

## Federal Deposit Insurance Corporation

## § 354.1

delayed more than 60 calendar days after the date of initial detection of a reportable transaction.

(2) In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the FDIC-supervised institution shall immediately notify, by telephone, an appropriate law enforcement authority and the appropriate FDIC regional office (Division of Supervision and Consumer Protection (DSC)) in addition to filing a timely report.

(c) *Reports to state and local authorities.* An FDIC-supervised institution is encouraged to file a copy of the suspicious activity report with state and local law enforcement agencies where appropriate.

(d) *Exemptions.* (1) An FDIC-supervised institution need not file a suspicious activity report for a robbery or burglary committed or attempted, that is reported to appropriate law enforcement authorities.

(2) An FDIC-supervised institution need not file a suspicious activity report for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(e) *Retention of records.* An FDIC-supervised institution shall maintain a copy of any suspicious activity report filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the suspicious activity report. Supporting documentation shall be identified and maintained by the FDIC-supervised institution as such, and shall be deemed to have been filed with the suspicious activity report. An FDIC-supervised institution must make all supporting documentation available to appropriate law enforcement authorities upon request.

(f) *Notification to board of directors.* The management of an FDIC-supervised institution shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section. The term “board of directors” includes the managing official of a foreign bank having an insured branch for purposes of this part.

(g) *Confidentiality of suspicious activity reports.* Suspicious activity reports are

confidential. An FDIC-supervised institution subpoenaed or otherwise requested to disclose a suspicious activity report or the information contained in a suspicious activity report shall decline to produce the suspicious activity report or to provide any information that would disclose that a suspicious activity report has been prepared or filed citing this part, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the appropriate FDIC regional office (Division of Supervision and Consumer Protection (DSC)).

(h) *Safe harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts an FDIC-supervised institution that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, cover all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this part or are filed on a voluntary basis.

[61 FR 6099, Feb. 16, 1996, as amended at 85 FR 3247, Jan. 21, 2020]

## PART 354—INDUSTRIAL BANKS

Sec.

- 354.1 Scope.
- 354.2 Definitions.
- 354.3 Written agreement.
- 354.4 Required commitments and provisions of written agreement.
- 354.5 Restrictions on industrial bank subsidiaries of Covered Companies.
- 354.6 Reservation of authority.

AUTHORITY: 12 U.S.C. 1811, 1815, 1816, 1817, 1818, 1819(a) (Seventh) and (Tenth), 1820(g), 1831o-1, 3108, 3207.

SOURCE: 86 FR 10727, Feb. 23, 2021, unless otherwise noted.

### § 354.1 Scope.

(a) In addition to the applicable filing procedures of part 303 of this chapter, this part establishes certain requirements for filings involving an industrial bank or a Covered Company.

(b) The requirements of this part do not apply to an industrial bank that is

## § 354.2

organized as a subsidiary of a company that is not subject to Federal consolidated supervision by the Federal Reserve Board (FRB) before April 1, 2021. In addition, this part does not apply to:

(1) Any industrial bank that is or becomes controlled by a company that is subject to Federal consolidated supervision by the FRB; and

(2) Any industrial bank that is not or will not become a subsidiary of a company.

### § 354.2 Definitions.

Unless defined in this section, terms shall have the meaning given to them in section 3 of the FDI Act.

*Control* means the power, directly or indirectly, to direct the management or policies of a company or to vote 25 percent or more of any class of voting securities of a company, and includes the rebuttable presumptions of control at §303.82(b)(1) of this chapter and of acting in concert at §303.82(b)(2) of this chapter. For purposes of this part, the presumptions set forth in §303.82(b)(1) and (2) of this chapter shall apply with respect to any company in the same manner and to the same extent as if they applied to an acquisition of securities of the company.

*Covered Company* means any company that is not subject to Federal consolidated supervision by the FRB and that controls an industrial bank:

(1) As a result of a change in bank control pursuant to section 7(j) of the FDI Act;

(2) As a result of a merger transaction pursuant to section 18(c) of the FDI Act; or

(3) That is granted deposit insurance by the FDIC pursuant to section 6 of the FDI Act, in each case on or after April 1, 2021.

*FDI Act* means the Federal Deposit Insurance Act, 12 U.S.C. 1811, *et seq.*

*Filing* has the meaning given to it in §303.2(s) of this chapter.

*FRB* means the Board of Governors of the Federal Reserve System and each Federal Reserve Bank.

*Industrial bank* means any insured State bank that is an industrial bank, industrial loan company, or other similar institution that is excluded from the definition of the term “bank” in

## 12 CFR Ch. III (1–1–23 Edition)

section 2(c)(2)(H) of the Bank Holding Company Act, 12 U.S.C. 1841(c)(2)(H).

*Senior executive officer* has the meaning given it in §303.101(b) of this chapter.

### § 354.3 Written agreement.

(a) No industrial bank may become a subsidiary of a Covered Company unless the Covered Company enters into one or more written agreements with both the Federal Deposit Insurance Corporation (FDIC) and the subsidiary industrial bank, which contain commitments by the Covered Company to comply with each of paragraphs (a)(1) through (8) in §354.4 and such other written agreements, commitments, or restrictions as the FDIC deems appropriate, including, but not limited to, the provisions of §§ 354.4 and 354.5.

(b) The FDIC may, at its sole discretion, condition a grant of deposit insurance, issuance of a non-objection to a change in control, or approval of a merger on an individual who is a controlling shareholder of a Covered Company joining as a party to any written agreement required by paragraph (a) of this section.

### § 354.4 Required commitments and provisions of written agreement.

(a) The commitments required to be made in the written agreements referenced in §354.3 are set forth in paragraphs (a)(1) through (8) of this section. In addition, with respect to an industrial bank subject to this part, the FDIC will condition each grant of deposit insurance, each issuance of a non-objection to a change in control, and each approval of a merger on compliance with paragraphs (a)(1) through (8) of this section by the parties to the written agreement. As required, each Covered Company must:

(1) Submit to the FDIC an initial listing of all of the Covered Company's subsidiaries and update such list annually;

(2) Consent to the examination by the FDIC of the Covered Company and each of its subsidiaries to permit the FDIC to assess compliance with the provisions of any written agreement, commitment, or condition imposed; the FDI Act; or any other Federal law

## Federal Deposit Insurance Corporation

## § 354.5

for which the FDIC has specific enforcement jurisdiction against such Covered Company or subsidiary, and all relevant laws and regulations;

(3) Submit to the FDIC an annual report describing the Covered Company's operations and activities, in the form and manner prescribed by the FDIC, and such other reports as may be requested by the FDIC to inform the FDIC as to the Covered Company's:

- (i) Financial condition;
- (ii) Systems for identifying, measuring, monitoring, and controlling financial and operational risks;
- (iii) Transactions with depository institution subsidiaries of the Covered Company;
- (iv) Systems for protecting the security, confidentiality, and integrity of consumer and nonpublic personal information; and
- (v) Compliance with applicable provisions of the FDI Act and any other law or regulation;

(4) Maintain such records as the FDIC may deem necessary to assess the risks to the subsidiary industrial bank or to the Deposit Insurance Fund;

(5) Cause an independent audit of each subsidiary industrial bank to be performed annually;

(6) Limit the Covered Company's direct and indirect representation on the board of directors or board of managers, as the case may be, of each subsidiary industrial bank to less than 50 percent of the members of such board of directors or board of managers, in the aggregate, and, in the case of a subsidiary industrial bank that is organized as a member-managed limited liability company, limit the Covered Company's direct and indirect representation as a managing member to less than 50 percent of the managing member interests of the subsidiary industrial bank, in the aggregate;

(7) Maintain the capital and liquidity of the subsidiary industrial bank at such levels as the FDIC deems appropriate, and take such other actions as the FDIC deems appropriate to provide the subsidiary industrial bank with a resource for additional capital and liquidity including, for example, pledging assets, obtaining and maintaining a letter of credit from a third-party institution acceptable to the FDIC, and

providing indemnification of the subsidiary industrial bank; and

(8) Execute a tax allocation agreement with its subsidiary industrial bank that expressly states that an agency relationship exists between the Covered Company and the subsidiary industrial bank with respect to tax assets generated by such industrial bank, and that further states that all such tax assets are held in trust by the Covered Company for the benefit of the subsidiary industrial bank and will be promptly remitted to such industrial bank. The tax allocation agreement also must provide that the amount and timing of any payments or refunds to the subsidiary industrial bank by the Covered Company should be no less favorable than if the subsidiary industrial bank were a separate taxpayer.

(b) The FDIC may require such Covered Company and industrial bank to commit to provide to the FDIC, and, thereafter, implement and adhere to, a contingency plan subject to the FDIC's approval that sets forth, at a minimum, recovery actions to address significant financial or operational stress that could threaten the safe and sound operation of the industrial bank and one or more strategies for the orderly disposition of such industrial bank without the need for the appointment of a receiver or conservator.

### **§ 354.5 Restrictions on industrial bank subsidiaries of Covered Companies.**

Without the FDIC's prior written approval, an industrial bank that is controlled by a Covered Company shall not:

(a) Make a material change in its business plan after becoming a subsidiary of such Covered Company;

(b) Add or replace a member of the board of directors, board of managers, or a managing member, as the case may be, of the subsidiary industrial bank during the first three years after becoming a subsidiary of such Covered Company;

(c) Add or replace a senior executive officer during the first three years after becoming a subsidiary of such Covered Company;

(d) Employ a senior executive officer who is, or during the past three years has been, associated in any manner

**§ 354.6**

(e.g., as a director, officer, employee, agent, owner, partner, or consultant) with an affiliate of the industrial bank; or

(e) Enter into any contract for services material to the operations of the industrial bank (for example, loan servicing function) with such Covered Company or any subsidiary thereof.

**§ 354.6 Reservation of authority.**

Nothing in this part limits the authority of the FDIC under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, or violations of law.

**PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS**

AUTHORITY: 12 U.S.C. 1819, 1823(k)(5).

**§ 357.1 Economically depressed regions.**

(a) *Purpose.* Section 13(k)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(5)) provides that the FDIC shall consider proposals for financial assistance for eligible insured savings associations before grounds exist for appointment of a conservator or receiver for such member. One of the criteria for eligibility is that an institution's offices are located in an economically depressed region as determined by the FDIC.

(b) *Economically depressed regions.* (1) For the purpose of determining "economically depressed regions", the FDIC will determine whether an institution qualifies as being located in an "economically depressed region" on a case-by-case basis. That determination will be based on four criteria:

- (i) High unemployment rates;
- (ii) Significant declines in non-farm employment;
- (iii) High delinquency rates of real estate assets at insured depository institutions; and
- (iv) Evidence indicating declining real estate values.

(2) In addition, the FDIC will also consider relevant information from institutions regarding their geographic

**12 CFR Ch. III (1-1-23 Edition)**

market area, as well as information on whether that market is "economically depressed".

[55 FR 11161, Mar. 27, 1990, as amended at 63 FR 10295, Mar. 3, 1998; 71 FR 20527, Apr. 21, 2006]

**PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS**

Sec.

359.0 Scope.

359.1 Definitions.

359.2 Golden parachute payments prohibited.

359.3 Prohibited indemnification payments.

359.4 Permissible golden parachute payments.

359.5 Permissible indemnification payments.

359.6 Filing instructions.

359.7 Applicability in the event of receivership.

AUTHORITY: 12 U.S.C. 1828(k).

SOURCE: 61 FR 5930, Feb. 15, 1996, unless otherwise noted.

**§ 359.0 Scope.**

(a) This part limits and/or prohibits, in certain circumstances, the ability of insured depository institutions, their subsidiaries and affiliated depository institution holding companies to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties (IAPs).

(b) The limitations on golden parachute payments apply to troubled insured depository institutions which seek to enter into contracts to pay or to make golden parachute payments to their IAPs. The limitations also apply to depository institution holding companies which are troubled and seek to enter into contracts to pay or to make golden parachute payments to their IAPs as well as healthy holding companies which seek to enter into contracts to pay or to make golden parachute payments to IAPs of a troubled insured depository institution subsidiary. A "golden parachute payment" is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the insured depository institution making the payment is troubled or, if the payment is being