

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064-AE19

Removal of Transferred OTS Regulations Regarding Electronic Operations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (“FDIC”) is adopting a final rule to rescind and remove from the Code of Federal Regulations the transferred regulation entitled “Electronic Operations.” This regulation was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (“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”). There is no corresponding FDIC Electronic Operations rule and the rule is deemed obsolete, unnecessary, and burdensome. Therefore, the FDIC has decided to rescind and remove the regulation in its entirety.

DATES: The final rule is effective on [Insert date 30 days after publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

Title III of the Dodd-Frank Act¹ 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, codified at 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, codified at 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue to be 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and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.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, codified at 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 which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC’s Board of Directors approved a “List of OTS

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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, codified at 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 terminology. Section 312(c) of the Dodd-Frank Act amended the definition of “appropriate Federal banking agency” contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the “appropriate Federal banking agency.” As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, pursuant to this authority, the FDIC’s Board of Directors reissued and redesignated certain transferring OTS regulations. These transferred OTS regulations were published as new FDIC regulations in the Federal Register on August 5, 2011.³ When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the

² 76 FR 39247 (July 6, 2011).

³ 76 FR 47652 (Aug. 5, 2011).

transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC requires State savings associations to notify the FDIC at least 30 days before establishing a transactional website. The OTS rule, formerly found at 12 CFR part 555, subpart B (“part 555, subpart B”), was transferred to the FDIC with only technical changes and is now found in the FDIC’s rules at 12 CFR part 390, subpart L (“part 390, subpart L”), entitled “Electronic Operations.” The FDIC has no such corresponding rule. After careful review of part 390, subpart L, the FDIC has decided to rescind part 390, subpart L, in its entirety, because, as discussed below, it is obsolete, unnecessary, and burdensome.

II. Proposed Rule

A. Removal of part 390, subpart L (former OTS part 555, subpart B)

On July 21, 2014, the FDIC published a Notice of Proposed Rulemaking (“Proposed Rule”) regarding the removal of part 390, subpart L, which governs electronic operations of State savings associations.⁴ The Proposed Rule would have removed part 390, subpart L, from the CFR in an effort to streamline FDIC regulations for all FDIC-supervised institutions. As discussed in the Proposed Rule, the FDIC carefully reviewed the transferred rule, part 390, subpart L, and determined that it should be rescinded because it is obsolete, unnecessary, and burdensome.

III. Comments

The FDIC issued the Proposed Rule with a 60-day comment period, which closed on September 19, 2014. No comments on the Proposed Rule were received by the FDIC. Consequently, the final rule (“Final Rule”) is adopted as proposed without any changes.

⁴ 79 FR 42231 (July 21, 2014).

IV. Explanation of the Final Rule

As discussed in the Proposed Rule, the OTS enacted the Electronic Operations rule, part 390, subpart L, unilaterally. This rule required savings associations to file a written notice with the OTS at least 30 days before establishing a transactional website. Neither the FDIC, the OCC, nor the FRB has a regulatory notice requirement similar to the Electronic Operations rule that requires insured depository institutions to notify the respective agency if they intend to establish transactional websites. Rescinding and removing the Electronic Operations rule will serve to streamline the FDIC's rules and eliminate obsolete, unnecessary, and burdensome regulations. It will also facilitate uniform supervision regarding notification requirements for electronic operation for all FDIC-supervised insured depository institutions. Accordingly, the Final Rule removes and rescinds part 390, subpart L, in its entirety.

V. Administrative Law Matters

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act ("PRA") of 1995, 44 U.S.C. 3501-3521, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number.

The Final Rule rescinds and removes from FDIC regulations part 390, subpart L, because it is obsolete, unnecessary, and burdensome. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by title III of the Dodd-Frank Act. In republishing this rule, the FDIC made only technical changes to existing OTS regulations. The FDIC does not have a regulatory notice requirement

similar to the Electronic Operations rule that requires insured depository institutions to notify the FDIC if they intend to set up transactional websites and, therefore, never established an information collection to account for the paperwork burden imposed on the public.

The Final Rule will neither create any new information collection nor modify any of the FDIC's existing information collections. Accordingly, the FDIC will not submit any information collection request to OMB.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"),⁵ generally requires an agency to consider whether a final rule will have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$500 million).⁶ Pursuant to section 605(b) of the RFA, a final regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the Federal Register together with the rule. For the reasons provided below, the FDIC certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in the Proposed Rulemaking, part 390, subpart L, was transferred from part 555, subpart B, which governed notification provisions for savings associations

⁵ 5 U.S.C. 601 *et seq.*

⁶ 78 FR 37409, 37411 (June 20, 2013).

that intended to establish transactional websites. Part 555, subpart B became effective on January 1, 1999, and all savings associations were required to comply with it. The FDIC's Final Rule rescinds and removes part 390, subpart L, because it is obsolete, unnecessary, and burdensome. Since the Electronic Operations rule is being rescinded, the Final Rule will reduce the paperwork and other regulatory burdens on State savings associations by eliminating the requirement to provide the FDIC with notice before establishing a transactional website. Therefore, the Final Rule will have no significant economic impact on any State savings association.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Final Rule is not a "major rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), 5 U.S.C. 801 *et seq.*

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the Proposed Rule, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"), the FDIC is required 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.⁷ The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review, which is expected to be completed by 2016. The Proposed Rule solicited comments on whether the proposed rescission of part 390, subpart L would impose any outdated or unnecessary regulatory requirements on insured depository institutions. No comments on this issue were received. Upon review, the FDIC does not believe that rescinding part 390, subpart L, imposes any outdated or unnecessary regulatory requirements on any insured depository institutions. Rather, because the Electronic Operations rule is being rescinded, the Final Rule eliminates an outdated and unnecessary regulatory burden on State savings associations by eliminating the requirement to provide the FDIC with notice before establishing a transactional website.

List of Subjects

Banks, banking; electronic operations; savings associations

12 CFR part 390, subpart L

Electronic Operations

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the FDIC rescinds and removes part 390, subpart L, of the Code of Federal Regulations as follows:

PART 390 – REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

Subpart L – Electronic Operations

⁷ Pub. L. No. 104-208, 110 Stat. 3009 (1996).

1.

The authority citation for part 390 is revised to read as follows:

Authority:

12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.

Subpart C also issued under 5 U.S.C. 504; 554-557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78 l; 78o-5; 78u-2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78 l.

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 et seq.

Subpart G also issued under 12 U.S.C. 2810 et seq., 2901 et seq.; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601-3619.

Subpart H also issued under 12 U.S.C. 1464; 1831y.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p-1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart N also issued under 12 U.S.C. 1821.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p-1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p-1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p-1; 1881-1884; 3207; 3339; 15 U.S.C. 78b; 78 l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 l; 78m; 78n; 78w.

Subpart U also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 l; 78m; 78n; 78p; 78w; 78d-1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under 12 U.S.C. 3201-3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 l; 78m; 78n; 78p; 78w.

Subpart X also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828; 3331 *et seq.*

Subpart Y also issued under 12 U.S.C.1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

2. Subpart L – [Removed and reserved]

Remove and reserve Subpart L consisting of §§ 390.220 through 390.222.

Dated at Washington, D.C., this ____ day of _____, 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman
Executive Secretary