(3) Provide a description of the current and proposed activities of the financial subsidiary and the specific authority permitting each activity;

(4) Certify that the bank and each of its depository institution affiliates, was well capitalized at the close of the previous calendar quarter, and remains well capitalized as of the date the bank files its notice;

(5) Certify that the bank and each of its depository institution affiliates is well managed as of the date the bank files its notice;

(6) Certify that the bank meets the debt rating or alternative requirement of § 208.71(b), if applicable; and

(7) Certify that the bank and its financial subsidiaries are in compliance with the asset limit set forth in § 208.71(a)(3) both before the proposal and on a pro forma basis.

(c) *Insurance activities.* (1) If a notice filed under paragraph (a) of this section relates to the initial affiliation of the bank with a company engaged in insurance activities, the notice must describe the type of insurance activity that the company is engaged in or plans to conduct and identify each state where the company holds an insurance license and the state insurance regulatory authority that issued the license.

(2) The appropriate Reserve Bank will send a copy of any notice described in this subsection to the appropriate state insurance regulatory authorities and provide such authorities with an opportunity to comment on the proposal.

(d) *Approval procedures.* A notice filed with the appropriate Reserve Bank will be deemed approved on the fifteenth day after receipt of a complete notice by the appropriate Reserve Bank, unless prior to that date the Board or the appropriate Reserve Bank notifies the bank that the notice is approved, that the notice will require additional review, or that the bank does not meet the requirements of this subpart.

§ 208.77 Definitions.

The following definitions shall apply to this subpart:

(a) *Affiliate, Company, Control, and Subsidiary.* The terms ''affiliate'', ''company'', ''control'', and ''subsidiary'' have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(b) *Appropriate Federal Banking Agency, Depository Institution, Insured Bank and Insured Depository Institution.* The terms ''appropriate Federal banking agency'', ''depository institution'', ''insured bank'' and ''insured depository institution'' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Eligible Debt.* The term ''eligible debt'' means unsecured debt with an initial maturity of more than 360 days that:

(1) Is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(2) Is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(d) *Financial Subsidiary.* The term ''financial subsidiary'' means any company that is controlled by one or more insured depository institutions *other than:*

(1) A subsidiary that only engages in activities that the state member bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state member bank; or

(2) A subsidiary that the state member bank is specifically authorized by the express terms of a Federal statute (other than section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*)), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a or 12 U.S.C. 611–631) or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(e) *Well Capitalized.* The term ''well capitalized'' has the meaning given the term in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831.).

(f) *Well Managed.* The term ''well managed'' means:

(1) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with its most recent examination or subsequent review and at least a rating of 2 for management (if such rating is given); or

(2) In the case of any depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

By order of the Board of Governors of the Federal Reserve System, March 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6468 Filed 3–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 340

RIN 3064–AB37

Restrictions on the Sale of Assets from the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing this rule to implement certain requirements of the Resolution Trust Corporation Completion Act of 1993. Under that law, people or entities that may have done certain acts that might have contributed to the failure of an insured institution may not buy assets of failed institutions from the FDIC. This rule establishes a self-certification process as a prerequisite to the purchase of assets from the FDIC and provides definitions of various terms in the law in order to make the limitations of the law clearer.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Steven K.Trout, Senior Resolutions Specialist, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3758; or Elizabeth Falloon, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 736–0725.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Background
II. Final Rule
III. Regulatory Analysis
A. Paperwork Reduction Act
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families.

I. Background

The FDIC is required to issue regulations that accomplish two things. First, the regulations must prohibit the sale of an asset of a failed financial institution to certain individuals or entities who may have contributed to the demise of that institution. Second, the regulations must prohibit the sale of an asset using FDIC financing to certain persons who have defaulted and engaged in fraudulent activities with respect to a loan from the institution.

This requirement is found at section 20 of the Resolution Trust Corporation Completion Act of 1993 (RTCCA or Act), which amended section 11(p) of the Federal Deposit Insurance Act (FDI Act).

In order to meet this requirement, we published a notice of proposed rulemaking in the **Federal Register** on September 21, 1999 (64 FR 51084) and solicited comments on the proposed rule. This rule implements the statutory requirements and is somewhat broader than the statutory minimum. The most significant way that the rule exceeds the statutory minimum relates to whether the restriction goes beyond the particular institution harmed by the particular wrongdoing. Under the regulation, prospective purchasers who are prohibited from buying assets of a failed institution may not purchase assets of any failed institution. In contrast, the statutory requirements might only limit the restriction to the assets of a particular institution.

Under the regulation, prospective purchasers are restricted from buying assets from failed financial institutions for which the FDIC are acting as conservator or receiver in certain circumstances. Specifically, under § 340.3 of the regulation, an individual or entity (or its associated person, as that term is defined) that has defaulted on obligations owed to a failed financial institution or the FDIC that aggregate over $1 million, and has made fraudulent misrepresentations in connection with any one of those obligations, is prohibited from using FDIC financing to purchase assets of any failed financial institution.

Section 340.4(a)(1) of the regulation provides that if an officer or director of a failed financial institution (or a related entity) participated in a material way in one or more transactions that resulted in a substantial (greater than $50,000) loss to that failed financial institution, the person would not be permitted to purchase an asset of any failed institution from the FDIC. The rule defines when an individual or entity has ''participated in a material way in a transaction that caused a substantial loss to a failed institution,'' as this phrase is not defined in the statute. The definition includes anyone who has been found by a court or tribunal (or, in certain circumstances, has been alleged in formal legal proceedings) in connection with a substantial loss to a failed institution to have (i) violated any federal banking laws or to have breached a written agreement with a federal banking agency or with the failed financial institution; (ii) engaged in an unsafe or unsound practice in conducting the affairs of the failed institution; or (iii) breached a fiduciary duty to the failed institution.

Under § 340.4(a)(2), if an individual or entity has, by federal regulatory action, been removed from or barred from participating in the affairs of any failed financial institution, the person would not, regardless of the source of payment or financing, be permitted to purchase an asset of any failed financial institution from the FDIC.

Under § 340.4(a)(3), if a prospective purchaser or related entity has demonstrated a pattern or practice of defalcation, as defined in the rule, regarding an obligation to a failed financial institution, the prospective purchaser would be barred from purchasing any asset of any failed institution from the FDIC, regardless of the source of financing or payment. The definition of ''pattern or practice of defalcation'' requires more than one incident involving either intent or reckless disregard for whether a loss was caused and requires that the resulting loss be ''substantial''.

Finally, under § 340.4(a)(4), a person who has defaulted on an obligation to a failed institution and has been convicted of committing, or conspiring to commit, any offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 of Title 18 of the United States Code (generally having to do with financial crimes, fraud and embezzlement) affecting any failed institution will not be permitted to purchase any asset of any failed institution from the FDIC.

In promulgating this regulation, we do not intend to imply that we will provide seller financing in connection with any particular asset sale just because a purchaser is not disqualified under the regulation. Persons who want seller financing will have to satisfy other criteria, such as creditworthiness. Further, we may promulgate other policies and rules restricting purchasers' eligibility to buy assets from the FDIC.

The rule provides for implementation of the restrictions set forth above through a self-certification process. All purchasers of assets covered by the regulation must execute a Purchaser Eligibility Certification in the form established by the FDIC. Federal, state and local governmental agencies and instrumentalities and government-sponsored entities such as Government National Mortgage Association, Fannie Mae and Freddie Mac are excepted from the self-certification requirement, but the Director of the FDIC's Division of Resolutions and Receiverships (DRR), can require a certification from any prospective purchaser if it appears that such a prospective purchaser would fall within the restricted categories. In the final rule, a language change has been made to § 340.7 to clarify that the list of enumerated organizations is not exclusive, and that other similar federally-regulated, government-sponsored enterprises may be exempt from the requirement of providing a certification unless otherwise required by the Director of DRR.

The prohibitions do not apply to a sale or transfer of assets that is part of a workout or settlement of obligations to a failed institution.

Some of the requirements of this regulation have been in effect under prior FDIC policies. The FDIC may continue to have additional policy requirements relating to buyer qualifications that address other policy goals.

In response to our Notice of Proposed Rulemaking we received two comments. One of these comments came from a trade association, and the other came from a financial institution, and both of them supported the adoption of the proposed rule in its entirety.

II. Final Rule

We are adopting the proposed rule without substantive change. However, section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, section 722, 113 Stat. 1338 (1999), requires the federal banking agencies to use plain language in all rulemakings. Thus, we have made numerous nonsubstantive changes to the regulation to ensure that it is in plain language.

III. Regulatory Analysis

A. Paperwork Reduction Act

This rule requires the collection of certain information from prospective purchasers of assets from the FDIC. The information is collected through the completion of a Purchaser Eligibility Certification form. The Office of Management and Budget (OMB) has reviewed and approved this form in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et. seq.*). The Purchaser Eligibility Certification has been assigned control number 3064–0135. OMB clearance will expire on February 28, 2003.

The FDIC has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspect of these collections of information. Comments may be sent to: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080,

550 17th Street NW., Washington, DC 20429.

B. Regulatory Flexibility Act

The only burden imposed by this regulation is the completion of a certification form described above in the Paperwork Reduction Act section. The burden produced by this requirement does not require the use of professional skills or the preparation of special reports or records and has a minimal impact, economic and time-wise, on those individuals and entities that seek to purchase assets from the FDIC. Moreover, this minimal burden is imposed only on those individuals and entities voluntarily seeking to purchase assets from the FDIC. Accordingly, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable.

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress and for Congress to review the rules. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 340

Asset disposition, Banks, banking.

For the reasons set out in the preamble, the FDIC amends chapter III of title 12 of the Code of Federal Regulations by adding a new part 340 to read as follows:

PART 340—RESTRICTIONS ON SALE OF ASSETS BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.
340.1 What is the statutory authority for the regulation, what are its purpose and scope, and can the FDIC have other policies on related topics?
340.2 Definitions.
340.3 What are the restrictions on the sale of assets by the FDIC if the buyer wants to finance the purchase with a loan from the FDIC?
340.4 What are the restrictions on the sale of assets by the FDIC regardless of the method of financing?
340.5 Can the FDIC deny a loan to a buyer who is not disqualified from purchasing assets using seller-financing under this regulation?
340.6 What is the effect of this part on transactions that were entered into before its effective date?
340.7 When is a certification required, and who does not have to provide a certification?
340.8 Does this part apply in the case of a workout, resolution, or settlement of obligations?

Authority: 12 U.S.C. 1819 (Tenth), 1821(p).

§ 340.1 What is the statutory authority for the regulation, what are its purpose and scope, and can the FDIC have other policies on related topics?

(a) *Authority.* The statutory authority for adopting this part is section 11(p) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(p). Section 11(p) was added to the FDI Act by section 20 of the Resolution Trust Corporation Completion Act (Pub. L. 103–204, 107 Stat. 2369 (1993)).

(b) *Purpose.* The purpose of this part is to prohibit individuals or entities who profited or engaged in wrongdoing at the expense of an insured institution, or seriously mismanaged an insured institution, from buying assets of failed financial institutions from the FDIC.

(c) *Scope.* The restrictions of this part generally apply to assets of failed institutions owned or controlled by the FDIC in any capacity, even though the assets are not owned by the insured institution that the prospective purchaser injured. Unless we determine otherwise, this part does not apply to the sale of securities in connection with the investment of corporate and receivership funds pursuant to the Investment Policy for Liquidation Funds managed by the FDIC as it is in effect from time to time. In the case of a sale of securities backed by a pool of assets that may include assets of failed institutions by a trust or other entity, this part applies only to the sale of assets by the FDIC to an underwriter in an initial offering, and not to any other purchaser of the securities.

(d) *The FDIC retains the authority to establish other policies restricting asset sales.* Neither section 11(p) of the FDI Act nor this part in any way limits the authority of the FDIC to establish policies prohibiting the sale of assets to prospective purchasers who have injured any failed financial institution, or to other prospective purchasers, such as certain employees or contractors of the FDIC, or individuals who are not in compliance with the terms of any debt or duty owed to the FDIC. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this part.

§ 340.2 Definitions.

(a) *Associated person* of an individual or entity means:

(1) With respect to an individual:

(i) The individual's spouse or dependent child or any member of his or her immediate household;

(ii) A partnership of which the individual is or was a general or limited partner; or

(iii) A corporation of which the individual is or was an officer or director;

(2) With respect to a partnership, a managing or general partner of the partnership; or

(3) With respect to any entity, an individual or entity who, acting individually or in concert with one or more individuals or entities, owns or controls 25 percent or more of the entity.

(b) *Default* means any failure to comply with the terms of an obligation to such an extent that:

(1) A judgment has been rendered in favor of the FDIC or a failed institution; or

(2) In the case of a secured obligation, the property securing such obligation is foreclosed on.

(c) *FDIC* means the Federal Deposit Insurance Corporation.

(d) *Failed institution* means any bank or savings association that has been under the conservatorship or receivership of the FDIC or RTC. For the purpose of this part, ''failed institution'' includes any entity owned and controlled by a failed institution.

(e) *Obligation* means any debt or duty to pay money owed to the FDIC or a failed institution, including any guarantee of any such debt or duty.

(f) *Person* means an individual, or an entity with a legally independent existence, including: a trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a corporation; an association; or other organization or society.

(g) *RTC* means the former Resolution Trust Corporation.

(h) *Substantial loss* means:
(1) An obligation that is delinquent for ninety (90) or more days and on which there remains an outstanding balance of more than $50,000;
(2) An unpaid final judgment in excess of $50,000 regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;
(3) A deficiency balance following a foreclosure of collateral in excess of $50,000, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;
(4) Any loss in excess of $50,000 evidenced by an IRS Form 1099–C (Information Reporting for Discharge of Indebtedness).

§ 340.3 What are the restrictions on the sale of assets by the FDIC if the buyer wants to finance the purchase with a loan from the FDIC?

A person may not borrow money or accept credit from the FDIC in connection with the purchase of any assets from the FDIC or any failed institution if:
(a) There has been a default with respect to one or more obligations totaling in excess of $1,000,000 owed by that person or its associated person; and
(b) The person or its associated person made any fraudulent misrepresentations in connection with any such obligation(s).

§ 340.4 What are the restrictions on the sale of assets by the FDIC regardless of the method of financing?

(a) A person may not acquire any assets from the FDIC or from any failed institution if the person or its associated person:
(1) Has participated, as an officer or director of a failed institution or of an affiliate of a failed institution, in a material way in one or more transaction(s) that caused a substantial loss to that failed institution;
(2) Has been removed from, or prohibited from participating in the affairs of, a failed institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the FDIC, or any of their successors;
(3) Has demonstrated a pattern or practice of defalcation regarding obligations to any failed institution; or
(4) Has been convicted of committing or conspiring to commit any offense under 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 affecting any failed institution and there has been a default with respect to one or more obligations owed by that person or its associated person.

(b) For purposes of paragraph (a) of this section, a person has participated ‘‘in a material way in a transaction that caused a substantial loss to a failed institution’’ if, in connection with a substantial loss to a failed institution, the person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the FDIC or by any component of the government of the United States or of any state:

(1) To have violated any law, regulation, or order issued by a federal or state banking agency, or breached or defaulted on a written agreement with a federal or state banking agency, or breached a written agreement with a failed institution;

(2) To have engaged in an unsafe or unsound practice in conducting the affairs of a failed institution; or

(3) To have breached a fiduciary duty owed to a failed institution.

(c) For purposes of paragraph (a) of this section, a person or its associated person has demonstrated a ‘‘pattern or practice of defalcation’’ regarding obligations to a failed institution if the person or associated person has:

(1) Engaged in more than one transaction that created an obligation on the part of such person or its associated person with intent to cause a loss to any financial institution insured by the FDIC or with reckless disregard for whether such transactions would cause a loss to any such insured financial institution; and

(2) The transactions, in the aggregate, caused a substantial loss to one or more failed institution(s).

§ 340.5 Can the FDIC deny a loan to a buyer who is not disqualified from purchasing assets using seller-financing under this regulation?

The FDIC still has the right to make an independent determination, based upon all relevant facts of a person's financial condition and history, of that person's eligibility to receive any loan or extension of credit from the FDIC, even if the person is not in any way disqualified from purchasing assets from the FDIC under the restrictions set forth in this part.

§ 340.6 What is the effect of this part on transactions that were entered into before its effective date?

This part does not affect the enforceability of a contract of sale and/or agreement for seller financing in effect prior to July 1, 2000.

§ 340.7 When is a certification required, and who does not have to provide a certification?

(a) Before any person may purchase any asset from the FDIC that person must certify, under penalty of perjury, that none of the restrictions contained in this part applies to the purchase. The FDIC may establish the form of the certification and may change the form from time to time.
(b) Notwithstanding paragraph (a) of this section, a state or political subdivision of a state, a federal agency or instrumentality such as the Government National Mortgage Association, or a federally-regulated, government-sponsored enterprise such as Fannie Mae or Freddie Mac does not have to give a certification before it can purchase assets from the FDIC, unless the Director of the FDIC's Division of Resolutions and Receiverships, or his designee, in his discretion, requires a certification of any such entity.

§ 340.8 Does this part apply in the case of a workout, resolution, or settlement of obligations?

The restrictions of §§ 340.3 and 340.4 do not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, one or more obligations, regardless of the amount of such obligations.

Dated at Washington, D.C. this 9th day of March, 2000.
By Order of the Board of Directors, Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 00–6823 Filed 3–17–00; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

12 CFR Part 1501

RIN 1505–AA80

Financial Subsidiaries

AGENCY: The Department of the Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing an interim final rule to implement the provisions of section 121 of the Gramm-Leach-Bliley Act (GLBA) that authorize the Secretary of the Treasury (Secretary), in consultation with the Board of Governors of the Federal