 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 statutory terminology). As a result, pursuant to those laws, the FDIC, the newly-designated “appropriate Federal banking agency” for State savings associations, is authorized to issue regulations involving such associations.

The FDIC has independent rulemaking authority for each of the transferred OTS rules that are republished as FDIC rules in this Interim Rule. The rules republished here regulate only State savings associations, consistent with the Dodd-Frank Act’s allocation to the FDIC of the duties and functions of the OTS relating to these associations. Similarly, the OCC and the FRB will republish former OTS rules relating to the functions and duties of the OTS transferred to those agencies, respectively. Since the Dodd-Frank Act did not give the FDIC authority over Federal savings associations or savings and loan holding companies, the sections of the OTS rules that previously regulated those entities are not republished by the FDIC in this Interim Rule.

The FDIC, through this Interim Rule, is formally transferring certain regulations applicable to State savings associations from 12 CFR chapter V to 12 CFR chapter III, as indicated in the Derivation Table. To expedite republication of the former OTS rules, the regulations contained in this Interim Rule will be transferred to the FDIC with only minor technical, conforming, or nomenclature changes. No changes are being made at this time to the substantive content of the transferred regulations. (For example, references in the former OTS

rules to the “OTS,” the “Director, and the “Office” [of Thrift Supervision] will be changed to the “FDIC” or the “Board of Directors” [of the FDIC].) FDIC staff will evaluate the transferred OTS rules and may later recommend incorporating the transferred rules into existing FDIC rules, amending them, or rescinding them, as appropriate.

A mass of transferred OTS rules are being republished in this Interim Rule. In republishing these rules, it is possible that some rules have been unintentionally omitted, that some nomenclature changes have not been identified, or that some internal cross-reference between transferring rules has not been changed. If there are such inadvertent errors they are not intended by the FDIC to alter the dictates of section 316(b) of the Dodd-Frank Act. That is, the former regulations of the OTS affecting State savings associations that are in effect the day before the transfer date continue in effect, and will be enforced by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law by the FDIC (or other Federal banking agency), any court of competent jurisdiction, or by operation of law.

Since the republished OTS rules previously were issued by the OTS pursuant to notice and comment rulemaking and since the FDIC’s proposed revisions to those rules involve only non-substantive, largely nomenclature changes, the FDIC finds good cause to make the Interim Rule effective immediately upon the transfer date. Public comment will be accepted for 60 days.

II. Description of Parts Effected by the Interim Rule and Derivation Table

The following provides a general descriptions of the changes made to each former OTS part that the FDIC is recodifying:

[Description of part revisions to be inserted when available]

The following Derivation Table is provided for reader reference:

OTS Regulation Transfer (Draft)			
Existing Section	Existing Title	New Section	New Title
		Part 390	
Part 507	Restrictions on post-employment activities of senior examiners	Subpart A	Restrictions on post-employment activities of senior examiners
507.1	What does this part do?	390.1	What does this subpart do?
507.2	Who is a senior examiner?	390.2	Who is a senior examiner?
507.3	What post-employment restrictions apply to senior examiners?	390.3	What post-employment restrictions apply to senior examiners?
507.4	When will OTS waive the post-employment restrictions	390.4	When will the FDIC waive the post-employment restrictions
507.5	What are the penalties for violating the post-employment restrictions?	390.5	What are the penalties for violating the post-employment restrictions?
Part 508	Removals, suspensions, and prohibitions where a crime is charged or proven	Subpart B	Removals, suspensions, and prohibitions where a crime is charged or proven
508.1	Scope.	390.10	Scope.
508.2	Definitions.	390.11	Definitions.
508.3	Issuance of Notice or Order.	390.12	Issuance of Notice or Order.
508.4	Contents and service of the Notice or Order.	390.13	Contents and service of the Notice or Order.
508.5	Petition for hearing.	390.14	Petition for hearing.
508.6	Initiation of hearing.	390.15	Initiation of hearing.
508.7	Conduct of hearings.	390.16	Conduct of hearings.
508.8	Default.	390.17	Default.
508.9	Rules of evidence.	390.18	Rules of evidence.
508.10	Burden of persuasion.	390.19	Burden of persuasion.
508.11	Relevant considerations.	390.20	Relevant considerations.
508.12	Proposed findings and conclusions and recommended decision.	390.21	Proposed findings and conclusions and recommended decision.
508.13	Decision of the Office.	390.22	Decision of the FDIC.
508.14	Miscellaneous.	390.23	Miscellaneous.
Part 509	Rules of Practice and Procedure in adjudicatory proceedings	Subpart C	Rules of Practice and Procedure in adjudicatory proceedings
Subpart A	Uniform rules of Practice and Procedure		
509.1	Scope.	390.30	Scope.
509.2	Rules of construction.	390.31	Rules of construction.
509.3	Definitions.	390.32	Definitions.
509.4	Authority of Director.	390.33	Authority of the Board of Directors.
509.5	Authority of the administrative law judge.	390.34	Authority of the administrative law judge.
509.6	Appearance and practice in adjudicatory proceedings.	390.35	Appearance and practice in adjudicatory proceedings.
509.7	Good faith certification.	390.36	Good faith certification.
509.8	Conflicts of interest.	390.37	Conflicts of interest.
509.9	Ex parte communications.	390.38	Ex parte communications.
509.10	Filing of papers.	390.39	Filing of papers.
509.11	Service of papers.	390.40	Service of papers.
509.12	Construction of time limits.	390.41	Construction of time limits.
509.13	Change of time limits.	390.42	Change of time limits.
509.14	Witness fees and expenses.	390.43	Witness fees and expenses.

OTS Regulation Transfer (Draft)

Existing Section	Existing Title	New Section	New Title
509.15	Opportunity for informal settlement.	390.44	Opportunity for informal settlement.
509.16	Office's right to conduct examination.	390.45	The FDIC's right to conduct examination.
509.17	Collateral attacks on adjudicatory proceeding.	390.46	Collateral attacks on adjudicatory proceeding.
509.18	Commencement of proceeding and contents of notice.	390.47	Commencement of proceeding and contents of notice.
509.19	Answer.	390.48	Answer.
509.20	Amended pleadings.	390.49	Amended pleadings.
509.21	Failure to appear.	390.50	Failure to appear.
509.22	Consolidation and severance of actions.	390.51	Consolidation and severance of actions.
509.23	Motions.	390.52	Motions.
509.24	Scope of document discovery.	390.53	Scope of document discovery.
509.25	Request for document discovery from parties.	390.54	Request for document discovery from parties.
509.26	Document subpoenas to nonparties.	390.55	Document subpoenas to nonparties.
509.27	Deposition of witness unavailable for hearing.	390.56	Deposition of witness unavailable for hearing.
509.28	Interlocutory review.	390.57	Interlocutory review.
509.29	Summary disposition.	390.58	Summary disposition.
509.30	Partial summary disposition.	390.59	Partial summary disposition.
509.31	Scheduling and prehearing conferences.	390.60	Scheduling and prehearing conferences.
509.32	Prehearing submissions.	390.61	Prehearing submissions.
509.33	Public hearings.	390.62	Public hearings.
509.34	Hearing subpoenas.	390.63	Hearing subpoenas.
509.35	Conduct of hearings.	390.64	Conduct of hearings.
509.36	Evidence.	390.65	Evidence.
509.37	Post-hearing filings.	390.66	Post-hearing filings.
509.38	Recommended decision and filing of record.	390.67	Recommended decision and filing of record.
509.39	Exceptions to recommended decision.	390.68	Exceptions to recommended decision.
509.40	Review by the Director.	390.69	Review by the Board of Directors.
509.41	Stays pending judicial review.	390.70	Stays pending judicial review.
Subpart B	Local Rules		
509.100	Scope.	390.71	Scope.
509.101	Appointment of Office of Financial Institution Adjudication.	390.72	Appointment of Office of Financial Institution Adjudication.
509.102	Discovery.	390.73	Discovery.
509.103	Civil money penalties.	390.74	Civil money penalties.
509.104	Additional procedures.	390.75	Additional procedures.
Part 512	Rules for investigative proceedings and formal examination proceedings	Subpart D	Rules for investigative proceedings and formal examination proceedings
512.1	Scope of part.	390.80	Scope of subpart.
512.2	Definitions.	390.81	Definitions.
512.3	Confidentiality of proceedings.	390.82	Confidentiality of proceedings.
512.4	Transcripts.	390.83	Transcripts.
512.5	Rights of witnesses.	390.84	Rights of witnesses.
512.6	Obstruction of the proceedings.	390.85	Obstruction of the proceedings.
512.7	Subpoenas.	390.86	Subpoenas.
Part 513	Practice before the office	Subpart E	Practice before the FDIC

OTS Regulation Transfer (Draft)

Existing Section	Existing Title	New Section	New Title
513.1	Scope of part.	390.90	Scope of subpart.
513.2	Definitions.	390.91	Definitions.
513.3	Who may practice.	390.92	Who may practice.
513.4	Suspension and debarment.	390.93	Suspension and debarment.
513.5	Reinstatement.	390.94	Reinstatement.
513.6	Duty to file information concerning adverse judicial or administrative action.	390.95	Duty to file information concerning adverse judicial or administrative action.
513.7	Proceeding under this part.	390.96	Proceeding under this part.
513.8	Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.	390.97	Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.
Part 516	Application processing procedures	Subpart F	Application processing procedures
	Pre-filing and filing procedures		
516.1	What does this part do?	390.100	What does this subpart do?
516.5	Do the same procedures apply to all applications under this part?	390.101	Do the same procedures apply to all applications under this subpart?
516.10	How does OTS compute time periods under this part?	390.102	How does the FDIC compute time periods under this subpart?
Subpart A	Pre-Filing Procedures		
516.15	Must I meet with OTS before I file my application?	390.103	Must I meet with the FDIC before I file my application?
516.20	What information must I include in my draft business plan?	390.104	What information must I include in my draft business plan?
516.25	What type of application must I file?	390.105	What type of application must I file?
516.30	What information must I provide with my application?	390.106	What information must I provide with my application?
516.35	May I keep portions of my application confidential?	390.107	May I keep portions of my application confidential?
516.40	Where do I file my application?	390.108	Where do I file my application?
516.45	What is the filing date of my application?	390.109	What is the filing date of my application?
516.47	How do I amend or supplement my application?	390.110	How do I amend or supplement my application?
Subpart B	Publication Requirements		
516.50	Who must publish a public notice of an application?	390.111	Who must publish a public notice of an application?
516.55	What information must I include in my public notice?	390.112	What information must I include in my public notice?
516.60	When must I publish the public notice?	390.113	When must I publish the public notice?
516.70	Where must I publish the public notice?	390.114	Where must I publish the public notice?
516.80	What language must I use in my publication?	390.115	What language must I use in my publication?
Subpart C	Comment Procedures		
516.100	What does this subpart do?	390.116	What do sections 390.116-390.125 do?
516.110	Who may submit a written comment?	390.117	Who may submit a written comment?
516.120	What information should a comment include?	390.118	What information should a comment include?
516.130	Where are comments filed?	390.119	Where are comments filed?
516.140	How long is the comment period?	390.120	How long is the comment period?
Subpart D	Meeting Procedures		
516.160	What does this subpart do?	390.121	What do sections 390.121-390.125 do?
516.170	When will OTS conduct a meeting on an application?	390.122	When will the FDIC conduct a meeting on an application?

OTS Regulation Transfer (Draft)

Existing Section	Existing Title	New Section	New Title
516.180	What procedures govern the conduct of the meeting?	390.123	What procedures govern the conduct of the meeting?
516.185	Will OTS approve or disapprove an application at a meeting?	390.124	Will the FDIC approve or disapprove an application at a meeting?
516.190	Will a meeting affect application processing time frames?	390.125	Will a meeting affect application processing time frames?
Subpart E	OTS Review		
Expedited Treatment			
516.200	If I file a notice under expedited treatment, when may I engage in the proposed activities?	390.126	If I file a notice under expedited treatment, when may I engage in the proposed activities?
Standard Treatment			
516.210	What will OTS do after I file my application?	390.127	What will the FDIC do after I file my application?
516.220	If OTS requests additional information to complete my application, how will it process my application?	390.128	If the FDIC requests additional information to complete my application, how will it process my application?
516.230	Will OTS conduct an eligibility examination?	390.129	Will the FDIC conduct an eligibility examination?
516.240	What may OTS require me to do after my application is deemed complete?	390.130	What may the FDIC require me to do after my application is deemed complete?
516.250	Will OTS require me to publish a new public notice?	390.131	Will the FDIC require me to publish a new public notice?
516.260	May OTS suspend processing of my application?	390.132	May the FDIC suspend processing of my application?
516.270	How long is the OTS review period?	390.133	How long is the FDIC review period?
516.280	How will I know if my application has been approved?	390.134	How will I know if my application has been approved?
516.290	What will happen if OTS does not approve or disapprove my application within two calendar years after the filing date?	390.135	What will happen if the FDIC does not approve or disapprove my application within two calendar years after the filing date?
Part 528	Nondiscrimination requirements	Subpart G	Nondiscrimination requirements
528.1	Definitions.	390.140	Definitions.
528.1a	Supplementary guidelines.	390.141	Supplementary guidelines.
528.2	Nondiscrimination in lending and other services.	390.142	Nondiscrimination in lending and other services.
528.2a	Nondiscriminatory appraisal and underwriting.	390.143	Nondiscriminatory appraisal and underwriting.
528.3	Nondiscrimination in applications.	390.144	Nondiscrimination in applications.
528.4	Nondiscriminatory advertising.	390.145	Nondiscriminatory advertising.
528.5	Equal Housing Lender Poster.	390.146	Equal Housing Lender Poster.
528.6	Loan application register.	390.147	Loan application register.
528.7	Nondiscrimination in employment.	390.148	Nondiscrimination in employment.
528.8	Complaints.	390.149	Complaints.
528.9	Guidelines relating to nondiscrimination in lending.	390.150	Guidelines relating to nondiscrimination in lending.
Part 533	Disclosure and reporting of CRA-related agreements	Subpart H	Disclosure and reporting of CRA-related agreements
533.1	Purpose and scope of this part.	390.160	Purpose and scope of this subpart.
533.2	Definition of covered agreement.	390.161	Definition of covered agreement.
533.3	CRA communications.	390.162	CRA communications.
533.4	Fulfillment of the CRA	390.163	Fulfillment of the CRA

OTS Regulation Transfer (Draft)

Existing Section	Existing Title	New Section	New Title
533.5	Related agreements considered a single agreement.	390.164	Related agreements considered a single agreement.
533.6	Disclosure of covered agreements.	390.165	Disclosure of covered agreements.
533.7	Annual reports.	390.166	Annual reports.
533.8	Release of information under FOIA.	390.167	Release of information under FOIA.
533.9	Compliance provisions.	390.168	Compliance provisions.
533.10	Transition provisions.	390.169	Reserved.
533.11	Other definitions and rules of construction used in this part.	390.170	Other definitions and rules of construction used in this subpart.
Part 536	Consumer protection in sales of insurance	Subpart I	Consumer protection in sales of insurance
536.10	Purpose and scope.	390.180	Purpose and scope.
536.20	Definitions.	390.181	Definitions.
536.30	Prohibited practices.	390.182	Prohibited practices.
536.40	What you must disclose.	390.183	What you must disclose.
536.50	Where insurance activities may take place.	390.184	Where insurance activities may take place.
536.60	Qualification and licensing requirements for insurance sales personnel.	390.185	Qualification and licensing requirements for insurance sales personnel.
Appendix	Appendix A to Part 536—Consumer Grievance Process		Appendix A to Part 390, Subpart I—Consumer Grievance Process
Part 550	Fiduciary powers of Savings Associations	Subpart J	Fiduciary powers of State Savings Associations
550.10	What regulations govern the fiduciary operations of savings associations?	390.190	What regulations govern the fiduciary operations of state savings associations?
Part 551	Recordkeeping and confirmation requirements for securities transactions	Subpart K	Recordkeeping and confirmation requirements for securities transactions
551.10	What does this part do?	390.200	What does this subpart do?
551.20	Must I comply with this part?	390.201	Must I comply with this subpart?
551.30	What requirements apply to all transactions?	390.202	What requirements apply to all transactions?
551.40	What definitions apply to this part?	390.203	What definitions apply to this subpart?
Subpart A	Recordkeeping requirements		
551.50	What records must I maintain for securities transactions?	390.204	What records must I maintain for securities transactions?
551.60	How must I maintain my records?	390.205	How must I maintain my records?
Subpart B	Content and timing of notice		
551.70	What type of notice must I provide when I effect a securities transaction for a customer?	390.206	What type of notice must I provide when I effect a securities transaction for a customer?
551.80	How do I provide a registered broker-dealer confirmation?	390.207	How do I provide a registered broker-dealer confirmation?
551.90	How do I provide a written notice?	390.208	How do I provide a written notice?
551.100	What are the alternate notice requirements?	390.209	What are the alternate notice requirements?
551.110	May I provide a notice electronically?	390.210	May I provide a notice electronically?
551.120	May I charge a fee for a notice?	390.211	May I charge a fee for a notice?
Subpart C	Settlement of securities transactions		
551.130	When must I settle a securities transaction?	390.212	When must I settle a securities transaction?
Subpart D	Securities trading policies and procedures		

OTS Regulation Transfer (Draft)

Existing Section	Existing Title	New Section	New Title
551.140	What policies and procedures must I maintain and follow for securities transactions?	390.213	What policies and procedures must I maintain and follow for securities transactions?
551.150	How do my officers and employees file reports of personal securities trading transactions?	390.214	How do my officers and employees file reports of personal securities trading transactions?
Part 555	Electronic operations	Subpart L	Electronic operations
555.100	What does this part do?	390.220	What does this subpart do?
Subpart B	Requirements applicable to all Savings Associations		
555.300	Must I inform OTS before I use electronic means or facilities?	390.221	Must I inform the FDIC before I use electronic means or facilities?
555.310	How do I notify OTS?	390.222	How do I notify the FDIC?
Part 557	Deposits	Subpart M	Deposits
Subpart A	General		
557.1	What does this part do?	390.230	What does this subpart do?
Subpart C	Deposit activities of all Savings Associations		
557.20	What records should I maintain on deposit activities?	390.231	What records should I maintain on deposit activities?
Part 558	Possession by conservators and receivers for Federal and State Savings Associations	Subpart N	Possession by conservators and receivers for Federal and State Savings Associations
558.1	Procedure upon taking possession.	390.240	Procedure upon taking possession.
558.2	Notice of appointment.	390.241	Notice of appointment.
Part 559	Subordinate organizations	Subpart O	Subordinate organizations
559.1	What does this part cover?	390.250	What does this subpart cover?
559.2	Definitions.	390.251	Definitions.
Subpart B	Regulations applicable to all Savings Associations		
559.10	How must separate corporate identities be maintained?	390.252	How must separate corporate identities be maintained?
559.11	What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?	390.253	What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?
559.12	How may a subsidiary of a savings association issue securities?	390.254	How may a subsidiary of a State savings association issue securities?
559.13	How may a savings association exercise its salvage power in connection with a service corporation or lower-tier entities?	390.255	How may a State savings association exercise its salvage power in connection with a service corporation or lower-tier entities?
Part 560	Lending and investment	Subpart P	Lending and investment
560.1	General.	390.260	General.
560.2	Applicability of law.	390.261	Reserved.
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560.160	Asset classification.	390.270	Asset classification.
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567.4	Capital directives.	390.464	Capital directives.
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		Part 391	
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570.4	Issuance of orders to correct deficiencies and to take or refrain from taking other actions.	391.13	Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
570.5	Enforcement of orders.	391.14	Enforcement of orders.
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Appendix	Appendix B to Part 570—Interagency Guidelines Establishing Information Security Standards		Appendix B to Subpart B of Part 391—Interagency Guidelines Establishing Information Security Standards
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571.83	Disposal of consumer information.	391.21	Disposal of consumer information.
Subpart J	Identity theft red flags		
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Part 572	Loans in areas having special flood hazards	Subpart D	Loans in areas having special flood hazards
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572.2	Definitions.	391.31	Definitions.
572.3	Requirement to purchase flood insurance where available.	391.32	Requirement to purchase flood insurance where available.
572.4	Exemptions.	391.33	Exemptions.
572.5	Escrow requirement.	391.34	Escrow requirement.

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Existing Section	Existing Title	New Section	New Title
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572.7	Forced placement of flood insurance.	391.36	Forced placement of flood insurance.
572.8	Determination fees.	391.37	Determination fees.
572.9	Notice of special flood hazards and availability of Federal disaster relief assistance.	391.38	Notice of special flood hazards and availability of Federal disaster relief assistance.
572.10	Notice of servicer's identity.	391.39	Notice of servicer's identity.
Appendix	Appendix A to Part 572—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance		Appendix D to Part 391—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance
Part 574	Acquisition of control of savings associations.	Subpart E	Acquisition of control of State savings associations.
574.1	Scope of part.	391.40	Scope of subpart.
574.2	Definitions.	391.41	Definitions.
574.3	Acquisition of control of savings associations.	391.42	Acquisition of control of State savings associations.
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574.5	Certifications of ownership.	391.44	Certifications of ownership.
574.6	Procedural requirements.	391.45	Procedural requirements.
574.7	Determination by the OTS.	391.46	Determination by the FDIC.
574.8	Qualified stock issuances by undercapitalized savings associations or holding companies.	391.47	Qualified stock issuances by undercapitalized savings associations or holding companies.
574.100	Rebuttal of control agreement.	391.48	Rebuttal of control agreement.

III. Regulatory Analysis and Procedure

A. Administrative Procedure Act

The OTS previously promulgated the transferred regulations after notice and opportunity for public comment, when required. Moreover, the FDIC's action in republishing regulations as they appear in one chapter of the Code of Federal Regulations in another chapter of the Code is technical, as opposed to substantive action. The republication is consistent with the Dodd-Frank Act. The republication includes technical, conforming, or nomenclature changes, but no substantive change has been made to the content of the transferring regulations. Therefore, in accordance with section 553(b)(B) of the Administrative Procedure Act (APA), the FDIC has determined that good cause exists to waive the general notice and opportunity for public comment requirements of the APA. Similarly, and to avoid any possible questions regarding the

continuity of the subject regulations, the FDIC has determined that good cause exists to make this Interim Rule effective as of the transfer date.

B. Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that any new rule prescribed by a Federal banking agency that imposes additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.² Because this Interim Rule merely republishes (with only technical changes) certain transferring rules of the OTS, no additional reporting, disclosure, or other new requirements have been imposed on an insured depository institution by the FDIC. As a result, the FDIC does not believe that the RCDRIA applies in this instance. In the event that the RCDRIA is determined to be applicable to this Interim Rule, based on the transfer of the functions from the OTS to the FDIC effective on the required statutory transfer date of July 21, 2011, the FDIC would invoke the RCDRIA's good cause exception to make this Interim Rule effective on the transfer date and not on the first date of a calendar quarter.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Interim Rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. § 801 *et seq.*. As required by SBREFA, the FDIC will submit the Interim Rule and other appropriate reports to Congress and the General Accounting Office for review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).

² 12 U.S.C. 4802.

As discussed above, consistent with section 553(b)(B) of the APA, the FDIC has determined that good cause exists in this case to waive the general notice and opportunity for public comment requirements of the APA; therefore, pursuant to 5 U.S.C. 601(2), the RFA does not apply.

E. Paperwork Reduction Act

Through this Interim Rule, the FDIC is reissuing certain transferring rules of the OTS. Nineteen (19) of these transferring and republished rules are associated with one or more collections of information for which the OTS had previously obtained approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501-3520). The Interim Rule adopted by the FDIC today does not introduce any new collections of information into the former OTS rules, nor does it amend the former OTS rules in a way that substantively modifies the collections of information that OMB has approved. Therefore, no PRA submission is being made to OMB at this time.

The FDIC notes, however, that the OMB's previous approval of the collections of information related to the transferring OTS rules was based on burden estimates provided by the OTS that included the rules' impact on both State and Federal savings associations. Section 312(c) of the Dodd-Frank Act provided that the FDIC would be the "appropriate Federal banking agency" only with respect to State, and not Federal savings associations. Of the approximately 700 savings associations currently regulated by the OTS, only about 60 of those are state savings associations for whom the FDIC will assume supervisory responsibility. As a result, the FDIC will review each of the relevant information collections, and, as necessary and appropriate, with OMB approval, incorporate the paperwork burden into FDIC's inventory by either establishing new FDIC collections of information or requesting nonmaterial, non-substantive changes to existing FDIC collections of information to include the burden for state savings associations.

List of Subjects in 12 CFR Part 390

Subpart A

Ethics, Governmental employees, OTS employees, Conflicts of Interest

Subpart B

Administrative practice and procedure, Crime, Savings associations

Subpart C

Administrative practice and procedure, Penalties.

Subpart D

Administrative practice and procedure, Investigations.

Subpart E

Accountants, Administrative practice and procedure, Lawyers.

Subpart F

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

Subpart G

Advertising, Aged, Civil rights, Credit, Equal employment opportunity, Fair housing, Home mortgage disclosure, Individuals with disabilities, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination, Signs and symbols.

Subpart H

Administrative practice and procedure, Business and industry, Community development, Confidential business information, Credit, Freedom of information, Holding companies, Investments, Mortgages, Nonprofit organizations, Penalties, Reporting and recordkeeping requirements, Savings associations.

Subpart I

Consumer protection, Insurance, Reporting and recordkeeping requirements, Savings associations, *Advertisement*

Subpart J

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees, *Investments*

Subpart K

Reporting and recordkeeping requirements, Savings associations, Securities, Trusts and trustees.

Subpart L

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

Subpart M

Consumer protection, Reporting and recordkeeping requirements, Savings associations.

Subpart N

Savings associations.

Subpart O

Reporting and recordkeeping requirements, Savings associations, Subsidiaries. Securities

Subpart P

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

Subpart Q

Savings Associations

Subpart R

Accounting, Reporting and recordkeeping requirements, Savings associations.

Subpart S

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds, Mortgages

Subpart T

Accounting, Savings associations, Securities, Reporting and recordkeeping.

Subpart U

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings associations, Securities.

Subpart V

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations

Subpart W

Reporting and recordkeeping requirements, Savings associations, Securities, Consumer Protection

Subpart X

Appraisals, Real estate appraisals, Reporting and recordkeeping requirements, Savings associations, Government Contracts

Subpart Y

Administrative practice and procedure, Capital, Savings associations.

Subpart Z

Capital, Reporting and recordkeeping requirements, Savings associations.

List of Subjects in 12 CFR Part 390

Subpart A

Consumer protection, Privacy, Reporting and recordkeeping requirements, Savings associations, Security measures.

Subpart B

Accounting, Administrative practice and procedure, Bank deposit insurance, Consumer protection, Holding companies, Privacy, Reporting and recordkeeping requirements, Safety and soundness, Savings associations, Intergovernmental relations.

Subpart C

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations

Subpart D

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

Subpart E

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, for the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends title 12 of the Code of Federal Regulations by adding new Parts 390 and 391, as follows:

PART 390 – REGULATIONS TRANSFERRED FROM OFFICE OF THRIFT SUPERVISION

Subpart A - Restrictions on post-employment activities of senior examiners

390.1 What does this subpart do? [etc.]

By direction of the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC this 14th day of June, 2011.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary

Example: Revision of Transferred OTS Rule

EXAMPLE OF TYPES OF NOMENCLATURE CHANGES MADE TO TRANSFERRING OTS RULE

PART 390

SUBPART B—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

Section Contents

- § 390.10 Scope.
- § 390.11 Definitions.
- § 390.12 Issuance of Notice or Order.
- § 390.13 Contents and service of the Notice or Order.
- § 390.14 Petition for hearing.
- § 390.15 Initiation of hearing.
- § 390.16 Conduct of hearings.
- § 390.17 Default.
- § 390.18 Rules of evidence.
- § 390.19 Burden of persuasion.
- § 390.20 Relevant considerations.
- § 390.21 Proposed findings and conclusions and recommended decision.
- § 390.22 Decision of the Board of Directors.
- § 390.23 Miscellaneous.

Authority: 12 U.S.C. 1818, 1819.

§ 390.10 Scope.

The rules in this subpart apply to hearings, which are exempt from the adjudicative provisions of the Administrative Procedure Act, afforded to any officer, director, or other person participating in the conduct of the affairs of a State savings association where such person has been suspended or removed from office or prohibited from further participation in the conduct of the affairs of the State savings association by a Notice or Order served by the Board of Directors upon the grounds set forth in section 8(g) of the Federal Deposit Insurance Act (FDIA), (12 U.S.C. 1818(g)).

§ 390.11 Definitions.

As used in this part—

(a) The term *Board of Directors* means the Board of Directors of the FDIC or its designee.

(b) The term *Notice* means a Notice of Suspension or Notice of Prohibition issued by the Board of Directors pursuant to section 8(g) of the FDIA.

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(c) The term Order means an Order of Removal or Order of Prohibition issued by the Board of Directors pursuant to section 8(g) of the FDIA.

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(d) The term association means a State savings association within the meaning of section 3(b)(3) of the FDIA. (12 U.S.C. 1813(b)(3)).

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(e) The term subject individual means a person served with a Notice or Order.

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(f) The term petitioner means a subject individual who has filed a petition for informal hearing under this part.

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§ 390.12 Issuance of Notice or Order.

Deleted: 8) ("FDIA"), a savings and loan holding company within the meaning of section 10(a)(1)(D) of the HOLA, 12 U.S.C. 1467a(a)(1)(D) and a subsidiary of a savings and loan holding company (other than a savings association) within the meaning of section 10(a)(1)(G) of the Home Owners' Loan Act of 1933

(a) The Board of Directors may issue and serve a Notice upon an officer, director, or other person participating in the conduct of the affairs of an association, where the individual is charged in any information, indictment, or complaint with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law, if the Board of Directors, upon due deliberation, determines that continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association. The Notice shall remain in effect until the information, indictment, or complaint is finally disposed of or until terminated by the Board of Directors.

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(b) The Board of Directors may issue and serve an Order upon a subject individual against whom a judgment of conviction, or an agreement to enter a pretrial diversion or other similar program has been rendered, where such judgment is not subject to further appellate review, and the Board of Directors, upon the deliberation, has determined that continued service or participation by the subject individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association.

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§ 390.13 Contents and service of the Notice or Order.

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(a) The Notice or Order shall set forth the basis and facts in support of the Board of Directors' issuance of such Notice or Order, and shall inform the subject individual of his right to a hearing, in accordance with this part, for the purpose of determining whether the Notice or Order should be continued, terminated, or otherwise modified.

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(b) The Executive Secretary shall serve a copy of the Notice or Order upon the subject individual and the related association in the manner set forth in § 509.11 [insert new section number].

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(c) Upon receipt of the Notice or Order, the subject individual shall immediately comply with the requirements thereof.

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§ 390.14 Petition for hearing.

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(a) To obtain a hearing, the subject individual must file two copies of a petition with the Executive Secretary within 30 days of being served with the Notice or Order.

(b) The petition filed under this section shall admit or deny specifically each allegation in the Notice or Order, unless the petitioner is without knowledge or information, in which case the petition shall so state and the statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a petitioner intends in good faith to deny only a part of or to qualify an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(c) The petition shall state whether the petitioner is requesting termination or modification of the Notice or Order, and shall state with particularity how the petitioner intends to show that his continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or to impair public confidence in the association.

§ 390.15 Initiation of hearing.

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(a) Within 10 days of the filing of a petition for hearing, the Board of Directors shall notify the petitioner of the time and place fixed for hearing, and it shall designate one or more Board of Directors employees to serve as presiding officer.

(b) The hearing shall be scheduled to be held no later than 30 days from the date the petition was filed, unless the time is extended at the request of the petitioner.

(c) A petitioner may appear personally or through counsel, but if represented by counsel, said counsel is required to comply with §509.6 [insert new section number].

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(d) A representative(s) of the FDIC enforcement staff also may attend the hearing and participate therein as a party.

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§ 390.16 Conduct of hearings.

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(a) Hearings provided by this section are not subject to the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554-557). The presiding officer is, however, authorized to exercise all of the powers enumerated in §509.5 [insert new section number].

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(b) Witnesses may be presented, within time limits specified by the presiding officer, provided that at least 10 days prior to the hearing date, the party presenting the witnesses furnishes the presiding officer and the opposing party with a list of such witnesses and a summary of the proposed testimony. However, the requirement for furnishing such a witness list and summary of testimony shall not apply to the presentation of rebuttal

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witnesses. The presiding officer may ask questions of any witness, and each party shall have an opportunity to cross-examine any witness presented by an opposing party.

(c) Upon the request of either the petitioner or a representative of the FDIC enforcement staff, the record shall remain open for a period of 5 business days following the hearing, during which time the parties may make any additional submissions for the record. Thereafter, the record shall be closed.

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(d) Following the introduction of all evidence, the petitioner and the representative of the FDIC enforcement staff shall have an opportunity for oral argument; however, the parties may jointly waive the right to oral argument, and, in lieu thereof, elect to submit written argument.

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(e) All oral testimony and oral argument shall be recorded, and transcripts made available to the petitioner upon payment of the cost thereof. A copy of the transcript shall be sent directly to the presiding officer, who shall have authority to correct the record sua sponte or upon the motion of any party.

(f) The parties may, in writing, jointly waive an oral hearing and instead elect a hearing upon a written record in which all evidence and argument would be submitted to the presiding officer in documentary form and statements of individuals would be made by affidavit.

§ 390.17. Default.

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by attorney, or fails to submit a written argument where oral argument has been waived pursuant to § 390.6(d) or (f) of this subpart, the Notice shall remain in effect until the information, indictment, or complaint is finally disposed of and the Order shall remain in effect until terminated by the Board of Directors.

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§ 390.18. Rules of evidence.

(a) Formal rules of evidence shall not apply to a hearing, but the presiding officer may limit the introduction of irrelevant, immaterial, or unduly repetitious evidence.

(b) All matters officially noticed by the presiding officer shall appear on the record.

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§ 390.19. Burden of persuasion.

The petitioner has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of the association does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association.

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§ 390.20. Relevant considerations.

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(a) In determining whether the petitioner has shown that his or her continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association, in order to decide whether the Notice or Order should be continued, terminated, or otherwise modified, the Board of Directors will consider:

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- (1) The nature and extent of the petitioner's participation in the affairs of the association;
- (2) The nature of the offense with which the petitioner has been charged;
- (3) The extent of the publicity accorded the indictment and trial; and
- (4) Such other relevant factors as may be entered on the record.

(b) When considering a request for the termination or modification of a Notice, the Board of Directors will not consider the ultimate guilt or innocence of the petitioner with respect to the criminal charge that is outstanding.

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(c) When considering a request for the termination or modification of an Order which has been issued following a final judgment of conviction against a subject individual, the Board of Directors will not collaterally review such final judgment of conviction.

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§ 390.21. Proposed findings and conclusions and recommended decision.

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(a) Within 30 days after completion of oral argument or the submission of written argument where oral argument has been waived, the presiding officer shall file with the Executive Secretary and certify to the Board of Directors for decision the entire record of the hearing, which shall include a recommended decision, the Notice or Order, and all other documents filed in connection with the hearing.

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(b) The recommended decision shall contain:

- (1) A statement of the issue(s) presented,
- (2) A statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and
- (3) An appropriate recommendation as to whether the suspension, removal, or prohibition should be continued, modified, or terminated.

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§ 390.22. Decision of the Board of Directors.

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(a) Within 30 days after the recommended decision has been certified to the Board of Directors, the Board of Directors shall issue a final decision.

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(b) The Board of Director's final decision shall contain a statement of the basis therefor. The Board of Directors may satisfy this requirement where it adopts the recommended decision of the presiding officer upon finding that the recommended decision satisfies the requirements of §509.38 [insert new section number].

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(c) The Executive Secretary shall serve upon the petitioner and the representative of the FDIC enforcement staff a copy of the Board of Director's final decision and the related recommended decision.

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§ 390.23 Miscellaneous.

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§ 508.14

The provisions of §§509.10, 509.11, and 509.12 [insert new section numbers] shall apply to proceedings under this subpart.

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, affiliate service corporation, savings and loan holding company, or subsidiary of such a holding company,

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Federal Deposit Insurance Act

Secretary means the Secretary to the Office and any Assistant or Acting Secretary to the Office.

(c) The term