

November 22, 2013

TO: The Board of Directors

FROM: Mark Pearce
Director
Division of Depositor and Consumer Protection

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Acting General Counsel
Legal Division

SUBJECT: Review of Regulations Transferred from the Former Office of Thrift Supervision:
Part 390, Subpart H - Disclosure and Reporting of CRA-Related Agreements

Summary of Recommendation

Staff recommends that the FDIC Board of Directors (“Board”) approve and authorize for publication in the *Federal Register* a notice of proposed rulemaking (“NPR”) to rescind and remove 12 C.F.R. Part 390, Subpart H, entitled *Disclosure and Reporting of CRA-Related Agreements*. Rescinding Part 390, Subpart H will serve to streamline the FDIC’s rules and eliminate redundancy and unnecessary regulations. In addition, staff recommends that the Board approve and authorize for publication in the *Federal Register*, conforming amendments to 12 CFR Part 346, also entitled *Disclosure and Reporting of CRA-Related Agreements*.

The proposed rescission of Part 390, Subpart H completes the FDIC’s review of this subpart of the former Office of Thrift Supervision (“OTS”) rules for rescission, amendment, or adoption. This subpart was included in the regulations that were transferred to the FDIC from the OTS on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ Upon removal of 12 C.F.R. Part 390, Subpart H, the Disclosure and Reporting of CRA-Related Agreements regulations applicable for all insured depository institutions (“IDIs”), for which the FDIC has been designated the appropriate Federal banking agency, will be found at 12 C.F.R. Part 346, entitled *Disclosure and Reporting of CRA-Related Agreements*.

The proposed rescission and amendments fulfill the FDIC’s review of the Disclosure and Reporting of CRA-Related Agreements sections of the FDIC rules and regulations impacted by the abolishment of the OTS and the transfer of supervisory responsibilities for state-chartered savings associations (“State savings associations”) to the FDIC.

Background

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.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 12 U.S.C. §§ 5301 *et seq.* (2010).

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. § 5411, the powers, duties and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the 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, 12 U.S.C. § 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials, that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are 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, 12 U.S.C. § 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC’s Board approved a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.” This list was published by the FDIC and the OCC as a Joint Notice in the Federal Register on July 6, 2011.²

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, 12 U.S.C. § 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both state and federal savings associations, nothing in the Dodd-Frank Act affected the FDIC’s existing authority to issue regulations under the Federal Deposit Insurance Act (“FDI Act”) and other laws as the “appropriate Federal banking agency” or under similar statutory authority. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act, 12 U.S.C. § 1813(q), and designated the FDIC as the “appropriate Federal banking agency” for State savings associations. As a result, when the FDIC acts as the designated “appropriate Federal banking agency,” or under similar authority, for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

On June 14, 2011, operating pursuant to this authority, the FDIC’s Board reissued and re-designated certain transferring regulations of the former OTS.³ In the preamble to the interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and may later recommend incorporation of the transferred OTS regulations into existing FDIC rules, amending or rescinding them, as appropriate.

² 76 FR 39247 (July 6, 2011).

³ 76 FR 47652 (Aug. 5, 2011).

Part 390, Subpart H – Disclosure and Reporting of CRA-Related Agreements

One of the regulations transferred to the FDIC governed OTS oversight of disclosure and reporting of CRA-related agreements in the context of State savings associations. Note that this is not the Community Reinvestment Act rule (located in FDIC rules at 12 C.F.R. Part 345) but is a much more limited disclosure and reporting rule implementing section 711 of the Gramm-Leach-Bliley Act. With regard to certain “covered” CRA-related agreements as defined in the rule, the rule requires insured depository institutions, their affiliates and nongovernmental entities or persons to (1) publicly disclose and (2) file annual reports with the institution’s appropriate Federal banking agency.⁴

Since 2001, the FDIC’s rules have included 12 C.F.R. Part 346, which governs FDIC oversight of disclosure and reporting of CRA-related agreements pursuant to section 48 of the FDI Act, 12 U.S.C. § 1831y. The OTS’s regulation, formerly found at 12 C.F.R. Part 533, was transferred to the FDIC with only nominal changes. It is currently located in the FDIC’s rules at 12 C.F.R. Part 390, Subpart H. The FDIC Disclosure and Reporting of CRA-Related Agreements rule and the former OTS rule now located in 12 C.F.R. Part 390, Subpart H were issued by the FDIC and OTS, respectively, in 2001, as part of a joint interagency rulemaking among the FDIC, the FRB, the OCC, and the OTS (“Federal banking agencies”) to implement section 48 of the FDI Act. As a result of this joint rulemaking, the Federal banking agencies adopted very similar, though not identical, rules regarding disclosure and reporting of CRA-related agreements.

After careful review and comparison of 12 C.F.R. Part 346, the FDIC’s Disclosure and Reporting of CRA-Related Agreements rule, with the transferred OTS rule, 12 C.F.R. Part 390, Subpart H the staff has concluded that the FDIC’s Part 346, with several technical amendments described below, will continue to provide appropriate oversight of the requirements for disclosure and reporting of CRA-related agreements pursuant to section 48 of the FDI Act and section 711 of the Gramm-Leach-Bliley Act for all insured depository institutions for which the FDIC is the appropriate Federal banking agency. Where possible, it is desirable for reasons of regulatory policy that insured depository institutions for which the FDIC is the appropriate Federal banking agency are subject to the same substantive and procedural rules governing disclosure and reporting of CRA-related agreements.

After reviewing the transferred OTS rules found in 12 C.F.R. Part 390, Subpart H, staff recommends that the FDIC, as the appropriate Federal banking agency for State savings associations, propose to rescind the former OTS rule in its entirety. Rescinding Part 390, Subpart H also will serve to streamline the FDIC’s rules and eliminate unnecessary regulations. If the proposal is adopted in final form with amendment to Part 346 to include State savings associations and their subsidiaries within its scope and conforming definitions, all of the banks

⁴ 12 C.F.R. § 346.1(a).

and State savings associations supervised by the FDIC would be subject to the FDIC's Part 346, as modified.

Part 346.1 – Purpose and scope of this part.

Section 346.1 currently defines the scope of Part 346 only with respect to FDIC-insured state nonmember banks, their subsidiaries and nongovernmental entities or persons, that enter into "covered agreements" (as defined in section 346.2 (a)) made pursuant to or in connection with fulfillment of the Community Reinvestment Act of 1977. Although the former OTS rule included savings and loan holding companies within its scope, section 312 of the Dodd-Frank Act transferred jurisdiction over savings and loan holding companies to the FRB. For this reason, although the former OTS rule and Part 390, Subpart H reference affiliates, proposed changes to the scope of the existing Part 346 does not include affiliates.

Staff recommends the FDIC propose modifications to the scope of Part 346 to include State savings associations and their subsidiaries to conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency.

Part 346.11 – Other definitions and rules of construction used in this part.

Section 346.11 currently contains no definition of *State savings association*. Accordingly, staff recommends that the FDIC propose to add a new subsection (m), which would define "State savings association" as having "the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))." This amendment would conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency. The current provision occupying subsection (m) will be moved to a newly created subsection (n) within section 346.11.

EGRPRA

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") requires the FDIC to review all of its regulations at least once every 10 years in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.⁵ The FDIC's review is ongoing and must be completed by 2016. The attached Notice of Proposed Rulemaking ("NPR") solicits comments on whether the proposed rescission of Part 390, Subpart H and amendments to Part 346 would impose any outdated or unnecessary regulatory requirements on any IDIs.

Recommendation

That the Board approve the attached resolution to adopt and authorize the publication in the *Federal Register* of the referenced NPR for public comment.

⁵ Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996)

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[Attachments: Part 390, Subpart H - Disclosure and Reporting of CRA-Related Agreements, and Part 346, entitled *Disclosure and Reporting of CRA-Related Agreements*, both as proposed to be modified herein.]