

February 4, 2019

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley
Director, Division of Risk Management Supervision

SUBJECT: Final Rule to Rescind and Remove 12 CFR Part 350,
Disclosure of Financial and Other Information
By FDIC-Insured State Nonmember Banks

RECOMMENDATION AND SUMMARY

Staff recommends that the FDIC Board of Directors (the Board) adopt the attached final rule and authorize its publication. The final rule would rescind and remove 12 CFR part 350 entitled *Disclosure of Financial and Other Information By FDIC-Insured State Nonmember Banks*. Upon the removal of part 350, FDIC-supervised banks and branches of foreign banks would no longer be subject to the annual disclosure statement requirement set out in part 350. This recommendation is consistent with the objectives of section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), including its direction to the FDIC to eliminate unnecessary regulations to the extent that such action is appropriate.

DISCUSSION

Background

Part 350 was adopted by the FDIC Board of Directors on December 17, 1987, and took effect February 1, 1988.¹ In general, part 350 requires FDIC-insured state nonmember banks and FDIC-insured state-licensed branches of foreign banks (collectively, banks) to prepare, and make available on request, annual disclosure statements consisting of: (1) required financial data comparable to specified schedules in the Consolidated Reports of Condition and Income (Call Report) filed for the previous two year-ends; (2) information that the FDIC may require of particular banks, which could include disclosure of enforcement actions; and (3) other information at a bank's option. Part 350 also permits the use of certain alternatives to the Call Report as a disclosure statement. Part 350 does not apply to the insured state savings associations that are supervised by the FDIC.

¹ See 52 FR 49379 (December 31, 1987).

Concur:

Charles Yi
General Counsel

The annual disclosure statement for a particular year must be prepared, and made available to the public, by March 31 of the following year, or the fifth day after an organization's annual report covering the year is sent to shareholders, whichever occurs first. Banks are required to announce the availability of the disclosure statements in lobby notices in each of their offices and in notices of annual meetings sent to shareholders.

In adopting part 350, the FDIC's intent was to improve public awareness and understanding of the financial condition of individual banks. In the preamble to the December 1987 final rule, the FDIC stated that "improved financial disclosure should reduce the likelihood of the market or bank customers overreacting to incomplete information." The FDIC also said that it believed the disclosure requirement "will complement its supervisory efforts and enhance public confidence in the banking system." With limited resources available for the public to gather, analyze, and understand information about the financial condition of individual banks before and during the 1980s, the FDIC's adoption of part 350 provided the public with an opportunity to obtain certain basic bank financial information.

After the FDIC adopted part 350, the Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (FRB) adopted similar disclosure regulations. When initially adopted, the disclosure regulations of the FDIC, the FRB (12 CFR § 208.17), and the OCC (12 CFR Part 18) were substantially uniform. The former Office of Thrift Supervision had a similar, but not identical, disclosure regulation (12 CFR § 562.3), which it repealed as unnecessary in 1995 as a result of a review of its regulations. In 1998, the FRB eliminated its disclosure regulation on the basis that Call Report information for banks had become available through the internet. In 2017, the OCC removed its disclosure regulation as duplicative and unnecessary, noting that the information it required national banks to disclose is contained in other publicly available documents.

With advancements in information technology since part 350 was adopted, including widespread public access to the internet, information about the financial condition of individual institutions is now reliably and directly offered to the public through the FDIC's and the Federal Financial Institutions Examination Council's websites. For example, information about the financial condition and performance of all institutions is publicly available each quarter through the Call Report and the Uniform Bank Performance Report. In addition, enforcement actions taken by the FDIC are readily available to the public from the FDIC's website.

As part of the EGRPRA review completed in 2017, part 350 was included in the third EGRPRA Federal Register notice.² The FDIC did not receive any comments on this regulation in response to that notice. Nevertheless, part 350 places a burden on insured state nonmember banks and insured state-licensed branches of foreign banks by requiring them to prepare an annual disclosure statement and make the statement available to the public. With widespread public access to the internet where more extensive and timely financial information about individual banks, as well as administrative enforcement actions, can be readily obtained, the incremental burden on banks of providing an annual disclosure statement is no longer justified. Thus, upon

² See 80 FR 32046 (June 5, 2015).

review, the FDIC has determined that part 350 is outdated and no longer necessary and therefore should be eliminated.

The Proposal

Consistent with the objectives of section 2222 of EGRPRA, on October 17, 2018, the FDIC Board authorized publication of a notice of proposed rulemaking (NPR) to rescind and remove part 350 from the Code of Federal Regulations. The NPR was published in the Federal Register on October 25, 2018, with a 30-day comment period. The FDIC received nine comments addressing the proposed rescission and removal of part 350 from bankers, banking associations, and a consultant. These commenters fully supported the proposal. A tenth commenter did not specifically address the proposed rescission and removal.

Final Rule

After considering the comments received, FDIC staff recommends that the Board adopt as proposed the rescission and removal of part 350 from the Code of Federal Regulations.

Conclusion

FDIC staff recommends that the Board approve the attached Final Rule for publication in the Federal Register.

Attachments:

Resolution

Notice of Proposed Rulemaking

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