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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect the relocation of its Northeastern Regional Office. On January 22, 2008, the Board relocates its Northeastern Regional Office from the U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, PA 19106–2987, to 1601 Market Street, Suite 1700, Philadelphia, PA 19103. Appendix II of this part is amended to show the new address. The Northeastern Office telephone numbers remain unchanged.

DATES: *Effective Date:* January 22, 2008.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, (202) 653–7200. The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

■ Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

Appendix II to Part 1201 [Amended]

■ 2. Amend Appendix II to 5 CFR part 1201 in item 3. by removing ''U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, PA 19106–2987,'' and adding, in its place ''1601 Market Street, Suite 1700, Philadelphia, PA 19103,''.

William Spencer,
Clerk of the Board.

[FR Doc. E8–447 Filed 1–11–08; 8:45 am]

BILLING CODE 7400–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 308, and 309

RIN 3064–AD25

Deposit Insurance Requirements After Certain Conversions; Definition of ''Corporate Reorganization;'' Optional Conversions (''Oakar Transactions''); Additional Grounds for Disapproval of Changes in Control; and Disclosure of Certain Supervisory Information

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

ACTION: Interim rule and request for comment.

SUMMARY: The FDIC is amending certain regulations in order to conform them to certain Federal statutes recently amended by the Financial Services Regulatory Relief Act of 2006, the Federal Deposit Insurance Reform Act of 2005, and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. First, the FDIC is amending its deposit insurance regulations to clarify that a deposit insurance application is required for each new bank that results from the conversion of certain Federal savings associations into multiple banks. Second, the FDIC is amending its merger regulations to define the term ''corporate reorganization'' to mean a merger that involves solely an insured depository institution and one or more of its affiliates. Third, the FDIC is amending its merger regulations to remove any reference to ''Optional Conversions'' (sometimes referred to as ''Oakar Transactions''). Fourth, the FDIC is adding, as an additional grounds for disapproval of a change in control notice, unfavorable future prospects of the institution to be acquired. Finally, the FDIC is authorizing the disclosure of examination reports and other confidential supervisory information to certain additional agencies and entities.

DATES: The interim rule is effective January 14, 2008. Comments on the rule must be received by March 14, 2008.

ADDRESSES: You may submit comments on the interim rule, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN 3064–AD25 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html*, including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1022, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Brett A. McCallister, Review Examiner (816) 234–8099 x4223, in the Division of Supervision and Consumer Protection; or Julie E. Paris, Senior Attorney, (202) 898–3821, Richard Bogue, Counsel, (202) 898–3726, or Robert C. Fick, Counsel, (202) 898–8962, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background.

On October 13, 2006, the President signed into law the Financial Services Regulatory Relief Act of 2006 (''FSRRA'').[1] The stated purpose of FSRRA is to reduce regulatory burden and improve productivity for financial institutions. Several provisions of FSRRA amend statutes that the FDIC has implemented through its Rules and Regulations (''Rules'').[2] As a result, the FDIC is revising certain of its Rules to conform them to the statutes as

[1] Public Law No. 109–351, 12 STAT. 1966 (Oct. 13, 2006).

[2] Chapter III of Title 12 of the Code of Federal Regulations.

amended by FSRRA. In addition, Congress enacted the Federal Deposit Insurance Reform Act of 2005 (''Reform Act'') [3] and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Amendments Act'') [4] which consolidated the two former deposit insurance funds into a single deposit insurance fund. As a result, the FDIC is revising its regulations to reflect this change.

II. Regulatory Amendments

A. Deposit Insurance Requirements After Certain Conversions

Section 5(i)(5) of the Home Owners' Loan Act (''HOLA'') [5] generally authorizes any Federal savings association that was chartered and in operation before November 12, 1999 and that had branches in one or more states, to convert into one or more national or state banks, each of which may encompass one or more of the existing branches. Section 608(a) of FSRRA amended section 5(i)(5) of the HOLA to generally require that if such a conversion results in more than one national or state bank, each resulting bank must obtain deposit insurance from the FDIC pursuant to section 5(a) of the Federal Deposit Insurance Act (''FDI Act'').[6]

Subpart B of Part 303 of the FDIC's Rules sets forth the procedures for applying for deposit insurance. Section 303.20 describes the scope of this subpart to include applications for deposit insurance for, among other institutions, proposed depository institutions. Since it is not clear that this subpart applies to each bank that results from the conversion of certain Federal savings associations into multiple banks under section 5(i)(5) of the HOLA, the FDIC is amending section 303.20 to expressly confirm the applicability of subpart B of part 303 to such resulting banks.

B. Definition of Corporate Reorganization

Section 606 made two changes to the Bank Merger Act [7] with respect to mergers that solely involve an insured depository institution and one or more of its affiliates (''Affiliate Mergers''). First, for Affiliate Mergers, section 606 amended section 18(c)(4) of the FDI Act [8] to eliminate the requirement for the responsible Federal banking agency to request competitive factors reports from either the other Federal banking agencies or the Attorney General of the United States.[9] Prior to FSRRA the responsible Federal banking agency had to request competitive factors reports for Affiliate Mergers. Second, section 606 revised section 18(c)(6) of the FDI Act [10] to eliminate the post-approval waiting period for Affiliate Mergers. Prior to FSRRA the applicant in an Affiliate Merger had to wait up to thirty days after obtaining the agency's approval before it could consummate the transaction.

The FDIC's regulations at 12 CFR 303.61(b) provides a definition of ''corporate reorganization'' that identifies a class of mergers that generally do not raise any competitive concerns and, therefore, do not require the same level of competitive analysis as other mergers subject to the Bank Merger Act. As a result, such mergers are less burdensome on applicants. Generally, 12 CFR 303.61(b) defines the term to include (i) mergers between an insured institution and its subsidiary or its holding company and (ii) mergers between institutions and entities that were ''commonly-owned.'' Institutions are ''commonly-owned'' only if more than 50% of the voting stock of each was owned by the same entity. The changes made by Section 606 of the FSRRA, however, indicate that there are no competitive concerns for a class of mergers that is broader than the class identified by the FDIC's regulation as corporate reorganizations. Specifically, FSRRA indicates that there are no competitive concerns for mergers that solely involve an insured depository institution and one or more affiliates.

While the term ''corporate reorganization'' is only used in subpart D as one of several illustrative examples of the types of mergers covered by the Bank Merger Act, the definition could cause confusion as to how it relates to Affiliate Mergers. As a result, the FDIC is amending the definition of ''corporate reorganization'' in order to conform it to the changes made by FSRRA and to avoid any confusion about the need for competitive analyses and post-approval waiting periods. Accordingly, the FDIC is amending 12 CFR 303.61(b) to define ''corporate reorganization'' as a merger that involves solely an insured depository institution and one or more of its affiliates.

C. Optional Conversions

Before it was repealed, the former section 5(d)(3) of the FDI Act [11] generally authorized a member of one insurance fund to merge with a member of the other fund without changing the funds that insured the deposits of the two institutions. This type of merger was referred to as an ''Optional Conversion'' in both section 5(d)(3) of the FDI Act and in section 303.63(d) of the FDIC's Rules; it was also commonly known as an ''Oakar Transaction.'' Section 303.63(d) of the FDIC's Rules required the applicant in an Optional Conversion to identify the merger as an ''Optional Conversion'' in its application.

On March 31, 2006, pursuant to the Reform Act and the Amendments Act, the former Savings Association Insurance Fund (''SAIF'') and the former Bank Insurance Fund (''BIF'') were consolidated into a single fund, the Deposit Insurance Fund. In addition, the Amendments Act repealed section 5(d)(3) of the FDI Act effective with the merger of the two funds.[12] Since the Reform Act consolidated the two funds into one, and since the Amendments Act repealed section 5(d)(3) of the FDI Act, Optional Conversions are no longer possible. As a result, the FDIC is amending section 303.63 to remove paragraph (d) *Optional conversions.* The removed paragraph formerly read as follows:

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

D. Additional Grounds for Disapproval of a Change in Control

Section 705 of FSRRA amended section 7(j)(7) of the FDI Act [13] to add an additional ground for the disapproval of a proposed acquisition of control of a bank. The additional ground for disapproval of a proposed acquisition is if the future prospects of the institution might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank.

Section 308.111 of the FDIC's Rules lists the statutory grounds for disapproval of a proposed acquisition of control of an insured state nonmember bank. Since FSRRA added unfavorable future prospects of the institution as an additional ground for disapproval of a

[3] Pub. L. 109–171, 120 STAT. 9 (Feb. 8, 2006).

[4] Pub. L. 109–173, 119 STAT. 3601 (Feb. 15, 2006).

[5] 12 U.S.C. 1464(i)(5).

[6] 12 U.S.C. 1815(a).

[7] 12 U.S.C. 1828(c).

[8] 12 U.S.C. 1828(c)(4).

[9] Notwithstanding this change, the responsible Federal banking agency retains the ability to request competitive factors reports if the circumstances warrant.

[10] 12 U.S.C. 1828(c)(6).

[11] 12 U.S.C. 1815(d)(3) (repealed 2006).

[12] *See* section 8(a)(4) of the Amendments Act, Pub. L. 109–173 (2006).

[13] 12 U.S.C. 1817(j)(7).

proposed acquisition, the FDIC is amending section 308.111(c) to reflect this new ground.

E. Disclosure of Certain Supervisory Information

Section 707 of FSRRA amended section 7(a)(2) of the FDI Act [14] by adding a new subsection (C) that generally expands the authority of the Federal banking agencies to furnish examination reports and other confidential supervisory information to (1) any other Federal and State agencies with supervisory or regulatory authority over the depository institution or entity, (2) officers, directors and receivers of such depository institution or entity, and (3) any other person that the Federal banking agency determines to be appropriate.

The FDIC's Rules authorizing the disclosure of confidential information are found in Part 309 of its Rules. Paragraph (b)(3) of section 309.6 entitled ''Disclosure of exempt records,'' authorizes the disclosure of exempt records to Federal financial institution supervisory agencies and certain other agencies.

Since section 707 of FSRRA authorized additional disclosures of certain supervisory information, the FDIC is amending section 309.6(b)(3) to add those additional disclosures to the disclosures previously authorized.

III. Regulatory Analysis and Procedure as to Interim Rule

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [15] requires the FDIC to use ''plain language'' in all proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the interim rule is clearly stated and effectively organized, and how the FDIC might make the text easier to understand.

B. Administrative Procedure Act

The interim rule takes effect upon publication in the **Federal Register**. The interim rule conforms the FDIC's regulations to several statutory provisions that were amended by FSRRA on October 13, 2006 and by the Reform Act and the Amendments Act effective on March 31, 2006. The statutory amendments made by FSRRA which took effect upon enactment on October 13, 2006 and the statutory amendments made by the Reform Act and the Amendments Act which took effect on March 31, 2006 continue in effect. The amendments to the FDIC's regulations made by the interim rule generally reflect the language contained in the amended statutes without interpretation. The amendments made by the interim rule effect no substantive changes beyond those already effected by Federal statute. For the foregoing reasons, solicitation of public comment prior to the effectiveness of these regulatory amendments is unnecessary. Accordingly, pursuant to 5 U.S.C. 553(b), the FDIC finds that good cause exists for making the rule effective upon this publication without first seeking public comment. However, the FDIC nonetheless invites public comment on the interim rule and will amend the rule if appropriate after reviewing any public comments received.

C. Regulatory Flexibility Act

Pursuant to section 603(a) of the Regulatory Flexibility Act (''RFA'') [16] a regulatory flexibility analysis is only required when an agency is required to publish a notice of proposed rulemaking for a proposed rule. Since the regulatory amendments made by the interim rule are effective upon publication in the **Federal Register**, and since no notice of proposed rulemaking is required to be published, no regulatory flexibility analysis is required.

D. Paperwork Reduction Act

No new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the interim rule.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

12 CFR Part 309

Banks, banking, Credit, Freedom of information, Privacy.

Authority and Issuance

■ For the reasons set forth in the preamble, parts 303, 308, and 309 of Chapter III of the title 12 of the Code of Federal Regulations are amended as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

■ 2. Add the following sentence at the end of § 303.20 to read as follows:

§ 303.20 Scope.

* * * Each bank that results from the conversion of a Federal savings association into multiple banks pursuant to section 5(i)(5) of the Home Owners' Loan Act, 12 U.S.C. 1464(i)(5), is treated as a proposed depository institution or a de novo institution, as appropriate, for purposes of this subpart.

■ 3. Amend § 303.61 by revising paragraph (b) to read as follows:

§ 303.61 Definitions.

* * * * *

(b) *Corporate reorganization* means a merger transaction that involves solely an insured depository institution and one or more of its affiliates.

* * * * *

§ 303.63 [Amended]

■ 4. In § 303.63, remove paragraph (d).

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 5. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 780–5, 6805(b)(1); 28 U.S.C. 2461 note, 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s) Pub. L. 104–134, 110 Stat. 1321–358.

■ 6. Amend § 308.111 by revising paragraph (c) to read as follows:

§ 308.111 Grounds for disapproval.

* * * * *

(c) Either the financial condition of any acquiring person or the future prospects of the institution might jeopardize the financial stability of the bank or prejudice the interest of the depositors of the bank.

* * * * *

PART 309—DISCLOSURE OF INFORMATION

■ 7. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819(a) ''Seventh'' and ''Tenth.''

[14] 12 U.S.C. 1817(a)(2).

[15] 12 U.S.C. 4809.

[16] 5 U.S.C. 603(a).

■ 8. Amend § 309.6 by adding the following new sentence at the end of paragraph (b)(3) to read as follows:

§ 309.6 Disclosure of exempt records.

* * * * *

(b) * * *

(3) * * * Finally, the Director, or designee, may in his or her discretion and for good cause, disclose reports of examination or other confidential supervisory information concerning any depository institution or other entity examined by the Corporation under authority of Federal law to: any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity; any officer, director, or receiver of such depository institution or entity; and any other person that the Corporation determines to be appropriate.

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, the 19th day of December, 2007. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8–294 Filed 1–11–08; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 137

[Docket No. USCG–2006–25708]

RIN 1625–AB09

Landowner Defenses to Liability Under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing standards and practices concerning the ''all appropriate inquiries'' element of a defense to liability of an owner or operator of a facility that is the source of a discharge or substantial threat of discharge of oil into the navigable waters or adjoining shorelines or the exclusive economic zone. To be entitled to the defense, those persons must show, among other elements not addressed in this rulemaking, that, before acquiring the real property on which the facility is located, they had made all appropriate inquiries into its previous ownership and uses to determine the presence or likely presence of oil. This rule is consistent with a final rule on this subject published by the Environmental Protection Agency.

DATES: This final rule is effective February 13, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–25708 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Benjamin White, National Pollution Funds Center, Coast Guard, telephone 202–493–6863. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 12, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Landowner Defenses to Liability Under the Oil Pollution Act of 1990: Standards and Practices for Conducting All Appropriate Inquiries'' in the **Federal Register** (72 FR 32232). We received no comments on the proposed rule. No public meeting was requested and none was held. The Coast Guard is, therefore, adopting the NPRM as published and without change as a final rule.

Background and Purpose

In general, under the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*) (OPA 90), an owner or operator of a facility that is the source of a discharge, or a substantial threat of discharge, of oil into the navigable waters or adjoining shorelines or the exclusive economic zone is liable for damages and removal costs resulting from the discharge or threat. See 33 U.S.C. 2702(a). Under OPA 90, that person is known as a ''responsible party.'' See 33 U.S.C. 2701(32).

The Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293) (the 2004 Act) amended OPA 90, at 33 U.S.C. 2703(d)(4), by creating an ''innocent landowner'' defense to liability for those persons who could demonstrate, among other requirements, that before acquiring the real property on which the facility is located, they did not know, and had no reason to know that oil that is the subject of the discharge or substantial threat of discharge was located on, in, or at the facility. See 33 U.S.C. 2703(d)(2)(A). This is done by establishing that, before it acquired the real property on which the facility is located, it carried out ''all appropriate inquiries'' into its previous ownership and uses according to ''generally accepted good commercial and customary standards and practices.'' See 33 U.S.C. 2703(d)(4)(A)(i). The Coast Guard is required to establish, by regulation, the standards and practices for carrying out all appropriate inquiries (33 U.S.C. 2703(d)(4)(B)), which is the subject of this rulemaking.

This rulemaking applies to persons planning to acquire real property on which a facility, as defined under 33 U.S.C. 2701(9), is located who choose to take steps necessary to protect themselves from liability should unknown oil that is the subject of a discharge or substantial threat of discharge be found at the facility after they acquire it. We call these persons ''landowners'' or ''owners'' in this preamble. Should prospective landowners opt for this protection, they may find that they have already complied with this rule if they have complied with ASTM International (ASTM) E 1527–05, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' The industry standard ASTM E 1527–05, is consistent with this rule and is compliant with the statutory criteria for all appropriate inquiries. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E 1527–05 standard to comply with this rule. For more information on the ASTM standard, see the ''ASTM Standard E 1527–05'' section in this preamble.

Note that this rule addresses only one of several elements that must be complied with in order to avail oneself of this protection. The element addressed in this rule is called the ''all-appropriate-inquiries'' element found in 33 U.S.C. 2703(d)(4).

Scope of the Rule

Congress included in the 2004 Act a list of criteria that the Coast Guard must address in their regulations for establishing standards and practices for conducting all appropriate inquiries. The criteria may be found in 33 U.S.C. 2703(d)(4)(C). This rulemaking is limited only to providing those standards and practices relative to the ''all appropriate inquiries'' element.