

## FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 337, 341, 346, 348, and 359

RIN 3064-AC02

### Applications, Requests, Submittals, Delegations of Authority, and Notices Required To Be Filed by Statute or Regulation; Unsafe and Unsound Banking Practices; Registration of Transfer Agents; Foreign Banks; Management Official Interlocks; Golden Parachute and Indemnification Payments

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed rule.

**SUMMARY:** The FDIC is proposing to amend its regulations governing application, notice and request procedures and delegations of authority by streamlining, modernizing and clarifying current policies and practices. Specifically, the FDIC proposes to offer qualifying well-capitalized and well-managed insured depository institutions and their holding companies expedited review procedures for several major types of filings, including deposit insurance, merger and branch applications. The agency also proposes to centralize substantially all filing procedures found throughout its rules within the regulation for ease of reference. Furthermore, the FDIC proposes to reorganize the requirements for each major application or notice type into a separate regulatory subpart that will contain all information necessary to submit a filing to the agency, as well as any relevant internal agency delegations of authority to approve or deny submissions. In addition, the agency is incorporating statutory changes to its application procedures made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Finally, the FDIC is proposing technical amendments to related regulations to conform these changes.

This action is being taken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 which requires the federal banking agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The proposal seeks to reduce burden on insured depository institutions by imposing regulatory requirements only

where needed to address safety and soundness concerns or accomplish other statutory responsibilities of the FDIC. The proposed rule also strives to more closely align the FDIC's application processing regulations with those of the other federal banking agencies.

**DATES:** Comments must be received by January 7, 1998.

**ADDRESSES:** Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number (202) 898-3838; Internet address: comments@fdic.gov).

Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

#### FOR FURTHER INFORMATION CONTACT:

*Division of Supervision:* Cary H. Hiner, Associate Director, (202) 898-6814; Jesse G. Snyder, Assistant Director, (202) 898-6915; Mark S. Schmidt, Assistant Director, (202) 898-6918. *Division of Compliance and Consumer Affairs:* Steven D. Fritts, Associate Director, (202) 942-3454, and Louise N. Kotoshirodo, Review Examiner, (202) 942-3599. *Legal Division:* Susan van den Toorn, Counsel, Regulation and Legislation Section, (202) 898-8707, and Nancy Schucker Recchia, Counsel, Regulation and Legislation Section, (202) 898-8885. *For administrative enforcement issues:* Grovetta N. Gardineer, Counsel, Compliance and Enforcement Section, (202) 736-0665, and Philip P. Houle, Counsel, Compliance and Enforcement Section, (202) 736-0758. *For foreign bank activities (Subpart J):* Jamey G. Basham, Counsel, Regulation and Legislation Section, Legal Division (202) 898-7265, and Christie A. Sciacca, Assistant Director, Division of Supervision (202) 898-3671, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Part 303 of the FDIC's regulations (12 CFR part 303) generally describes the procedures to be followed by both the FDIC and applicants with respect to applications, notices, or requests required to be filed by statute or regulation. Additional information concerning processing is contained in related FDIC statements of policy. Part

303 also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel of the Legal Division, the Executive Secretary, and, in some cases, their designees to act on certain applications, notices, requests, and enforcement matters.

The FDIC is proposing comprehensive revisions to part 303 as part of a systematic review of its regulations and policy statements undertaken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) (12 U.S.C. 4803(a)). Section 303(a) of CDRIA requires the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision (federal banking agencies) to streamline and modify their regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The statute also requires each of the federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from their regulations and written policies.

To initiate its CDRIA review, the FDIC published in the **Federal Register** a notice soliciting comment on its regulations and written policies. 60 FR 62345, December 6, 1995. In response to that request, the FDIC received four comments regarding part 303 and one comment concerning a related policy statement.

One commenter wrote that electronic filing of various reports and documents has the potential to reduce burden arising from compliance with filing requirements. In particular, the commenter noted that other governmental agencies already have recognized the benefits of electronic filing and that certain application procedures, such as applications to establish or relocate an office and applications relating to mergers are well-suited for electronic filing. The FDIC is working the other federal banking agencies in an attempt to adopt uniform filing forms for common applications and to have such forms filed electronically where possible.

Another commenter suggested that with regard to applications by insured state nonmember banks to establish a branch, move its main office, or relocate a branch pursuant to § 303.2(c), the regulations should reduce the regulatory burden of setting up shared automated teller machines (ATMs). Applications are no longer required for ATMs and

remote service units (RSUs) as a result of section 2205 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) (Pub. L. 104-208, 110 Stat. 3009), which excluded ATMs and RSUs from the definition of a "domestic branch" under section 3(o) of the FDI Act (12 U.S.C. 1831(o)). Therefore, the definition of "branch" in proposed § 303.41 excludes ATMs and RSUs.

With regard to section 32 notices (change in director or senior executive officer), a commenter suggested that exceptions be carved out for two of the three statutory triggering events. Section 32 of the Federal Deposit Insurance Act (FDI Act) required prior notice from a depository institution or holding company that (1) was chartered less than two years; (2) had undergone a change in control within the preceding two years; or (3) was not in compliance with minimum capital requirements or was otherwise in "troubled condition." Section 2209 of EGRPRA subsequently amended section 32 by eliminating the prior notice requirement for institutions and holding companies that are chartered for less than two years or that have undergone a change in control within the preceding two years. However, institutions and holding companies that are not in compliance with minimum capital requirements or are otherwise in "troubled condition" remain subject to the prior notice requirement. As a result, this comment has been rendered moot.

One commenter questioned why current § 303.2(a)(4) includes a requirement that an application by an insured state nonmember bank to establish a branch, move its main office or relocate a branch contain a statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including evidence that clearance has been obtained from the State Historic Preservation Officer (SHPO). As a federal agency, the FDIC is subject to the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*) which creates a mandatory review and consultation process for Federal undertakings that may affect properties included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. In order to comply with NHPA, the FDIC currently requests applicants to state whether the site is included in, or eligible for inclusion in the National Register and to provide evidence that clearance has been obtained from the SHPO. See 12 CFR § 303.2(a)(4). However, the proposed filing procedures at § 303.42(b)(5) modify the

current requirements to provide that applicants submit a statement that clearance has been or will be obtained from the SHPO. In addition, the FDIC is undertaking a review of its statement of policy on the National Historic Preservation Act of 1966 as part of the CDRIA review process and is exploring the possibility of entering into a programmatic agreement with the Advisory Council on Historic Preservation which would greatly streamline the historic preservation review process, especially for those applications which do not involve a historic site. The FDIC expects to issue a revised statement of policy on NHPA in 1998.

Finally, the comment received on the FDIC's written policies concerned the statement of policy on Applications for Deposit Insurance. Discussion of the comment is contained in the revised statement of policy on Applications for Deposit Insurance published elsewhere in today's **Federal Register**.

The proposed revisions to part 303 seek to reduce regulatory burden on insured depository institutions, particularly upon state nonmember banks supervised by the FDIC. The proposed rule also strives to more closely align the FDIC's application processing regulations with those of the other federal banking agencies. Furthermore, the proposal reflects changes to the FDIC's application procedures made by EGRPRA.

## II. Discussion

The proposed regulation meets the goals of section 303(a) of CDRIA in several important ways.

- New expedited processing procedures have been introduced for six application types which represent the majority of all filings (applications for deposit insurance, mergers, branches, consent to exercise trust powers, retirement of capital, and certain foreign banking activities).

During the first six months of 1997, the FDIC acted on 1615 applications, notices and requests. Approximately 1500 or 93 percent of these filings were of the type for which expedited processing or notice procedures would be available under this proposal. Under present regulations, only 130 of the filings acted upon during the first six months of 1997 actually took the form of notices with clear time frames for regulatory action. In addition to reducing processing time for filings submitted by well managed and well capitalized banks, the proposed expedited procedures will add more certainty to the timing of regulatory decision. This new approach will allow

the FDIC to focus its resources on applications that do not fall within the new expedited review procedure and are therefore more likely to present safety and soundness risks or raise CRA or compliance concerns.

- The processing of some applications has been structured to act like notices. For example, applications to establish a branch or to relocate a main office or branch processed under expedited procedures will generally be deemed approved 21 days after receipt of a substantially complete application. Branch related applications represented more than 50 percent of all applications acted upon by the FDIC in the first six months of 1997.

- Regulations and guidelines issued by the federal banking agencies implementing common statutes have been made more uniform. This is particularly true for filings regarding mergers, changes in bank control, and changes in director or senior executive officer.

- Filing contents have been clarified and streamlined wherever practical. Examples include applications for a merger which qualifies as a corporate reorganization, a temporary office in an emergency or disaster situation, applications for deposit insurance for an interim institution in connection with a related merger transaction, and applications for continuation for deposit insurance by a state bank withdrawing from the Federal Reserve System.

- The procedural requirements for virtually all applications and notices have been centralized in part 303. Subpart A of the proposed regulation contains the general rules applicable to all filings. Each subpart that follows contains all of the procedural requirements for a particular application type. For example, subpart C on branching contains definitions applicable to that subpart, filing procedures, processing procedures, public notice provisions and delegations of authority. Subpart M contains miscellaneous filings that do not merit separate subparts. Subpart N contains all administrative enforcement action delegations.

- Delegations of authority from the FDIC's Board of Directors to the Directors of DOS, DCA, the General Counsel of the Legal Division, and the Executive Secretary to act on certain applications, notices, requests, and enforcement matters have been reviewed and updated.

- Duplicative and outdated material has been deleted from existing part 303. An example is eliminating application procedures for the establishment or relocation of a remote service facility,

which is no longer required pursuant to section 2205 of EGRPRA.

Concurrently with this proposal to amend part 303, the FDIC is publishing elsewhere in today's **Federal Register** two revised statements of policy on Applications for Deposit Insurance and Bank Merger Transactions for comment. The FDIC is also proposing elsewhere in today's **Federal Register** to rescind its statements of policy on Applications to Establish a Domestic Branch and Applications to Relocate Main Office or Branch, and to amend its statement of policy on Liability of Commonly Controlled Depository Institutions. The latter policy statement is being amended to move the application procedures to request a waiver of cross-guaranty liability from the policy statement to proposed part 303. It is recommended that interested parties read those policy statements in conjunction with the proposed regulatory text of part 303 and submit combined comments to the agency, if practicable.

In addition, the FDIC has already rescinded the following policy statements related to part 303 as unnecessary or duplicative:

- Changes in Control in Insured State Nonmember Banks (62 FR 24927, May 7, 1997)
- Applications, Legal Fees, and Other Expenses (62 FR 15479, April 1, 1997)
- Eligibility to Make Application to Become an Insured Bank Under Section 5 of the Federal Deposit Insurance Act (62 FR 15706, April 2, 1997)

The FDIC rescinded the first two statements of policy because any necessary substantive information contained in them has been moved to the proposed regulation or other policy statements. The third statement of policy was rescinded because the analysis was based on a provision of the FDI Act that was repealed by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236).

### III. Proposed Rule

The discussion below identifies and explains significant proposed changes to part 303. The FDIC requests general comments on all aspects of the proposed regulation as well as specific comments on certain issues as noted throughout the preamble. To aid the reader, a derivation table follows the preamble which relates the sections of proposed part 303 to current part 303, as well as other sections of the FDIC regulations which are being relocated to part 303.

#### A. Subpart A—Rules of General Applicability

Subpart A of part 303 clarifies and simplifies the rules generally applicable to processing of applications, notices and requests (filings) required by regulation or statute by reorganizing the definitions and general rules of procedure currently found in § 303.0 and § 303.6, respectively, into one subpart. Subpart A also explains the availability of expedited processing for an "eligible depository institution" (defined in proposed § 303.2(r)) and the criteria under which the FDIC may remove a filing from expedited processing. Further, subpart A contains general principles governing delegations of authority from the Board of Directors to certain FDIC officials, most of which are currently contained in § 303.10(a) and § 303.11 (a) and (b).

The availability of expedited procedures for several major types of filings (deposit insurance, branches, and mergers) as well as some other filings (for example, consent to exercise trust powers and reduce/retire capital stock or capital debt instruments) will reduce burden upon the banking industry by enabling banks and thrifts to undertake corporate activities more quickly. Expedited processing will also introduce more certainty into the application process for both applicants and interested parties by establishing fixed timeframes for decision and receipt of comment letters. Furthermore, centralizing in one subpart general information that was previously scattered throughout part 303 will make part 303 much easier to use for the public, bankers, attorneys and regulators.

In addition to reorganizing existing regulatory text into one subpart, subpart A also updates terminology, streamlines procedures, and reflects current FDIC policies and practices.

**Definitions.** Subpart A alphabetizes the definitions currently set forth in § 303.0 and adds several new definitions.

New definitions of "applicant" and "filing" were added for ease of drafting regulatory text and to add clarity and consistency. "Applicant" is intended to replace the terms "insured depository institution," "state nonmember bank" or "individual" where they appear throughout part 303. The scope section of each subpart will explain whether particular filing procedures are applicable to all insured depository institutions or only to state nonmember banks. The term "filing" is intended to provide a convenient way to collectively refer to applications, notices, or

requests, where appropriate throughout part 303. New definitions were also added for "application" and "notice" to clarify the distinctions between those types of filings.

A definition of "insider" was added to avoid duplication in several subparts. The current definition of "protest" found in § 303.0(b)(30) has been replaced with three terms ("comment," "adverse comment," and "CRA protest") to distinguish among the types of comments that DOS and DCA may receive in connection with a pending filing. The term "deputy director" has been defined to include deputy directors of both DOS and DCA to reflect those positions. Also, a definition has been added for "General Counsel" of the FDIC. Further, the various types of Section 8 enforcement orders have been grouped under one category "Section 8 orders".

A new definition of "eligible depository institution" has been added to establish criteria that institutions must meet to qualify for expedited processing, as discussed below.

Definitions of "Associate General Counsel for Compliance and Enforcement," "regional manager," and "remote service facility" are being removed as obsolete or no longer necessary.

**Expedited processing.** Subpart A sets forth the general procedures for expedited processing, for which only an eligible depository institution qualifies. Proposed § 303.2(r) of subpart A defines the term "eligible depository institution" as a depository institution that meets the following five criteria: (1) Received an FDIC-assigned composite Uniform Financial Institutions Rating System (UFIRS) rating of 1 or 2 as a result of its most recent federal or state examination; <sup>1</sup> (2) received at least a satisfactory CRA rating from its primary federal regulator at its last examination; (3) received a compliance rating of 1 or 2 from its primary federal regulator at its last examination; (4) is well-capitalized; and (5) is not subject to any corrective or supervisory order or agreement. Although an institution must have a satisfactory or better CRA rating in order to qualify for expedited processing for any filing, the CRA performance of an institution will serve as a basis for decision only in connection with "applications for a deposit facility" as required by section 2903(2) of the Community Reinvestment Act (12 U.S.C. 2903(2)). Proposed § 303.5 sets

<sup>1</sup> An FDIC-assigned composite UFIRS rating may be based on the FDIC's own examination, or based on the review of examination reports prepared by state banking authorities or the other federal banking agencies.

forth those relevant filings for which an institution's CRA record will be taken into account (deposit insurance, mergers, and establishment or relocation of a branch or main office, including the relocation of an insured branch of a foreign bank). The FDIC believes that these five criteria for eligibility are appropriate to ensure that only well-capitalized, well-managed institutions that do not present any supervisory, compliance or CRA concerns receive expedited processing. The FDIC specifically requests comment on whether these standards for eligibility are appropriate.

It should be noted that the FDIC recently issued two proposed rules for comment which would revise and consolidate its international banking regulations (12 CFR part 347) and regulations governing the activities and investments of insured state banks and savings associations (12 CFR part 362). 62 FR 37748, July 16, 1997; 62 FR 47969, Sept. 12, 1997. These proposals also contain expedited procedures and definitions of an "eligible" type of institution which generally parallel proposed § 303.2(r) of subpart A, but add two additional criteria: (1) That the institution has been chartered and operating for at least three years; and (2) that the institution received a rating of 1 or 2 under the "management" component rating of the UFIRS at its most recent examination. The additional criteria may be appropriate in connection with the part 347 and 362 proposals to the extent that the eligibility criteria govern substantive issues beyond the question of whether an application should receive expedited processing. The FDIC will evaluate the necessity of the additional criteria in the context of parts 347 and 362 as it goes forward with those rulemakings.

Under § 303.11(c) of the proposed rule, expedited processing will be automatically given to institutions meeting the definition of an "eligible depository institution" (with a few exceptions where other conditions apply) upon determination by the appropriate regional director (DOS). Therefore, an applicant need not request expedited processing or even identify itself as an eligible institution. A filing may be removed from expedited processing pursuant to proposed § 303.11(c)(2) if: (1) For filings subject to public notice, an adverse comment is received that warrants additional investigation or review; (2) for filings subject to evaluation of CRA performance, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing

presents a significant CRA or compliance concern; (3) for any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or (4) for any filing, the appropriate regional director (DOS) determines that other good cause exists for removal. If a filing is removed from expedited processing, the applicant will be promptly informed in writing of the reason. For filings which the appropriate regional director has not been delegated authority to approve, the filing will generally be removed from expedited processing.

*Computation of time.* Previously, part 303 simply contained a cross-reference to § 308.12, which governs computation of time for purposes of the FDIC's rules of administrative procedure. The proposed rule clarifies that the FDIC uses a calendar day rule and begins computing the relevant period on the day after an event occurs (for example, the day after receipt of a filing or newspaper publication).

*Effect of CRA performance on filings.* This new section clearly states that CRA performance will be considered in connection with applications to establish a domestic branch or relocate a domestic branch or main office, merger applications, and deposit insurance applications, and clarifies that CRA applies to applications to relocate an insured branch of a foreign bank. Although this information is currently contained in part 345 (Community Reinvestment Act), the FDIC believes that an explicit statement concerning the filings covered by CRA better serves the public and the banking industry than providing a cross-reference.

*Public notice.* Current § 303.6(f)(4) reproduces a notice that institutions are required to use when publishing notice of a filing in a local newspaper. Under § 303.7(c) of the proposed rule, applicants are offered the choice of a sample notice or a list of contents which may be used to draft a notice tailored to the needs of the institution. This choice is designed to reduce burden on the banking industry by providing more flexibility.

Proposed § 303.7(b) adds a new provision requiring confirmation of publication. Promptly after publication, the applicant must mail or otherwise deliver a copy of the newspaper notice to the appropriate regional director (DOS). This is designed to avoid possible delays in processing if a defective notice is discovered.

Proposed § 303.7(d) reduces burden by providing that an applicant may

publish a single public notice for multiple transactions provided that the notice includes an explanation of how the transactions are related and states the closing date of the longest public comment period that will apply. Further, § 303.7(e) of the proposed rule states that the FDIC may accept the publication of a single joint notice containing information required by both the FDIC and another federal banking agency or state banking authority provided that the notice states that comments must be submitted to both agencies.

*Public comments.* Current § 303.6(f)(3) permits interested parties to comment upon a pending filing until the date of final disposition. Proposed § 303.9(a) provides that comments would be accepted only during a defined comment period in order to add certainty to the filing process for both the public and the applicant. Closing the comment period on a date certain eliminates the risk of final action being delayed due to a late comment or of final action being taken while a comment is in the process of being transmitted to the FDIC.

In order to provide the public with adequate time to submit meaningful comments, proposed § 303.9(b)(2) grants the appropriate regional director (DOS) three bases upon which to extend or reopen the public comment period: (1) If the applicant fails to file all required information on a timely basis to permit review by the public or makes a request for confidential treatment not granted by the FDIC that delays the public availability of that information; (2) if any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that may materially affect the application; or (3) for good cause. Good cause is currently the only basis for extension of the comment period under § 303.6(f)(3).

Further, proposed § 303.9(b)(4) clarifies that the FDIC will provide copies of all comments to the applicant and that the applicant will be given an opportunity to respond.

*Hearings and other meetings.* Proposed § 303.10 simplifies the current rules concerning hearing procedures contained in § 303.6 (h), (i), and (j) and updates those provisions to reflect current FDIC practices.

*Decisions on filings.* Proposed § 303.11 sets forth new provisions concerning multiple transactions, abandonment of filings, and nullification of decisions. With regard to multiple transactions, if all related transactions have been granted expedited processing, then the longest

expedited processing time will govern for all transactions. The proposed rule also codifies current FDIC practice concerning abandonment of filings. If an applicant does not provide additional information requested by the FDIC within the time period specified, the FDIC may notify the applicant that the filing has been deemed abandoned and processing has been discontinued. The proposal also contains three nullification provisions. The FDIC may nullify a decision on a filing if: (1) The agency becomes aware of any material misrepresentation or omission after rendering a decision; (2) the agency is not informed by the applicant of a subsequent material change in circumstances prior to rendering a decision; or (3) the decision is contrary to law, regulation, or FDIC policy, or granted due to clerical or administrative error, or a material mistake of law or fact. The FDIC believes these provisions are useful additions to part 303.

*Appeals and petitions for reconsideration.* Current § 303.6(e) contains the FDIC's procedures governing petitions for reconsideration of a denied filing. Proposed § 303.11(f) would clarify that these procedures cover only requests for reconsideration of filings that do not otherwise have appeal procedures provided by other regulation or written guidance, and that decisions to deny a hearing request are nonappealable.

As proposed, § 303.11(f)(2) provides that within 15 days of receipt of notice from the FDIC that its filing has been denied, an applicant may file a petition with the appropriate regional director containing either a resolution of the board of directors of the applicant authorizing filing, if the applicant is a corporation or other entity, or a letter signed by the individual(s) filing the petition, if the applicant is not a corporation or other entity. As under the existing rule, the filing must contain substantive information that for good cause was not previously set forth in the filing and specific reasons why the FDIC should reconsider its prior decision.

A regional director or deputy regional director (DOS or DCA) may approve, but not deny, a petition for reconsideration. However, the Director or Deputy Director (DOS or DCA) may approve or deny a petition. If the petition is granted, the filing will be reconsidered by the Board of Directors if the filing was originally denied by the Board of Directors or denied by the Director, Deputy Director, or an associate director (DOS or DCA). The Director or Deputy Director (DOS or DCA) will reconsider the filing if the filing was originally denied by a regional director or deputy

regional director. Proposed § 303.11(f) also clarifies that a decision on a petition for reconsideration by the Director or Deputy Director (DOS or DCA) is a final agency decision and is not appealable to the Board of Directors.

The FDIC specifically seeks comment on its new petition for reconsideration procedures, which are designed to provide a more objective review. It should be noted that the FDIC has separate appeal procedures regarding material supervisory determinations such as examination ratings, material disputed asset classifications, determinations regarding violations of laws and regulations, etc. which were published in the **Federal Register** on March 25, 1995. 60 FR 15923. In addition, procedures for requesting a review of assessment risk classification and for revision of computation of quarterly assessment payments are contained in part 327. Therefore, proposed § 303.11(f) applies only to filings as that term is defined in part 303.

*General delegations of authority.* Proposed § 303.12 contains the general principles governing delegations of authority from the Board of Directors to FDIC officials. Some, but not all, of these principles are currently contained in §§ 303.10(a) and 303.11 (a) and (b). This proposed section states that the Board does not delegate its authority regarding matters covered in the FDIC's regulations unless such a delegation is specifically made. However, in matters where the Board has neither specifically delegated nor retained authority, FDIC officials may take action with respect to matters which generally involve conditions or circumstances requiring prompt action to protect the interests of the FDIC and to achieve flexibility and expedition in the exercise of FDIC functions under part 303. Delegations are to be broadly construed in favor of the existence of authority in FDIC officials who act under delegated authority, and any exercise of delegated authority by an official is conclusive evidence of that official's authority. The purpose of this broad construction is to promote the efficient operation of the FDIC, to allow the public to rely on actions of FDIC officials, and to discourage frivolous challenges to the exercise of delegated authority.

*Delegations of authority to DOS and DCA officials.* Proposed § 303.13 contains delegations of authority to DOS and DCA officials to enable them to carry out the FDIC's applications function.

Where a CRA protest is filed and remains unresolved, proposed § 303.13(a) delegates authority to the

regional director or deputy regional director (DCA) to concur that approval of any filing subject to CRA is consistent with the purposes of CRA. Previously, receipt of a CRA protest caused a filing to be forwarded to Washington for review. This change in policy is expected to improve and expedite decision making by placing it closer to the source.

For purposes of determining when to commence processing of a filing, proposed § 303.13(b) delegates authority to DOS officials to determine whether a filing is substantially complete. This provision also is intended to clarify that the standard to initiate the processing period is the receipt of a substantially complete filing.

Proposed § 303.13(c) contains a delegation of authority permitting DOS officials to enter into memoranda of agreement pursuant to regulations of the Advisory Council on Historic Preservation which implement the National Historic Preservation Act (NHPA). This provision is currently found in § 303.8(g) of the FDIC's regulations and facilitates the agency's ability to comply with NHPA.

#### *B. Subpart B—Deposit Insurance*

Since passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236), all proposed depository institutions or existing noninsured depository institutions that desire federal deposit insurance have been required to apply to the FDIC. This includes all nationally chartered banks, state or federally chartered savings associations, and state chartered banks, including state member banks.

Subpart B reorganizes and clarifies the filing and processing procedures for an applicant to follow in applying for deposit insurance for a proposed or existing noninsured depository institution, for an interim depository institution (when required), and for continuation of deposit insurance for a state bank upon withdrawing from membership in the Federal Reserve System. The proposal updates the regulation to reflect current statutory requirements and current FDIC policy for processing such applications. Subpart B also sets forth the delegations of authority and criteria under which DOS may approve such applications. The proposed rule should be read in conjunction with the FDIC's revised policy statement on Applications for Deposit Insurance found elsewhere in today's **Federal Register**. Substantive changes to the regulatory text are discussed below.

*Expedited processing.* Under expedited processing, an application for deposit insurance for a proposed depository institution which will be a subsidiary of an "eligible depository institution" or an "eligible holding company" will be processed within 60 days of receipt of a substantially complete application or 20 days after publication, whichever is later. Currently, deposit insurance applications are processed within 120 days. See FDIC Financial Institutions Letter 26-96 dated May 6, 1996. An eligible depository institution is defined in proposed § 303.2(r). An eligible holding company is defined in proposed § 303.22(a) as a bank or thrift holding company which has consolidated assets of \$150 million or more; has an assigned composite rating of 2 or better; and has at least 75 percent of its consolidated depository institution assets in eligible depository institutions. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval. Public comment is invited on the definition of eligible holding company and the time frame for processing applications for deposit insurance under expedited review.

*Public notice and comment period.* Current regulations state that notice shall be published on the date the application is mailed or delivered to the regional director or not more than 30 days prior to that date. Under proposed § 303.23(a), notice would be published as close as practicable to the filing date but not more than five days before the filing date. This provides assurance that the public portion of the application file will be available for inspection during the comment period.

Currently, the notice informs the public that comments may be filed with the regional director at any time before processing of the application has been completed and that processing will not be completed earlier than the 15th day following either the date of publication or date of receipt of the application, whichever is later. Proposed § 303.23(a) would require that interested parties file comments with the regional director on or before the 15th day following the date of publication. Closing the comment period eliminates the risk of final action being delayed due to a late comment or of final action being taken while a comment is in the mail to the FDIC. The proposed 15-day comment period is considered adequate time for an interested party to provide comments. Also, the regional director may extend or reopen the comment period for good cause, such as when an interested party cannot provide comments within the 15

days for reasons beyond the party's control. Comment is invited on the adequacy of the 15 day comment period, especially in light of the ability of regional directors to extend or reopen the comment period under § 303.9(b)(2).

*Application for deposit insurance for an interim depository institution.* An interim depository institution is defined in proposed § 303.24(a) as an institution formed or organized solely to facilitate a merger transaction which will be reviewed by one of the four federal banking agencies and that the institution will not open for business. The filing will consist of a brief letter application and a copy of the related merger transaction. Also, newspaper publication requirements concerning the application for deposit insurance for an interim is being eliminated as unnecessary since public notice would be required for the merger transaction, which is considered to be the primary transaction. It is anticipated that the FDIC will consult with the federal banking agency reviewing the merger application and that final action on the deposit insurance application will be taken within 21 days after receipt of a substantially complete application. If additional review by the FDIC is warranted, the applicant will be so advised in writing.

*Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.* Procedures are being simplified. Under § 303.25 of the proposal, the applicant would file a letter application containing the information specified in the regulation, including a new requirement that the application must contain a statement by the bank's management that there are no current outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System. If such programs or agreements exist, the application must contain a statement that the bank's board of directors is willing to enter into a similar agreement with the FDIC which would become effective upon the date of withdrawal from the Federal Reserve System. The regional director would notify the applicant in writing within 15 days of the date a substantially complete application is received that deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review will be necessary. If additional review is warranted, the regional director would inform the applicant in writing of the reasons and inform the applicant that it will be notified in writing of the FDIC's final decision regarding continuation of deposit insurance. Upon further review,

the regional director may approve the continuation of deposit insurance or, if denial is deemed warranted, forward a recommendation for action by the FDIC Board of Directors.

*Other changes.* Current § 303.7(d)(1)(ii) lists a number of specific criteria that must be met before delegated authority can be exercised. The criteria relate to initial capitalization, legal fees and other expenses, projected profitability, investment in fixed assets and financial arrangements involving insiders, including stock financing arrangements. These criteria, which have been updated to reflect current policy, are discussed in the revised policy statement on Applications for Deposit Insurance which is simply cross-referenced in the proposed rule to avoid duplication.

Current § 303.7(d)(1)(iii)(A) states that authority to approve an application for deposit insurance may not be delegated to the regional director or deputy regional director where a protest under the Community Reinvestment Act (CRA) is filed. This provision is being revised to permit approval of a CRA-protested application by the regional director (DOS) or deputy regional director (DOS) where the protest has been reviewed by DCA, the regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA.

Section 303.7(d)(1)(iii)(B) of the current regulation states that the authority to approve an application may not be delegated to a regional director or deputy regional director where: (1) There is direct or indirect financing by proposed directors, officers or 5 percent or more shareholders of more than 75 percent of the purchase price of the stock subscribed by any one shareholder; (2) there is aggregate financing of stock subscriptions in excess of 50 percent of the total capital offered; or (3) warehoused or trustee stock exceeds 10 percent of initial capital funds. This provision is being eliminated because the revised policy statement contains a comprehensive discussion of financing that the FDIC believes provides adequate guidance. If proposed financing is not within the established guidelines, the regional director will forward a recommendation to the Director (DOS).

A new provision found at § 303.26(d)(2) would permit DOS to impose a condition which requires the maintenance of a leverage capital ratio of at least 8 percent throughout the first three years of operation of a depository institution while also providing an

adequate allowance for loan and lease losses. This clarifies the FDIC's long-standing position that the minimum ratio of 8 percent is to be maintained throughout the first three years of operation rather than only requiring that the ratio be at least 8 percent at the end of the third year of operation.

Under current § 303.7(d)(2)(i), authority to approve applications for deposit insurance by operating noninsured institutions is delegated to the regional director (DOS) or deputy regional director (DOS) only for those applicant institutions with total assets of less than \$250 million. There is no such restriction on the authority of the Director or Deputy Director (DOS). Accordingly, this size limitation is being eliminated from the proposed regulation.

Other minor changes are made within the subpart to facilitate reorganization and clarification to produce a more concise and user-friendly regulation.

### C. Subpart C—Establishment and Relocation of Domestic Branches and Offices

Subpart C reorganizes and clarifies the portion of part 303 that implements section 18(d) of the FDI Act which requires insured state nonmember banks to obtain the prior written consent of the FDIC in order to establish a domestic branch, relocate the main office, or relocate a branch. The most significant changes from the current regulation are provisions implementing expedited processing for eligible depository institutions, the addition of several new definitions, and the exclusion of remote service units, including automated teller machines and automated loan machines, from the definition of a branch. As proposed, applications filed by eligible depository institutions will be deemed approved 21 days after receipt of a substantially complete application, or 5 days after the expiration of the comment period, whichever is later. Additional technical requirements regarding the expedited procedure apply to interstate branch applications. The average processing time for branch applications during the first six months of 1997 was 30 days. In addition to expedited processing, the proposed subpart contains two special provisions which provide further regulatory relief. One of these provisions gives advance consent for the relocation of a branch or main office in the event of a disaster or emergency and the other provision allows the regional director to waive publication required in the case of a redesignation of a main office and existing branch.

A section has also been added to allow the regional director (DOS) to approve an application under this subpart that is the subject of an unresolved CRA protest, provided the regional director (DCA) finds that approval of the application would be consistent with the purposes of CRA and the applicant agrees in writing to any nonstandard conditions imposed regarding CRA. This provision is expected improve decision making by placing it closer to the actual decision maker and avoiding unnecessary delays. In addition, the subpart adds provisions which implement relevant portions of the FDI Act regarding the establishment of interstate branches and implements changes contained in section 2205 of EGRPRA.

Finally, as part of the systematic review of its written policies pursuant to CDRIA, the FDIC is proposing elsewhere in today's **Federal Register** to rescind its Statement of Policy of Applications to Relocate a Main Office or Branch and Statement of Policy on Applications to Establish a Domestic Branch. Both statements are considered obsolete and unnecessary in view of the comprehensive approach taken in subpart C.

*Scope.* Proposed § 303.40 limits the scope of this subpart to applications regarding the establishment of domestic branches, and the relocation of a main office or domestic branch, including provisions regarding interstate branching. Excluded from the scope of the subpart are filings for the approval of the acquisition and establishment of branches in connection with a bank merger transaction. Proposed regulations for such filings are found in subpart D. The scope of the subpart also does not include filings by insured branches of foreign banks to relocate a branch or filings by state nonmember banks to establish a foreign branch. Proposed regulations regarding foreign banks and branches are contained in subpart J.

*Interstate branching.* The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) (Pub. L. 103-328, 108 Stat. 2338) became effective on September 29, 1994, and, among other things, amended the FDI Act to establish a federal framework for interstate branching effective June 1, 1997. Among the new interstate branching authorities added by the Interstate Act are a provision regarding the retention of branches after an interstate relocation of a main office and a provision regarding interstate branching through de novo branches.

Section 102(b)(3) of the Interstate Act adds a new paragraph (3) to section

18(d) of the FDI Act that permits a state nonmember bank, after the relocation of its main office to another state, to retain branches in its former home state. Home state means the state by which a state bank is chartered. This authority is, however, subject to certain limitations. A bank relocating its main office from one state to another may retain its branches in the original state only to the extent that the bank would be authorized, as a bank chartered in the new state, to establish or acquire those branches. As of June 1, 1997, an out-of-state bank may establish branches in another state only if it is authorized to establish such branches (i) as de novo branches under section 18(d)(4)(A) of the FDI Act, (ii) as a result of an interstate merger transaction under section 44 of the FDI Act, or (iii) as a result of an emergency assisted transaction under section 13(f) or 13(k) of the FDI Act. In effect, this provision means that a state nonmember bank can relocate its main office to another state and retain its existing branches in the original state if it could, as a bank chartered in the new state, establish those branches in the original state. Therefore, if the bank were considered to be chartered in such new state and could, with such other-state charter, establish those branches in the original state by means of an interstate de novo branch transaction, an interstate merger, or an emergency assisted transaction, then it can retain those branches. Accordingly, the proposed rule includes a requirement that an applicant seeking to relocate its main office interstate indicate whether the applicant intends to retain its existing home state branches.

Section 103(b) of the Interstate Act adds a new paragraph (4) to section 18(d) of the FDI Act that permits, subject to certain requirements and conditions, interstate branching through de novo branches. Under this authority the FDIC may approve an application by a state nonmember bank to establish and operate a de novo branch in a state that is not the bank's home state and in which the bank does not currently maintain a branch. In order to grant such approval, the FDIC must: (i) Determine that the host state (the state in which the bank seeks to establish a branch) has in effect a law that applies equally to all banks and expressly permits all out-of-state banks to establish de novo branches in such state, (ii) determine that the applicant has complied with the host state's filing requirements and has submitted to the host state a copy of the application it filed with the FDIC, (iii) determine that

the applicant is adequately capitalized and will continue to be adequately capitalized and adequately managed upon consummation of the transaction, and (iv) take the applicant's CRA record into consideration. Except for item (ii) in the foregoing listing, the FDIC generally has the resources needed to make the determinations required. Accordingly, among the application procedures included in this proposed rule is the requirement that the applicant request that the host state confirm in writing to the FDIC that the applicant has complied with the host state's filing requirements and has submitted a copy of its application with the FDIC to the host state supervisor.

**Definitions.** In § 303.41 of the proposal, the FDIC has added definitions for "messenger service," "mobile," "temporary," and "seasonal branches" and, as noted above, "de novo" branches as well as definitions of "home state" and "host state". In an effort to promote uniformity and increase the use of common terms, the definitions used in this subpart are similar to those used by other federal banking agencies.

With regard to the definition of "branches," the proposed regulation at § 303.41(a) clarifies that remote service units, including automated loan machines, are not branches. The exclusion of automated teller machines and remote service units is a result of statutory changes contained in section 2205 of EGRPRA.

The definition of "messenger services" in § 303.41(a)(1) provides that branch applications will be required only for those messenger services operated by a bank or an affiliate that picks up and delivers items relating to transactions between the bank and its customer in which deposits are received, checks paid or money lent. A messenger service established and operated by a non-affiliated third party generally does not constitute a branch for purposes of this subpart. Banks contracting with third parties for such services should consult with the appropriate regional director (DOS) to determine if the messenger service constitutes a branch.

Section 303.41(a)(2) defines "mobile branch" as a branch service that does not have a permanent site and includes a vehicle that travels to various public locations and enables the applicant bank to conduct banking business with its customers. Because of the mobility inherent in such branches, they may serve regularly scheduled locations or may be open at irregular times and locations.

The definition of "temporary branch" contained in § 303.41(a)(3) clarifies that a bank may operate such a branch as a public service such as during an emergency or disaster to provide necessary banking services. A temporary branch can be approved for a period not to exceed one year. Such a time period should provide sufficient time for the applicant to restore appropriate services to the community.

The definition of "seasonal branch" in § 303.41(a)(4) provides that such a branch operate at periodically recurring intervals, such as during state fairs. This definition differs from the temporary branch in that once an application is approved for a seasonal branch, the applicant bank may return to that site on a recurring basis without the need to reapply.

"Branch relocation" is defined in § 303.41(b) as a move within the same immediate neighborhood of the existing branch that does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to another location outside its immediate neighborhood is considered the establishment of a new branch and the closing of an existing branch.

The proposed regulation at § 303.41(c) defines a "de novo branch" to mean a branch of a bank which is originally established by the bank and which does not become a branch of such bank as a result of the acquisition, conversion, merger, or consolidation of an insured depository institution or a branch of an insured depository institution.

Definitions are also proposed for "home state" and "host state" at § 303.41 (d) and (e). A home state means the state by which the bank is chartered and host state means a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

**Filing procedures.** The proposed regulation also changes various application requirements. Changes address the timing of filing, the submission of copies of the publication, the inclusion of the geographic area in which a messenger service will operate, the inclusion of the community or communities in which a mobile branch will operate, and whether the mobile branch will serve various regularly scheduled locations or be open at irregular times and locations.

As proposed in § 303.42, an applicant must submit a letter application on the date the notice required by proposed § 303.44 is published or within 5 days after the date of the last required publication. Previously, applicants could file up to 30 days subsequent to the first publication date. By filing

applications 5 days after the date of the last newspaper publication, banks are able to submit all copies of the newspaper publications required by the proposed regulation and the public will have the assurance that the application will be on file during the comment period.

Proposed § 303.42(b)(7) has been added to require applicants to submit a copy of each newspaper publication in addition to providing the date of publication and the name and address of the newspaper. In the past, applicants have been required to immediately notify the FDIC after the publication. Submitting a copy of the newspaper notice allows FDIC to verify publication and the contents of the notice.

The proposed regulation at § 303.42(b)(2) clarifies the filing procedures for messenger services and mobile branches. Since messenger services by their very nature are not serving a fixed location, the designation of a specific site for operation is not practical. Rather these types of branches will operate in defined geographic areas, such as a neighborhood, city or county. By approving such applications on a geographic area, banks will be able to operate freely without reapplying for changes to schedules. Filings relative to mobile branches however must disclose the community or communities to be served and the intention to serve defined locations on a regular schedule or to be open at varying times and locations. Knowledge of the community or communities to be served assists the FDIC in determining compliance with the applicable statutory and regulatory provisions relating to branch filings. Applicants must, however, reapply when the geographic area to be served changes.

**Processing.** Pursuant to proposed § 303.43(a), the FDIC proposes to expedite processing for eligible depository institutions. It is the FDIC's intent to reduce regulatory burden for well-run, well-managed institutions by providing expeditious approvals of routine applications to establish a branch or to relocate the main office or branch.

Pursuant to expedited processing procedures contained in proposed § 303.11(c), an application submitted by an eligible depository institution as defined in proposed § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing unless the FDIC removes the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Section 303.43(a) provides that the FDIC may remove an application from expedited processing at any time before



the approval date and will promptly notify the applicant in writing of the reason for such action. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following: (1) The 21st day after receipt of a substantially complete application by the FDIC, (2) the 5th day after expiration of the comment period described in § 303.44 of this proposal, or (3) in the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives from the host state confirmation that the applicant has both complied with the filing requirements of the host state and submitted a copy of the application with the FDIC to the host state bank supervisor.

The automatic approval date for an application under expedited procedures provides an applicant with a firm date by which its application will be approved. Under the existing regulation, the FDIC can approve applications immediately after expiration of the comment period, but applications can also be approved much later.

For applicants not eligible for expedited processing, the FDIC will provide the applicant with written notification of the final action taken with regard to the particular application as soon as a decision is rendered.

**Public notice requirements.** The proposed regulation at § 303.44 generally would amend and clarify the publication requirements relating to relocating a main office and establishing or relocating branch offices. It also provides for a specific time frame in which comments must be received.

The proposed section retains current newspaper publication requirements contained in § 303.6(f)(1)(ii) of the existing regulation, except for relocation of branches which will now require publication only in the community which the branch serves. A branch relocation can only occur in the same immediate neighborhood; hence, publication is needed in only one newspaper since it is likely that the one newspaper will cover all of the affected community. In such cases, the FDIC has deemed publication in the community in which the home office is located unnecessary. Furthermore, a single publication is consistent with the requirements of the other federal banking agencies. Section 303.44(a) continues the existing requirement that for applications to relocate a main office, publication must be made at least

once each week on the same day for two consecutive weeks.

Currently in § 303.6, individuals may comment until processing of the application is completed. In order to eliminate the uncertainty regarding the close of the comment period, it is proposed that the comment period be limited as specified in § 303.44. Proposed § 303.44 provides that comments must be received by the appropriate regional director (DOS) within 15 days of the date of the last newspaper publication. Proposed § 303.9 provides for extension or reopening of the comment period in certain situations.

**Special provisions.** Section 303.45 of the proposed regulation adds several new provisions regarding procedures for opening temporary branches in emergency or disaster situations, re-designating a main office, and providing for the expiration of approved applications.

The proposed regulation at § 303.45(a) clarifies procedures relating to establishing temporary branches in emergency or disaster situations. The current regulation on branching contains no specific guidance on this issue. The FDIC recognizes the need in limited circumstances, such as emergency or disaster situations, where there exists a clear public need to continue banking services, that applicants may not be in a position to follow the normal application procedures for relocation of a main office or branch. As a result, the proposed regulation provides that in the case of an emergency or disaster at a main office or branch which requires that an office be immediately relocated to a temporary location, the applicant notify the appropriate regional director (DOS) within 3 days of such temporary location. In such limited cases, the FDIC will accept initial notification by whatever means appropriate. The FDIC is making this limited exception to allow for the public's need to have uninterrupted access to banking services. Such prior consent to relocate the office is appropriate because it may not always be possible for a bank to comply with the normal application procedures for relocating a main office or branch in such circumstances.

The proposal further provides that within 10 days of the temporary relocation resulting from the emergency or disaster, the bank shall submit a written filing to the appropriate regional director (DOS) that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary

branch. Finally, depending on the particular circumstances, as part of the review process, the appropriate regional director (DOS) may waive public notice requirements.

Section 303.45(b) of the proposed regulation provides that in cases where an applicant desires to designate an existing branch as its main office and redesignate its main office as a branch, an application must be submitted to relocate the main office and to establish or relocate a branch, as appropriate. The appropriate regional director (DOS) may waive the public notice requirements in instances where an application presents no significant or novel policy, supervisory, CRA, compliance, or legal concern. Such waiver will be granted only within the applicant's home state.

With regard to the expiration of approvals, applications which have been approved by the FDIC to establish branches and to relocate main offices and branches currently have no expiration date. The FDIC believes that approvals should not remain in effect indefinitely because circumstances surrounding an application may change over time. Therefore, proposed § 303.45(c) provides that approval of an application expires if a branch has not commenced business or if a relocation has not been completed within 18 months of approval.

**Delegation of authority.** Section 303.46 of the proposed regulations adds a delegation for the appropriate regional director to approve interstate branches. Additionally, the proposed regulation provides for a delegation to permit approval of a CRA-protested application by the regional director (DOS) or deputy regional director (DOS) where the protest has been reviewed by DCA, and the regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding CRA.

New § 303.46(c)(8) makes clear that the Board of Directors has not delegated authority to approve a branch application by a bank which the FDIC has determined is not reasonably helping to meet the credit needs of the community served by the bank in a host state pursuant to section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a).

The proposed regulation provides that appropriate regional directors may exercise delegated authority to act on applications for establishment of temporary branches or messenger services without a favorable resolution of the statutory factors in section 6 of

the FDI Act. This delegation recognizes the limited nature of these types of branches.

The proposed regulation eliminates an obsolete delegation of authority relating to applications to establish and operate new teller's windows, drive-in facilities, or any like office, as an adjunct to the main office or branch (including offices not considered branches under state law). Applications to establish a new teller's window, drive-in facility, or any like offices are required when such a facility is a branch office. If such facilities are extensions of already approved main office and branches, no application to establish the facility is necessary.

**Other changes.** Several other changes are proposed that affect the new subpart C. These modifications involve changing the term "move a main office" to "relocate the main office," changing the term "courier service" to "messenger service," and deleting provisions relating to remote service facilities.

**Public comment.** In addition to seeking public comments on the above revisions to subpart C associated with the establishment of branches and relocation of branches and the main office, the FDIC also seeks specific public comments on the following issues.

**Comment period:** Since the FDIC is proposing in § 303.44(b) to change from a comment period that was essentially open-ended in current § 303.6 to a specific time frame (*i.e.*, 15 days), the FDIC seeks comment on whether a 30-day comment period is more appropriate than the proposed 15 days and if so, the reasons why 15 days would not be a feasible period of time within which to submit comments.

**Mobile branch applications:** The FDIC is proposing that the geographic location for a mobile branch be designated as to which community or communities are to be served. The FDIC seeks comment on whether such a designation is appropriate. The FDIC also seeks comment on whether a new application should be required if a change is made in the community or communities to be served.

#### *D. Subpart D—Mergers*

Subpart D covers transactions subject to FDIC approval under the Bank Merger Act (12 U.S.C. 1828(c)). This includes mergers, consolidations, and similar transactions involving insured depository institutions (collectively, "mergers"). This subpart gathers together from various sections of part 303 the existing provisions governing merger applications and reorganizes

them to make the regulatory requirements easier to understand. Substantive changes have been made in processing procedures to reduce regulatory burden.

The principal changes proposed in subpart D include the addition of an expedited processing procedure (proposed § 303.64(a)); the modification and centralization of various definitions applicable to merger transactions, such as replacement of the term "phantom merger" used only by the FDIC with the more commonly-used "interim merger" (proposed § 303.61(c)); and the addition of references to other statutory or regulatory provisions often applicable to merger transactions. These references, included at § 303.62(b), are to the interstate merger provisions of section 44 of the FDI Act (12 U.S.C. 1831u), applications for deposit insurance, insurance fund conversion transactions, branch closings, prompt corrective action considerations, and certification of assumption of deposit liabilities.

The most significant change from the existing merger approval regulations is the proposed expedited processing procedure. This procedure would be available for transactions to which all parties are eligible depository institutions (as defined in proposed § 303.2(r)), and immediately following which the resulting institution would be well-capitalized. Under expedited processing, which is generally applicable only to merger applications that can be approved under delegated authority, the application would be acted upon by the latest of 45 days after the FDIC receives a substantially complete application; 10 days after the last newspaper publication of the notice of the proposed merger; 5 days after the FDIC receives the Attorney General's comments on the competitive impact of the merger; or, for an interstate merger, 5 days after the FDIC confirms that the applicant has satisfactorily complied with the filing requirements of the resulting institution's host state. An application that otherwise qualifies for expedited processing may be removed from such treatment for the reasons stated in subpart A, at proposed § 303.11(c)(2).

Among the new references mentioned above, the reference to deposit insurance applications at proposed § 303.62(b)(2) clarifies that the FDIC will not require a deposit insurance application to secure insurance coverage for an institution resulting from a statutory merger between a federally-chartered interim institution and an FDIC-insured institution, even if the resulting institution will operate under the interim federal charter. However,

the FDIC will continue to require an application for deposit insurance if the entity merging with the interim federal institution is not insured and the parties wish the resulting institution to be insured.<sup>2</sup>

In addition to reorganizing and enhancing the merger application provisions to make them easier to use, the proposal reduces the procedural burden on applicants. For example, in addition to establishing an expedited processing procedure, the proposal would no longer call for copies of the charter or articles of incorporation of the resulting institution to be routinely submitted with a merger application. The proposal also simplifies the application requirements for mergers between institutions that are commonly-owned outside of a bank holding company structure by treating such transactions as "corporate reorganizations" (proposed § 303.61(b)).

Further, in order to add predictability to the procedure for receiving and reviewing public comment on proposed mergers, the proposal provides that the comment period for non-emergency transactions will end on the 35th day after the applicant's first newspaper publication of notice of the merger (proposed § 303.65(d)). This period provides additional time for interested parties to respond to the final publication which occurs approximately on the 30th day. No change is being made to the public notice requirements for transactions determined to be an emergency requiring expeditious action.

The proposal also relaxes the FDIC's current practice of requiring that the first newspaper notice of the merger not be published until after the merger application is filed with the FDIC. Under the proposal, the applicant may publish its first notice up to 5 days before filing with the FDIC (proposed § 303.65(a)(1)).

With regard to CRA considerations, the proposal would expand the existing delegation to permit approval of a CRA-protested application by the regional director (DOS) or deputy regional director (DOS) where the protest has been reviewed by DCA, the regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA (proposed § 303.66(b)(5)). This would modify the existing merger regulations, which provide that mergers

<sup>2</sup>The Board does not believe that it is consistent with the language or intent of the FDI Act to insure without FDIC approval an institution resulting from a combination of institutions that themselves have never been granted deposit insurance by the FDIC.

that are the subject of an unresolved CRA protest may be approved under delegated authority by senior supervisory officials in Washington, but may not be acted upon at the regional level.

The proposed rule eliminates consideration and favorable resolution of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) as a criteria for DOS officials to exercise delegated authority to approve a merger transaction. This provision is currently found in § 303.7(b)(7)(ii). The FDIC has found that the physical environment is unlikely to be affected by the FDIC's consideration of bank merger transactions and that, typically, the provisions of the NEPA would not be implicated. Since the FDIC is in the process of reviewing its policy statement on NEPA, the agency believes it is not advisable to include a reference to NEPA in the proposed regulatory text.

The FDIC invites comment on all aspects of the proposed revisions to the merger provisions of part 303. Comments are more specifically invited regarding the expansion of the term "corporate reorganization," elements of the expedited processing procedures as proposed for merger applications, and the inclusion of cross-references to related provisions. In addition, comment is sought on the proposal to require that comments regarding a particular merger application be filed with the FDIC no later than the 35th day after the first publication of notice of the merger.

#### *E. Subpart E—Change in Bank Control*

The FDIC proposes to reorganize, clarify, and simplify its regulation implementing the Change in Bank Control Act of 1978. The proposed changes, developed in consultation with the other federal banking agencies, attempt to harmonize the scope and procedural requirements of the FDIC's regulation with those of the other federal banking agencies and to reduce unnecessary burden.

The proposal defines the previously undefined term "acting in concert" to clarify the scope of the regulation. It also incorporates the current FDIC position that the acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank is presumed to be an acquisition of the underlying shares. Further, the proposal lengthens the period of time for notifying the FDIC from 30 to 90 days for shares acquired in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or a bona fide gift. In the case of shares

acquired in satisfaction of a debt previously contracted, the proposal adds language that reflects FDIC practice of requiring the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities to file a notice before the loan is acquired.

The proposal also would reduce regulatory burden on persons whose ownership percentage increases as the result of a redemption of voting shares by the issuing bank or the action of a third party not within the acquiring person's control. In these situations, the proposal would permit the person affected by the bank or third party action to file a notice within 90 calendar days after receiving notice of the transaction. Currently, these persons must file notice under the Change in Bank Control Act prior to the action that increases the person's percentage ownership, and, because these persons cannot control the third party action that causes the increased percentage ownership, they are often put in violation of the Change in Bank Control Act and the FDIC's Rules and Regulations.

The FDIC also proposes to provide more flexible timing for newspaper announcements of filings under the Change in Bank Control Act by permitting notificants to publish the announcement as close as practicable to filing the notice of change in control. The proposed rule removes the requirement that the notificant have confirmation that the FDIC has accepted the notice before publishing the announcement.

The FDIC also proposes to delete the provision governing notices filed in contemplation of a public tender offer which permits an acquiror to delay publication of the newspaper announcement. None of the other federal banking agencies has such a provision.

The FDIC invites comment on all of its proposed revisions to the regulation implementing the Change in Bank Control Act. In particular, the FDIC requests comment on whether the definition of "acting in concert" is appropriate, and whether there is reason to retain the public tender offer provision.

#### *F. Subpart F—Change of Director or Senior Executive Officer*

Section 32 of the FDI Act (12 U.S.C. 1831i) requires certain insured depository institutions and their depository institution holding companies to provide at least 30 days' prior notice to the appropriate federal banking agency before adding any

individual to the board of directors or employing any individual as a senior executive officer. The agency may issue a notice of disapproval prior to expiration of the 30-day period if it determines, based upon the proposed individual's competence, experience, character or integrity, that it would not be in the best interests of the depositors or the public to permit the individual to be employed by, or associated with, the institution. Section 32 permits the agency to waive the prior notice requirement, but the agency may still disapprove an individual's association with the institution within 30 days after granting such a waiver.

Until recently, section 32 required prior notice from a depository institution or holding company that was chartered less than two years; had undergone a change in control within the preceding two years; or was not in compliance with minimum capital requirements or was otherwise in "troubled condition." Section 2209 of EGRPRA amended section 32 by eliminating the prior notice requirement for institutions and holding companies that are chartered for less than two years or that have undergone a change in control within the preceding two years. However, institutions and holding companies that are not in compliance with minimum capital requirements or are otherwise in "troubled condition" remain subject to the prior notice requirement. In addition, EGRPRA provides that prior notice will be required if the agency determines, in connection with its review of a capital restoration plan required under section 38 of the FDI Act (governing prompt corrective action) or otherwise, that such prior notice is appropriate. Also, the EGRPRA amendments provide the agencies with more latitude to determine the prior notice period and allow the agencies up to 90 days to issue a notice of disapproval.

The FDIC published an interim rule implementing section 32 as applied to insured state nonmember banks on December 27, 1989 (54 FR 53040) and requested comments. The interim rule, which added a new § 303.14 to part 303 of the FDIC's regulations, remains in effect. Only seven commenters responded, and the principal issues raised concerned the definitions of "change in control" and "troubled condition." Objections to the definition of change in control have been rendered moot by the EGRPRA amendments since a change of control within the preceding two years is no longer a triggering event for a section 32 notice. Two commenters objected to the definition of "troubled condition." One objected to an insured

state nonmember bank being considered in troubled condition if it is subject to a cease-and-desist order on the grounds that not all such orders result from safety and soundness concerns and/or financial difficulties. The other commenter objected to the fact that an insured state nonmember bank can be designated in troubled condition based upon a visitation, examination, or report of condition. The proposed rule clearly indicates that only a cease and desist order or written agreement that requires action to improve financial condition of the bank triggers the designation of troubled condition. However, such designation may also be made based upon an examination or report of condition. The FDIC believes that it is appropriate to use all information it deems reliable in making such a designation.

The proposed regulation reflects the EGRPRA amendments to section 32 and reorganizes, clarifies, and simplifies notice procedures. The proposal also strives to harmonize the procedural requirements of the FDIC's regulation with those of the other federal banking agencies and to reduce any unnecessary regulatory burden.

Although the EGRPRA amendments appear to provide the agencies with authority to increase the prior notice period to 90 days, the FDIC proposes to retain the 30-day prior notice currently required by § 303.14. This established 30-day regulatory period has proven sufficient to process the majority of filings, and reflects the FDIC's time line for processing section 32 notices adopted in FDIC Financial Institutions Letter 26-96 dated May 6, 1996. However, the agency proposes to amend the regulation to allow the agency to take an additional period of up to 60 days, if necessary, to issue a notice of disapproval. It is anticipated that this additional 60-day period would be used infrequently. In all such cases, the notificant will be advised in writing prior to expiration of the 30-day prior notice period of the reason the FDIC could not take action and of the projected additional time needed.

Other than the revisions prompted by the EGRPRA amendments, there is little substantive change to the FDIC's regulation. Current § 303.14(c)(2)(ii) provides that if a new member of a bank's board of directors is elected at a shareholder's meeting, prior notice is automatically waived. However, notice must be filed with the appropriate regional director (DOS) within 48 hours after the election. Proposed § 303.103(c)(2) modifies this provision slightly to clarify that the automatic waiver applies to new board members

not proposed by management and to state that the notice must be submitted within two business days, rather than 48 hours. Section 308.12 of the FDIC's regulations, which governs computation of processing time for purposes of part 303, refers to time in increments of days and not hours. This modification results in a more liberal computation of processing time in that intervening Saturdays, Sundays and federal holidays are not counted.

The FDIC invites public comment on retention of the 30-day processing timeframe (subject to a possible 60-day extension) and the change in the automatic waiver filing period. The agency also welcomes suggestions for further reducing unnecessary burden on insured state nonmember banks when reviewing changes in officers and directors, consistent with the requirements of section 32.

#### *G. Activities and Investments of Insured State Banks*

Subpart G is reserved for filing procedures related to activities and equity investments of insured state banks which are currently contained in part 362 (12 CFR part 362). Part 362 implements section 24 of the FDI Act (12 U.S.C. 1831a), which was created by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236), and governs the circumstances in which insured state banks may engage in activities which are not permissible for national banks.

The FDIC recently issued a notice of proposed rulemaking to make comprehensive revisions to part 362. 62 FR 47969, Sept. 12, 1997. In connection with these revisions, the FDIC proposes to eliminate certain application procedures which are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. The FDIC cannot determine at this time whether its 362 proposal or this notice of proposed rulemaking to revise part 303 will be finalized first, but it is the FDIC's intent to place the part 362 application procedures relating to state bank activities in subpart G of part 303 at such time as both rules are final. In order to deal with this problem, the application procedures which implement the proposed revisions to part 362 concerning state bank activities are contained in subpart E of the 362 proposal. If the 362 proposal is finalized before this 303 proposal, insured state banks operating under the revised part 362 will look to subpart E of part 362 for application procedures until such time as part 303 is finalized, at which point the FDIC will transfer the

application procedures from subpart E of part 362 to subpart G of part 303. If the 303 proposal is finalized first, insured state banks operating under the current version of part 362 will continue to look to the current version of part 362 itself for application procedures until the revisions to part 362 are finalized, and the application procedures which are proposed as subpart E of part 362 will be finalized as subpart G of part 303. Members of the public taking an interest in the FDIC's application procedures for the activities of insured state banks under part 362 should review the part 362 proposal for the specifics of such application procedures.

#### *H. Subpart H—Filings by Savings Associations*

The FDIC is also reserving subpart H for filing procedures related to activities of insured state savings associations and subsidiaries of insured savings associations, which are currently contained in § 303.13 of part 303 (12 CFR 303.13). Section 303.13 implements sections 28 and 18(m) of the FDI Act (12 U.S.C. 1831(e) and 12 U.S.C. 1828(m)), which were both created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101-73, 103 Stat. 484). Section 303.13 governs the circumstances in which a state savings association may engage in activities which are not permissible for a federal savings association, and also requires all insured savings associations to notify the FDIC prior to establishing a subsidiary or engaging in new activities through a subsidiary.

As part of the FDIC's recently-issued notice of proposed rulemaking to revise part 362, discussed above, the FDIC has proposed to address the substantive issues covered by § 303.13 as subparts C and D of a revised part 362. The proposal harmonizes, to the extent possible given the underlying statutes, the treatment of activities of insured state banks and the activities of insured state savings associations. In connection with these revisions, the FDIC proposes to eliminate certain application procedures which are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. The FDIC cannot determine at this time whether its 362 proposal or this notice of proposed rulemaking to revise part 303 will be finalized first, but it is the FDIC's intent to place the part 362 application procedures relating to savings associations in subpart H of part 303 at such time as both rules are final. In order to deal with this problem, the application procedures which implement the proposed revisions to

part 362 concerning savings associations are contained in subpart F of the 362 proposal. If the 362 proposal is finalized before this 303 proposal, existing § 303.13 will be rescinded in connection with finalizing part 362. Savings associations operating under the revised part 362 will look to subpart F of part 362 for application procedures until such time as part 303 is finalized, at which point the FDIC will transfer the application procedures from subpart F of part 362 to subpart H of part 303. If the 303 proposal is finalized first, existing § 303.13 will be preserved without substantive change on an interim basis in connection with finalizing part 303. Savings associations operating under § 303.13 will continue to look to § 303.13 for application procedures until the revisions to part 362 are finalized. In connection with finalizing part 362, § 303.13 will be rescinded, and the application procedures which are proposed as subpart F of part 362 will be finalized as subpart H of part 303. Members of the public taking an interest in the FDIC's application procedures for the activities of insured savings associations and their subsidiaries should review the part 362 proposal for the specifics of such application procedures.

#### *I. Subpart I—Mutual-to-Stock Conversions*

The FDIC is proposing to move the notice requirements for mutually owned state-chartered savings banks that propose to convert to stock form from § 303.15 to a separate subpart I. These notice requirements were adopted in final form on January 1, 1995. The intended effect of the rules is to ensure that mutual-to-stock conversions of FDIC regulated institutions do not raise safety and soundness concerns, breaches of fiduciary duty, or other violations of law. The substantive regulation regarding mutual-to-stock conversions would remain in § 333.4 of this chapter.

The FDIC also is proposing to provide for delegated authority in its mutual-to-stock conversion regulations. Some members of the industry have commented that the FDIC takes longer than necessary to act on conversion transactions. At the present time, all conversion notices are reviewed by the FDIC Board of Directors. The FDIC has gained considerable experience in reviewing notices to convert and the Board believes it is now appropriate to delegate authority to the Director and the Deputy Director (DOS) to issue notices of intent not to object. Such a delegation would apply only when the proposed conversion is determined not

to pose a risk to the converting institution's safety and soundness, violate any law or regulation, present a breach of fiduciary duty, or raise any unique legal or policy issues. The Board believes that this delegation will allow the FDIC to act more promptly on routine notices and ease regulatory burden.

No other changes in procedures are being proposed. The public is invited to comment on any changes the FDIC could make to ease regulatory burden while ensuring that conversions do not raise supervisory concerns.

#### *J. Subpart J—Foreign Bank Activities*

Proposed subpart J addresses application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks. The FDIC is proposing to make these application requirements easier to use and more streamlined by centralizing them in subpart J. Under the FDIC's current rules, these application requirements are located in various subsections of three different regulations: 12 CFR part 303, 12 CFR part 346, and 12 CFR part 347. The FDIC also is proposing to further streamline processing for several of these application requirements.

On July 15, 1997, the FDIC published a Notice of Proposed Rulemaking (part 347 NPR) which requests public comment on an FDIC proposal to revise the FDIC's rules on the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks. 62 FR 37748. Subpart D of the part 347 NPR includes four proposed application procedures designed to work with the substantive revisions made to the FDIC's international banking regulations under the part 347 NPR.<sup>3</sup> The FDIC cannot determine at this time whether the part 347 NPR or this notice of proposed rulemaking to revise part 303 (part 303 NPR) will be finalized first. To deal with the possibility that the part 303 NPR may be finalized before the part 347 NPR is finalized, this part 303 NPR contains interim versions of the same application procedures contained in subpart D of the part 347 NPR. The interim versions proposed here are designed to work with the existing versions of the FDIC's international

<sup>3</sup>These are the procedures for: (1) Establishing, moving, or closing a foreign branch of a state nonmember bank; (2) investment by state nonmember banks in foreign organizations; (3) exemptions from the insurance requirement for a state branch of a foreign bank; and (4) approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches.

banking regulations, and are different in several respects from the application procedures contained in subpart D of the part 347 NPR. Therefore, members of the public taking an interest in the FDIC's application procedures for international banking issues should review the part 347 NPR as well as this part 303 NPR.

If this part 303 NPR is finalized first, the four interim application procedures will remain in effect only until the part 347 NPR is finalized. In connection with finalizing the part 347 NPR, the FDIC will transfer the application procedures in subpart D of the part 347 NPR to subpart J of part 303 and rescind the interim procedures. If the part 347 NPR is finalized first, the interim procedures in this part 303 NPR will never be finalized, and the FDIC will make necessary technical amendments to transfer the application procedures in subpart D of the part 347 NPR to subpart J of part 303.

This part 303 NPR also contains two application procedures which are not of an interim nature: the procedure for moving an insured branch of a foreign bank, and the procedure for mergers involving an insured branch of a foreign bank. These two procedures are not impacted by the part 347 NPR.

#### *Interim Application Procedures*

*Establishing, moving, or closing a foreign branch of a state nonmember bank.* Section 18(d)(2) of the FDI Act (12 U.S.C. 1828(d)(2)) and § 347.3 require an insured state nonmember bank to obtain the FDIC's prior written consent before establishing a branch located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands. Applications for these foreign branches are currently treated under the same process applicable for domestic branches under § 303.2. The FDIC proposes to treat foreign branches separately, since foreign branch applications are not legally required to be subjected to analysis under the CRA or factors under section 6 of the FDI Act, as is the case for domestic branches.

Under § 303.182 as proposed, the FDIC would give its general consent for an eligible depository institution (as defined by § 303.2(r)) to establish additional foreign branches in any jurisdiction in which the bank already operates a branch, or to move a branch within the jurisdiction.<sup>4</sup> Also, an

<sup>4</sup>An application to establish a foreign branch is not an "application for a deposit facility" covered by the CRA, and the FDIC will therefore only take the insured state nonmember bank's CRA rating into account for purposes of determining whether the application receives expedited processing under

eligible depository institution that operates branches in two or more foreign jurisdictions may establish additional branches conducting approved activities in additional foreign jurisdictions under expedited processing procedures permitting the eligible depository institution to establish the branch 45 days after submitting its application to the FDIC.

The FDIC is proposing these general consent and expedited processing procedures because an insured state nonmember bank meeting the requirements of the provisions ordinarily should have sufficient familiarity with the implications of foreign branching, and be of sufficiently sound overall condition, that extensive FDIC review is not required. The FDIC retains the option to suspend these procedures as to any institutions for which this is not the case. For applicants seeking to establish a branch in an additional jurisdiction, the FDIC may also remove an applicant from expedited processing for any of the grounds specified in § 303.11(c) follows: (1) If the FDIC determines the filing presents a significant supervisory concern; (2) raises a significant legal or policy issue; or (3) if the FDIC determines other good cause exists for removal. The FDIC will promptly provide the applicant with a written explanation if the FDIC decides to remove a filing from expedited processing.

General consent and expedited processing are also inapplicable in any case presenting either of two special circumstances. Since the FDIC must have access to information about a foreign branch's activities in order to effectively supervise the institution, general consent or expedited processing do not apply if the law or practice of the foreign jurisdiction would limit the FDIC's access to information for supervisory purposes. In such cases, the FDIC must have an opportunity to fully analyze the extent of the confidentiality conferred under foreign law and whether it would, in light of all the circumstances, impair the FDIC's ability to carry out its responsibilities as a bank supervisor. In addition, if the proposed foreign branch has a direct adverse impact on a site which is on the World Heritage List<sup>5</sup> or the foreign

the general consent and expedited processing procedures.

<sup>5</sup> The World Heritage List was established under the terms of The Convention Concerning the Protection of World Culture and Natural Heritage adopted in November, 1972 at a General Conference of the United Nations Education, Scientific and Cultural Organization. Current versions of the list are on the Internet at <http://www.unesco.org/whc/>

jurisdiction's equivalent of the National Register of Historic Places (National Register), the FDIC may need an opportunity to evaluate the proposal in light of section 402 of the National Historic Preservation Act Amendments of 1989 (NHPA Amendments Act) (16 U.S.C. 470a-2).

Proposed § 303.182 also requires an insured state nonmember bank which closes a foreign branch to notify the appropriate regional director (DOS) that it has done so. This notice stems from the current requirement for such notice under § 347.3. The FDIC has previously determined that Congress did not intend section 42 of the FDI Act on branch closings to apply to foreign branches. Finally, proposed § 303.182 sets out the procedures for applications which are not eligible for the general consent or expedited processing procedures.

*Acquisition of stock of foreign banks or other financial entities by an insured state nonmember bank.* Section 18(l) of the FDI Act (12 U.S.C. 1828(l)) and § 347.4 require an insured state nonmember bank to obtain the FDIC's prior written consent before acquiring an ownership interest in a foreign bank or other financial entity. The current application procedures are set out in § 303.5(d). Since the current substantive provisions governing foreign investment at § 347.4 provide only relatively general guidance about the conduct of such activities, it is not possible for the FDIC to implement general consent and expedited processing procedures on an interim basis, and proposed § 303.183 contains no substantive changes from the current procedures. However, in connection with the FDIC's revisions of the foreign investment rules in the part 347 NPR, the FDIC has proposed general consent and expedited processing procedures.

*Exemptions from the insurance requirement for a state branch of a foreign bank.* Section 346.6 requires an uninsured state branch of a foreign bank to obtain the FDIC's consent if the branch proposes to accept initial deposits of less than \$100,000 and such deposits are not otherwise exempted from the definition of retail deposit taking activity under § 346.6(a). The current application procedures are set out in § 346.6(b). These procedures need no substantive revision at this time, because the procedures were recently reviewed and amended by the FDIC as a result of amendments to the International Banking Act of 1978, Pub. L. 95-369, 92 Stat. 607 (12 U.S.C. 3101

[heritage.htm](#), or may be obtained from the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429.

*et seq.*) made by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. 103-328, 108 Stat. 2338 (Interstate Act). 61 FR 5671 (Feb. 14, 1996).

*Approval for an insured state branch of a foreign bank to conduct activities not permissible for a federal branch.* Section 346.101 requires an insured state branch of a foreign bank to obtain the FDIC's permission to conduct any type of activity which is not permissible for a federal branch of a foreign bank. The current application procedures are set out in § 346.101 itself, which was recently adopted. 59 FR 60703 (Nov. 28, 1994). Thus, proposed § 303.187 does not make any substantive changes from the current procedures on an interim basis.

#### Noninterim Application Procedures

*Moving an insured branch of a foreign bank.* Section 18(d)(1) of the FDI Act requires any insured branch of a foreign bank which wishes to move from one location to another to obtain the FDIC's prior written consent. Applications for these insured branches currently are treated under the same process applicable to domestic branches of insured state nonmember banks under § 303.2. Since the FDIC's consent to these applications is legally subject to the same statutory considerations as applications to establish or relocate a domestic branch or to relocate the main office of an insured state nonmember bank, the FDIC is proposing an application process in § 303.184 which parallels proposed subpart C. This includes expedited processing for an eligible insured branch. Subpart J contains a proposed definition of "eligible insured branch" which parallels the general § 303.2(r) definition of "eligible depository institution," with appropriate changes to take into account the different supervisory rating system and capital requirements applicable to insured branches.

*Mergers involving an insured branch of a foreign bank.* An insured branch of a foreign bank meets the definition of an insured depository institution under section 3 of the FDI Act (12 U.S.C. 1813) and is therefore subject to the Bank Merger Act. The FDIC's current rules and regulations do not include a specific application process for approvals of merger transactions involving an insured branch. In order to give insured branches conducting merger transactions which are subject to FDIC approval the benefit of the same streamlined application processing proposed for domestic institutions in subpart D, proposed § 303.185 contains appropriate cross-references to subpart

D. Section 303.185 clarifies that an eligible insured branch as defined in subpart J generally is eligible for the expedited processing available to an eligible depository institution in subpart D. Similarly, § 303.185 clarifies that a transaction in which an insured branch is merged with other branches, agencies, or subsidiaries in the United States of the same foreign bank parent is eligible for disposition under the enhanced delegations applicable to corporate reorganizations.<sup>6</sup>

Section 303.185 also incorporates a point explained in Advisory Opinion FDIC-96-12 (May 13, 1996) concerning the treatment of an insured branch under section 44 of the FDI Act (12 U.S.C. 1831u) as added by section 102 of the Interstate Act. Section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of a branch of an insured bank without the acquisition of the entire bank, but approval is possible only if the state in which the branch is located expressly permits out-of-state banks to acquire a branch of the bank without acquiring an entire bank. In contrast, section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of an entire bank if the state in which the bank is located has not adopted legislation to opt out of interstate mergers. Section 303.185 treats interstate mergers involving an insured branch under the latter approach. Express state authority permitting out-of-state banks to acquire a branch of the bank without acquiring the entire bank is required only if a foreign bank has more than one insured branch in the affected state and proposes to sell fewer than all of them to the same acquiror. If such state authority does not exist, the FDIC requires the foreign bank to sell all of its insured branches in that state to the same affiliated or unaffiliated acquiror. As is explained in Advisory Opinion FDIC-96-12, the statute and definitions used in section 44 do not provide a conclusive answer to this issue, but the FDIC's approach gives effect to all of the language and purposes of the Interstate Act.

<sup>6</sup>If the foreign bank parent itself is not primarily engaged in business in the United States, and is involved in some merger or other combination outside the United States which does not result in a corresponding merger transaction in the United States with respect to an insured branch, section 18(c)(11) provides that no approval is required, since no party to the transaction is primarily engaged in business in the United States.

#### *K. Subpart K—Prompt Corrective Action*

Section 38 of the FDI Act, which governs prompt corrective action, restricts or prohibits certain activities based on an institution's capital category, and requires an insured institution to submit a capital restoration plan when it becomes undercapitalized. On September 15, 1992, the FDIC approved a final interagency rule implementing the requirements of prompt corrective action. The final rule, which became effective December 19, 1992, amended part 325 of the agency's regulations by defining five capital categories for purposes of implementing the prompt corrective action requirements. 57 FR 44900 (Sept. 29, 1992).

In conjunction with interagency action, the FDIC on January 26, 1993, approved amendments to part 303 to implement certain application procedures relating to prompt corrective action. The application procedures outlined in § 303.5(e) relate solely to activities that are prohibited unless prior written consent is granted by the appropriate agency. In addition, a new § 303.7(f)(1)(ix) was added to part 303 which provides delegation of authority to act on applications seeking prior consent to engage in certain restricted activities which are filed pursuant to the prompt corrective action regulations. These revisions to part 303 became effective on February 12, 1993. 58 FR 8219 (Feb. 12, 1993).

Subpart K does not substantially amend current procedures. The only substantive change is that a new paragraph has been added as § 303.207. This new section is derived from section 38(i)(2)(G) of the FDI Act, and relates to paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Current § 303.5(e) contains a reference to activities listed in sections 38(i)(2) (A) through (F) of section 38, and the addition of item G completes the list of the seven activities which are prohibited for critically undercapitalized institutions unless prior FDIC approval has been granted.

As part of the reorganization of part 303, delegations previously contained in § 303.7(f)(ix) have been consolidated into subpart K and delegations previously contained in § 303.9(h), regarding directives and capital plans pursuant to section 38 of the FDI Act, have been consolidated with enforcement related delegations in subpart N. As subpart K applies only to

the application process, it does not affect the general prompt corrective action regulations adopted as a part of the interagency rulemaking process.

#### *L. Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)*

Section 19 of the FDI Act prohibits any person convicted of any crime involving dishonesty, breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for any such offense, from (i) continuing as or becoming an institution-affiliated party, (ii) owning or controlling directly or indirectly an insured depository institution, or (iii) otherwise participating in the conduct of the affairs of FDIC-insured depository institutions, without the FDIC's prior written consent.

Proposed subpart L does not substantially amend current section 19 application procedures, but rather brings together in one place information on section 19 which was previously contained in various sections of part 303. However, proposed § 303.222 has been added to clarify the FDIC's position that the prior consent of the FDIC is required before a person approved under section 19 to participate in the affairs of a particular institution may participate in the affairs of another insured institution. Delegations of authority to act upon applications filed pursuant to section 19 remains unchanged.

On July 24, 1997, the FDIC Board of Directors published for comment a proposed Statement of Policy on Section 19 which contains interpretations of the statutory language (62 FR 39840). Issues addressed in the statement of policy include what constitutes participation, who is a "person" under the statute, the meaning of "own" or "control," procedures for filing a section 19 application, and the standards for granting consent to a section 19 application. The proposed rule should be read in conjunction with the proposed policy statement for a fuller understanding of the FDIC's position on section 19.

#### **M. Subpart M—Other Filings**

This subpart contains the procedural requirements and delegations of authority for miscellaneous filings which do not warrant treatment as separate subparts. In many instances, there were no regulations or guidelines established regarding procedures or content for submitting a filing to the FDIC. In addition, it was often unclear when the filing requirements were

applicable. Under proposed subpart M, all information relating to a particular filing has been brought together in a self-contained section under a standardized format. The FDIC believes that this will simplify the filing process for prospective applicants by setting forth this information in a single location.

Under the proposal, new expedited review procedures will be offered for applications to reduce or retire capital stock or capital debt instruments and applications to exercise trust powers. Expedited processing for brokered deposit waivers has been retained yet modified to parallel the requirements for an "eligible depository institution" in proposed § 303.2(r), with the exception of the well-capitalized criteria.

Application procedures currently found in part 359 (golden parachutes and indemnification payments) are being moved to subpart M. In addition, procedures for requesting a conditional waiver of cross-guaranty liability are being moved from the FDIC's Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions to proposed subpart M. Finally, specific procedures are being added to address requests for relief from reimbursement under the Truth in Lending Act and Regulation Z.

*Reduce or retire capital stock or capital debt instruments.* Section 303.241 reorganizes, clarifies and simplifies procedures for applications to reduce or retire capital stock, notes or debentures pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)). Filing instructions are currently contained in the standard instructions for all applications for which no form of application has been prescribed (12 CFR 303.5(b)). Authority to approve or deny such applications is currently delegated at § 303.7(f)(1)(iii).

Under expedited processing, an application by an eligible depository institution (as defined in proposed § 303.2(r)) will be deemed approved 20 days after receipt by the appropriate FDIC regional director (DOS), unless the applicant is notified that the FDIC has removed the application from expedited processing. A recent increase in the number of applications to reduce or retire capital stock, notes or debt indicates to the FDIC that expedited processing will simplify and streamline the process for and be of benefit to state nonmember banks. The 20-day automatic approval period is based upon the processing time established in the FDIC's Application Processing Time Lines (FIL-26-96, May 6, 1996) and is supported by the average processing

time for approval of these types of requests during 1996.

The information requested under the proposal is the basic information that is necessary to process a request pursuant to section 18(i)(1) of the FDI Act and is included to provide guidance to prospective applicants. The filing procedures and information requested do not impose additional requirements upon applicants but simply clarify existing practice.

*Exercise of trust powers.* Currently, §§ 303.5(b) and 303.7(a)(2) contain the general application procedures for the FDIC's prior approval to exercise trust powers. Sections 333.1, 333.2 and 333.101 provide the substantive basis for requesting such applications.

The FDIC proposes to amend part 303 to create a new section relating to trust applications that would bring together all the trust application procedures as well as the related delegations of authority into one centralized location. The proposal contains two exceptions to the application requirements. The first exception allows a state nonmember bank that received authority to exercise trust powers from its chartering authorities prior to December 1, 1950 to exercise trust powers without the FDIC's consent. The second exception permits an insured depository institution to continue to conduct trust activities pursuant to authority granted by its chartering authority following a charter conversion or withdrawal from membership in the Federal Reserve System.

The proposed procedures would require applicants to complete a trust application form obtained from any FDIC regional office and provides expedited processing for eligible depository institutions as defined in proposed § 303.2(r). Under expedited processing, an eligible institution's trust application will be deemed approved 30 days after receipt by the appropriate FDIC regional director, unless the applicant is advised in writing that its filing has been removed from expedited processing. For applications not processed pursuant to the expedited processing procedures, the FDIC will provide written notification of the final action taken with regard to the filing.

*Brokered deposit waivers.* The FDIC is proposing to reorganize its regulations regarding applications to accept brokered deposits by adequately capitalized insured depository institutions. The application procedures would be placed in this subpart M and the substantive rules regarding the acceptance of brokered deposits would remain in § 337.6. Procedures would not be substantially altered.

Applicants for a brokered deposit waiver cannot meet the strict definition of an "eligible depository institution" set forth in proposed § 303.2(r), regarding institutions eligible for expedited processing. The definition in § 303.2(r) requires eligible depository institutions to be "well capitalized." Well capitalized institutions are not required to apply for a waiver prior to accepting brokered deposits. Therefore, for the purpose of determining eligibility for expedited processing for this subsection only, an adequately capitalized institution which otherwise meets the standards of § 303.2(r) will be deemed to be an eligible depository institution. Under the current regulation, any institution with a composite rating of 1 or 2 is eligible for expedited processing. The definition contained in § 303.2(r) contains additional qualifications for eligibility. The FDIC does not believe that there is a compelling reason to use a substantially different definition of eligibility for this subsection than that used for all other types of applications for which expedited procedures are available.

In moving the application procedures to part 303, the proposal would amend paragraph (c) of § 337.6 by referring the applicant to § 303.243 for filing instructions. Paragraphs (d) and (e) of § 337.6 would be deleted because the information in those paragraphs (involving filing procedures, delegations of authority, and expedited processing procedures) would appear in § 303.243.

*Golden parachutes and severance plan payments.* The FDIC is proposing to revise its regulations regarding applications to make excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. The FDIC's regulations with respect to such payments are codified at part 359. Generally, troubled depository institutions as defined in the regulations are prohibited under part 359 from making severance plan payments and golden parachute payments, unless the institution obtains the consent of its primary federal regulator and, in certain circumstances, the FDIC.

Under the proposal, the substantive rules with respect to making such payments would remain unchanged in part 359 of the FDIC's regulations. The only changes to part 359 would appear in § 359.6, which involves "Filing instructions." First, a reference to new § 303.244 of the FDIC's regulations would be added. Second, a sentence specifying the necessary elements of an



application would be deleted from § 359.6. These elements and the procedures for obtaining the consent of the FDIC would be set forth in the new § 303.244. The necessary elements would be expanded from two items to five items in § 303.244 in order to assist an applicant in preparing a complete filing. The filing procedures and information requested do not impose additional requirements upon applicants, but simply clarify existing requirements.

*Waiver of liability for commonly controlled depository institutions.* The application procedures for an insured depository institution to request a waiver of liability pursuant to section 5(e) of the FDI Act are new (12 U.S.C. 1815(e)). The FDIC Board of Directors recently approved revisions to the Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions (62 FR 15480, April 1, 1997), which provides guidance to the industry as to the manner in which the FDIC will administer the provisions of section 5(e) of the FDI Act. The statement of policy is being further revised elsewhere in today's **Federal Register** to move the procedures for requesting a conditional waiver of the cross-guaranty liability to proposed § 303.245 and to include a cross-reference to § 303.245.

*Insurance fund conversions.* The FDIC is proposing to revise its regulations regarding filings for insurance fund conversions at § 303.246. The proposed revisions would reformat the filing requirements and delete references to and procedures regarding insurance fund conversions qualifying as exceptions to the insurance fund conversion moratorium imposed in section 5(d) of the FDI Act (12 U.S.C. 1815(d)(2)(A)(ii)). Such references and procedures are no longer necessary because the insurance fund conversion moratorium expired in the last quarter of 1996 when the Savings Association Insurance Fund reached its designated reserve ratio.

*Conversion with diminution of capital.* Section 303.247 reorganizes and clarifies filing procedures pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to a state nonmember bank where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholder's meeting approving such conversion. Filing instructions are currently contained in § 303.3(c) and § 303.5(b).

The information requested of the applicant under the proposal is the basic information that is necessary to process a request pursuant to section 18(i)(2) of the FDI Act. The filing procedures and information requested do not impose additional requirements upon applicants but simply clarify existing requirements.

A delegation of authority has been added to § 303.247 to allow the Director, Deputy Director, or where confirmed in writing, an associate director, regional director or deputy regional director (DOS) to approve conversions with diminution of capital. Authority to deny is delegated only to the Director and Deputy Director (DOS). At present, there is no delegated authority.

*Continue or resume status as an insured institution following termination under section 8 of the FDI Act.* Proposed § 303.248 covers applications by depository institutions for permission to continue or resume their insured status after termination of insurance under section 8 of the FDI Act (12 U.S.C. 1818). This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of an FDIC order terminating deposit insurance. However, it does not cover any operating non-insured depository institution which was previously insured by the FDIC or any non-insured, non-operating depository institution whose charter has not been surrendered or revoked. Institutions not covered by this section would be required to file a *de novo* application for FDIC insurance. The contents of the filing under this section have been streamlined to require all relevant facts and reasons for the request and a certified copy of the resolution authorizing the request by the institution's board of directors.

*Truth in Lending Act—Requests for relief from reimbursement and reconsiderations of denials.* Proposed § 303.249 is intended to apply to requests for relief from reimbursement involving the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR 226) (Truth in Lending cases). Currently, no specific procedures or timeframes are provided for Truth in Lending cases in part 303. Requests for relief from reimbursement are addressed pursuant to the procedures in § 303.6 which apply generally to applications, and requests for reconsideration of a request for relief following denial must be filed within 15 days under § 303.6(e), which governs petitions for reconsideration. Proposed § 303.249 sets forth new procedures specifically for Truth in Lending cases and provides that applicants may file initial requests

for relief within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. Requests for reconsideration following denial will continue to be handled under the FDIC's general petition for reconsideration provision, located at proposed § 303.11(f), which requires filing within 15 days of receipt of denial.

*Modifications of conditions.* Section 303.250 reorganizes and clarifies the procedures for requests to modify a previously issued FDIC approval of a filing. The instructions for these requests are currently contained in § 303.5(b). The relevant delegation of authority to approve or to deny such filings is contained in existing § 303.7(f)(1)(iv).

The information requested of the applicant under the proposal is the basic information that is necessary to process a request of this nature. The filing procedures and information requested do not impose additional requirements upon applicants, but simply clarify existing requirements. However, a new criteria for exercise of delegated authority by DOS officials is being added requiring Legal Division consultation to modify conditions if Legal Division consultation was required in connection with the original filing.

During 1995, the FDIC approved 15 requests to modify a prior approval, with an average processing time of 11 days. During 1996, the FDIC approved 14 such requests, with an average processing time of 15 days. Given the low volume of activity and the prompt processing of those requests, the FDIC believes that the creation of special expedited procedures is not warranted.

*Extensions of time.* Section 303.251 reorganizes and clarifies the procedures for requests seeking an extension of time to fulfill a condition required in an approval issued by the FDIC, or to consummate a transaction which was the subject of an approval by the FDIC. The instructions for these requests are currently contained in § 303.5(b). The relevant delegation of authority to approve or to deny such filings is contained in existing § 303.8(a).

The information requested of the applicant under the proposal is the basic information that is necessary to process a request of this nature. The filing procedures and information requested do not impose additional requirements upon applicants, but simply clarify existing requirements.

During 1995, the FDIC approved 31 requests for an extension of time, with an average processing time of 10 days.

During 1996, the FDIC approved 31 such requests, with an average processing time of 13 days. Given the low volume of activity and the prompt processing of those requests, the FDIC believes that the creation of special expedited procedures is not warranted.

#### *N. Subpart N—Enforcement Delegations*

Subpart N makes several significant changes to the FDIC's enforcement delegations of authority, as described below.

*Section 8(a) notices of intention to terminate insured status.* Under current § 303.9(a), authority has been delegated to the Director of DOS to issue notifications to primary regulator (NPRs) under section 8(a) of the FDI Act (12 U.S.C. 1818(a)), with Legal Division concurrence. If unsafe or unsound conditions or practices and violations of law cited in an NPR are not corrected, a notice of intention to terminate insured status (NIT) may be issued.

The Director of DOS, pursuant to an agreement with the Board of Directors, has not exercised delegated authority to issue NPRs, and has brought all such cases to the Board of Directors. Currently, when the Board issues an NPR, it also authorizes the Executive Secretary, with Legal Division concurrence, to issue an NIT, after being informed by DOS that an institution has not corrected the conditions, practices and/or violations of law cited in the NPR. Proposed § 303.262 would largely codify existing FDIC practice by delegating authority to issue NITs, but would modify existing FDIC practice by allowing the Director of DOS to issue NITs with Legal Division concurrence. This would speed matters since the Executive Secretary now relies on information received from DOS prior to issuing NITs.

*Section 8(g) suspension and removal actions.* Currently, authority is delegated to the Director and Deputy Director (DOS and DCA) and, when confirmed in writing by the Director, to an associate director, to issue orders of suspension or prohibition to any institution-affiliated party who is charged in any information, indictment or complaint, or who is convicted of or enters into a pretrial diversion or similar program, regarding any criminal offense cited in or covered by section 8(g) of the FDI Act, when such institution-affiliated party consents to the suspension or prohibition. Proposed § 303.266(b) contains a new delegation to issue orders of prohibition or suspension under section 8(g), regardless of whether or not the institution-affiliated party consents to the order, if the criminal offense is one for which section 8(g)

mandates suspension or prohibition. The FDIC believes that such a delegation is appropriate since no discretion to issue this type of order is provided in the statute.

*Consent section 8(q) orders terminating insured status.* Section 8(q) of the FDI Act, 12 U.S.C. 1818(q), authorizes the issuance of consent orders terminating deposit insurance of an institution whose deposits have been assumed by another institution, whether by way of merger, consolidation, statutory assumption, or contract. Proposed § 303.268 codifies the current delegation of authority to the Executive Secretary of the FDIC to issue consent orders pursuant to section 8(q) of the Act. This authority was contained in a June 13, 1989 resolution of the Board of Directors and was not previously codified in part 303.

*Civil money penalties.* Proposed § 303.269 clarifies the FDIC's delegations of authority relating to the issuance of final orders to pay civil money penalties, whether or not a notice of charges has been issued in a case. Proposed § 303.269 also authorizes the Director (DOS) and Director (DCA) to take joint action where violations for which civil money penalties are authorized involved both safety and soundness and consumer compliance matters. The proposal further delegates the authority to levy and enforce civil money penalties for the late, inaccurate, false or misleading filing of Reports of Condition and Income, Home Mortgage Disclosure Act Reports, CRA loan data reports (see 12 CFR 345.42), and all other required reports.

*Section 5(e) assessments of commonly-controlled institutions.* Section 5(e) of the FDI Act, 12 U.S.C. 1815(e), permits the FDIC to recoup the amount of loss to the deposit insurance funds resulting from the failure of affiliated institutions or assistance provided to affiliated institutions. Proposed § 303.270 sets forth the authority to issue notices of assessment under section 5(e) of the Act, also known as cross-guaranty assessments. This authority was not previously codified in 12 CFR part 303. The addition of this provision and the delegations of authority to the Director, Deputy Director and, where confirmed in writing, to an associate director of DOS to issue notices of assessment of liability, reflect the actual practice of the Board of Directors. Additionally, proposed § 303.278(j) provides that the Board expressly retains authority on whether or not to waive cross-guaranty assessments. This provision is new and was not previously codified in part 303.

*Section 10(c) investigations.* The legal authority of the General Counsel to issue orders of investigation pursuant to section 10(c) of the FDI Act contained in proposed § 303.272(b) is being expanded to include sections 8 through 13 of the FDI Act (12 U.S.C. 1818–1823) in order to cover post-conservatorship or post-receivership investigations conducted by the FDIC in connection with the possible liability of directors, officers, and other institution-affiliated parties. The requirement of the concurrent certification of the General Counsel for certain orders of investigation issued by the Director and Deputy Director of the Division of Resolutions and Receiverships is being added to be consistent with the current requirement for orders issued in certain specified situations by the Directors and Deputy Directors of DOS and DCA.

*Acceptance of written agreements.* Proposed § 303.274 continues in effect FDIC delegations of authority on acceptance of written agreements in lieu of orders to terminate deposit insurance and to issue cease-and-desist orders under sections 8 (a) and (b) of the Act (12 U.S.C. 1818 (a) and (b)). The Director (DOS) has delegated authority to enter into written agreements relating to section 8(a) of the Act and relating to safety and soundness matters under section 8(b) of the Act, while the Director (DCA) has authority to enter into written agreements under section 8(b) of the Act relating to consumer compliance matters. Proposed § 303.274(c) adds a new provision not previously codified in part 303, giving authority to the Director and Deputy Director (DOS) and (DCA) and, where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director to enter into written agreements with insured institutions and institution-affiliated parties that contain conditions that must exist before the FDIC may issue a statement of non-objection to a filing under part 303.

*Termination of pending actions—general.* Proposed § 303.275 adds a new paragraph (h) which clarifies the time frames in which pending enforcement actions may be terminated or dismissed pursuant to delegated authority. The section provides that any pending enforcement action may be terminated or dismissed by the Director or Deputy Director of DOS or DCA, as appropriate, before the commencement of a hearing on the merits by an administrative law judge. Once a hearing on the merits has begun, the pending action may be dismissed or terminated by stipulation or consent of the affected parties no

later than 14 days after the administrative law judge has closed the record of the hearing. After this time, only the FDIC Board of Directors may terminate or dismiss an enforcement action. This provision was not previously codified in part 303.

*Standards governing modification and termination of section 8(e) prohibition orders.* The delegation of authority to the Director and Deputy Director (DOS) and (DCA), as appropriate and if confirmed in writing, to the associate director to modify and terminate orders of removal or prohibition under section 8(e) of the FDI Act (12 U.S.C. 1818(e)) may be found in proposed § 303.276(e). Proposed § 303.276(e) adds the standards articulated by the Board in FDIC enforcement decisions under which a removal or prohibition order may be modified or terminated. Those standards are as follows: (1) The respondent has demonstrated his/her fitness to participate in any manner in the conduct of the affairs of an insured depository institution, (2) the respondent has shown that his/her participation would not pose a risk to the institution's safety and soundness, and (3) the respondent has proven that his/her participation would not erode public confidence in the institution. Proposed § 303.276(e) also delegates authority to grant consent pursuant to section 8(e)(7)(B) of the Act for the modification of termination of outstanding section 8(e) orders issued by another federal financial regulator. These provisions are new and were not previously codified in part 303.

*Enforcement authority vested in General Counsel.* Proposed subpart N would vest authority in the General Counsel or, where confirmed in writing by the General Counsel, his or her designee, to provide Legal Division concurrence regarding all enforcement actions. This change reflects the General Counsel's position as the head of the Legal Division with ultimate prosecutorial authority over all enforcement actions.

#### IV. Other Regulatory Changes

##### A. Part 337 (Unsafe and Unsound Banking Practices)

The FDIC is proposing to amend § 337.6, which governs the acceptance of brokered deposits by insured depository institutions. A well capitalized insured depository institution may accept brokered deposits without restriction by § 337.6 while an undercapitalized institution may not accept brokered deposits under any circumstances. In the case of an

adequately capitalized insured depository institution, a brokered deposit can be accepted but only if the institution has obtained a waiver from the FDIC. Under the proposal, the procedures for obtaining a waiver would be moved from § 337.6 to 12 CFR part 303. An institution seeking a waiver would be referred by § 337.6(c) to § 303.243. Paragraphs (d) and (e) of § 337.6 would be deleted because the information in those paragraphs (involving filing procedures, delegations of authority and expedited processing procedures) would appear in § 303.243. Paragraph (f) would be deleted because the 60-day transition rule prescribed by that paragraph (for the period beginning on June 16, 1992) is obsolete.

Additionally, § 337.6 would be amended to reflect certain changes in the statutory definition of "deposit broker." Prior to these changes, the term "deposit broker" included "any insured depository institution" that solicits deposits by offering interest rates that significantly exceed the prevailing rates offered by other insured depository institutions in the same market area "having the same type of charter." Through the Riegle Community Development and Regulatory Improvement Act of 1994 (see Pub. L. 103-325, 108 Stat. 2160, Sec. 337), Congress made two changes to this statutory definition. First, Congress changed "any insured depository institution" to "any insured depository institution that is not well capitalized." The effect of this change was to relieve well capitalized institutions of the burden of reporting deposits with high interest rates as brokered deposits. Second, Congress removed the phrase, "having the same type of charter." The effect of this change was to require a comparison between the interest rates of all insured depository institutions within a market area (as opposed to insured depository institutions with a particular type of charter). See 12 U.S.C. 1831f(g)(3). Under the proposal, the amended statutory language would be incorporated in the FDIC's regulatory definition of "deposit broker" at § 337.6(a)(5)(iii).

##### B. Part 346 (Foreign Banks)

The FDIC is proposing to move current § 303.8(f) from part 303 to part 346, without substantive change. Section 303.8(f) contains delegations for the Division of Supervision to accept the pledge agreements by which insured branches of foreign banks pledge assets for the benefit of the FDIC, to be used in the event the FDIC becomes obligated to pay the insured deposits of the insured branch. Section 303.8(f) also

authorizes the General Counsel or designee to alter the model deposit agreement used. The FDIC is proposing to move the delegation to part 346 for ease of reference, in order to locate the delegation with the substantive pledge requirements to which the delegation applies. The delegation would be added as a new paragraph at the end of § 346.19 on pledge of assets.

##### C. Part 359 (Golden Parachute and Indemnification Payments)

The FDIC is proposing to amend 12 CFR part 359 by moving certain information from § 359.6 ("Filing instructions") to 12 CFR part 303. The substantive rules in part 359 would remain unchanged. These rules govern the making of excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. Generally, troubled depository institutions are prohibited under part 359 from making such payments unless the institution obtains the consent of the FDIC and/or the institution's primary federal regulator. Under the proposal, an institution seeking the consent of the FDIC would be referred by § 359.6 to § 303.244. Also, a listing of the necessary elements of an application would be moved from § 359.6 to § 303.244. These elements would be expanded in order to assist an applicant in preparing a complete filing.

#### V. Regulatory Text Deleted From Proposed Part 303

Some matters currently addressed in part 303 are not being included in the proposed revisions to part 303 because these matters will be covered elsewhere or are no longer needed. Those items are summarized below:

*Section 303.2(c)—Special procedures for remote service facilities.* Notice procedures for remote service facilities, along with related delegations of authority and the definition of "remote service facility" have been deleted because EGRPRA excludes such facilities from the definition of a branch.

*Section 303.11(c)—Request for review.* This section merely states that an aggrieved party may request the Board of Directors to review any action taken under authority delegated under §§ 303.7, 303.8, and 303.9. Numerous avenues already exist for appeal, such as those found under proposed § 303.11(f) (Appeals and petitions for reconsideration) and part 308 (Uniform Rules of Practice and Procedure). Broad authority to challenge delegations of authority seems unnecessary and is not in keeping with the Board's recent

resolution on delegations of authority which has been codified in part in proposed § 303.12 (General rules governing delegations of authority).

*Section 303.12—OMB control number assigned pursuant to the Paperwork Reduction Act.* This section is being deleted in its entirety because this same material also appears in § 304.7, Display of control numbers, of this chapter.

Several delegations of authority are also being eliminated:

*Sections 303.7(f)(1)(vii) and 303.7(f)(2)(i)—Delegations regarding the Depository Institutions Management Interlocks Act.* These delegations are being moved to part 348 (Management Official Interlocks) of this chapter.

*Section 303.8(b)—Disclosure laws and regulations.* The delegations related to part 335 (Securities of nonmember insured banks) are now contained in part 335 of this chapter. The delegations to administer part 341 (Registration of Securities Transfer Agents) are being moved to part 341 of this chapter.

*Section 303.8(c)—Security devices and procedures and bank service arrangements.* This is a delegation to administer the provisions of part 326 (Minimum Security Devices and Procedures). There are no longer any application procedures related to part 326, so therefore no delegations of authority are required.

*Section 303.8(d)—In emergencies.* This is a delegation to staff to manage the FDIC's affairs in the event an enemy attack renders the Board of Directors unable to perform its normal management functions. This delegation is being transferred to an internal Board resolution.

*Section 303.8(h)—Application or notices for membership or resumption of business.* This delegation permits DOS officials to provide comments to other federal regulators on applications or notices for membership in the Federal Reserve System, or for conversion of a state bank to a national bank. This delegation is being deleted as unnecessary since it is done as a matter of practice.

*Section 303.8(i)—Depository Institutions Disaster Relief Act of 1992 (DIDRA).* The provisions of DIDRA that were the subject of these delegations have expired.

## VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to publish an initial regulatory flexibility analysis, except to the extent provided in 5 U.S.C. 605(b), whenever the agency is required to publish a general notice of proposed rulemaking

for a proposed rule. Pursuant to subsections 603 (b) and (c) of the RFA, the FDIC provides the following initial regulatory flexibility analysis:

*Reasons why agency action is being considered.* The "Supplementary Information" section above contains this information.

*Statement of objectives of and legal basis for proposed rule.* The "Supplementary Information" section above contains this information.

*Description and estimate of the number of small entities to which the proposed rule applies.* The proposed rule applies generally to the approximately 6,300 state nonmember banks for which the FDIC is the primary federal regulator, regardless of size. As of June 26, 1997, there were 6,265 such institutions, 4,316 of which were small entities as defined by the RFA.<sup>7</sup> In addition, as indicated in the Scope paragraphs of the pertinent subparts, certain of the subparts apply to all depository institutions insured by the FDIC, regardless of size. As of June 26, 1997, there were 11,220 such institutions, 6,926 of which were small entities as defined by the RFA. Subpart B (Deposit Insurance) also applies to proposed depository institutions and operating noninsured institutions that seek to apply for FDIC deposit insurance, regardless of size. Based upon recent experience, the FDIC estimates that the proposed rule will affect a total of approximately 200 such entities per year, nearly all of which the FDIC would expect to be small entities as defined by the RFA. In limited circumstances, certain subparts apply more generally to other entities or persons, as defined by the respective subparts, making applications to the FDIC, regardless of size. Quantification of the number of such persons or small entities who will be affected by the proposed rule is not practicable. The FDIC believes that any economic impact on such small entities will be beneficial because the proposed rule serves to reduce regulatory burden. The FDIC invites the public to comment on this conclusion and will carefully review all comments received prior to issuing the final regulation.

*Projected reporting, recordkeeping and other compliance requirements of the proposed rule.* The proposed rule reorganizes, clarifies and simplifies the

rules applicable to the processing of applications, notices and requests, and updates the regulation to reflect recent statutory changes. The FDIC expects that these proposed changes will reduce industry costs associated with regulatory filings and will decrease processing time associated with such filings. For example, branch applications for eligible institutions generally will be deemed approved 21 days after filing and expedited procedures have been introduced for certain merger and deposit insurance applications. Consistent with statutory amendments, the proposed rule eliminates the need for banks that have undergone a recent change in control or have been operating less than two years to file notices to add a director or senior executive officer, thus substantially reducing the number of required filings. Reorganization of part 303 so that all information relevant to the filing and processing of each particular application type in one concise subpart also serves to lessen burden. The proposed rule also more closely aligns the procedural requirements of the FDIC's regulations with those of the other federal banking agencies, thus reducing the burden which may be associated with interpreting the rules of more than one federal banking agency.

*Identification of federal rules which may duplicate, overlap or conflict with the proposed rule.* The "Supplementary Information" section above contains this information.

*Discussion of significant alternatives to proposed rule.* The FDIC believes that the proposed rule is an alternative to the existing part 303 and provides economic benefits to small entities. The proposed rule reorganizes and consolidates the existing rule to make it easier for affected small entities to use. The reporting requirements have been clarified and simplified as a result of the FDIC's experience in administering the existing part 303. By streamlining application procedures and granting eligible depository institutions expedited processing of certain filings, the proposed rule enables small entities that qualify as eligible depository institutions to operate more efficiently. By reducing the regulatory burden associated with application procedures, the proposed rule reduces the resources small entities will have to devote to regulatory compliance. Because the majority of the filings required by the proposed rule are required by statute, elimination of the rule is not a viable alternative. The FDIC has carefully reviewed each of the existing filing and processing procedures and, where the applicable statutes provide some

<sup>7</sup>The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration. The Small Business Administration has defined a "small entity" for banking purposes as a national or commercial bank, savings institution or credit union with less than \$100 million in assets. See 13 CFR 121.201.

flexibility, the FDIC proposes to revise existing part 303 in a way it believes best serves to reduce regulatory burden and streamline processing without compromising the safety and soundness of the banking industry.

The FDIC invites the public to comment on whether the proposed rule reduces regulatory burden and to provide the FDIC with suggested alternatives to those set forth in the proposed rule. The FDIC will carefully review all comments received prior to issuing the final regulation.

### VII. Paperwork Reduction Act

The collections of information contained in this proposed rule and identified below have been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, DC 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F-4080, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Part 303." OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the FDIC on the proposed regulation.

#### *Subpart C (Establishment and Relocation of Domestic Branches and Offices)*

Section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)) provides that no state nonmember insured bank shall establish

and operate any new domestic branch or move its main office or any such branch from one location to another without the prior written consent of the FDIC after considering the factors enumerated in section 6 of the FDI Act (12 U.S.C. 1816). Subpart C of the proposed regulation sets forth the application requirements and procedures for insured state nonmember banks to establish a branch, relocate a main office, and relocate a branch subject to the approval by the FDIC. The information collected is used by the FDIC to evaluate the statutory factors and determine whether to grant consent. This collection of information has been approved by OMB under clearance number 3064-0070 through May 31, 1998. Public comment regarding this collection is being solicited because the proposed regulation would modify the OMB-approved collection by addressing the establishment and relocation of interstate branches and deleting remote service facilities from the section 18(d) application requirements.

#### Estimate of Annual Burden

*Number of applications:* 1,750.  
*Number of hours to prepare an application:* 5.  
*Total annual burden hours:* 8,750.

#### *Subpart M (Other Filings): Section 303.242 (Exercise Trust Powers)*

Section 333.2 of the FDIC's regulations (12 CFR 333.2) prohibits any insured state nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered to be a change in the general character of a bank's business if the bank did not exercise those powers previously because trust powers create a new fiduciary relationship. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. Section 303.242 of the proposed regulation sets forth the application procedures relating to the FDIC's prior approval to exercise trust powers. Each application submitted by a bank is evaluated by the FDIC to verify the qualifications of bank management to administer a trust department to ensure that the bank's financial condition will not be jeopardized as a result of trust operations. This collection of information has been approved by OMB under clearance number 3064-0025 through December 31, 1997. Public comment is being solicited because the collection is being modified to simplify and clarify the "Application for Consent

to Exercise Trust Powers" form, and to eliminate a number of items of information required under the current form. In addition, the collection is being modified so that an "eligible depository institution" as defined in § 303.2(r) of the proposal will file an abbreviated application and will receive expedited processing by the FDIC.

#### Estimate of Annual Burden

*Number of applications from "eligible depository institutions":* 31.  
*Average number of hours to prepare an application:* 8.  
*Annual burden hours:* 248.  
*Number of applications from institutions that do not qualify as "eligible depository institutions":* 5.  
*Average number of hours to prepare an application:* 24.  
*Annual burden hours:* 120.  
*Total number of applications:* 36.  
*Total annual burden hours:* 368.

#### Other Collections of Information

Proposed part 303 addresses collections of information in addition to subpart C and subpart M collections discussed above. Subpart B (Deposit Insurance) addresses a collection approved by OMB under clearance number 3064-0001 which expires on July 31, 2000. Subpart D (Mergers) addresses a collection approved by OMB under clearance number 3064-0015 which expires on September 30, 1998. The merger application collection will be the subject of an interagency solicitation of public comment concerning the PRA aspects of a single, interagency form for affiliated and nonaffiliated mergers. Subpart E (Change in Bank Control) addresses a collection approved by OMB under clearance number 3064-0019 which expires on January 31, 2000. Subpart F (Change of Director or Senior Executive Officer) addresses a collection approved by OMB under clearance number 3064-0097 which expires on January 31, 2000. Subpart G (Activities and Investments of Insured State Banks), addresses a collection approved by OMB under clearance number 3064-0111, and Subpart H (Filings by Savings Associations), addresses a collection approved under clearance number 3064-0104. Public comment about these two collections was sought in a notice of proposed rulemaking regarding 12 CFR part 362, "Activities of Insured State Banks and Insured Savings Associations." 62 FR 47969, Sept. 12, 1997.

Subpart I (Mutual-to-Stock Conversions) addresses a collection approved by OMB under clearance number 3064-0117 which expires on

July 31, 2000. Subpart J (Foreign Bank Activities) addresses two collections approved by OMB under clearance numbers 3064-0114 and 3064-0125, both of which expire on July 31, 2000. Subpart K (Prompt Corrective Action) addresses a collection approved by OMB under clearance number 3064-0115 which expires on July 31, 1999. Subpart L (Section 19) addresses a collection approved by OMB under clearance number 3064-0018 which expires on July 31, 2000. Subpart M (Other Filings) § 303.241 (Reduce or retire capital stock or capital debt instruments) addresses a collection approved by OMB under clearance number 3064-0079 which expires on

October 31, 1997. Public comment was sought about this collection on July 29, 1997 (62 FR 40525). A submission to renew 3064-0079 without change will be made to OMB in early October, 1997 at which time further comment will be solicited. Subpart M (Other Filings) § 303.243 (Brokered deposits) addresses a collection approved by OMB under clearance number 3064-0099 which expires on August 31, 1998.

The FDIC has reviewed these other collections of information and has concluded that either the proposed part 303 does not change the collection of information as approved by OMB in a way that requires that public comment be solicited or that the proposed changes have already been incorporated

into recent OMB PRA submissions. Public comment and OMB review of these collections will occur as part of the regular cycle of review under the PRA. Nonetheless, the FDIC welcomes comment about the PRA aspects of this proposed regulation or any subpart of it. Comment specifically about PRA related issues should identify the Paperwork Reduction Act and any particular subpart and/or collection for which consideration is desired.

**VIII. Derivation Table**

This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the proposed rule is based.

Proposed Provision	Original Provision	Comments
303.1	303.0(a)	Revised.
303.2	303.0(b)	No change.
(a)	303.0(b)(13)	No change.
(b)	303.0(b)(29)	No change.
(c)	303.0(b)(30)	Revised.
(d)	303.0(b)(25)	No change.
(e)		Added.
(f)		Added.
(g)	303.0(b)(12)	Revised.
(h)	303.0(b)(6)	No change.
(i)	303.0(b)(26)	No change.
(j)		Added.
(k)	303.0(b)(1)	No change.
(l)	303.0(b)(30)	Revised.
(m)		Added.
(n)	303.0(b)(8)	Revised.
(o)	303.0(b)(3)	No change.
(p)	303.0(b)(2)	No change.
(q)	303.0(b) (4), (5)	No change.
(r)		Added.
(s)		Added.
(t)		Added.
(u)		Added.
(v)	303.0(b)(14)	No change.
(w)		Added.
303.2(x)		Added.
(y)		Added.
(z)	303.0(b)(24)	No change.
(aa)	303.0(b)(17)	No change.
(bb)	303.0(b)(15)	No change.
(cc)	303.0(b)(11)	No change.
(dd)	303.0(b)(7), (9)	Revised.
(ee)(1)	303.0(b)(16)	No change.
(2)	303.0(b)(18)	No change.
(3)	303.0(b)(19)	No change.
(4)	303.0(b)(20)	No change.
(5)	303.0 b(21)	No change.
(6)	303.0 b(22)	No change.
(ff)	303.0(b)(31)	No change.
(gg)	303.0(b)(27)	Amended.
(hh)	303.0(b)(28)	Amended.
303.3	303.0(a)	Revised.
303.4	303.6(l)	Added.
303.5		Added.
303.6	303.6(b)	Revised.
303.7(a)	303.6 (a), (c)	Revised.
(b)	303.6(f)	Revised.
(c)		Added.
(d)		Added.
303.8(a)	303.6(g)(1), (2)	Revised.
(b)	303.6(g)(3)	Revised.
303.9(a)	303.6(f)(3)	Revised.

Proposed Provision	Original Provision	Comments
303.9(b)(1)		Added.
(2)	303.6(f)(4)	Revised.
(3)	303.6(f)(5)	No change.
(4)		Added.
303.10(a)		Added.
(b), (c)	303.6(h)	Revised.
(d)		Added.
(e)	303.6(i)	Revised.
(f)	303.6(i)(2)	Revised.
(g)	303.6(j)(5)	Revised.
(h)	303.6(j)(1-4)	Revised.
(i)	303.6(j)(6)	Revised.
(j)	303.6(h)(3)	Revised.
(k)	303.6(k)	Revised.
(l)	303.6(l)	Revised.
(m)	303.6(m)	Revised.
303.11(a)	303.6(d)	Revised.
(b)		Added.
(c)		Added.
(d)		Added.
(e)		Added.
(f)	303.6(e)	Revised.
(g)		Added.
303.12(a)	303.11(a)	Added.
(b)		Revised.
(c), (d)	303.10(a)	Revised.
(e), (f)	303.11(a)(1)	Revised.
(g)		Added.
303.13	303.8(g)	No change.
303.20	303.1	Revised.
303.21	303.1	Revised.
303.22		Added.
303.23(a)	303.6(f)(1)	Revised.
(b)	303.6(f)(1)(ii)	No change.
303.24		Added.
303.25		Added.
303.26(a)(1)	303.7(d)(1)	Revised.
303.26(a)(2)	303.7(f)(1)(vi)	Revised.
303.26(b)	303.7(d)(2)	Revised.
(c)	303.7(d)(3)	Revised.
(d)	303.7(b)(4)	Revised.
303.27	303.10(b)(2)	Revised.
303.40(a)	303.2	Amended
(b), (c), (d)		Added.
303.41(a)	303.2(a) (footnote 2)	Revised.
(b)	303.2(a)	No change.
(c), (d), (e)		Added.
303.42(a), (b), (c), (d)	303.2(a)	Revised.
303.43(a), (b)		Added.
303.44(a)	303.6(f)(1)	Revised.
(b)	303.6(f)(3), (4)	Revised.
(c)	303.6(f)(2)	Revised.
303.45(a), (b), (c)		Added.
303.46(a), (b), (c), (d)	303.7(a)	Revised.
303.60		Added.
303.61(a)	303.3(a), (b)	Revised.
(b)	303.7(f)(1)(v)	Revised.
(c)	303.7(f)(1)(v)	Revised.
(d)	303.3(d)	Revised.
(e)		Added.
303.62(a)	303.3	Revised.
(b)		Added.
303.63(a)	303.3(a), (e)	Revised.
(b)	303.3(a)	Revised.
(c)		Added.
(d)	303.3(d)	Revised.
303.64(a), (b)		Added.
303.65(a), (b), (c), (d)	303.6(f)(1), (3)	Revised.
303.66(a)(1)	303.7(b), (f)	Revised.
(2), (3)		Added.
(b)	303.7(b)	Revised.
(c)	303.7(b)(2), (5)	Revised.
(d)	303.7(f)(v), (vi)	Revised.
(e)	303.10(b)(i), (iii), (iv)	Revised.

Proposed Provision	Original Provision	Comments
(f) .....	303.7(b)(3) .....	Revised.
(g) .....	303.8(e) .....	Revised.
303.67 .....	303.10(b)(1) .....	Revised.
303.80 .....	.....	Added.
303.81(a) .....	303.4(a) .....	Revised.
(b) .....	.....	Added.
(c) .....	303.4(a) footnote 3 .....	No change.
(d) .....	303.4(a) footnote 4 .....	No change.
303.82(a) .....	.....	Added.
(b) .....	303.4(a) .....	Revised.
(c) .....	.....	Added.
(e), (d) .....	303.4(a) .....	Revised.
303.83(a)(1) thru (b)(1) .....	303.4(c) .....	Revised.
(b)(2), (3) .....	.....	Added.
303.84(a) .....	303.4(b)(1) .....	Revised.
(b) .....	303.4(b)(5) .....	No change.
303.85(a), (b), (c) .....	.....	Added.
303.86(a)(1), (2) .....	303.4(b)(2)(i) .....	Revised.
(a)(3) .....	.....	Added.
(a)(4), (5) .....	303.4(b)(3)(ii) .....	Revised.
(a)(6) .....	303.4(b)(6) .....	Revised.
303.87(a) .....	303.7(c) .....	Revised.
303.100 .....	.....	Added.
303.101(a) .....	.....	Added.
(b) .....	303.14(a)(3) .....	Revised.
(c) .....	303.14(a)(4) .....	Revised.
303.102(a) .....	303.14(b) .....	Revised.
(b) .....	303.14(b) .....	No change.
(c) .....	303.14(c)(2) .....	No change.
303.103(a) .....	303.14(c)(1) .....	Revised.
(b) .....	303.14(c)(4) .....	Revised.
(c) .....	303.14(c)(2) .....	Revised.
(d) .....	303.14(d) .....	Revised.
303.104 .....	303.14(e) .....	Revised.
303.160 .....	.....	Added.
303.161 .....	303.15(a) .....	Revised.
303.162 .....	303.15(a), (b) .....	Revised.
303.163(a) .....	303.15(c)(1) .....	No change.
(b) .....	303.15(c)(2) .....	No change.
(c), (d), (e), (f) .....	303.15(d) .....	No change.
303.164 .....	.....	Added.
303.180 .....	.....	Added.
303.181 .....	.....	Added.
303.182 .....	303.2 .....	Revised.
303.183 .....	303.5(d), 303.7(f)(2)(ii) .....	Revised.
303.184 .....	303.2, 303.6, 303.7 .....	Revised.
303.185 .....	.....	Added.
303.186 .....	346.6(b) .....	Revised.
303.187 .....	346.101 .....	Revised.
303.200 .....	.....	Added.
303.201 .....	303.5(e) .....	No change.
303.202 .....	303.5(e) .....	No change.
303.203 .....	303.5(e)(1) .....	No change.
303.204 .....	303.5(e)(2) .....	No change.
303.205 .....	303.5(e)(3) .....	No change.
303.206 .....	303.5(e)(4) .....	No change.
303.207 .....	303.5(e)(5) .....	Amended.
303.208 .....	303.7(f)(ix) .....	No change.
303.220 .....	.....	Added.
303.221 .....	.....	Added.
303.222 .....	.....	Added.
303.223 .....	.....	Added.
303.224(a),(b),(c),(d) .....	303.7(e) .....	Amended.
(e) .....	303.10(b)(3) .....	No change.
303.240 .....	.....	Added.
303.241(a) .....	.....	Added.
(b),(c),(d) .....	303.5(b) .....	Revised.
(e),(f),(g) .....	.....	Added.
(h) .....	303.7(f)(1)(iii) .....	No change
303.242(a) .....	.....	Added.
(b),(c),(d) .....	303.5(b) .....	Revised.
(e)(f) .....	.....	Added.
(g)(h) .....	303.7(a)(2) .....	No change
303.243(a),(b),(c) .....	337.6(d),(e) .....	No change.



Proposed Provision	Original Provision	Comments
(d),(e),(f) .....	.....	Added.
(g) .....	337.6 (c),(e) .....	No change.
(h) .....	337.6 (e), 303.7(f)(1)(viii) .....	Revised.
303.244(a), (b), (c), (d), (e) .....	359 .....	Revised.
(f) .....	303.7(g) .....	No change.
303.245 .....	.....	Added.
303.246(a),(b),(c),(d) .....	303.5(a) .....	Revised.
(e) .....	.....	Added.
(f) .....	303.7(f)(4) .....	Revised.
303.247 .....	303.3(c) .....	Revised.
303.248 .....	303.5(c) .....	Revised.
303.249 .....	.....	Added.
303.250(a),(b),(c),(d),(e) .....	.....	Added.
(f) .....	303.7(f)(14)(iv) .....	Revised.
303.251(a),(b),(c),(d),(e) .....	.....	Added.
(f) .....	303.8(a) .....	No change.
303.260 .....	.....	Added.
303.261 .....	303.9(a) .....	Revised.
303.262 .....	.....	Added.
303.263 .....	303.9(b) .....	Revised.
303.264 .....	303.9(c) .....	Revised.
303.265 .....	303.9(d) .....	Revised.
303.266 .....	303.9(e) .....	Revised.
303.267 .....	303.9(f) .....	Revised.
303.268 .....	.....	Added.
303.269 .....	303.9(g) .....	Revised.
303.270 .....	.....	Added.
303.271 .....	303.9(h) .....	Revised.
303.272 .....	303.9(i) .....	Revised.
303.273 .....	303.9(k) .....	Revised.
303.274 .....	303.9(l) .....	Revised.
303.275 .....	303.9(m) .....	Revised.
303.276 .....	303.9(n) .....	Revised.
303.277 .....	303.9(o) .....	Revised.
303.278 .....	303.10(c) .....	Revised.

**List of Subjects**

*12 CFR Part 303*

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements.

*12 CFR Part 337*

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

*12 CFR Part 341*

Banks, banking, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 346*

Bank deposit insurance, Foreign banking, Reporting and recordkeeping requirements.

*12 CFR Part 348*

Antitrust, Banks, banking, Holding companies.

*12 CFR Part 359*

Banks, banking, Golden parachute payments, Indemnity payments.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby proposes to amend 12 CFR chapter III as follows:

1. Part 303 is revised to read as follows:

**PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY**

Sec.

303.0 Scope.

**Subpart A—Rules of General Applicability**

Sec.

303.1 Scope.

303.2 Definitions.

303.3 General filing procedures.

303.4 Computation of time.

303.5 Effect of Community Reinvestment Act performance on filings.

303.6 Investigations and examinations.

303.7 Public notice requirements.

303.8 Public access to filing.

303.9 Comments.

303.10 Hearings and other meetings.

303.11 Decisions.

303.12 General rules governing delegations of authority.

303.13 Delegations of authority to officials in the Division of Supervision and the Division of Compliance and Consumer Affairs.

**Subpart B—Deposit Insurance**

303.20 Scope.

303.21 Filing procedures.

303.22 Processing.

303.23 Public notice requirements.

303.24 Application for deposit insurance for an interim institution.

303.25 Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.

303.26 Delegation of authority.

303.27 Authority retained by the FDIC Board of Directors.

**Subpart C—Establishment and Relocation of Domestic Branches and Offices**

303.40 Scope.

303.41 Definitions.

303.42 Filing procedures.

303.43 Processing.

303.44 Public notice requirements.

303.45 Special provisions.

303.46 Delegation of authority.

**Subpart D—Mergers**

303.60 Scope.

303.61 Definitions.

303.62 Transactions requiring prior approval.

303.63 Filing procedures.

303.64 Processing.

- 303.65 Public notice requirements.
- 303.66 Delegation of authority.
- 303.67 Authority retained by the FDIC Board of Directors.

#### Subpart E—Change in Bank Control

- 303.80 Scope.
- 303.81 Definitions.
- 303.82 Transactions requiring prior notice.
- 303.83 Transactions not requiring prior notice.
- 303.84 Filing procedures.
- 303.85 Processing.
- 303.86 Public notice requirements.
- 303.87 Delegation of authority.

#### Subpart F—Change of Director or Senior Executive Officer

- 303.100 Scope.
- 303.101 Definitions.
- 303.102 Filing procedures.
- 303.103 Processing and waiver of prior notice.
- 303.104 Delegation of authority.

#### Subpart G—Activities and Investments of Insured State Banks [Reserved]

#### Subpart H—Filings by Savings Associations [Reserved]

#### Subpart I—Mutual-to-Stock Conversions

- 303.160 Scope.
- 303.161 Filing procedures.
- 303.162 Content of notice.
- 303.163 Processing.
- 303.164 Delegation of authority.

#### Subpart J—Foreign Bank Activities

- 303.180 Scope.
- 303.181 Definitions.
- 303.182 Establishing, moving or closing a foreign branch of a state nonmember bank.
- 303.183 Acquisition of stock of foreign banks or other financial entities by an insured state nonmember bank.
- 303.184 Moving an insured branch of a foreign bank.
- 303.185 Mergers involving an insured branch of a foreign bank.
- 303.186 Exemptions from insurance requirement for a state branch of a foreign bank.
- 303.187 Approval of an insured state branch of a foreign bank to conduct activities not permissible for federal branches.

#### Subpart K—Prompt Corrective Action

- 303.200 Scope.
- 303.201 Filing procedures.
- 303.202 Processing.
- 303.203 Applications for capital distribution.
- 303.204 Applications for acquisitions, branching, and new lines of business.
- 303.205 Applications for bonuses and increased compensation for senior executive officers.
- 303.206 Application for payment of principal or interest on subordinated debt.
- 303.207 Restricted activities for critically undercapitalized institutions.
- 303.208 Delegation of authority.

#### Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

- 303.220 Scope.
- 303.221 Filing procedures.
- 303.222 Service at another insured depository institution.
- 303.223 Applicant's right to hearing following denial.
- 303.224 Delegation of authority.

#### Subpart M—Other Filings

- 303.240 General.
- 303.241 Reduce or retire capital stock or capital debt instruments.
- 303.242 Exercise of trust powers.
- 303.243 Brokered deposit waivers.
- 303.244 Golden parachute and severance plan payments.
- 303.245 Waiver of liability for commonly controlled depository institutions.
- 303.246 Insurance fund conversions.
- 303.247 Conversion with diminution of capital.
- 303.248 Continue or resume status as an insured institution following termination under section 8 of the FDI Act.
- 303.249 Truth in Lending Act—Relief from reimbursement.
- 303.250 Modification of conditions.
- 303.251 Extension of time.

#### Subpart N—Enforcement Delegations

- 303.260 Scope.
- 303.261 Issuance of notification to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).
- 303.262 Issuance of notice of intention to terminate insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).
- 303.263 Cease-and-desist actions under section 8(b) of the FDI Act (12 U.S.C. 1818(b)).
- 303.264 Temporary cease-and-desist orders under section 8(c) of the FDI Act (12 U.S.C. 1818(c)).
- 303.265 Removal and prohibition actions under section 8(e) of the FDI Act (12 U.S.C. 1818(e)).
- 303.266 Suspension and removal action under section 8(g) of the FDI Act (12 U.S.C. 1818(g)).
- 303.267 Termination of insured status under section 8(p) of the FDI Act (12 U.S.C. 1818(p)).
- 303.268 Termination of insured status under section 8(q) of the FDI Act (12 U.S.C. 1818(q)).
- 303.269 Civil money penalties.
- 303.270 Notices of assessment under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).
- 303.271 Prompt corrective action directives and capital plans under section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.
- 303.272 Investigations under section 10(c) of the FDI Act (12 U.S.C. 1820(c)).
- 303.273 Unilateral settlement offers.
- 303.274 Acceptance of written agreements.
- 303.275 Modifications and terminations of enforcement actions and orders.
- 303.276 Enforcement of outstanding enforcement orders.

- 303.277 Compliance plans under section 39 of the FDI Act (12 U.S.C. 1831p-1) (standards for safety and soundness) and part 308 of this chapter.
- 303.278 Enforcement matters where authority is not delegated.

**Authority:** 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1828, 1831e, 1831p-1, 1835a, 3104, 3105, 3108; 15 U.S.C. 1601–1607.

#### § 303.0 Scope.

(a) This part generally describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices required to be filed by statute or regulation. Additional details concerning processing are explained in related FDIC statements of policy. This part also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel of the Legal Division, the Executive Secretary, and, in some cases, their designees to act on certain applications, notices, requests, and enforcement matters.

(b) Additional application procedures may be found in the following FDIC regulations:

- (1) 12 CFR part 327—Assessments (Request for review of assessment risk classification);
- (2) 12 CFR part 328—Advertisement of Membership (Application for temporary waiver of advertising requirements);
- (3) 12 CFR part 345—Community Reinvestment (CRA strategic plans and requests for designation as a wholesale or limited purpose institution);
- (4) 12 CFR part 348—Management Official Interlocks (Exemption request).

#### Subpart A—Rules of General Applicability

##### § 303.1 Scope.

Subpart A prescribes the general procedures for submitting applications, notices, and requests (collectively, "filings") to the FDIC which are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing, including public notice and comment. This subpart further explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)). Finally, this subpart sets forth general principles governing delegations of authority by the FDIC's Board of Directors.

##### § 303.2 Definitions.

For purposes of this part:

(a) *Act* or *FDI Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

(b) *Adjusted part 325 total assets* means adjusted 12 CFR part 325 total assets as calculated and reflected in the FDIC's Reports of Examination.

(c) *Adverse comment* means any objection, protest, or other adverse written statement submitted by an interested party relative to a filing. The term adverse comment shall not include any comment concerning the Community Reinvestment Act (CRA), fair lending, consumer protection, or civil rights that the appropriate regional director or deputy regional director (DCA) determines to be frivolous (for example, raising issues between the commenter and the applicant that have been resolved). The term adverse comment also shall not include any other comment that the appropriate regional director or deputy regional director (DOS) determines to be frivolous (for example, a non-substantive comment submitted primarily as a means of delaying action on the filing).

(d) *Amended order to pay* means an order to forfeit and pay civil money penalties, the amount of which has been changed from that assessed in the original notice of assessment of civil money penalties.

(e) *Applicant* means a person or entity that submits a filing to the FDIC.

(f) *Application* means a submission requesting FDIC approval to engage in various corporate activities and transactions.

(g) *Appropriate FDIC region, appropriate FDIC regional office, appropriate regional director, appropriate deputy regional director, appropriate regional counsel* mean, respectively, the FDIC region, and the FDIC regional office, regional director, deputy regional director, and regional counsel, which the FDIC designates as follows:

(1) When an institution or proposed institution that is the subject of a filing or administrative action is not and will not be part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located; or

(2) When an institution or proposed institution that is the subject of a filing or administrative action is or will be part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the group's major policy and decision

makers are located, or any other region the FDIC designates on a case-by-case basis.

(h) *Associate director* means any associate director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(i) *Book capital* means total equity capital which is comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, as those items are defined in the instructions of the Federal Financial Institutions Examination Council (FFIEC) for the preparation of Consolidated Reports of Condition and Income for insured banks.

(j) *Comment* means any written statement of fact or opinion submitted by an interested party relative to a filing.

(k) *Corporation, FDIC* means the Federal Deposit Insurance Corporation.

(l) *CRA protest* means any adverse comment from the public related to a pending filing which raises a negative issue relative to the Community Reinvestment Act (CRA) (12 U.S.C. 2901 et seq.), whether or not it is labeled a protest and whether or not a hearing is requested.

(m) *Deputy Director* means the Deputy Director of the Division of Supervision (DOS) or the Deputy Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(n) *Deputy regional director* means any deputy regional director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the same FDIC region of DOS or DCA.

(o) *DCA* means the Division of Compliance and Consumer Affairs or, in the event the Division of Compliance and Consumer Affairs is reorganized, such successor division.

(p) *DOS* means the Division of Supervision or, in the event the Division of Supervision is reorganized, such successor division.

(q) *Director* means the Director of the Division of Supervision (DOS) or the Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(r) *Eligible depository institution* means a depository institution that meets the following criteria:

(1) Received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(s) *Filing* means an application, notice or request submitted to the FDIC under this part.

(t) *General Counsel* means the head of the Legal Division of the FDIC or any official within the Legal Division exercising equivalent authority for purposes of this part.

(u) *Insider* means a person who is or is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of any class of the applicant's outstanding voting stock; or the associates or interests of any such person.

(v) *Institution-affiliated party* shall have the same meaning as provided in section 3(u) of the Act (12 U.S.C. 1813(u)).

(w) *NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(x) *NHPA* means the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.).

(y) *Notice* means a submission notifying the FDIC that a depository institution intends to engage in or has commenced certain corporate activities or transactions.

(z) *Notice of assessment of civil money penalties* means a notice of assessment of civil money penalties, findings of fact and conclusions of law, and order to pay issued pursuant to sections 7(a)(1), 7(j)(15), 8(i) or 18(h) of the Act (12 U.S.C. 1817(a)(1), 1817(j)(15), 1818(i), or 1828(h)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), or any other provision of law providing for the assessment of civil money penalties by the FDIC.

(aa) *Notice of charges* means a notice of charges and of hearing setting forth the allegations of unsafe or unsound practices or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(bb) *Notice to primary regulator* means the notice described in section 8(a)(2)(A) of the Act concerning termination of deposit insurance (12 U.S.C. 1818(a)(2)(A)).

(cc) *Regional counsel* means a regional counsel of the Legal Division or, in the event the title becomes obsolete, any official of equivalent authority within the Legal Division. The authority delegated to a regional counsel may be exercised, when confirmed in writing by the regional counsel, by a deputy regional counsel, or any official of equivalent or higher authority in the Supervision and Legislation Branch of the Legal Division.

(dd) *Regional director* means any regional director in the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA), or in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(ee) *Section 8 orders:*

(1) *Section 8(a) order* means an order terminating the insured status of a depository institution under section 8(a) of the Act (12 U.S.C. 1818(a)).

(2) *Section 8(b) order, cease-and-desist order* means a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(3) *Section 8(c) order, temporary cease-and-desist order* means a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(4) *Section 8(e) order* means a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(5) *Section 8(e)(3) order, temporary order of suspension* means a temporary order of suspension or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

(6) *Section 8(g) order* means an order of suspension or order of prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(ff) *Standard conditions* means the conditions that any FDIC official acting under delegated authority may impose as a matter of routine when approving a filing, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

(1) That the applicant has obtained all necessary and final approvals from the

appropriate federal or state authority or other applicable authority;

(2) That if the transaction does not take effect within a specified time period, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the said time period;

(3) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(4) In the case of a merger transaction (as defined in § 303.61(a) of this part), including a corporate reorganization, that the proposed transaction not be consummated before the 30th calendar day (or shorter time period as may be prescribed by the FDIC with the concurrence of the Attorney General) after the date of the order approving the merger.

(gg) *Tier 1 capital* shall have the same meaning as provided in § 325.2(t) of this chapter (12 CFR 325.2(t)).

(hh) *Total assets* shall have the same meaning as provided in § 325.2(v) of this chapter (12 CFR 325.2(v)).

**§ 303.3 General filing procedures.**

Unless stated otherwise, filings should be submitted to the appropriate regional director (DOS). Forms and instructions for submitting filings may be obtained from any FDIC regional office (DOS). If no form is prescribed, the filing should be in writing; be signed by the applicant or a duly authorized agent; and contain a concise statement of the action requested. For specific filing and content requirements, consult the specific subparts of this part. The FDIC may require the applicant to submit additional information.

**§ 303.4 Computation of time.**

For purposes of this part, the FDIC begins computing the relevant period on the day after an event occurs (e.g., the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period. When the last day is a Saturday, Sunday or federal holiday, the period runs until the end of the next business day.

**§ 303.5 Effect of Community Reinvestment Act performance on filings.**

Among other factors, the FDIC takes into account the record of performance under the Community Reinvestment Act (CRA) of each applicant in considering a filing for approval of:

(a) The establishment of a domestic branch;

(b) The relocation of the bank's main office or a domestic branch;

(c) The relocation of an insured branch of a foreign bank;

(d) A transaction subject to the Bank Merger Act; and

(e) Deposit insurance.

**§ 303.6 Investigations and examinations.**

The Board of Directors, Directors of (DOS) or (DCA), their associate directors, or the appropriate regional director or appropriate deputy regional director (DOS) or (DCA) acting under delegated authority may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.

**§ 303.7 Public notice requirements.**

(a) *General.* The public must be provided with prior notice of a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger or other business combination, initiate a change of control transaction, or request deposit insurance. The public has the right to comment on, or to protest, these types of proposed transactions during the relevant comment period. In order to fully apprise the public of this right, an applicant shall publish a public notice of its filing in a newspaper of general circulation. For specific publication requirements, consult subparts B (deposit insurance), C (branches and relocations), D (mergers), E (change in bank control), and J (foreign bank activities).

(b) *Confirmation of publication.* The applicant shall mail or otherwise deliver a copy of the newspaper notice to the appropriate regional director (DOS) promptly after publication.

(c) *Content of notice.* (1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) Name and address of the applicant(s). In the case of an application for deposit insurance for a de novo bank, the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch, include the current and proposed address of the branch. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the

current and proposed address of the branch.

(ii) Type of filing being made;  
(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director (DOS);

(v) The address of the appropriate FDIC regional office (DOS) where comments may be sent (the same location as that where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart; and

(vii) That the nonconfidential portions of the application are on file in the regional office and are available for public inspection during regular business hours.

(2) Alternatively, paragraphs (b)(1) (iv) through (vii) of this section may be satisfied through use of the following notice:

Any person wishing to comment on this application may file his or her comments in writing with the regional director (DOS) of the Federal Deposit Insurance Corporation at its regional office [insert address of regional office]. If any person desires to protest the granting of this application, he or she has a right to do so if he or she files a written comment with the regional director by the [insert closing date of the public comment period specified in the appropriate subpart of part 303]. The non-confidential portions of the application are on file in the regional office and are available for public inspection during regular business hours.

(d) *Multiple transactions.* The FDIC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When publishing a single public notice for multiple transactions, the applicant shall explain in the public notice how the transactions are related and state the closing date of the longest public comment period that shall apply to all of the related transactions.

(e) *Joint public notices.* For a transaction subject to public notice requirements by the FDIC and another federal or state banking authority, the FDIC will accept publication of a single joint notice containing all the information required by both the FDIC and the other federal agency or state banking authority, provided that the notice states that comments must be submitted to both the FDIC and, if applicable, the other federal or state banking authority.

### § 303.8 Public access to filing.

(a) *General.* For filings subject to a public notice requirement, any person

may inspect or request a copy of the non-confidential portions of a filing (the public file) until 180 days following final disposition of a filing. The public file generally consists of portions of the filing, supporting data, supplementary information, and comments submitted by interested persons (if any) to the extent that the documents have not been afforded confidential treatment. To view or request photocopies of the public file, an oral or written request should be submitted to the appropriate regional director. The public file will be produced for review not more than one business day after receipt by the regional office. The FDIC may impose a fee for photocopying in accordance with § 309.5(c) of this chapter and with the rates the FDIC publishes annually in the **Federal Register**.

(b) *Confidential treatment.* (1) The applicant may request that specific information be treated as confidential. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy;

(ii) Commercial or financial information, the disclosure of which would result in substantial competitive harm to the submitter; and

(iii) Information the disclosure of which could seriously affect the financial condition of any depository institution.

(2) If an applicant requests confidential treatment for information that the FDIC does not consider to be confidential, the FDIC may include that information in the public file after notifying the applicant. On its own initiative, the FDIC may determine that certain information should be treated as confidential and withhold that information from the public file. A written request for information withheld from the public file, or copies of the public file following closure of the file 180 days after final disposition, should be submitted pursuant to the Freedom of Information Act (5 U.S.C. 552) to the FDIC, Office of the Executive Secretary, 550 17th Street, NW., Washington, DC 20429.

### § 303.9 Comments.

(a) *Submission of comments.* For filings subject to a public notice requirement, any person may submit comments to the appropriate FDIC regional director (DOS) during the comment period.

(b) *Comment period.* (1) *General.* Consult specific subparts of this part for the comment period applicable to a particular filing.

(2) *Extension.* The appropriate regional director or deputy regional director (DOS) may extend or reopen the comment period if:

(i) The applicant fails to file all required information on a timely basis to permit review by the public or makes a request for confidential treatment not granted by the FDIC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that the FDIC determines may materially affect the application; or

(iii) The appropriate regional director or deputy regional director (DOS) determines that other good cause exists.

(3) *Solicitation of comments.*

Whenever appropriate, the regional director (DOS) may solicit comments from any person or institution which might have an interest in or be affected by the pending filing.

(4) *Applicant response.* The FDIC will provide copies of all comments received to the applicant and may give the applicant an opportunity to respond.

### § 303.10 Hearings and other meetings.

(a) *Matters covered.* This section covers hearings and other proceedings in connection with filings for or by:

(1) Deposit insurance by a proposed new depository institution or operating non-insured institution;

(2) An insured state nonmember bank to establish a domestic branch or to relocate a main office or domestic branch;

(3) Relocation of an insured branch of a foreign bank;

(4) (i) Merger or consolidation which requires the FDIC's prior approval under the Bank Merger Act (12 U.S.C. 1828(c));

(ii) Except as otherwise expressly provided, the provisions of this § 303.10 shall not be applicable to any proposed merger transaction which the FDIC Board of Directors determines must be acted upon immediately to prevent the probable default of one of the institutions involved or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(c)(6)); and

(5) Any other purpose or matter which the FDIC Board of Directors in its sole discretion deems appropriate.

(b) *Hearing requests.* Before the end of the comment period, any person may submit to the appropriate regional director (DOS) a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be

insufficient to make an adequate presentation of those issues or facts to the FDIC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(c) *Action on a hearing request.* The regional director (DOS) may grant or deny a request for a hearing and may limit the issues that he or she deems relevant or material. The FDIC generally grants a hearing request only if it determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.

(d) *Denial of a hearing request.* If the regional director (DOS) denies a hearing request, he or she shall notify the person requesting the hearing of the reason for the denial. A decision to deny a hearing request shall be a final agency determination that is not appealable to the Board of Directors.

(e) *FDIC procedures prior to the hearing.* (1) *Notice of hearing.* The FDIC shall issue a notice of hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The notice of hearing shall state the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The FDIC shall send a copy of the notice of hearing to the applicant, to the person requesting the hearing, and to anyone else requesting a copy.

(2) *Presiding officer.* The FDIC shall appoint a presiding officer to conduct the hearing, who will usually be the appropriate regional director (DOS). The presiding officer is responsible for all procedural questions not governed by this § 303.10.

(f) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate regional director (DOS) of his or her intent to participate in the hearing no later than 10 days from the date that the FDIC issues the Notice of Hearing. At least 5 days before the hearing, each participant shall submit to the appropriate regional director (DOS), as well as to the applicant and any other person as required by the FDIC, the names of witnesses, a statement describing the proposed testimony of each witness, and one copy of each exhibit the participant intends to present.

(g) *Transcripts.* The FDIC shall arrange for a hearing transcript. The person requesting the hearing and the applicant each shall bear the cost of one copy of the transcript for his or her use unless such cost is waived by the presiding officer and incurred by the FDIC.

(h) *Conduct of the hearing.* (1) *Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening and closing statements and present witnesses, material, and data.

(2) *Information submitted.* Any person presenting material shall furnish one copy to the FDIC, one copy to the applicant, and one copy to each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the FDIC's Rules of Practice and Procedure (12 CFR part 308) do not govern hearings under this § 303.10.

(i) *Closing the hearing record.* At the applicant's or any participant's request, or at the FDIC's discretion, the FDIC may keep the hearing record open for up to 10 days following the FDIC's receipt of the transcript. The FDIC shall resume processing the filing after the record closes.

(j) *Informal proceedings.* The FDIC may arrange for an informal proceeding with an applicant and other interested parties in connection with a filing, either upon receipt of a written request for such a meeting made during the comment period, or upon the FDIC's own initiative. No later than 10 days prior to an informal proceeding, the appropriate regional director (DOS) shall notify the applicant and each person who requested a hearing or oral presentation of the date, time, and place of the proceeding. The proceeding may assume any form, including a meeting with FDIC representatives at which participants will be asked to present their views orally. The appropriate regional director (DOS) or (DCA) may hold separate meetings with each of the participants.

(k) *Disposition and notice thereof.* The FDIC shall notify the applicant and all participants of the final disposition of a filing and shall provide a statement of the reasons for the final disposition.

(l) *Computation of time.* In computing periods of time under this section, the provisions of § 308.12 of the FDIC's Rules of Practice and Procedure (12 CFR 308.12) shall apply.

(m) *Authority retained by FDIC Board of Directors to modify procedures.* The FDIC Board of Directors may delegate authority by resolution on a case-by-case basis to the presiding officer to adopt different procedures in individual matters and on such terms and conditions as the Board of Directors determines in its discretion. Such resolution shall be made available for

public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

### § 303.11 Decisions.

(a) *General procedures.* The FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial.

(b) *Authority retained by FDIC Board of Directors to modify procedures.* In acting on any filing under this part, the FDIC Board of Directors may by resolution adopt procedures which differ from those contained in this part when it deems it necessary or in the public interest to do so. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

(c) *Expedited processing.* (1) A filing submitted by an eligible depository institution as defined in § 303.2(r) of this part will receive expedited processing as specified in the appropriate subparts of this part unless the appropriate regional director or deputy regional director (DOS) chooses to remove the filing from expedited processing for the reasons set forth in paragraph (c)(2) of this section. Except for filings made pursuant to subpart J (foreign bank activities), expedited processing will not be available for any filing that the appropriate regional director (DOS) does not have delegated authority to approve.

(2) *Removal of filing from expedited processing.* The appropriate regional director or deputy regional director (DOS) may remove a filing from expedited procedures at any time prior to final disposition if:

(i) For filings subject to public notice under § 303.7, an adverse comment is received that warrants additional investigation or review;

(ii) For filings subject to evaluation of CRA performance under § 303.5, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern;

(iii) For any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or

(iv) For any filing, the appropriate regional director (DOS) determines that other good cause exists for removal.

(3) For purposes of this section, a significant CRA concern includes but is not limited to a determination by the appropriate regional director (DCA) that, although a depository institution may have an institution-wide rating of satisfactory, a depository institution's CRA rating is less than satisfactory in a state or multi-state metropolitan statistical area (MSA), or a depository institution's CRA performance is less than satisfactory in an MSA or in the non-MSA portion of a state in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(4) If the FDIC determines that it is necessary to remove a filing from expedited review procedures pursuant to paragraph (c)(2) of this section, the FDIC promptly will provide the applicant with a written explanation.

(d) *Multiple transactions.* If the FDIC is considering related transactions, some or all of which have been granted expedited processing, then the longest processing time for any of the related transactions shall govern for purposes of approval.

(e) *Abandonment of filing.* A filing must contain all information set forth in the applicable subpart of this part. To the extent necessary to evaluate a filing, the FDIC may require an applicant to provide additional information. If information requested by the FDIC is not provided within the time period specified by the agency, the FDIC may deem the filing abandoned and shall provide written notification to the applicant and any interested parties that submitted comments to the FDIC that the file has been closed.

(f) *Appeals and petitions for reconsideration—(1) General.* Appeal procedures for a denial of a change in bank control (subpart E), change in senior executive officer or board of directors (subpart F) or denial of an application pursuant to section 19 of the FDI Act (subpart L) are contained in 12 CFR part 308, subparts D, L, and M, respectively. For all other filings covered by this chapter for which appeal procedures are not provided by regulation or other written guidance, the procedures specified in paragraphs (f) (2) through (5) of this section shall apply. A decision to deny a request for a hearing is a final agency determination that is not appealable to the Board of Directors pursuant to § 303.10(d) of this part.

(2) *Filing procedures.* Within 15 days of receipt of notice from the FDIC that its filing has been denied, any applicant

may file a petition for reconsideration with the appropriate regional director (DOS), if the filing initially was submitted to DOS, or the appropriate regional director (DCA), if the filing initially was submitted to DCA.

(3) *Content of filing.* A petition for reconsideration must contain the following information:

(i) A resolution of the board of directors of the applicant authorizing filing of the petition, if the applicant is a corporation or other entity, or a letter signed by the individual(s) filing the petition, if the applicant is not a corporation or other entity;

(ii) Relevant, substantive information that for good cause was not previously set forth in the filing; and

(iii) Specific reasons why the FDIC should reconsider its prior decision.

(4) *Delegation of authority.* (i) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director and the appropriate regional director and deputy regional director, to grant a petition for reconsideration, after consultation with the Legal Division.

(ii) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate, to deny a petition for reconsideration, after consultation with the Legal Division.

(iii) Notwithstanding paragraphs (F)(4) (i) and (ii) of § 303.11, no reconsideration of a filing that originally required Legal Division concurrence may be acted upon without Legal Division concurrence.

(5) *Procedures for reconsideration of filings.* If a petition for reconsideration is granted, the filing will be reconsidered by:

(i) The Board of Directors, if the filing was originally denied by the Board of Directors or denied by the Director or Deputy Director or an associate director (DOS) or (DCA); or

(ii) The Director or Deputy Director (DOS) or (DCA), if the filing was originally denied by a regional director or deputy regional director.

(6) *Final decision.* Decisions made on a petition for reconsideration by the Director or Deputy Director (DOS) or (DCA) are final agency decisions and are not appealable to the Board of Directors.

(g) *Nullification of decision—(1) Material misrepresentation or omission.* If the FDIC subsequently becomes aware of any material misrepresentation or omission after the agency has rendered a decision on a filing, the FDIC may nullify its decision by providing written notification to the applicant of the determination and the reason therefor.

Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to an enforcement action and other penalties, including criminal penalties provided in Title 18 of the United States Code.

(2) *Material change in circumstances.* If the FDIC is not informed by the applicant of a subsequent material change in circumstances prior to rendering a decision on a filing (for example, a material change in a business plan, or the financial condition of the depository institution), the FDIC may nullify its decision in the manner described in paragraph (g)(1) of this section.

(3) *Other nullifications.* The FDIC may nullify any decision on a filing that is contrary to law, regulation or FDIC policy, or granted due to clerical or administrative error, or a material mistake of law or fact.

#### § 303.12 General rules governing delegations of authority.

(a) *Scope.* This section contains general rules governing the FDIC Board of Director's delegations of authority under this chapter. These principles are procedural in nature only and are not substantive standards. All delegations of authority, confirmations, limitations, revisions, and rescissions under this chapter must be in writing and maintained with the Office of the Executive Secretary.

(b) *Authority not delegated.* Except as otherwise expressly provided, the FDIC Board of Directors does not delegate its authority.

(1) The FDIC Board of Directors retains and does not delegate the authority to act on agreements with foreign regulatory or supervisory authorities, matters that would establish or change existing Corporation policy, matters that might attract unusual attention or publicity, or involve an issue of first impression notwithstanding any existing delegation of authority.

(2) The FDIC Board of Directors retains the authority to act on any filing or enforcement matter upon which any member of the Board of Directors wishes to act, even if the authority to act on such filing or enforcement matter has been delegated.

(c) *Exercise of delegated authority not mandated.* Any FDIC official with delegated authority under this chapter may elect not to exercise that authority.

(d) *Action by FDIC officials.* In matters where the FDIC Board of Directors has neither specifically delegated nor retained authority, FDIC officials may take action with respect to matters

which generally involve conditions or circumstances requiring prompt action to protect the interests of the FDIC and to achieve flexibility and expedition in its operations and the exercise of FDIC functions under this part.

(e) *Construction.* The delegations of authority contained in this chapter are to be broadly construed in favor of the existence of authority in FDIC officials who act under delegated authority. Any exercise of delegated authority by an FDIC official is conclusive evidence of that official's authority.

(f) *Written confirmations, limitations, revisions or rescissions.* Where the FDIC Board of Directors has delegated authority to the Director (DOS), Director (DCA) or the General Counsel, or their respective designees, each shall have the right to confirm, limit, revise, or rescind any delegation of authority issued or approved by them, respectively, to any subordinate official(s).

**§ 303.13 Delegations of authority to officials in the Division of Supervision and the Division of Compliance and Consumer Affairs.**

(a) *CRA protests.* Where a CRA protest is filed and remains unresolved, authority is delegated to the Director and Deputy Director (DCA) and, where confirmed in writing by the Director, to an associate director or the appropriate regional director or deputy regional director to concur that approval of any filing subject to CRA is consistent with the purposes of CRA.

(b) *Adequacy of filings.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to determine whether a filing is substantially complete for purposes of commencing processing.

(c) *National Historic Preservation Act.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council on Historic Preservation which implement the National Historic Preservation Act of 1966 (16 U.S.C. 470).

**Subpart B—Deposit Insurance**

**§ 303.20 Scope.**

This subpart sets forth the procedures for applying for deposit insurance for a proposed depository institution or an operating noninsured depository institution under section 5 of the FDI

Act (12 U.S.C. 1815). It also sets forth the procedures for requesting continuation of deposit insurance for a state bank withdrawing from membership in the Federal Reserve System and for interim institutions chartered to facilitate a merger transaction. Related delegations of authority are also set forth.

**§ 303.21 Filing procedures.**

(a) Applications for deposit insurance shall be filed with the appropriate regional director (DOS). The relevant application forms and instructions for applying for deposit insurance for an existing or proposed depository institution may be obtained from any FDIC regional office (DOS).

(b) Application for deposit insurance for an interim depository institution shall be filed and processed in accordance with the procedures set forth in § 303.24 of this subpart. An interim depository institution is defined as an institution formed or organized solely for the purpose of facilitating a merger transaction which will be reviewed by a responsible agency as defined in section 18(c)(2) of the FDI Act.

(c) A request for continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System shall be in letter form and shall provide the information prescribed in § 303.25 of this subpart.

**§ 303.22 Processing.**

(a) *Expedited processing for proposed institutions.* (1) An application for deposit insurance for a proposed institution which will be a subsidiary of an eligible depository institution as defined in § 303.2(r) of this part or an eligible holding company will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. An eligible holding company is defined as a bank or thrift holding company that has consolidated assets of \$150 million or more, has an assigned composite rating of 2 or better, and has at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part.

(2) Under expedited processing, the FDIC will take action on an application within 60 days of receipt of a substantially complete application, or 20 days after publication, whichever is later. Final action may be withheld until the FDIC has assurance that permission

to organize the proposed institution will be granted by the chartering authority. Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(b) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

**§ 303.23 Public notice requirements.**

(a) *De novo institutions and operating noninsured institutions.* The applicant shall publish a notice, as prescribed in § 303.7 of this part, in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located. Notice shall be published as close as practicable to, but no sooner than five days before, the date the application is mailed or delivered to the regional director (DOS). Comments by interested parties must be received by the appropriate regional director (DOS) within 15 days following the date of publication, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2) of this part.

(b) *Exceptions to public notice requirements.* No publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a failed depository institution, or to an interim depository institution formed or organized solely to facilitate a merger transaction, or for a request for continuation of federal deposit insurance by a state bank withdrawing from membership in the Federal Reserve System.

**§ 303.24 Application for deposit insurance for an interim institution.**

(a) *Content of application.* A letter application for deposit insurance for an interim institution, accompanied by a copy of the related merger application, shall be filed with the appropriate regional director. The letter application should briefly describe the transaction and contain a statement that deposit insurance is being requested for an interim institution formed or organized solely for the purpose of facilitating a merger transaction which will be reviewed by a federal banking agency other than the FDIC and that the institution will not open for business.

(b) *Processing.* An application for deposit insurance for an interim depository institution will be



acknowledged in writing by the FDIC. Final action will be taken within 21 days after receipt of a substantially complete application, unless the applicant is notified in writing that additional review is warranted. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

**§ 303.25 Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.**

(a) *Content of application.* To continue its insured status upon withdrawal from membership in the Federal Reserve System, a state bank must submit a letter application to the appropriate regional director (DOS). A complete application shall consist of the following information:

- (1) A copy of the letter, and any attachments thereto, sent to the Federal Reserve setting forth the bank's intention to terminate its membership;
- (2) A copy of the letter from the Federal Reserve acknowledging the bank's notice to terminate membership;
- (3) A statement regarding any anticipated changes in the bank's general business plan during the next 12-month period; and

(4)(i) A statement by the bank's management that there are no outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System.

(ii) If such programs or agreements exist, a statement by applicant that its Board of Directors is willing to enter into a similar supervisory agreement with the FDIC which would become effective upon withdrawal from the Federal Reserve System.

(b) *Processing.* An application for deposit insurance under this section will be acknowledged in writing by the FDIC. The appropriate regional director (DOS) shall notify the applicant, within 15 days of receipt of a substantially complete application, either that federal deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review is warranted and the applicant will be notified, in writing, of the FDIC's final decision regarding continuation of deposit insurance. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

**§ 303.26 Delegation of authority.**

(a) *Proposed depository institutions.* (1) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and

deputy regional director, to approve applications for deposit insurance for proposed depository institutions. For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (a)(1)(i) through (a)(1)(iv) of this section must be satisfied and the applicant shall have agreed in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent. For the regional director or deputy regional director (DOS) to exercise this authority, paragraphs (a)(1)(i) through (a)(1)(v) of this section must be satisfied and the applicant shall have agreed in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent.

(i) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(iii) The application is in conformity with the standards and guidelines for the granting of deposit insurance established in the FDIC statement of policy "Applications for Deposit Insurance" (2 FDIC Law, Regulations and Related Acts (FDIC) 5349); and

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(v) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance filed by or on behalf of proposed interim depository institutions formed or organized solely for the purpose of facilitating a merger transaction which

will be reviewed by a responsible agency as defined in section 18(c)(2) of the FDI Act.

(b) *Operating noninsured depository institutions.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance by operating noninsured depository institutions. For the delegate to exercise this authority, the following criteria must be satisfied and the applicant shall have agreed in writing to comply with any condition imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent:

(1) The applicant is determined to be eligible for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in 12 U.S.C. 1813(a)) in which the applicant is located;

(2) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(3) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(4) The application is in conformity with the standards and guidelines for the granting of deposit insurance to operating noninsured depository institutions established in the FDIC policy statement "Applications for Deposit Insurance" (2 FDIC Law, Regulations and Related Acts (FDIC) 5349);

(5) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(6) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(c) *Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate

director and the appropriate regional director and deputy regional director to approve continuation of federal deposit insurance where the applicant has agreed in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent.

(d) *Conditions that may be imposed under delegated authority.* Following are conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (a) and (b) of this section:

(1) The applicant will provide a specific amount of initial paid-in capital;

(2) With respect to a proposed depository institution that has applied for deposit insurance pursuant to this subpart, the Tier 1 capital to assets leverage ratio (as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator) will be maintained at not less than eight percent throughout the first three years of operation and that an adequate allowance for loan and lease losses will be provided;

(3) Any changes in proposed management or proposed ownership to the extent of 10 or more percent of stock, including new acquisitions of or subscriptions to 10 or more percent of stock shall be approved by the FDIC prior to the opening of the depository institution;

(4) The applicant will adopt an accrual accounting system for maintaining the books of the depository institution;

(5) Where applicable, deposit insurance will not become effective until the applicant has been granted a charter as a depository institution, has authority to conduct a depository institution business, and its establishment and operation as a depository institution have been fully approved by the appropriate state and/or federal supervisory authority;

(6) Where deposit insurance is granted to an interim institution formed or organized solely to facilitate a related transaction, deposit insurance will only become effective in conjunction with consummation of the related transaction;

(7) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision to acquire voting stock

control of the proposed depository institution prior to its opening;

(8) Where applicable, the applicant has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

(9) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved. An insider is one who is or is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 or more percent of any class of the applicant's outstanding voting stock; or the associates or interests of any such person;

(10) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the regional director;

(11) The applicant will have adequate fidelity coverage;

(12) The depository institution will obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC regional office within 15 days after their receipt by the depository institution and notify the appropriate FDIC regional office within 15 days when a change in its independent auditor occurs; and

(13) Any standard condition defined in § 303.2(ff) of this part.

#### **§ 303.27 Authority retained by the FDIC Board of Directors.**

Without limiting the Board of Director's authority, the Board of Directors retains authority to deny applications for deposit insurance and approve applications for deposit insurance where the applicant does not agree in writing to comply with any condition imposed by the FDIC, other than the standard conditions listed in §§ 303.2(ff) and 303.26(d) of this part, which may be imposed without the applicant's written consent.

#### **Subpart C—Establishment and Relocation of Domestic Branches and Offices**

##### **§ 303.40 Scope.**

(a) *General.* This subpart sets forth the application requirements and procedures and the delegation of authority for insured state nonmember

banks to establish a branch, relocate a main office, and relocate a branch subject to the approval by the FDIC pursuant to sections 13(f), 13(k), 18(d) and 44 of the FDI Act.

(b) *Mergers.* Applications for approval of the acquisition and establishment of branches in connection with a merger transaction under section 18(c) of the FDI Act (12 U.S.C. 1828(c)), are processed in accordance with subpart D (Mergers) of this part.

(c) *Insured branches of foreign banks and foreign branches of domestic banks.* Applications regarding insured branches of foreign banks and foreign branches of domestic banks are processed in accordance with subpart J (Foreign Bank Activities) of this part.

(d) *Interstate acquisition of individual branch.* Applications requesting approval of the interstate acquisition of an individual branch or branches located in a state other than the applicant's home state without the acquisition of the whole bank are treated as interstate bank merger transactions under section 44 of the FDI Act (12 U.S.C. 1831a(u)), and are processed in accordance with subpart D (Mergers) of this part.

#### **§ 303.41 Definitions.**

For purposes of this subpart:

(a) *Branch* includes any branch bank, branch office, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands at which deposits are received or checks paid or money lent. A branch does not include an automated teller machine, an automated loan machine, or a remote service unit. The term branch also includes the following:

(1) A *messenger service* that is operated by a bank or its affiliate that picks up and delivers items relating to transactions in which deposits are received or checks paid or money lent. A messenger service established and operated by a non-affiliated third party generally does not constitute a branch for purposes of this subpart. Banks contracting with third parties to provide messenger services should consult with the appropriate regional director (DOS) to determine if the messenger service constitutes a branch.

(2) A *mobile branch*, other than a messenger service, that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch may serve defined locations on a regular schedule

or may serve a defined area at varying times and locations.

(3) A *temporary branch* that operates for a limited period of time not to exceed one year as a public service, such as during an emergency or disaster situation.

(4) A *seasonal branch* that operates at various periodically recurring intervals, such as during state and local fairs, college registration periods, and other similar occasions.

(b) *Branch relocation* means a move within the same immediate neighborhood of the existing branch that does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to a location outside its immediate neighborhood is considered the closing of an existing branch and the establishment of a new branch.

(c) *De novo branch* means a branch of a bank which is established by the bank as a branch and does not become a branch of such bank as a result of:

(1) The acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(2) The conversion, merger, or consolidation of any such institution or branch.

(d) *Home state* means the state by which the bank is chartered.

(e) *Host state* means a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

#### § 303.42 Filing procedures.

(a) *General.* An applicant shall submit an application to the appropriate regional director (DOS) on the date the notice required by § 303.44 of this subpart is published, or within 5 days after the date of the last required publication.

(b) *Content of filing.* A complete letter application shall include the following information:

(1) A statement of intent to establish a branch, or to relocate the main office or a branch;

(2) The exact location of the proposed site including the street address. With regard to messenger services, specify the geographic area in which the services will be available. With regard to a mobile branch, specify the community or communities in which the vehicle will operate and the intention to:

(i) Serve defined locations on a regular schedule; or

(ii) Be open at varying times and locations; or

(iii) A combination of paragraphs (b)(2)(i) and (b)(2)(ii) of this section;

(3) Details concerning any involvement in the proposal by an

insider of the bank as defined in § 303.2(u) of this part, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(4) A statement on the impact of the proposal on the human environment, including, information on compliance with local zoning laws and regulations and the effect on traffic patterns, for purposes of complying with the applicable provisions of the NEPA;

(5) A statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including a statement that clearance has been or will be obtained from the State Historic Preservation Officer for purposes of complying with applicable provisions of the NHPA;

(6) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA;

(7) A copy of each newspaper publication required by § 303.44 of this subpart, the name and address of the newspaper, and date of the publication;

(8) When an application is submitted to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, a statement that the applicant has requested that the host state provide to the appropriate regional director (DOS) written confirmation:

(i) That the applicant has complied with that state's filing requirements; and

(ii) That the applicant has also submitted to the host state bank supervisor a copy of the filing with the FDIC to establish and operate a de novo branch.

(9) When an application is submitted to relocate the main office of the applicant from one state to another, a statement of the applicant's intent regarding retention of branches in the state where the main office exists prior to relocation.

(c) *Undercapitalized institutions.* Applications to establish a branch by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) also should provide the information required by § 303.204 of this part. Applications pursuant to sections 38 and 18(d) of the FDI Act (12 U.S.C. 1831o and 1828(d)) may be filed concurrently or as a single application.

(d) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

#### § 303.43 Processing.

(a) *Expedited processing for eligible depository institutions.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(1) The 21st day after receipt by the FDIC of a substantially complete filing;

(2) The 5th day after expiration of the comment period described in § 303.44 of this part; or

(3) In the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives confirmation from the host state that the applicant has both complied with the application requirements of the host state and submitted a copy of the application with the FDIC to the host state bank supervisor.

(b) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

#### § 303.44 Public notice requirements.

(a) *Newspaper publications.* For applications to establish or relocate a branch, a notice as described in § 303.7(b) of this part shall be published once in a newspaper of general circulation. For applications to relocate a main office, notice shall be published at least once each week on the same day for two consecutive weeks. The required publication shall be made in the following communities:

(1) *To establish a branch.* In the community in which the main office is located and in the communities to be served by the branch (including messenger services and mobile branches).

(2) *To relocate a main office.* In the community in which the main office is currently located and in the community to which the main office proposes to relocate.

(3) *To relocate a branch.* In the community in which the branch is located.

(b) *Public comments.* Comments by interested parties must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (a) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2) of this part.

(c) *Lobby notices.* In the case of applications to relocate a main office or a branch, a copy of the required newspaper publication shall be posted in the public lobby of the office to be relocated for at least 15 days beginning with the date of the last published notice required by paragraph (a) of this section.

#### § 303.45 Special provisions.

(a) *Emergency or disaster events.* (1) In the case of an emergency or disaster at a main office or a branch which requires that an office be immediately relocated to a temporary location, applicants shall notify the appropriate regional director (DOS) within 3 days of such temporary relocation.

(2) Within 10 days of the temporary relocation resulting from an emergency or disaster, the bank shall submit a written application to the appropriate regional director (DOS), that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary branch.

(3) As part of the review process, the appropriate regional director (DOS) will determine on a case by case basis whether additional information is necessary and may waive public notice requirements.

(b) *Redesignation of main office and existing branch.* In cases where an applicant desires to redesignate its main office as a branch and redesignate an existing branch as the main office, an application shall be submitted to relocate the main office and to relocate or establish a branch as appropriate. The appropriate regional director (DOS) may waive the public notice requirements in instances where an application presents no significant or novel policy, supervisory, CRA, compliance or legal concerns. Such waiver will be granted only to a redesignation within the applicant's home state.

(c) *Expiration of approval.* Approval of an application expires if a branch has not commenced business or if a relocation has not been completed within 18 months after date of approval.

#### § 303.46 Delegation of authority.

(a) *Approval of applications.* (1) Where the applicant agrees in writing to

comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve the applications listed in this paragraph (a)(1). For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (c)(1) through (c)(4) and (c)(6) through (c)(7) of this section must be satisfied. For the regional director or deputy regional director (DOS) to exercise this authority, criteria in paragraphs (c) (1)–(7) of this section must be satisfied.

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office; and

(iv) Relocate a branch; or

(2) Where the applicant does not agree in writing to comply with any condition imposed by the delegate, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to approve the applications listed in paragraph (a)(1) of this section.

(b) *Denial of applications.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to deny an application to establish a temporary branch.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny applications for consent to:

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office; and

(iv) Relocate a branch.

(c) *Criteria for delegated authority.* The following criteria must be satisfied before the authority delegated in paragraph (a) of this section may be exercised:

(1) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved except that this criterion does not apply to applications to establish messenger services and temporary branches;

(2) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital Adequacy" (12 CFR part 325, appendix B) or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the filing, except that this criterion does not apply to applications to establish messenger services and temporary branches, or to relocate branches or main offices;

(3) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's insiders are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(4) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(5) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA;

(6) An applicant with one or more existing branches in a state other than the applicant's home state has not failed the credit needs test in a host state under section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a).

(7) Additionally, for applications submitted to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch:

(i) Receipt by the appropriate regional director (DOS) of the host state's written confirmation that the applicant has complied with that state's filing requirements and that the applicant also has submitted to the host state bank supervisor a copy of its FDIC filing to establish and operate a de novo branch;

(ii) Determination by the FDIC that the applicant is adequately capitalized as of the date of the filing and will continue to be adequately capitalized and adequately managed upon consummation of the transaction;

(iii) Confirmation that the host state has in effect a law that meets the requirements of section 18(d)(4)(A) of

the FDI Act (12 U.S.C. 1828(d)(4)(A)); and

(iv) Compliance with section 44(b)(3) of the FDI Act (12 U.S.C. 1831u(b)(3)); and

(8) Additionally, for applications submitted to relocate a main office from one state to another where the applicant seeks to retain branches in the state where the applicant's main office exists prior to an interstate relocation of the main office, confirmation that the filing meets the requirements of section 18(d)(3)(B) of the FDI Act (12 U.S.C. 1828(d)(3)(B)).

#### Subpart D—Mergers

##### § 303.60 Scope.

This subpart sets forth the application requirements, procedures, and delegations of authority for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)).

##### § 303.61 Definitions.

For purposes of this subpart:

(a) *Merger* includes any transaction in which an insured depository institution:

(1) Merges or consolidates with any other insured depository institution or, either directly or indirectly, acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution; or

(2) Merges or consolidates with any noninsured bank or institution or assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or transfers assets to any noninsured bank or institution in consideration of the assumption of liability for any portion of the deposits made in such insured depository institution.

(b) *Corporate reorganization* means a merger between commonly-owned institutions, between an insured depository institution and its subsidiary, or between an insured depository institution and its holding company, provided that the merger would have no effect on competition or otherwise have significance under the statutory standards set forth in section 18(c) of the FDI Act (12 U.S.C. 1828(c)). For purposes of this paragraph, institutions are commonly-owned if more than 50 percent of the voting stock of each of the institutions is owned by the same company, individual, or group of closely-related individuals acting in concert.

(c) *Interim merger* means a merger (other than a purchase and assumption transaction) between an operating depository institution and a newly-formed depository institution or

corporation that will not open for business and that exists solely for the purpose of facilitating a corporate reorganization.

(d) *Optional conversion* (Oakar transaction) means a merger in which an insured depository institution assumes deposit liabilities insured by the deposit insurance fund (either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) of which that assuming institution is not a member, and elects not to convert the insurance covering the assumed deposits. Such transactions are covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

(e) *Resulting institution* refers to the surviving institution upon consummation of a merger.

##### § 303.62 Transactions requiring prior approval.

(a) *Mergers*. The following transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger, including any corporate reorganization, interim merger, or optional conversion, in which the resulting institution is to be an insured state nonmember bank; and

(2) Any merger, including any corporate reorganization or interim merger, that involves an uninsured bank or institution.

(b) *Related provisions*. Transactions covered by this subpart also may be subject to other provisions or application requirements, including the following:

(1) *Interstate mergers*. Interstate mergers between insured banks are subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger that consists of the acquisition of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance*. An application for deposit insurance will be required in connection with a merger between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a federal banking agency other than the FDIC. If the FDIC is the federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger of a federally-chartered interim institution and an insured institution, even if the resulting institution is to

operate under the charter of the federal interim institution.

(3) *Deposit insurance fund conversions*. Procedures for conversion transactions involving the transfer of deposits from BIF to SAIF or from SAIF to BIF are set forth in subpart M of this part at § 303.246.

(4) *Branch closings*. Branch closings in connection with a merger are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r-1), including requirements for notice to customers. These requirements are addressed in the Interagency Policy Statement Concerning Branch Closings Notices and Policies (2 FDIC Law, Regulations and Related Acts (FDIC) 5391).

(5) *Undercapitalized institutions*. Applications for a merger by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) should also provide the information required by § 303.204 of this part. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C. 1831o and 1828(c)) may be filed concurrently or as a single application.

(6) *Certification of assumption of deposit liability*. An insured depository institution assuming deposit liabilities of another insured institution must provide certification of assumption of deposit liability to the FDIC in accordance with 12 CFR part 307.

##### § 303.63 Filing procedures.

(a) *General*. Applications required under this subpart shall be filed with the appropriate regional director (DOS). The appropriate forms and instructions, including instructions concerning notice to depositors where applicable, may be obtained upon request from any DOS regional office.

(b) *Mergers*. Applications for approval of mergers shall be accompanied by copies of all agreements or proposed agreements relating to the merger and any other information requested by the FDIC.

(c) *Interim mergers*. Applications for approval of interim mergers and any related deposit insurance applications shall be made by filing the forms and other documents required by paragraphs (a) and (b) of this section and such other information as may be required by the FDIC for consideration of the request for deposit insurance.

(d) *Optional conversions*. Applications for optional conversions shall include a statement that the proposed merger is a transaction covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

**§ 303.64 Processing.**

(a) *Expedited processing for eligible depository institutions.* (1) *General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) of this part and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part.

(2) Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65 of this subpart; or

(iii) 5 days after receipt of the Attorney General's report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC confirms that the applicant has satisfactorily complied with the filing requirements of the resulting institution's host state.

(3) Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) *Qualifications.*—(i) *Criteria.* The FDIC will process an application using expedited procedures if:

(A) All parties to the merger are eligible depository institutions as defined in § 303.2(r) of this part; and

(B) Immediately following the merger, the resulting institution will be "well capitalized" pursuant to subpart B of part 325 of this chapter (12 CFR part 325).

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application as soon as the decision is rendered.

**§ 303.65 Public notice requirements.**

(a) *General.* Except as provided in paragraph (b) of this section, an applicant for approval of a merger must publish notice of the proposed transaction on at least three occasions at approximately two-week intervals in a newspaper of general circulation in the

community or communities where the main offices of the merging institutions are located or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto.

(1) *First publication.* The first publication of the notice should be as close as practicable to the date on which the application is filed with the FDIC, but no more than 5 days prior to the filing date.

(2) *Last publication.* The last publication of the notice shall be on the 30th day after the first publication or, if the newspaper does not publish on the 30th day, on the newspaper's publication date that is closest to the 30th day.

(b) *Exceptions.*—(1) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published twice during a 10-day period. The first notice shall be published as soon as possible after the FDIC notifies the applicant of such determination. The second notice shall be published on the 10th day after the first publication or, if the newspaper does not publish on the 10th day, on the newspaper's publication date that is closest to the 10th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger, publication is not required.

(c) *Content of notice.*—(1) *General.* The notice shall conform to the public notice requirements set forth in § 303.7 of this part.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in section § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the regional director (DOS) within 35 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). If the FDIC has determined that an emergency exists requiring

expeditious action, comments must be received by the regional director within 10 days after the first publication.

**§ 303.66 Delegation of authority.**

(a) *General.*—(1) *Bank Merger Act approval.* Subject to paragraphs (a)(3) and (e) of this section, authority is delegated in paragraphs (b), (c), and (d) of this section to the designated FDIC officials to approve under the Bank Merger Act any application filed under this subpart for approval of a merger for which the specified criteria are satisfied.

(2) *Interstate merger approval.* With respect to an interstate merger covered by section 44 of the FDI Act (12 U.S.C. 1831u), in addition to the authority delegated to any official in paragraph (b), (c), or (d) of this section to approve the merger under the Bank Merger Act, authority is also delegated to such official to approve the merger under section 44. This delegation is subject to paragraph (a)(3) of this section and to the condition that the merger is eligible for FDIC approval under section 44.

(3) *Combined approvals.* The delegations in paragraphs (a)(2), (b), (c), and (d) of this section do not apply to an interstate bank merger covered both by section 44 and by the Bank Merger Act, unless the merger is being approved pursuant to delegated authority under both section 44 and the Bank Merger Act.

(b) *Basic delegation.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and the appropriate regional director and deputy regional director to approve applications under the Bank Merger Act. For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (b)(1) through (4) and (b)(6) of this section must be satisfied. For the regional director or deputy regional director (DOS) to exercise this authority, paragraphs (b)(1) through (b)(6) of this section must be satisfied.

(1) The resulting institution would meet all applicable capital requirements upon consummation of the transaction (or, where the resulting entity is an insured branch of a foreign bank, would be in compliance with 12 CFR 346.20 upon consummation of the transaction); and

(2) The factors set forth in section 18(c)(5) of the Act (12 U.S.C. 1828(c)(5)) have been considered and favorably resolved; and

(3)(i) The merging institutions do not operate in the same relevant geographic market(s); or

(ii) In each relevant geographic market in which more than one of the merging

institutions operate, the resulting institution upon consummation of the merger would hold no more than 15 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market; or

(iii) In each relevant geographic market in which more than one of the merging institutions operate, the resulting institution upon consummation of the merger would hold no more than 25 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market, and the Attorney General has notified the FDIC in writing that the proposed merger would not have a significantly adverse effect on competition; and

(4) Compliance with the CRA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(5) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), associate director (DCA), the appropriate regional director (DCA), or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(6) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part, which may be imposed without the applicant's written consent.

(c) *Additional delegations.* In addition to the delegations otherwise provided for in this section, and subject to the criteria set forth in paragraphs (b)(1), (2), (4) and (6) of this section, authority is delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve an application for a merger upon the consummation of which the resulting institution would hold not more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate, and the Attorney General has notified the FDIC in writing that the merger would not have a significantly adverse effect on competition.

(d) *Corporate reorganizations; interim mergers.*—(1) *Basic delegation.* In addition to the delegations otherwise provided for in this section, authority is

delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve:

(i) An application for a corporate reorganization that satisfies the criteria set forth in paragraphs (b) (5) and (6) of this section; and

(ii) Any related application for deposit insurance.

(2) *Additional delegation.* Authority is further delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to approve:

(i) An application for corporate reorganization that satisfies the criteria set forth in paragraphs (b)(6) of this section and as to which a CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved; and

(ii) Any related application for deposit insurance.

(e) *Limitations.* The delegations in paragraphs (b) through (d) of this section do not apply if:

(1) The Attorney General of the United States has determined that the merger would have a significantly adverse effect on competition; or

(2) The FDIC has made a determination pursuant to section (c)(6) of the Bank Merger Act (12 U.S.C. 1828(c)(6)) that an emergency exists requiring expeditious action or that the transaction must be consummated immediately in order to avoid a probable failure.

(f) *Review of competitive factors reports.* In deciding whether to approve a merger under the authority delegated by this section, the delegate shall review any reports provided by the Attorney General of the United States, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Director of the Office of Thrift Supervision in response to a request by the FDIC for reports on the competitive factors involved in the proposed merger. If the Attorney General has not provided a competitive factors report and if the delegation criterion specified in either paragraph (b)(3) (i) or (ii) of this section is satisfied, the delegate may request from the FDIC's General Counsel or designee a written opinion as to whether the proposed merger may have a significantly adverse effect on competition.

(g) *Competitive factor reports provided by the FDIC.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate

director and the appropriate regional director and deputy regional director, to furnish requested reports to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the competitive factors involved in any merger subject to approval by one of those agencies, if the delegate is of the view that the proposed merger would not have a substantially adverse effect on competition.

#### § 303.67 Authority retained by the FDIC Board of Directors

Without limiting the authority of the Board of Directors, the Board of Directors retains authority to act on applications covered by this subpart if the criteria or other conditions for delegation are not satisfied. This includes the retention of authority to deny applications for merger transactions. It further includes retention of authority to approve applications for merger transactions where:

(a) The limitations specified in § 303.66(e) preclude action under delegated authority;

(b) The applicant does not agree in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part, which may be imposed without the applicant's written consent; or

(c) The resulting institution, upon consummation of a merger other than a corporate reorganization, would have more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate.

#### Subpart E—Change in Bank Control

##### § 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)), and delegations of authority regarding such filings.

##### § 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* means a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership of an insured state nonmember bank resulting from a redemption of voting shares.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal

of acquiring control of an insured state nonmember bank, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting shares of an insured bank.

(d) *Person* means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.

**§ 303.82 Transactions requiring prior notice.**

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84 of this subpart, before acquiring control of an insured state nonmember bank, unless the acquisition is exempt under § 303.83.

(b) *Acquisitions requiring prior notice.*—(1) *Acquisition of control.* The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank constitutes the acquisition of the power to direct the management or policies of an insured bank requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank, each such person shall file prior notice with the FDIC.

(c) *Acquisitions of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) of this section resulting in a

person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act.

(e) *Rebuttal of presumptions.* Prior notice to the FDIC is not required for any acquisition of voting shares under the presumption of control set forth in this section, if the FDIC finds that the acquisition will not result in control. The FDIC will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

**§ 303.83 Transactions not requiring prior notice.**

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting shares of an insured state nonmember bank by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of that institution continuously since March 9, 1979, or since that institution commenced business, whichever is later; or

(ii) Is presumed, under § 303.82(b)(2) of this subpart, to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has controlled the bank continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82 of this subpart) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

(3) Acquisitions of voting shares subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Transactions exempt under the Bank Holding Company Act: foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies described in sections 2(a)(5), 3(a)(A), or 3(a)(B) respectively of the Bank Holding

Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B));

(5) A customary one-time proxy solicitation;

(6) The receipt of voting shares of an insured state nonmember bank through a pro rata stock dividend; and

(7) The acquisition of voting shares in a foreign bank, which has an insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j) (9), (10), and (12)).)

(b) *Prior notice exemption.* (1) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after the acquisition and provides any relevant information requested by the regional director (DOS):

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquirer of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the regional director (DOS):

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

(3) Nothing in paragraph (b)(1) of this section limits the authority of the FDIC to disapprove a notice pursuant to § 303.85(c) of this subpart.

**§ 303.84 Filing procedures.**

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate regional director (DOS)



and shall contain all the information required by paragraph 6 of the Change in Bank Control Act, section 7(j) of the FDI Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated interagency form which may be obtained from any FDIC regional office.

(2) The FDIC may waive any of the informational requirements of the notice if the FDIC determines that it is in the public interest.

(3) A notificant shall notify the appropriate regional director (DOS) immediately of any material changes in a notice submitted to the regional director (DOS), including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated interagency form, together with a statement of any material changes since the date of the statement or summary. The regional director (DOS), nevertheless, may request additional information if appropriate.

(b) *Other laws.* Nothing in this regulation shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or other laws.

#### § 303.85 Processing.

(a) *Acceptance of notice.* The 60-day notice period specified in § 303.82 of this subpart shall commence on the date of receipt of a substantially complete notice. The regional director (DOS) shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted for processing. The FDIC may request additional relevant information at any time.

(b) *Time period for FDIC action.*—(1) *Consummation of acquisition.* (i) The notificant(s) may consummate the proposed acquisition 60 days after submission to the regional director (DOS) of a substantially complete notice under paragraph (a) of this section, unless within that period the FDIC disapproves the proposed acquisition or extends the 60-day period.

(ii) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the FDIC notifies the notificant(s) in writing of its intention not to disapprove the acquisition.

(c) *Disapproval of acquisition of control.* Subpart D of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

#### § 303.86 Public notice requirements.

(a) *Publication.*—(1) *Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located. The announcement shall be published as close as is practicable to the date the notice is filed with the appropriate regional director (DOS), but in no event more than 10 calendar days before or after the filing date.

(2) *Contents of newspaper announcement.* The newspaper announcement shall conform to the public notice requirements set forth in § 303.7 of this part.

(3) *Delay of publication.* The FDIC may permit delay in the publication required by this section if the FDIC determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate regional director (DOS).

(4) *Shortening or waiving notice.* The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the bank to be acquired.

(5) *Consideration of public comments.* In acting upon a notice filed under this subpart, the FDIC shall consider all public comments received in writing within 20 days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (a)(4) of this section, within such shorter period.

(6) *Publication if filing is subsequent to acquisition of control.* (i) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act and these regulations, the acquiring person(s) shall, within 10 days of being so directed by the FDIC, publish an announcement of the acquisition of control in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located.

(ii) The newspaper announcement shall contain the name(s) of the acquiror(s), the name of the depository

institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement also shall state that any person wishing to comment on the change in control may do so by submitting written comments to the appropriate regional director (DOS) of the FDIC (give address of regional office) within 20 days following the required newspaper publication.

#### § 303.87 Delegation of authority.

(a) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured state nonmember bank.

(b) The authority delegated by paragraph (a) of this section shall include the power to:

(1) Act in situations where information is submitted on acquisitions arising out of events beyond the person's control, as set forth in § 303.83(b) of this subpart;

(2) Extend notice periods;

(3) Determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting shares of an insured state nonmember bank; and

(4) Delay or waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in §§ 303.86(a) (3) and (4) of this subpart.

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state nonmember bank.

#### Subpart F—Change of Director or Senior Executive Officer

##### § 303.100 Scope.

This subpart sets forth the circumstances under which an insured state nonmember bank must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice, as well as applicable delegations of authority. This regulation implements section 32 of the FDI Act (12 U.S.C. 1831i).

##### § 303.101 Definitions.

For purposes of this subpart:

(a) *Director* means a person who serves on the board of directors or board of trustees of an insured state nonmember bank, except that this term does not include an advisory director who:

- (1) Is not elected by the shareholders;
- (2) Is not authorized to vote on any matters before the board of directors or board of trustees or any committee thereof;
- (3) Solely provides general policy advice to the board of directors or board of trustees and any committee thereof; and
- (4) Has not been identified by the FDIC as a person who performs the functions of a director for purposes of this subpart.

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the insured state nonmember bank.

(c) *Troubled condition* means any insured state nonmember bank that:

- (1) Has a composite rating, as determined in its most recent report of examination of 4 or 5 under the Uniform Financial Institutions Rating System (UFIRS), or in the case of an insured state branch of a foreign bank, an equivalent rating;
- (2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;
- (3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the bank or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the bank, unless otherwise informed in writing by the FDIC; or
- (4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the bank's most recent report of condition or report of examination, or other information available to the FDIC.

### § 303.102 Filing procedures.

(a) *Insured state nonmember banks.* An insured state nonmember bank shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the bank, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

- (1) The bank is not in compliance with all minimum capital requirements applicable to the bank as determined on the basis of the bank's most recent report of condition or report of examination;
- (2) The bank is in troubled condition; or
- (3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831o(e)(2)) or otherwise, that such notice is appropriate.

(b) *Insured branches of foreign banks.* In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured state branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the state branch.

(c)(1) *Content of filing.* The notice required by paragraph (a) of this section shall be filed with the appropriate regional director (DOS) and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated interagency form which is available from any FDIC regional office. The regional director or his or her designee may require additional information.

(2) *Modification.* The FDIC may modify or accept other information in place of the requirements of paragraph (c)(1) of this section for a notice filed under this subpart.

### § 303.103 Processing and waiver of prior notice.

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate regional director (DOS). The regional director shall notify the bank submitting the notice of the date on which the notice is accepted for processing and of the date on which the

30-day notice period will expire. If processing cannot be completed within 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service.*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Waiver of prior notice.* (1) *Waiver requests.* The FDIC may permit an individual, upon petition by the bank to the appropriate regional director (DOS), to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that:

- (i) Delay would threaten the safety or soundness of the bank;
- (ii) Delay would not be in the public interest; or
- (iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* In the case of the election of a new director not proposed by management at a meeting of the shareholders of an insured state nonmember bank, the prior 30-day notice is automatically waived and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate regional director (DOS) within two business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the FDIC to disapprove a notice within 30 days after a waiver is granted under paragraph (c)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (c)(2) of this section.

(d) *Notice of disapproval.* The FDIC may disapprove a notice filed under § 303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed

by, or associated with, the bank. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

#### § 303.104 Delegation of authority.

The following authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director or deputy regional director to:

- (a) Designate an insured state nonmember bank as being in troubled condition;
- (b) Grant waivers of the prior notice requirement;
- (c) Extend the 30-day processing period for an additional period of up to 60 days in the event of extenuating circumstances; and
- (d) Issue notices of disapproval or notices of intent not to disapprove under this subpart.

#### Subpart G—Activities and Investments of Insured State Banks [Reserved]

#### Subpart H—Filings by Savings Associations [Reserved]

#### Subpart I—Mutual-to-Stock Conversions

##### § 303.160 Scope.

This subpart sets forth the notice requirements which must be met by mutually owned state-chartered savings banks that propose to convert to stock form, and the related delegations of authority. The substantive requirements governing such conversions are contained in § 333.4 of this chapter.

##### § 303.161 Filing procedures.

A notice shall be filed in letter form with the appropriate regional director (DOS) at the same time as the conversion application materials are filed with the institution's primary state regulator.

##### § 303.162 Content of notice.

The notice shall provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. Copies of all agreements entered into as part of the mutual-to-stock conversion between the institution and its officers, directors or trustees, and any agreements entered into with any other institution and/or its successors must be provided. An insured mutual savings bank chartered by a state that does not require the filing of an application to convert from mutual to stock form shall notify the FDIC of the

proposed conversion and provide any materials requested by the FDIC.

##### § 303.163 Processing.

(a) The FDIC shall review the materials submitted by the institution seeking to convert from mutual to stock form. The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion and the institution promptly shall provide such information to the FDIC. Among the factors to be reviewed by the FDIC are:

- (1) The use of the proceeds from the sale of stock, as set forth in the business plan;
- (2) The adequacy of the disclosure materials;
- (3) The participation of depositors in approving the transaction;
- (4) The form of the proxy statement required for the vote of the depositors/members on the conversion;
- (5) Any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be granted to officers and directors/trustees of the bank in connection with the conversion;

(6) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;

(7) The process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders;

(8) The nature and apportionment of stock subscription rights; and

(9) The bank's plans to fulfill its commitment to serving the convenience and needs of its community.

(b) *Additional considerations.* In reviewing the materials required to be submitted under this section, the FDIC will take into account the extent to which the proposed conversion conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (OTS) (12 CFR part 563b), as currently in effect at the time the FDIC reviews the required materials related to the proposed conversion. Any non-conformity with those provisions will be closely reviewed. Conformity with the OTS requirements will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion would pose a risk to the institution's safety or soundness, violate any law or regulation or present a breach of fiduciary duty.

(c) *Notification of completed filing of materials.* The FDIC shall notify the institution when all the required materials related to the proposed

conversion have been filed with the FDIC and the notice is thereby complete for purposes of computing the time periods designated in paragraphs (d) and (f) of this section.

(d) *Notice of intent not to object.* If the FDIC determines, in its discretion, that the proposed conversion would not pose a risk to the institution's safety or soundness, violate any law or regulation or present a breach of fiduciary duty, then the FDIC shall issue to the bank seeking to convert, within 60 days of receipt of a substantially complete notice of proposed conversion or within 20 days after the last applicable state or other federal regulator has approved the proposed conversion, whichever is later, a notice of intent not to object to the proposed conversion. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

(e) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion poses a risk to the institution's safety or soundness, violates any law or regulation or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution that the conversion shall not be consummated until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking regulator and state or federal securities regulator involved in the conversion. The letter of objection shall advise the institution of its right to petition the FDIC for reconsideration under § 303.11(f) of this part. Such action shall not, in any way, prohibit the FDIC from taking any other action(s) that it may deem necessary.

(f) *Consummation of the conversion.* An institution may consummate the proposed conversion upon either:

(1) The receipt of a notice of intent not to object; or

(2) The expiration of the 60-day period following receipt of a substantially complete notice by the FDIC or the 20-day period after the last applicable state or other federal regulator has approved the proposed conversion, whichever is later, unless the FDIC issues a notice of objection before the end of that period. If a notice of objection is issued, the conversion shall not be consummated until such letter is rescinded. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

**§ 303.164 Delegation of authority.**

(a) Authority is delegated to the Director and Deputy Director (DOS) to issue a notice of intent not to object to a proposed conversion transaction that is determined not to pose a risk to the institution's safety or soundness, violate any law or regulation, present a breach of fiduciary duty, and not to raise any unique legal or policy issues. Such authority will be exercised in accordance with the time periods contained in § 303.163(d) of this subpart, unless the bank seeking to convert agrees to a longer time period.

(b) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to accept notices of intent to convert to stock form and to extend the initial 60-day period within which FDIC may object by an additional 60 days.

**Subpart J—Foreign Bank Activities****§ 303.180 Scope.**

This subpart sets forth procedures for complying with application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks and delegations of authority.

**§ 303.181 Definitions.**

For the purposes of this subpart, the following additional definitions apply:

(a) *Board of Governors* means the Board of Governors of the Federal Reserve System.

(b) *Comptroller* means the Office of the Comptroller of the Currency.

(c) *Eligible insured branch*. An insured branch will be treated as an eligible depository institution within the meaning of § 303.2(r) of this part if the insured branch:

(1) Received an FDIC-assigned composite ROCA rating of 1 or 2 as a result of its most recent federal or state examination, and the FDIC, Comptroller, or Board of Governors have not expressed concern about the condition or operations of the foreign banking organization or the support it offers the branch;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well capitalized as defined in subpart B of part 325 of this chapter; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with any U.S. bank regulatory authority.

(d) *Federal branch* means a federal branch of a foreign bank as defined by § 346.1 of this chapter.

(e) *Foreign bank* means a foreign bank as defined by § 346.1 of this chapter.

(f) *Foreign branch* means a foreign branch of an insured state nonmember bank as defined by § 347.2 of this chapter.

(g) *Insured branch* means an insured branch of a foreign bank as defined by § 346.1 of this chapter.

(h) *State branch* means a state branch of a foreign bank as defined by § 346.1 of this chapter.

**§ 303.182 Establishing, moving or closing a foreign branch of a state nonmember bank.**

(a) *General consent to expand within a country*. (1) General consent of the FDIC is granted under § 347.3 of this chapter for an eligible depository institution to establish additional foreign branches conducting activities authorized by § 347.3 in any foreign country in which the bank already operates one or more foreign branches, or to move an existing foreign branch within a foreign country.

(2) *Notice procedures for general consent*. The eligible depository institution must provide the appropriate regional director (DOS) written notice within 30 days of taking such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a-2). The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other branch establishments*. (1) *Where to file*. An insured state nonmember bank seeking to establish a foreign branch other than under paragraph (a) of this section must submit an application to the appropriate regional director (DOS).

(2) *Content of filing*. A complete letter filing must contain the following information:

(i) The exact location of the foreign branch, including a street address, and a statement whether the foreign branch will be located on a site on the World

Heritage List or on the foreign country's equivalent of the National Register, in accordance with section 402 of the NHPA Amendments Act;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the applicant's business plan with respect to the foreign branch; and

(iv) A brief description of the activities of the branch, and to the extent any activities are not authorized by § 347.3 of this chapter, the applicant's reasons why they should be approved.

(3) *Additional information*. The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing*.—(1) *Expedited processing for eligible depository institutions*. An application filed by an eligible depository institution as defined in § 303.2(r) of this part that operates foreign branches in two or more territories or foreign countries to establish a foreign branch that conducts activities authorized by § 347.3 of this chapter in an additional foreign country will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing is deemed approved 45 days after the FDIC's receipt of a substantially complete application.

(2) *Standard processing*. For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken as soon as the decision is rendered.

(d) *Exceptions to general consent and expedited processing*. (1) Upon notice to an insured state nonmember bank, the FDIC may modify or suspend the availability of its general consent or expedited processing under this section.

(2) General consent or expedited processing under this section does not apply in any case in which:

(i) The foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register in accordance with section 402 of the NHPA Amendments Act; or

(ii) Any applicable law or practice in the relevant foreign country would limit the FDIC's access to information for supervisory purposes.

(e) *Closing.* Within 30 days after it closes a foreign branch, an insured state nonmember bank must advise the appropriate regional director (DOS) by letter of the name, location, and date of closing of the closed branch.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve an application under paragraph (c) of this section if the following criteria are satisfied:

(1) The requirements of section 402 the NHPA Amendments Act have been favorably resolved; and

(2) The applicant will only conduct activities authorized by § 347.3 of this chapter.

**§ 303.183 Acquisition of stock of foreign banks or other financial entities by an insured state nonmember bank.**

(a) *Definition.* For purposes of this section only, a foreign bank or other financial entity means a foreign bank or other financial entity as defined by § 347.2 of this chapter.

(b) *Filing procedures.*—(1) *Where to file.* An application by an insured state nonmember bank to acquire or hold an ownership interest in a foreign bank or other financial entity, as required by § 347.4 of this chapter, must be filed in writing with the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must contain full information concerning the foreign bank or other financial entity, including the following information:

(i) The cost, number, class of shares to be acquired, and the proposed carrying value of such shares on the books of the insured state nonmember bank;

(ii) A recent balance sheet and income statement of the foreign bank or other financial entity;

(iii) A brief description of the foreign bank's or other financial entity's business (including full information concerning any direct or indirect business transacted in the United States);

(iv) Lists of directors and principal officers (with address and principal business affiliation of each) and of all shareholders known to hold 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each; and

(v) Information concerning the rights and privileges of the various classes of shares outstanding.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

(d) *Delegations of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve or deny applications submitted under this section for the acquisition and holding of stock or other evidences of ownership of a foreign bank or other financial entity that result in the state nonmember bank having a less than 25 percent ownership interest in such bank or other financial entity.

**§ 303.184 Moving an insured branch of a foreign bank.**

(a) *Filing procedures.*—(1) *Where and when to file.* An application by an insured branch of a foreign bank seeking the FDIC's consent to move from one location to another, as required by section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)), must be submitted in writing to the appropriate regional director (DOS) on the date the notice required by paragraph (c) of this section is published, or within 5 days after the date of the last required publication.

(2) *Content of filing.* A complete letter filing must include the following information:

(i) The exact location of the proposed site, including the street address;

(ii) Details concerning any involvement in the proposal by an insider of the insured branch, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A statement of the impact of the proposal on the human environment, including information on compliance with local zoning laws and regulations and the effect on traffic patterns, for purposes of complying with the applicable provisions of the NEPA;

(iv) A statement as to whether the site is included in or is eligible for inclusion in the National Register of Historic Places, including a statement that clearance has been or will be obtained from the State Historic Preservation Officer, for purposes of complying with the applicable provisions of the NHPA;

(v) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA; and

(vi) A copy of the newspaper publication required by paragraph (c) of this section, as well as the name and address of the newspaper and the date of the publication.

(3) *Comptroller's application.* If the applicant is filing an application with the Comptroller which contains the information required by paragraph (a)(2) of this section, the applicant may submit a copy to the FDIC in lieu of a separate application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.*—(1) *Expedited processing for eligible insured branches.* An application filed by an eligible insured branch as defined in § 303.181(c) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(i) The 21st day after the FDIC's receipt of a substantially complete application; or

(ii) The 5th day after expiration of the comment period described in paragraph (c) of this section.

(2) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(c) *Publication requirement and comment period.*—(1) *Newspaper publications.* The applicant must publish a notice of its proposal to move from one location to another, as described in § 303.7(b), in a newspaper of general circulation in the community in which the insured branch is located prior to its being moved and in the community to which it is to be moved. The notice must include the insured branch's current and proposed addresses.

(2) *Public comments.* All public comments must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (c)(1) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(3) *Lobby notices.* If the insured branch has a public lobby, a copy of the newspaper publication must be posted in the public lobby for at least 15 days beginning on the date of the publication required by paragraph (c)(1) of this section.

(d) *Delegation of authority.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve an application under this section. For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (d)(1)(i) through (d)(1)(iv) and (d)(1)(vi) of this section must be satisfied. For the regional director or deputy regional director (DOS) to exercise this authority, paragraphs (d)(1)(i) through (d)(1)(vi) of this section must be satisfied.

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The applicant is at least adequately capitalized as defined in subpart B of part 325 of this chapter;

(iii) Any financial arrangements which have been made in connection with the proposed relocation and which involve the applicant's directors, officers, major shareholders, or their interests are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(v) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(vi) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve applications under this section which meet all criteria in paragraph

(d)(1) of this section except that the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent; or

(3) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to deny applications under this section.

#### **§ 303.185 Mergers involving an insured branch of a foreign bank.**

(a) *Applicability of subpart D.* Mergers requiring the FDIC's prior approval as set forth in § 303.62 of this part include any merger in which the resulting institution is an insured branch of a foreign bank which is not a federal branch, or any merger which involves any insured branch and any uninsured institution. In such cases:

(1) References to an eligible depository institution in subpart D of this part include an eligible insured branch as defined in § 303.181 of this subpart;

(2) The definition of a corporate reorganization in § 303.61(b) of this part includes a merger between an insured branch and other branches, agencies, or subsidiaries in the United States of the same foreign bank; and

(3) For the purposes of § 303.62(b)(1) of this part on interstate mergers, a merger transaction involving an insured branch is one involving the acquisition of a branch of an insured bank without the acquisition of the bank for purposes of section 44 of the FDI Act (12 U.S.C. 1831u) only when the merger transaction involves fewer than all the insured branches of the same foreign bank in the same state.

#### **§ 303.186 Exemptions from insurance requirement for a state branch of a foreign bank.**

(a) *Filing procedures.*—(1) *Where to file.* An application by a state branch for consent to operate as a noninsured state branch, as required by § 346.6(b) of this chapter, must be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must include the following information:

(i) The kinds of deposit activities in which the state branch proposes to engage;

(ii) The expected source of deposits;

(iii) The manner in which deposits will be solicited;

(iv) How the activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(v) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(vi) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application.

(2) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

#### **§ 303.187 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches.**

(a) *Filing procedures.*—(1) *Where to file.* An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by § 346.101(a) of this chapter, must be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must include the following information:

(i) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(ii) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application;

(iv) A statement by the applicant of whether it is in compliance with §§ 346.19 and 346.20 of this chapter, Pledge of assets and Asset maintenance, respectively;

(v) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of each such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

(vi) A statement of why the activity will pose no significant risk to the Bank Insurance Fund.

(3) *Board of Governors application.* If the application to the Board of Governors contains the information required by paragraph (a) of this section, the applicant may submit a copy to the FDIC in lieu of a separate letter application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Divestiture or cessation.*—(1) *Where to file.* Divestiture plans necessitated by a change in law or other authority, as required by § 346.101(f) of this chapter, must be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must include the following information:

(i) A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (b) of this section.

#### Subpart K—Prompt Corrective Action

##### § 303.200 Scope.

(a) *General.* (1) This subpart covers applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), which requires insured depository institutions that are not adequately capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. The restrictions and prohibitions become more severe as an institution's capital level declines.

(2) Definitions for the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart B of part 325 of this chapter, § 325.103(b) for banks and § 325.103(c) for insured branches of foreign banks.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart B

of part 325 of this chapter apply primarily to insured state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart B of part 325 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

##### § 303.201 Filing procedures.

Applications shall be filed with the appropriate regional director (DOS). The application shall contain the information specified in each respective section of this subpart, and shall be in letter form as prescribed in § 303.3 of this part. Additional information may be requested by the FDIC. Such letter shall be signed by the president, senior officer or a duly authorized agent of the insured depository institution and be accompanied by a certified copy of a resolution adopted by the institution's board of directors or trustees authorizing the application.

##### § 303.202 Processing.

The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

##### § 303.203 Applications for capital distribution.

(a) *Scope.* An insured state nonmember bank and any insured branch of a foreign bank shall submit an application for capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire or otherwise acquire shares or ownership interests of the insured depository institution shall describe the proposal, the shares or obligations which are the subject thereof, and the additional shares or obligations of the institution which will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under section 18(i) of the FDI Act (12 U.S.C. 1828(i)) as implemented by § 303.241 of this part regarding prior consent to retire capital, such application should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

##### § 303.204 Applications for acquisitions, branching, and new lines of business

(a) *Scope.* (1) Any insured state nonmember bank and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status toward implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

##### § 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured state nonmember bank or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured state nonmember bank or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

(b) *Content of filing.* Applications shall list each proposed bonus or increase in compensation, and for the latter shall identify compensation for each of the twelve calendar months preceding the calendar month in which the institution became undercapitalized. Applications also shall state the date the institution's capital restoration plan was accepted by the FDIC, and describe any progress made in implementing the plan.

**§ 303.206 Application for payment of principal or interest on subordinated debt.**

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to pay principal or interest on subordinated debt.

(b) *Content of filing.* Applications shall describe the proposed payment and provide an explanation of action taken under section 38(h)(3)(A)(ii) of the FDI Act (action instead of receivership or conservatorship). The application also shall explain how such payments would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o). Existing approvals pursuant to requests filed under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) (capital stock reductions or retirements) shall not be deemed to be the permission needed pursuant to section 38.

**§ 303.207 Restricted activities for critically undercapitalized institutions.**

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to engage in certain restricted activities.

(b) *Content of filing.* Applications to engage in any of the following activities, as set forth in sections 38(i)(2)(A) through (G) of the FDI Act, shall describe the proposed activity and explain how the activity would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o):

(1) Enter into any material transaction other than in the usual course of business including any action with respect to which the institution is required to provide notice to the appropriate federal banking agency. Materiality will be determined on a case-by-case basis;

(2) Extend credit for any highly leveraged transaction (as defined in part 325 of this chapter);

(3) Amend the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(4) Make any material change in accounting methods;

(5) Engage in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b)));

(6) Pay excessive compensation or bonuses. Part 359 of this chapter provides guidance for determining excessive compensation. The FDIC will consider the existing compensation levels of an institution's executive officers directors and principal shareholders (as defined in Regulation O, 12 CFR part 215) on a case-by-case basis, and will require prior written approval for any change in their compensation levels; or

(7) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Section 337.6 of this chapter (Brokered deposits) provides guidance for defining the relevant terms of this provision; however this provision does not supersede the general prohibitions contained in § 337.6.

**§ 303.208 Delegation of authority.**

Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny the following applications, requests or petitions submitted pursuant to this subpart:

(a) Applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) (prompt corrective action), including applications to make a capital distribution;

(b) Applications for acquisitions, branching, and new lines of business (except that the delegation is limited to the authority as delegated to approve or deny any concurrent application filed pursuant to section 18(c) or (d) of the FDI Act (12 U.S.C. 1828(c) or (d));

(c) Applications to pay a bonus or increase compensation;

(d) Applications for an exception to pay principal or interest on subordinated debt; and

(e) Applications by critically undercapitalized insured depository institutions to engage in any restricted activity listed in this subpart.

**Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)****§ 303.220 Scope.**

This subpart covers applications under section 19 of the FDI Act (12 U.S.C. 1829).

Pursuant to section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not become, or continue as, an institution-affiliated party of an insured depository institution; own or control, directly or indirectly, any insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository

institution without the prior written consent of the FDIC.

**§ 303.221 Filing procedures.**

(a) *Regional office.* An application under section 19 shall be filed with the appropriate FDIC regional director (DOS).

(b) *Contents of filing.* Application forms may be obtained from any FDIC regional office. The FDIC may require additional information beyond that sought in the form or questionnaire, as warranted, in individual cases.

**§ 303.222 Service at another insured depository institution.**

In the case of a person who has already been approved by the FDIC under this subpart or section 19 of the Act in connection with a particular insured depository institution, such person may not become an institution affiliated party, or own or control directly or indirectly another insured depository institution, or participate in the conduct of the affairs of another insured depository institution, without the prior written consent of the FDIC.

**§ 303.223 Applicant's right to hearing following denial.**

An applicant may request a hearing following a denial of an application in accordance with the provisions of part 308 of this chapter.

**§ 303.224 Delegation of authority.**

(a) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) or, where confirmed in writing by the Director, to an associate director or to the appropriate regional director or deputy regional director, to approve applications made by insured depository institutions pursuant to section 19 of the FDI Act, after consultation with the Legal Division; provided however, that authority may not be delegated to the regional director or deputy regional director where the applicant's primary supervisory authority interposes any objection to such application.

(b) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) or, where confirmed in writing by the Director, to an associate director, to deny applications made by insured depository institutions pursuant to section 19 of the Act.

(c) *Concurrent legal certification.* The authority to deny applications delegated under this section shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, his or her designee, that the action taken is not inconsistent with section 19 of the FDI Act.



(d) *Conditions on application approvals.* Regional directors and deputy regional directors acting under delegated authority under this subpart may impose any of the following conditions on the approval of applications, as appropriate in individual cases:

(1) A participant or institution-affiliated party of an institution shall be bonded to the same extent as others in similar positions; and/or

(2) When deemed necessary, the prior consent of the appropriate regional director (DOS) shall be required for any proposed significant changes in duties and/or responsibilities of the person who is the subject of the application.

(e) *Authority not delegated by FDIC Board of Directors.* The FDIC Board of Directors has not delegated its authority to consider and act upon an application under section 19 of the FDI Act after a hearing held in accordance with the provisions of part 308 of this chapter.

#### Subpart M—Other Filings

##### § 303.240 General.

This subpart sets forth the filing procedures to be followed when seeking the FDIC's consent to engage in certain activities or accomplish other matters as specified in the individual sections contained herein. For those matters covered by this subpart that also have substantive FDIC regulations or related statements of policy, references to the relevant regulations or statements of policy are contained in the specific sections.

##### § 303.241 Reduce or retire capital stock or capital debt instruments.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The type and amount of the proposed change to the capital structure and the reason for the change;

(2) A schedule detailing the present and proposed capital structure;

(3) The time period that the proposal will encompass;

(4) If the proposal involves a series of transactions affecting Tier 1 capital components which will be consummated over a period of time

which shall not exceed 12 months, the application shall certify that the insured depository institution will maintain itself as a well capitalized institution as defined in part 325 of this chapter, both before and after each of the proposed transactions;

(5) If the proposal involves the repurchase of capital instruments, the amount of the repurchase price and the basis for establishing the fair market value of the repurchase price;

(6) A statement that the proposal will be available to all holders of a particular class of outstanding capital instruments on an equal basis, and if not, the details of any restrictions; and

(7) The date that the applicant's board of directors approved the proposal.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Undercapitalized institutions.* Procedures regarding applications by an undercapitalized insured depository institution to retire capital stock or capital debt instruments pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) are set forth in subpart K (Prompt Corrective Action), § 303.203 of this part. Applications pursuant to section 38 and 18(i) may be filed concurrently, or as a single application.

(f) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved 20 days after the FDIC's receipt of a substantially complete application.

(g) *Standard processing.* For those applications that are not processed pursuant to expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny an application pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)) to reduce the amount or retire any part of common or

preferred capital stock, or to retire any part of capital notes or debentures.

##### § 303.242 Exercise of trust powers.

(a) *Scope.* This section contains the procedures to be followed by a state nonmember bank to seek the FDIC's prior consent to exercise trust powers. The FDIC's prior consent to exercise trust powers is not required in the following circumstances:

(1) Where a state nonmember bank received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where an insured depository institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Filing procedures.* Applicants should submit to the appropriate regional director (DOS) a completed form, "Application for Consent To Exercise Trust Powers." This form may be obtained from any FDIC regional office.

(c) *Content of filing.* The filing should consist of the completed trust application form.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Delegation of authority.* (1) Where the criteria listed in paragraph (g)(2) of this section are satisfied and the applicant agrees in writing to comply with any conditions imposed by the approving FDIC official, other than the standard conditions defined in § 303.2(ff) of this part, which may be imposed without the applicant's written

consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for the FDIC's consent to exercise trust powers.

(2) The following criteria must be satisfied before the authority delegated in paragraph (g)(1) of this section may be exercised:

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The proposed management of the trust business is determined to be capable of satisfactorily handling the anticipated business; and

(iii) The applicant's board of directors formally has adopted the FDIC Statement of Principles of Trust Department Management available from any FDIC regional office.

(h) *Denials and certain conditional approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to:

(1) Deny applications for trust powers; and

(2) Approve applications for trust powers where the criteria listed in paragraph (g)(2) of this section are satisfied but the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent.

#### § 303.243 Brokered deposit waivers.

(a) *Scope.* Pursuant to section 29 of the FDI Act (12 U.S.C. 1831f) and § 337.6 of this chapter, an adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposits unless it has obtained a waiver from the FDIC. A well capitalized insured depository institution may accept brokered deposits without a waiver, and an undercapitalized insured depository institution may not accept, renew or roll over any brokered deposits under any circumstances. This section contains the procedures to be followed to file with the FDIC for a brokered deposit waiver. The FDIC will provide notice to the depository institution's appropriate federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Prior notice and/or consultation shall not be required in any particular case if the

FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application should contain the following:

(1) The time period for which the waiver is requested;

(2) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(3) The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(4) How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;

(5) Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(6) Management systems overseeing the solicitation, acceptance and use of brokered deposits;

(7) A recent consolidated financial statement with balance sheet and income statements; and

(8) The reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in this § 303.243(e) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. For the purpose of this section, an applicant will be deemed an eligible depository institution if it satisfies all of the criteria contained in § 303.2(r) except that the applicant may be adequately capitalized rather than well capitalized. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited procedures will be deemed approved 21 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those filings which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Conditions for approval.* A waiver issued pursuant to this section shall:

(1) Be for a fixed period, generally no longer than two years, but may be extended upon refiling; and

(2) May be revoked by the FDIC at any time by written notice to the institution.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny brokered deposit waiver applications. Based upon a preliminary review, any delegate may grant a temporary waiver for a short period in order to facilitate the orderly processing of a filing for a waiver.

#### § 303.244 Golden parachute and severance plan payments.

(a) *Scope.* Pursuant to section 18(k) of the FDI Act (12 U.S.C. 1828(k)) and part 359 of this chapter (12 CFR part 359), an insured depository institution or depository institution holding company may not make golden parachute payments or excess nondiscriminatory severance plan payments unless the depository institution or holding company obtains permission to make such payments in accordance with the rules contained in part 359 of this chapter. This section contains the procedures to file for the FDIC's consent when such consent is necessary under part 359 of this chapter, as described below:

(1) *Golden parachute payments.* A golden parachute payment is defined in § 359.1(f)(1) of this chapter as a payment by a troubled insured depository institution or troubled depository institution holding company. A troubled insured depository institution or a troubled depository institution holding company is prohibited from making golden parachute payments unless it obtains the consent of the appropriate federal banking agency and the written concurrence of the FDIC. Therefore, in the case of golden parachute payments, the procedures in this section apply to all troubled insured depository institutions and troubled depository institution holding companies.

(2) *Excess nondiscriminatory severance plan payments.* In the case of excess nondiscriminatory severance plan payments as provided by § 359.1(f)(2)(v) of this chapter, the

FDIC's consent is necessary for state nonmember banks that meet the criteria set forth in § 359.1(f)(1)(ii) of this chapter. In addition, the FDIC's consent is required for all insured depository institutions or depository institution holding companies that meet the same criteria and seek to make payments in excess of the 12-month amount specified in § 359.1(f)(2)(v).

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application should contain the following:

- (1) The reasons why the applicant seeks to make the payment;
- (2) An identification of the institution-affiliated party who will receive the payment;
- (3) A copy of any contract or agreement regarding the subject matter of the filing;
- (4) The cost of the proposed payment and its impact on the institution's capital and earnings; and
- (5) The reasons why consent to the payment should be granted.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or to deny filings to make:

- (1) Excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v); and
- (2) Golden parachute payments permitted by 12 CFR 359.4.

**§ 303.245 Waiver of liability for commonly controlled depository institutions.**

(a) *Scope.* Section 5(e) of the FDI Act (12 U.S.C. 1815(e)) creates liability for commonly controlled insured depository institutions for losses incurred or anticipated to be incurred by the FDIC in connection with the default of a commonly controlled insured depository institution or any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in

the best interests of the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF). This section describes procedures to request a conditional waiver of liability pursuant to 12 U.S.C. 1815(e)(5)(A).

(b) *Definition. Conditional waiver of liability* means an exemption from liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)) subject to terms and conditions.

(c) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(d) *Content of filing.* The application should contain the following information:

- (1) The basis for requesting a waiver;
- (2) The existence of any significant events (e.g., change of control, capital injection, etc.) that may have an impact upon the applicant and/or any potentially liable institution;
- (3) Current, and if applicable, pro forma financial information regarding the applicant and potentially liable institution(s); and
- (4) The benefits to the appropriate FDIC insurance fund resulting from the waiver and any related events.

(e) *Additional information.* The FDIC may request additional information at any time during the processing of the filing.

(f) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Failure to comply with terms of conditional waiver.* In the event a conditional waiver of liability is issued, failure to comply with the terms specified therein may result in the termination of the conditional waiver of liability. The FDIC reserves the right to revoke the conditional waiver of liability after giving the applicant written notice of such revocation and a reasonable opportunity to be heard on the matter.

(h) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application for waiver of liability of commonly controlled depository institutions.

**§ 303.246 Insurance fund conversions.**

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the FDIC's prior approval to engage in an insurance fund conversion that involves the transfer of deposits between the SAIF and the BIF. Optional conversion transactions, commonly referred to as Oakar transactions, pursuant to section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)) which do not involve the

transfer of deposits between the SAIF and the BIF are governed by the procedures set forth in subpart D (Merger Transactions) of this part.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate FDIC regional director (DOS). The filing should be signed by representatives of each institution participating in the transaction. Insurance fund conversions which are proposed in conjunction with a merger application filed pursuant to section 18(c) of the FDI Act (12 U.S.C. 1828(c)) should be included with that filing.

(c) *Content of filing.* The application should include the following information:

- (1) A description of the transaction;
- (2) The amount of deposits involved in the conversion transaction;
- (3) A pro forma balance sheet and income statement for each institution upon consummation of the transaction; and
- (4) Certification by each party to the transaction that applicable entrance and exit fees will be paid pursuant to part 312 of this chapter.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny filings for insurance fund conversions involving the transfers of deposits between the Savings Association Insurance Fund and the Bank Insurance Fund.

**§ 303.247 Conversion with diminution of capital.**

(a) *Scope.* This section contains the procedures to be followed by an insured federal depository institution seeking the prior written consent of the FDIC pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to an insured state nonmember bank (except a District bank) where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholders' meeting approving such conversion.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

- (1) A description of the proposed transaction;
- (2) A schedule detailing the present and proposed capital structure; and
- (3) A copy of any documents submitted to the state chartering authority with respect to the charter conversion.

(d) *Additional information.* The FDIC may request additional information at any time during the processing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority*—(1) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications to convert with diminution of capital.

(2) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny applications to convert with diminution of capital.

**§ 303.248 Continue or resume status as an insured institution following termination under section 8 of the FDI Act.**

(a) *Scope.* This section relates to applications by depository institutions whose insured status has been terminated under section 8 of the FDI Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution. This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of an FDIC order terminating deposit insurance, but does not cover operating non-insured depository institutions which were previously insured by the FDIC, or any non-insured, non-operating depository institution whose charter has not been surrendered or revoked.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The filing should contain the following information:

- (1) A complete statement of the action requested, all relevant facts, and the reason for such requested action; and
- (2) A certified copy of the resolution of the depository institution's board of directors authorizing submission of the filing.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application to continue or resume status as an insured institution following termination under section 8 of the FDI Act.

**§ 303.249 Truth in Lending Act—Relief from reimbursement.**

(a) *Scope.* This process applies to requests for relief from reimbursement pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226).

(b) *Procedures to be followed in filing initial requests for relief.* Requests for relief from reimbursement should be filed with the appropriate regional director (DCA) within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. The filing should contain a complete and concise statement of the action requested, all relevant facts, the reasons and analysis relied upon as the basis for such requested action, and all supporting documentation.

(c) *Additional information.* The FDIC may request additional information at any time during processing of any such requests.

(d) *Processing.* The FDIC will acknowledge receipt of the request and provide the applicant with a subsequent written notification of its determination as soon as the decision is rendered.

(e) *Delegation of authority*—(1) *Denial of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to deny requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); provided however, that a regional director or deputy regional director is not authorized to deny any request where the estimated amount of reimbursement is greater than \$25,000.

(2) *Approval of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the director, to a deputy director or an associate director to approve requests for relief from the requirements for reimbursement under section 608(a)(2)

of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(a)(2)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(g) *Procedures to be followed in filing requests for reconsideration.* Within 15 days of receipt of written notice that its request for relief has been denied, the requestor may petition the appropriate regional director (DCA) for reconsideration of such request in accordance with the procedures set forth in § 303.11(f) of this part.

**§ 303.250 Modification of conditions.**

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC to modify the requirements of a prior approval of a filing issued by the FDIC.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

- (1) A description of the original approval;
- (2) A description of the modification requested; and
- (3) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests to modify the requirements of a prior approval of a filing issued by the FDIC subject to the following criteria:

- (1) The Legal Division is consulted to the same extent as was required for approval of the original filing; and
- (2) The approving delegate had the authority to approve the original filing.

**§ 303.251 Extension of time.**

(a) *Scope.* This section contains the procedures to be followed by an insured

depository institution to seek the prior consent of the FDIC for additional time to fulfill a condition required in an approval of a filing issued by the FDIC or to consummate a transaction which was the subject of an approval by the FDIC.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

(1) A description of the original approval;

(2) Identification of the original time limitation;

(3) The additional time period requested; and

(4) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* (1) Except as provided in paragraph (f)(2) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests for extensions of time within which to perform acts or fulfill conditions required by a prior FDIC action on a filing of the insured depository institution.

(2) Limits on exercise of delegated authority. (i) Extensions of time approved may not exceed one year.

(ii) Notwithstanding the delegations in paragraph (f)(1) of this section, no delegate shall have the authority to deny an extension of time request unless that delegate has the authority under this part to deny the original filing upon which the extension of time is predicated.

#### Subpart N—Enforcement Delegations

##### § 303.260 Scope.

This subpart contains delegations of authority relating to the initiation, prosecution, and settlement of administrative enforcement actions under the FDI Act and other laws and regulations enforced by the FDIC, including investigations and subpoenas.

##### § 303.261 Issuance of notification to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *Book capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS), and where

confirmed in writing by the Director, to an associate director or to the appropriate regional director or deputy regional director, to issue notifications to primary regulator when the respondent depository institution's book capital is less than 2 percent of total assets; provided that authority may not be delegated to the regional director or deputy regional director whenever the respondent depository institution has issued any mandatory convertible debt or any form of Tier 2 capital (such as limited life preferred stock, subordinated notes and debentures).

(b) *Tier 1 capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to issue notifications to primary regulator when the respondent depository institution's adjusted Tier 1 capital is less than 2 percent of adjusted part 325 total assets as defined in § 303.2(b) of this part.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues notifications to primary regulator, by the appropriate regional counsel, that the allegations contained in the findings of violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for the issuance of a notification to primary regulator pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

##### § 303.262 Issuance of notice of intention to terminate insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to issue notices of intent to terminate insured status when the respondent depository institution has failed to correct any violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition as specified in the relevant notification to primary regulator.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the findings in the notice of intention to terminate insured status of violations of law or regulation and/or unsafe or

unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for termination of the insured status of the respondent depository institution pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

##### § 303.263 Cease-and-desist actions under section 8(b) of the FDI Act (12 U.S.C. 1818(b)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director or to the appropriate regional director or deputy regional director to issue:

(1) Notices of charges; and

(2) Cease-and-desist orders (with or without a prior notice of charges) where the respondent depository institution or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue a joint notice of charges or cease-and-desist order under this section, where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors, regional directors or deputy regional directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a section 8(b) order, or that the stipulated cease-and-desist order is authorized under section 8(b) of the FDI Act, and, upon its effective date, shall be a cease-and-desist order which has become final for purposes of enforcement pursuant to the FDI Act.

##### § 303.264 Temporary cease-and-desist orders under section 8(c) of the FDI Act (12 U.S.C. 1818(c)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing

by the appropriate Director, to an associate director, to issue temporary cease-and-desist orders.

(b) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue a joint temporary cease-and-desist order where such order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action is not inconsistent with section 8(c) of the FDI Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

**§ 303.265 Removal and prohibition actions under section 8(e) of the FDI Act (12 U.S.C. 1818(e)).**

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) or the Director and Deputy Director (DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notices of intention to remove an institution-affiliated party from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e)(1) and (2) of the FDI Act (12 U.S.C. 1818(e)(1) and (2)), and temporary orders of suspension pursuant to section 8(e)(3) of the FDI Act (12 U.S.C. 1818(e)(3)); and

(2) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the institution-affiliated party consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices and orders pursuant to this section where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or their deputy directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the

General Counsel, by his or her designee, that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the FDI Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the FDI Act, and, upon issuance, shall be an order which has become final for purposes of enforcement pursuant to the FDI Act.

**§ 303.266 Suspension and removal action under section 8(g) of the FDI Act (12 U.S.C. 1818(g)).**

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension or prohibition to an institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted of or enters a pretrial diversion or similar program, as to any criminal offense cited in or covered by section 8(g) of the FDI Act, when such institution-affiliated party consents to the suspension or prohibition.

(b) *Delegation of authority where suspension or prohibition mandated.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension and prohibition to any institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted of or enters a pretrial diversion or similar program, as to any criminal offense involving mandatory suspension or prohibition under sections 8(g)(1)(A)(ii) and (C)(ii) of the FDI Act (12 U.S.C. 1818(g)(1)(A)(ii) and (C)(ii)), whether or not such institution-affiliated party consents to the suspension or prohibition.

(c) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue joint orders pursuant to this section where such order addresses both safety and soundness and consumer compliance matters. A joint order will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(g) of the FDI Act (12 U.S.C. 1818(g)) and the order is

enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the FDI Act (12 U.S.C. 1818(i) and (j)).

**§ 303.267 Termination of insured status under section 8(p) of the FDI Act (12 U.S.C. 1818(p)).**

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) or, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

**§ 303.268 Termination of insured status under section 8(q) of the FDI Act (12 U.S.C. 1818(q)).**

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of an insured depository institution where the liabilities of the insured institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, pursuant to section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) or, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

**§ 303.269 Civil money penalties.**

(a) *General.* Except as provided otherwise in this section, authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notice of assessment of civil money penalties; and

(2) Final orders to pay (with or without a prior notice of assessment of civil money penalty) where the insured depository institution or institution-affiliated party consents to the issuance of the order to pay and waives, as applicable, receipt of a notice of assessment of civil money penalty and the right to an administrative hearing.

(b) *Legal concurrence.* The authority delegated under paragraph (a) of this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties, or that the stipulated final order to pay is authorized under the FDI Act, and upon its effective date, shall be an order to pay which has become final for purposes of enforcement pursuant to the FDI Act.

(c) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices pursuant to paragraph (a) of this section where such notice addresses both safety and soundness and consumer compliance matters. A joint notice will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Required reports.* (1) Authority is delegated to the General Counsel or his or her designee for the levying and enforcement of civil money penalties under:

(i) Section 7(a)(1) of the FDI Act (12 U.S.C. 1817(a)(1)) for the late, inaccurate, false or misleading filing of Reports of Condition and Reports of Income;

(ii) Section 8(i) of the FDI Act (12 U.S.C. 1818(i)) for the late, inaccurate, false or misleading filing of Home Mortgage Disclosure Act (HMDA) reports;

(iii) Section 8(i) of the FDI Act (12 U.S.C. 1818(i)) for the late, inaccurate, false or misleading filing of Community Reinvestment Act (CRA) loan data reports; and

(iv) Such other reports as the Board of Directors may require.

(2) In the exercise of this delegated authority, the General Counsel or his or her designee shall consult with the appropriate Director, Deputy Director, or associate director before imposing any penalty.

**§ 303.270 Notices of assessment under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).**

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to

issue notices of assessment of liability to commonly controlled insured depository institutions for the estimated amount of loss to the deposit insurance funds.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

**§ 303.271 Prompt corrective action directives and capital plans under section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.**

(a) *General—Notices, directives and orders.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, reject, require new or revised capital restoration plans, or make any other determinations with respect to the implementation of capital restoration plans and, in accordance with subpart Q of part 308 of this chapter, to issue:

(1) Notices of intent to issue capital directives;

(2) Directives to insured state nonmember banks that fail to maintain capital in accordance with the requirements contained in part 325 of this chapter;

(3) Notices of intent to issue prompt corrective action directives, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831(f)(2)(F)(ii));

(4) Directives to insured depository institutions pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), with or without the consent of the respondent bank to the issuance of the directive, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii));

(5) Directives to insured depository institutions requiring immediate action or imposing proscriptions pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter, and in accordance with the requirements contained in § 308.201(a)(2) of this chapter;

(6) Notices of intent to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter;

(7) Directives to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter with the consent of the respondent bank to the issuance of the directive; and

(8) Orders on request for informal hearings to reconsider reclassifications

and designate the presiding officer at the hearing pursuant to § 308.202 of this chapter.

(b) *Notices—Dismissal of director and officer.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue a prompt corrective action directive ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii)) and in accordance with the requirements contained in § 308.203 of this chapter;

(2) Issue directives ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii)); and

(3) Issue orders of dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C.

1831o(f)(2)(F)(ii)) where the individual consents to the issuance of such order prior to the filing of a recommendation by the presiding officer with the FDIC.

(c) *Reclassification of institution other than on basis of capital.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to:

(1) Act on recommended decisions of presiding officers pursuant to a request for reconsideration of a reclassification in accordance with the requirements contained in § 308.202 of this chapter; and

(2) Act on requests for rescission of a reclassification.

(d) *Appeals of immediately effective PCA directives.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to act on appeals from immediately effective directives issued pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) and § 308.201 of this chapter.

(e) *Informal hearings.* Authority is delegated to the Executive Secretary of the FDIC to issue orders for informal hearings and designate presiding officers on directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues a notice, directive, or order, by the appropriate regional counsel, that the action taken is

not inconsistent with section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.

**§ 303.272 Investigations under section 10(c) of the FDI Act (12 U.S.C. 1820(c)).**

(a) *Authority of division directors.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), to the Director and Deputy Director of the Division of Resolutions and Receiverships, and where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director and deputy regional director, to issue an order of investigation pursuant to section 10(c) of the FDI Act (12 U.S.C. 1820(c)) and subpart K of part 308 of this chapter (12 CFR 308.144 through 308.150).

(b) *Authority of General Counsel.* Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his or her designee, to issue an order of investigation pursuant to sections 8 through 13 of the FDI Act (12 U.S.C. 1818–1823), as appropriate, and subpart K of part 308 of this chapter (12 CFR 308.144 through 308.150).

(c) *Concurrence in certain situations.* In issuing an order of investigation that pertains to an open insured depository institution or an institution making application to become an insured depository institution, or a post-conservatorship or post-receivership order of investigation, the authority delegated under this section shall be exercised only upon the concurrent execution of the order of investigation by the Director or Deputy Director (DOS), or the Director or Deputy Director (DCA), or the Director or Deputy Director of the Division of Resolutions and Receiverships, their respective associate directors, and the General Counsel or his or her designee. In the case of a joint order of investigation, such authority shall be exercised only upon the concurrent execution of the order of investigation by both Directors or Deputy Directors, or their associate directors, and upon the certification and execution of the order by the General Counsel or his or her designee.

**§ 303.273 Unilateral settlement offers.**

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept, deny or enter into negotiations for or regarding settlement and settlement offers with

insured depository institutions, or with an institution-affiliated party, pertaining to or arising in connection with a proceeding under part 308 of this chapter. In cases where a proceeding under part 308 of this chapter was issued jointly by DOS and DCA, both Directors or Deputy Directors, or their associate directors, must agree to accept, deny or enter into negotiations regarding settlement and settlement offers with insured depository institutions or with an institution-affiliated party.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

**§ 303.274 Acceptance of written agreements.**

(a) *Written agreements under section 8(a) of the FDI Act.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any matter which may be addressed by the FDIC pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(b) *Written agreements in lieu of cease-and-desist orders.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any safety and soundness or consumer compliance matter which may be addressed by the FDIC pursuant to section 8(b) of the FDI Act (12 U.S.C. 1818(b)) or any other provision of the FDI Act which addresses safety and soundness or consumer compliance matters. In cases which would address both safety and soundness and consumer compliance matters, the Directors, or their designees, may accept or enter into joint written agreements with insured depository institutions or any institution-affiliated party.

(c) *Written agreements as conditions attendant to FDIC filings contained in this part.* Authority is delegated to the Director and Deputy Director (DOS), and to the Director and Deputy Director (DCA) and, where confirmed in writing by the appropriate Director, to an

associate director, or to the appropriate regional director or deputy regional director, to accept or enter into any written agreements with insured depository institutions, any institution-affiliated party or any other petitioner which contains conditions precedent to the FDIC's non-objection to a filing pursuant to this part.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

**§ 303.275 Modifications and terminations of enforcement actions and orders.**

(a) *Termination of section 8(a) (12 U.S.C. 1818(a)) orders and agreements.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(a) orders and agreements and to terminate actions and agreements which are pending pursuant to section 8(a) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution.

(b) *Termination of section 8(a) (12 U.S.C. 1818(a)) notification to primary regulator issued by Board of Directors.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate notifications to primary regulator issued by the Board of Directors pursuant to section 8(a) of the FDI Act where the respondent depository institution is in material compliance with such notification or for good cause shown.

(c) *Termination of section 8(a) (12 U.S.C. 1818(a)) notice of intent to terminate insured status.* In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the FDI Act, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate the actions pending pursuant to such notice of intent to terminate insured status where the respondent depository institution is in material compliance with the applicable notification to primary regulator or for good cause shown.



(d) *Sections 8(b) and 8(c)* (12 U.S.C. 1818(b) and (c)) *actions and orders.* (1) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(b) and section 8(c) orders and agreements and to terminate actions and agreements which are pending pursuant to sections 8(b) and 8(c) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution. In cases where a joint order was issued by DOS and DCA, both Directors, or their Deputy Directors or associate directors, or the appropriate regional directors or deputy regional directors, must execute the order of termination.

(2) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(b) orders issued by the Board of Directors either where material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown. In cases where an order issued by the Board of Directors addresses both safety and soundness and consumer compliance matters, both Directors or Deputy Director, or the designees of the Directors, must execute the order of termination.

(e) *Modification and termination of section 8(e)* (12 U.S.C. 1818(e)) *orders and actions.* Authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to modify or terminate outstanding section 8(e) orders and pending actions and to grant consent under section 8(e)(7)(B) of the Act (12 U.S.C. 1818(e)(7)(B)) for the modification or termination of an outstanding section 8(e) order issued by another Federal financial institution regulatory agency where:

(1) The respondent has demonstrated his or her fitness to participate in any manner in the conduct of the affairs of an insured depository institution;

(2) The respondent has shown that his or her participation would not pose a risk to the institution's safety and soundness; or

(3) The respondent has proven that his or her participation would not erode public confidence in the institution.

(f) *Modification and termination of section 8(g)* (12 U.S.C. 1818(g)) *orders and actions.* Pursuant to section 8(j) of the FDI Act (12 U.S.C. 1818(j)), authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by either the Board of Directors or under delegated authority.

(g) *Other matters not specifically addressed.* For all outstanding or pending notices, actions, orders, directives and agreements not specifically addressed in this subpart, the delegations of authority contained in this subpart shall include the authority to modify or terminate any outstanding or pending notice, order, directive or agreement issued pursuant to delegated authority, as may be appropriate.

(h) *Termination of pending actions—general.* Any pending enforcement action may be dismissed or terminated by the Director or Deputy Director of DOS or DCA, as appropriate, at any time prior to the commencement of a hearing on the merits by an administrative law judge. Once a hearing on the merits has been convened by an administrative law judge, a pending enforcement action may be dismissed or terminated by stipulation or consent of the affected parties no later than 14 days after the administrative law judge has closed the record of the hearing. Only the FDIC Board of Directors may terminate or dismiss an enforcement action more than 14 days after the record has been closed by an administrative law judge.

(i) *Legal concurrence.* Any dismissals, modifications or terminations pursuant to this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director acts under delegated authority, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

**§ 303.276 Enforcement of outstanding enforcement orders.**

After consultation with the Director (DOS) or the Director (DCA), or a Deputy Director or an associate director, or the appropriate regional director or deputy regional director, as may be appropriate, the General Counsel or designee is authorized to initiate and

prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828, 1829, 1831i, 1831o, 1972, or 3909, or any provision thereof, in the appropriate United States District Court.

**§ 303.277 Compliance plans under section 39 of the FDI Act (12 U.S.C. 1831p-1) (standards for safety and soundness) and part 308 of this chapter.**

(a) *Compliance plans.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised compliance plans, or to make any other determinations with respect to the implementation of compliance plans pursuant to subpart R of part 308 of this chapter.

(b) *Notices, orders, and other action.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p-1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(2) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p-1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(3) Act on requests for modification or rescission of an order.

(c) *Legal concurrence—compliance plans.* The authority delegated under this section as to compliance plans shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

(d) *Legal concurrence—notices and orders.* The authority delegated under this section as to notices and orders shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her

designee that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the FDI Act or that the issuance of a final order is not inconsistent with section 39 of the FDI Act or that the stipulated section 39 order is not inconsistent with section 39 of the FDI Act and is an order which has become final for purposes of enforcement pursuant to the FDI Act.

**§ 303.278 Enforcement matters where authority is not delegated.**

Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(a) Notifications to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)) when the respondent bank's book capital is at or above 2 percent of total assets and adjusted Tier 1 capital is at or above 2 percent of adjusted part 325 total assets as defined in § 303.2(b) of this part;

(b) Orders terminating insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a));

(c) Cease-and-desist orders under section 8(b) of the FDI Act (12 U.S.C. 1818(b)) when the respondent depository institution or individual does not consent to the issuance of such orders;

(d) Temporary orders of suspension and prohibition under section 8(e) of the FDI Act (12 U.S.C. 1818(e));

(e) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution under section 8(e) of the FDI Act (12 U.S.C. 1818(e)) when the individual does not consent to the issuance of such orders;

(f) Orders of suspension or prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured depository institution under section 8(g) of the FDI Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(g) Final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held;

(h) Denials of requests for modifications or terminations of orders issued pursuant to section 8(g) of the FDI Act;

(i) Grants or denials of requests for reinstatement to office, whether or not an informal hearing has been requested, pursuant to § 308.203 of this chapter; and

(j) Grants or denials of requests for waivers of liability of commonly controlled insured depository institutions as to assessments under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

**PART 337—UNSAFE AND UNSOUND BANKING PRACTICES**

2. The authority citation for part 337 is revised to read as follows:

**Authority:** 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821f, 1828(j)(2), 1831, 1831f-1.

3. Section 337.6 is amended by revising paragraph (a)(5)(iii), adding a sentence at the end of paragraph (c), removing paragraphs (d) and (e), and redesignating paragraphs (g) and (h) as (d) and (e), respectively, to read as follows:

**§ 337.6 Brokered deposits.**

(a) \* \* \*

(5) \* \* \*

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution that is not well capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

(c) \* \* \* For filing requirements, consult 12 CFR 303.243.

\* \* \* \* \*

**PART 341—REGISTRATION OF TRANSFER AGENTS**

4. The authority citation for part 341 continues to read as follows:

**Authority:** Secs. 2, 3, 17, 17A and 23(a), Securities Exchange Act of 1934, as amended (15 U.S.C. 78b, 78c, 78q, 78q-1 and 78w(a)).

5. Section 341.7 is added to read as follows:

**§ 341.7 Delegation of authority.**

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and appropriate regional director and deputy regional director, to act on

disclosure matters under and pursuant to sections 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78).

(b) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(1)).

**PART 346—FOREIGN BANKS**

6. The authority citation for part 346 continues to read as follows:

**Authority:** 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3105, 3108.

7. Section 346.19 of subpart C is amended by adding a new paragraph (e)(14) to read as follows:

**§ 346.19 Pledge of assets.**

\* \* \* \* \*

(e) \* \* \*

(14) *Delegation of authority.* (i) Authority is delegated to the Director and Deputy Director of the Division of Supervision and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director of the region in which the insured branch is located, to enter into pledge agreements with foreign banks and depositories under this section. This authority also shall extend to the power to revoke such approval and require the dismissal of the depository.

(ii) Authority is delegated to the General Counsel or designee to modify the terms of the model deposit agreement used under this section.

\* \* \* \* \*

**PART 348—MANAGEMENT OFFICIAL INTERLOCKS**

8. The authority citation for part 348 continues to read as follows:

**Authority:** 12 U.S.C. 3207, 12 U.S.C. 1823(k).

9. Section 348.9 is added to read as follows:

**§ 348.9 Delegation of authority.**

(a) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and appropriate regional director and deputy regional director, to approve or deny requests to establish management official interlocks pursuant to § 348.6 or section 205(8) of the Depository Institutions Management Interlocks Act (except that a regional director or deputy regional director may deny such a request only if the request was made pursuant to 348.6(b)(4)); and

(b) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny a request to establish a management official interlock pursuant to any provision of either § 348.6 or section 205(8) of the Depository Institutions Management Interlocks Act.

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

10. The authority citation for part 359 continues to read as follows:

**Authority:** 12 U.S.C. 1828(k).

11. Section 359.6 is revised to read as follows:

**§ 359.6 Filing instructions.**

Requests to make excess nondiscriminatory severance plan

payments pursuant to § 359.1(f)(2)(v) and golden parachute payments permitted by § 359.4 shall be submitted in writing to the appropriate regional director (DOS). For filing requirements, consult 12 CFR 303.244. In the event that the consent of the institution's primary federal regulator is required in addition to that of the FDIC, the requesting party shall submit a copy of its letter to the FDIC to the institution's primary federal regulator. In the case of national banks, such written requests shall be submitted to the OCC. In the case of state member banks and bank holding companies, such written requests shall be submitted to the Federal Reserve district bank where the institution or holding company, respectively, is located. In the case of savings associations and savings

association holding companies, such written requests shall be submitted to the OTS regional office where the institution or holding company, respectively, is located. In cases where only the prior consent of the institution's primary federal regulator is required and that agency is not the FDIC, a written request satisfying the requirements of this section shall be submitted to the primary federal regulator as described in this section.

By order of the Board of Directors.

Dated at Washington, DC., this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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