29, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019. (See 84 FR 34261 (July 18, 2019).)

Updated Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[1] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[2] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[3] The proposed rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each established small bank's assessment rate and is, therefore, not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on quarterly regulatory report data as of March 31, 2019, the FDIC insures 5,371 depository institutions, of which 4,004 are defined as small entities by the terms of the RFA. Further, 4,001 RFA-defined small, FDIC-insured institutions have small bank credits totaling $183.7 million.

As stated previously, the proposed rule eliminates the possibility that affected small, FDIC-insured institutions would begin receiving small bank credits in the quarter when the reserve ratio first reaches or exceeds 1.38 percent, but that these credits then would be suspended if the reserve ratio subsequently falls below 1.38 percent (but remains at least 1.35 percent). Therefore, the economic effect of this aspect of the proposed rule is a reduction in the potential future costs associated with a disruption of the type just described in the application of small bank credits by affected small, FDIC-insured institutions. It is difficult to accurately estimate the magnitude of this benefit to affected small, FDIC-insured institutions, because it depends, among other things, on future economic and financial conditions, the operational and financial management practices at affected small, FDIC-insured institutions, and the future levels of the reserve ratio. However, the FDIC believes the economic effects of the proposed rule are likely to be small, because an estimated 41 percent of the aggregate amount of small bank credits would be applied in the first quarter that the reserve ratio is at least 1.38 percent. Further, the FDIC estimates that 3,851 small, FDIC-insured institutions (or 96.3 percent) would exhaust their individual shares of small bank credits within four assessment periods. Of the 150 small, FDIC-insured institutions that the FDIC estimates would have small bank credits that would last more than four quarters, 139 are expected to exhaust their individual shares after being applied for two additional assessment periods (*i.e.,* after a total of six assessment periods of application), and four within four additional assessment periods of application (*i.e.,* after a total of eight assessment periods), and seven will last more than eight quarters. Therefore, the dollar amount of remaining small bank credits declines substantially after the initial application of credits in the first quarter of use, reducing the effects of credit application being suspended due to a decrease in the reserve ratio. Additionally, recent history suggests a generally positive near-term outlook for the banking sector (implying lower costs to the DIF), therefore the probability of suspension of applying small bank credits is low, particularly in the near-term quarters.

As stated previously, the proposed rule would require the FDIC to remit the outstanding balances of remaining OTACs in a lump-sum payment, in the next assessment period in which the reserve ratio is at least 1.35 percent, at the same time that the outstanding small bank credit balances are remitted. As of March 31, 2019, only two IDIs have outstanding OTACs, totaling approximately $300,000. However, both institutions are subsidiaries of large banking organizations and therefore do not qualify as small entities under the RFA. Therefore, this aspect of the proposed rule would not affect any small, FDIC-insured institutions. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 26, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–21322 Filed 10–2–19; 8:45 am]

BILLING CODE 6714–01–P

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[1] 5 U.S.C. 601 *et seq.*

[2] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for purposes of the RFA.

[3] 5 U.S.C. 601.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF15

Removal of Transferred OTS Regulations Regarding Accounting Requirements for State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to streamline Federal Deposit Insurance Corporation (FDIC) regulations, the FDIC proposes to rescind and remove from the Code of Federal Regulations rules entitled *Accounting Requirements* (part 390, subpart T) that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed rule would rescind and remove part 390, subpart T (including the Appendix to 12 CFR 390.384) because the financial statement and disclosure requirements set forth in part 390, subpart T are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that a State savings

association must satisfy under federal banking or securities laws or regulations.

DATES: Comments must be received on or before November 4, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *FDIC Website: https://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF15 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 to FDIC:* 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.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Maureen Loviglio, Senior Staff Accountant, Division of Risk Management Supervision, (202) 898–6777, *MLoviglio@FDIC.gov;* Suzanne Dawley, Counsel, Legal Division, (202) 898–6509, *sudawley@FDIC.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the proposed rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary regulations, or realigning existing regulations in order to improve the public's understanding and to improve the ease of reference. The second is to promote parity between State savings associations and State nonmember banks by making both classes of institutions subject to the same accounting requirements. Thus, as further detailed in this section, the FDIC proposes to rescind and remove from the Code of Federal Regulations rules entitled Accounting Requirements (part 390, subpart T) applicable to State savings associations. Such requirements prescribe definitions, public accountant qualifications, and the form and content of financial statements pertaining to certain securities and their related transaction documents. Transaction documents may include proxy statements and offering circulars in connection with a conversion, any offering of securities by a State savings association, and filings by State savings associations requiring financial statements under the Securities Exchange Act of 1934 (Exchange Act).[1] The FDIC has determined that the additional financial disclosure requirements required by part 390, subpart T for State savings associations are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that State nonmember banks must satisfy under federal banking or securities laws or regulations. Therefore, the FDIC is proposing to remove part 390, subpart T and apply existing disclosure requirements, and related form and content of financial statements requirements to State savings associations.

II. Background

A. The Dodd-Frank Act

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.[2] Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[3] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act,[4] provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials issued, made, prescribed, or allowed to become effective by the OTS. The section provides that, if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,[5] on June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[6]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[7] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)[8] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c)(1) of the Dodd-Frank Act[9] revised the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act,[10] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations. Further, section 376 of the Dodd Frank Act[11] grants rulemaking and administrative authority to the FDIC over the Exchange Act[12] filings of State savings associations.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[13] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the

[1] 12 U.S.C. 78a *et seq.*

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 12 U.S.C. 5411.

[4] 12 U.S.C. 5414(b).

[5] 12 U.S.C. 5414(c).

[6] 76 FR 39246 (July 6, 2011).

[7] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[8] 12 U.S.C. 1811 *et seq.*

[9] 12 U.S.C. 5412(c)(1).

[10] 12 U.S.C. 1813(q).

[11] Section 376 of the Dodd Frank Act amended section 3(a) of the Exchange Act. *See,* 15 U.S.C. 78c(a)(34).

[12] 12 U.S.C. 78a *et seq.*

[13] 76 FR 47652 (Aug. 5, 2011).

transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

B. OTS Regulations Transferred to the FDIC's Part 390, Subpart T

One of the OTS rules transferred to the FDIC governs the accounting requirements for State savings associations. The OTS rule, formerly found at 12 CFR part 563c, was transferred to the FDIC with nominal changes and is now found in the FDIC's rules at part 390, subpart T, entitled *Accounting Requirements.*[14] This subpart prescribes for State savings associations accounting requirements with respect to definitions, public accountant qualifications, and the form and content of financial statements pertaining to certain securities transaction documents. These transaction documents include proxy statements and offering circulars in connection with a conversion, any offering of securities by a State savings association, and filings by State savings associations requiring financial statements under the Exchange Act.[15] Each provision of part 390, subpart T is discussed in Part III of this section.

III. The Proposal To Rescind the Transferred OTS Accounting Requirements Regulations

After careful review of part 390, subpart T, the FDIC has determined that the accounting requirements with respect to financial statement and disclosure form and content set forth by part 390, subpart T are substantially similar to, although more detailed than, other requirements that a State savings association must satisfy under federal banking or securities laws or regulations. Therefore, the FDIC proposes to rescind and remove part 390, subpart T (including the Appendix to 12 CFR 390.384).

State savings association reports and financial statements are required to be uniform and consistent with U.S. generally accepted accounting principles (GAAP) pursuant to section 37 of the FDI Act and section 4(b) of the Homeowners Owners Loan Act (HOLA).[16] While securities issued by State savings associations are exempt from registration requirements of the Securities Act of 1933 (Securities Act),[17] the FDIC reviews for compliance with 12 CFR part 192, *Conversion from a Mutual to Stock Form,* offering circulars related to mutual-to-stock conversions involving securities offerings by State savings associations. The FDIC will not approve an offering circular until concerns regarding the adequacy or accuracy of the offering circular or the disclosures are satisfactorily addressed.[18] The FDIC is also responsible for administering and enforcing certain sections of the Exchange Act with respect to State savings associations with securities that are publicly traded.[19] As such, a State savings association that is an Exchange Act reporting company must file required periodic reports such as annual reports on Form 10–K, quarterly reports on Form 10–Q, and current reports on Form 8–K with the FDIC pursuant to part 335 of the FDIC rules.[20] With respect to the form and content requirements for offerings of mutual capital certificates and debt securities of State savings associations set forth in part 390, subpart T,[21] the FDIC has determined that the additional disclosures required by part 390, subpart T, may be more detailed than otherwise applicable financial statement form and content and disclosure requirements that a State savings association must satisfy under GAAP, the Exchange Act, FDIC regulations, and state regulations, as appropriate. While there may be situations where the disclosures required under GAAP, FDIC regulations, and state regulations, as appropriate, with respect to the offerings of mutual capital certificates and debt securities are less detailed that the requirements under part 390, subpart T, there have been no recent filings by State savings associations to the FDIC related to the offerings of mutual capital certificates and debt securities. Therefore, the FDIC has concluded that the practical impact of the differences in level of disclosure detail is negligible and does not justify maintaining separate disclosure regulations applicable solely to State savings associations.

A brief review of the State savings association accounting requirements in part 390, subpart T follows.

A. Part 390, Subpart T—Accounting Requirements

Historically, the Federal Home Loan Bank Board (FHLBB), the predecessor to the OTS, established various accounting and financial reporting requirements for savings associations.[22] These requirements occasionally differed from GAAP and when this occurred, such requirements were referred to as regulatory accounting practices. Regulatory accounting practices were often less stringent than GAAP.[23] The Competitive Equality Banking Act of 1987 (CEBA)[24] amended HOLA to require the FHLBB to prescribe uniformly applicable accounting standards to be used by all savings associations for the purpose of determining compliance with any rule or regulation of the FHLBB to the same degree that GAAP is used to determine compliance with rules and regulations of the Federal banking agencies. To implement the statute, the FHLBB promulgated regulations that required all unaudited financial statements and financial reports submitted and Statements of Condition be prepared in accordance with GAAP. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),[25] amended section 4(b)(1) of HOLA to require the Director of the OTS to prescribe, by regulation, uniform accounting and disclosure standards for savings associations, to be used to

[14] 12 CFR part 390, subpart T.

[15] *Id.*

[16] 12 U.S.C. 1831n(a)(2); 12 U.S.C. 1463(b)(2).

[17] 15 U.S.C. 77a *et seq.* Section 3(a)(5) of the Securities Act exempts from registration requirements securities issued by State savings associations. 15 U.S.C. 77c(a)(5).

[18] 12 CFR 192.300.

[19] 12 CFR 335.101. Part 335 issued by the FDIC under section 12(i) of the Exchange Act applies to all securities of State savings associations that are subject to the registration requirements of section 12(b) or section 12(g) of the Exchange Act. The FDIC is vested with the powers, functions, and duties of the Securities and Exchange Commission (SEC) to administer and enforce Exchange Act sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78j–1, 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p) and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265) regarding State savings associations with one or more classes of securities subject to the registration provisions of sections 12(b) or 12(g) of the Exchange Act.

[20] Pursuant to section 12(a) of the Exchange Act, an issuer must register as an Exchange Act reporting company if it elects to list a class of securities (debt or equity) on a national securities exchange. 15 U.S.C. 78l(a). Generally, an issuer must register pursuant to section 12(g) of the Exchange Act if a class of its equity securities (other than exempted securities) is held of record by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors and, on the last day of the issuer's fiscal year, its total assets exceed $10 million. 12 CFR part 335. However, for banks, bank holding companies, and savings and loan holding companies, the threshold is 2,000 or more holders of record; the separate registration trigger for 500 or more non-accredited holders of record does not apply. A list of FDIC-supervised depository institutions currently reporting to the FDIC under the Exchange Act and part 335 can be accessed at *https://www.fdic.gov/bank/individual/part335/index.html.*

[21] 12 CFR 390.384(c).

[22] 57 FR 40085 (September 2, 1992). The term "savings association" includes both any Federal savings association, any State savings association, and any corporation (other than a bank) that the FDIC Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association. 12 U.S.C. 1831(b)(1).

[23] *Id.*

[24] Public Law 100–86, 101 Stat. 552 (1978).

[25] Public Law 101–73, 103 Stat. 183 (1989).

determine savings associations' compliance with all applicable regulations. Section 4(b)(2) of HOLA requires that these uniform accounting standards for savings associations incorporate GAAP to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies. Consistent with these goals, the former OTS savings association accounting requirements, formerly found at part 563c, as they applied to State savings associations, were transferred to the FDIC with only nomenclature changes as part 390, subpart T.

390.380 Form and Content of Financial Statements

This section provides the form and content requirements of financial disclosures, including specific statements, to be included by a State savings association in a proxy statement or offering circular required to be used in connection with a mutual-to-stock conversion under 12 CFR part 192 and an offering circular or nonpublic offering materials required to be used in connection with an offer or sale of securities under part 390, subpart W (*Securities Offerings).* Unless provided for by FDIC rule or order, the financial disclosures governed by this subpart must be prepared and presented in accordance with U.S. generally accepted accounting principles (GAAP) and be consistent with certain provisions of SEC Regulation S–X (Regulation S–X).[26] In addition, this section requires that financial statement disclosures comply with the Appendix to § 390.384, which specifies the various items that must appear on the face of the financial statements related to any proxy statement and offering circular for conversion application and any filing under the Exchange Act under this section, and additional disclosures that must be included with the financial statements in related notes.[27] Regulation S–X sets forth the specific form and content of financial reports for several federal securities laws, and extends the meaning of financial statements to include all notes to the statements and all related schedules.[28]

390.381 Definitions

Section 390.381 provides a general cross-reference to the definitions section of Regulation S–X. This section also includes Regulation S–X definitions of *registrant* and *significant subsidiary* that the OTS modified specifically for State savings associations. Under this section, *registrant* includes an applicant, State savings association, or any other person required to prepare financial statements pursuant to part 390, subpart T. The definition of *significant subsidiary* pursuant to this subpart means a subsidiary (including its subsidiary) for which (1) the State savings association or its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total consolidated assets of the association and its subsidiaries; (2) the State savings association or its other subsidiaries' proportionate share of the total assets of the subsidiary exceeds 10 percent of the total consolidated assets of the State savings association and its subsidiaries; or (3) the State savings association or its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items, and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of the consolidated income of the State savings association and its subsidiaries; all for the most recently completed fiscal year.

390.382 Qualification of Public Accountant

Section 390.382 provides a cross-reference to SEC Rule 2–01 of Regulation S–X that sets forth qualifications of accountants.[29] Pursuant to this section, a ''qualified public accountant'' must be a certified public accountant certified by, or a licensed public accountant licensed by, a regulatory authority of a State or other political subdivision of the United States who is in good standing under the laws of the jurisdiction where the home office of the registrant to be audited is located. Further, any person or firm suspended from practice before the SEC or other governmental agency is not a qualified public accountant for the purposes of this section.

390.383 Condensed Financial Information [Parent only]

Section 390.383 applies to the condensed financial information of the State savings association as the parent of consolidated subsidiaries required to be presented in a note to the financial statements when the restricted net assets of consolidated subsidiaries exceed 25 percent of the consolidated net assets as of the end of the most recent fiscal year, and is closely related to the following section, § 390.384, *Financial statements for conversions, SEC filings, and offering circulars.*[30] Section 390.383 further requires that the investment in, and indebtedness of and to, State savings association subsidiaries be stated separately in the condensed balance sheet from amounts for other subsidiaries, and the amount of cash dividends paid to the parent State savings association for each of the last three years by the State savings association subsidiaries be stated separately in the condensed income statement from amounts from other subsidiaries. Restricted net assets of a subsidiary are the amount of the State savings association's proportionate share of the net assets of the subsidiaries (after intercompany netting) that as of the end of the most recent year may not be transferred to the parent State savings association by the subsidiaries in the form of loans, advances, or cash dividends without the consent of a third party, such as a lender, regulatory agency, or foreign government. For the purposes of this section, if the restrictions on the amount of the funds that may not be loaned or advanced differ from the amount restricted for transfer as cash dividends, the State savings association should use the amount least restrictive to the subsidiary. Also, redeemable preferred stocks and minority interest must be deducted in computing net assets.

390.384 Financial Statements for Conversions, SEC Filings, and Offering Circulars

Section 390.384 and its appendix prescribe the form and content of State savings association financial statements used in connection with (1) mutual-to-stock conversions pursuant to 12 CFR 192, (2) filings under the Exchange Act, and (3) offering circulars used in connection with mutual capital certificates [31] and debt securities.[32] This section reflects items in SEC Rule 9–03 and SEC Rule 9–04 that, if applicable, should appear on the face of the balance sheets or its notes, or income statement or its notes, respectively, as well as incorporating items from other rules in Regulation S–X as modified by the OTS to specifically apply to savings

[26] 17 CFR part 210, entitled *Form and Content of and Requirements for Financial Statements, Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Company Act of 1940, Investment Advisers Act of 1940, and Energy Policy and Conservation Act of 1975.* Such provisions include articles 1, 2, 3, 4, 10, and 11 of Regulation S–X, 17 CFR 210.l-210.4; 210.10, and 210.11. Regulation S–X generally sets forth form and content of and requirements for financial statements with respect to filing under the Securities Act and Exchange Act, among others.

[27] Appendix to 12 CFR 390.384.

[28] *See* 17 CFR 210.1–01.

[29] 17 CFR 210.2–01.

[30] 12 CFR 390.383.

[31] 12 CFR 163.74.

[32] 12 CFR 390.341.

associations and includes references to Regulation S–X rules as well.[33]

B. Accounting Requirements Applicable to State Savings Associations

The FDIC's regulations do not have a direct analog to the accounting requirements for State savings association set forth in the transferred OTS regulations at part 390, subpart T. However, as mentioned above, existing federal banking and securities laws and regulations provide requirements that are substantially similar.

Generally Accepted Accounting Principles

In the United States, GAAP is a commonly recognized set of rules and procedures designed to govern corporate accounting and financial reporting.[34] This comprehensive set of accounting practices was developed by the Financial Accounting Standards Board (FASB), an independent not-for-profit body that derives its authority from the SEC.[35] FASB sets GAAP with input from the SEC, the American Institute of Certified Public Accountants, and other stakeholders that include preparers, users, and auditors.[36]

Section 37 of the FDI Act, like part 390, subpart T, requires that reports and statements to be filed with federal banking agencies by insured depository institutions, including insured State saving associations, be uniform and consistent with GAAP.[37] Section 4(b) of HOLA also requires that savings associations use accounting standards that are no less stringent than GAAP.[38] Further, the instructions to the Consolidated Reports of Condition and Income (Call Report) state that the regulatory reporting requirements applicable to the Call Report shall conform to GAAP as set forth in the FASB's Accounting Standards Codification.[39] By eliminating regulations that are substantially similar to existing statutory directives for State savings associations to use GAAP, the FDIC would follow the SEC in amending disclosure requirements that have become redundant in light of GAAP, among other things.[40]

Exchange Act Filings

State saving associations that have securities subject to the registration requirements of Section 12(b) or Section 12(g) of the Exchange Act are subject to a mandatory periodic disclosure process that is designed to require Exchange Act-registered companies to make public the information that investors would find pertinent in making investment decisions. Section 12(i) of the Exchange Act provides that the appropriate Federal banking agencies must issue substantially similar regulations to regulations and rules issued by the SEC.[41] Therefore, the FDIC is vested with the powers and duties of the SEC to enforce the registration provisions of the Exchange Act with respect to State nonmember banks and State savings associations.[42]

Part 335, *Securities of State Nonmember Banks and State Savings Associations,* applies to all securities of State nonmember banks and State savings associations (FDIC-supervised institutions). Part 335 implements section 12(i) of the Exchange Act which vests authority in the FDIC to administer and enforce certain sections of the Exchange Act and Sarbanes-Oxley, including the accounting standards to be used in the preparation of filings and other reports under the respective laws. Part 335 incorporates the regulations and rules of the SEC with respect to the registration, reporting, and accounting requirements applicable to companies subject to the Exchange Act. The FDIC amended the scope of part 335 to include State savings associations in 2014, and, therefore, the requirement for all FDIC-supervised institutions is the same. These requirements are substantially similar to the securities offerings disclosure regulations that the OCC promulgated under the same authority for national banks and federal savings associations.[43] Therefore, State savings associations would file reports containing generally the same information, and the same form and content, that would be included in Exchange Act reports, including applicable financial statement form and content requirements of Regulation S–X, with the FDIC rather than the SEC, and subject to the same regulations as State nonmember banks.

Mutual to Stock Conversion Offerings

Mutually-owned State savings associations may convert from the mutual form of ownership, where the institution is owned jointly by the association members, to the stock form of ownership, where the institution is owned by shareholders. Although section 312 of the Dodd-Frank Act transferred all functions of the OTS relating to State savings associations to the FDIC, rulemaking authority for Federal and State savings associations was transferred to the OCC.[44] As a result, the form and content of financial statements included as part of a State savings association conversion application is governed by part 192 of the OCC's Rules (OCC conversion regulations), instead of part 390, subpart T. Part 192 governs savings association conversions generally. These OCC conversion regulations apply to financial statements included with proxy solicitations and offering circulars.[45] In reviewing a notice of intent to convert from mutual to stock form from an insured state-chartered mutually-owned savings association, the FDIC takes into account the extent to which the proposed conversion transaction conforms with the OCC conversion regulations, providing consistency in standards for financial statements included with proxy solicitations and offering circulars for mutual State savings association and mutual State bank conversions.[46] Additionally, mutual State savings associations must comply with the disclosure requirements for offering materials used in connection with the issuance of mutual capital certificates pursuant to 12 CFR 163.74.[47]

State Savings Association Securities Offerings

Securities issuances by State savings association are exempt from registration requirements pursuant to section 3(a)(5) of the Securities Act.[48] State savings

[33] 17 CFR 210–9.03, 210–9.04. Other items included by the OTS in the Appendix to § 390.384 are similar to items in SEC Rule 1–02 *Definitions,* Rule 3–04 *Changes in stockholders' equity and noncontrolling interests,* Rule 4–08, *General notes to financial statements,* and Rule 10–01, *Interim financial statements.*

[34] Robert Parrino and David Kidwell, Fundamentals of Corporate Finance, 3.1 (John Wiley & Sons) (2009).

[35] *Id*

[36] *Id.*

[37] 12 U.S.C. 1831n(a)(2).

[38] 12 U.S.C. 1463(b)(2).

[39] Instructions for Preparation of Consolidated Reports of Condition and Income, Form FFIEC 031 and 041, *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201906_i.pdf;* Instructions for Preparation of Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than $1 Billion, Form FFIEC 051, *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC051_201906_i.pdf.*

[40] 83 FR 50148 (Oct. 4, 2018).

[41] 15 U.S.C. 78l(i).

[42] *Id.*

[43] 12 CFR part 16.

[44] Section 312(b)(2), 124 Stat. at 1522, codified to 12 U.S.C. 5412(b)(2).

[45] 12 CFR part 192, subpart A, Standard Conversions.

[46] 12 CFR 303.163(b). Paragraph (b) references the former OTS mutual-to-stock regulations that were at 12 CFR part 563b. The OCC republished part 563b as part 192 as an interim final rule in August 2011, 76 FR 49156 (Aug. 9, 2011).

[47] Debt securities issued pursuant to 12 CFR 390.341 are also subject to the disclosure requirements for offering materials.

[48] 15 U.S.C. 77c(a)(5).

associations are subject to a separate and stringent regulatory and reporting structure under federal banking laws independent of the SEC, such as through ongoing supervision and oversight, as well as extensive reporting requirements, frequent safety and soundness examinations[49] and capital requirements[50] that protect investors from securities fraud and improper disclosure that the SEC registration process is designed to prevent. The Securities Act registration exemption allows State savings associations to issue securities with many of the benefits of registered offerings with the efficiency and cost effectiveness of private placements, does not place limitations on the number or type of investors that can participate, or on the amount of securities offered. As a result, State savings associations may access capital markets without the time and expense of conducting an SEC-registered offering.

Nonetheless, as in any other securities offering, the anti-fraud provisions of the federal securities laws apply, including section 17 of the Securities Act and section 10(b) of and Rule 10b–5 under the Exchange Act.[51] Financial statements used in proxy solicitations or offering circulars used in marketing securities must disclose the information necessary to avoid liability under the anti-fraud provisions even if specific disclosure requirements are not imposed. The FDIC reviews offering circulars to ensure that they were prepared in compliance with the anti-fraud provisions of the federal securities laws which require full and adequate disclosure of material facts and meet the needs of investors, depositors, and issuers.

With respect to the form and content requirements for offerings of mutual capital certificates and debt securities of State savings associations set forth in part 390, subpart T, the FDIC has determined that the additional disclosures required by part 390, subpart T may be more detailed than otherwise applicable financial statement form and content and disclosure requirements that a State savings association must satisfy under GAAP, FDIC regulations, and state regulations, as appropriate. While there may be situations where the disclosures required under GAAP, FDIC regulations, and state regulations, as appropriate, with respect to the offerings of mutual capital certificates and debt securities are less detailed than the requirements under part 390, subpart T, there have been no recent filings by State savings associations to the FDIC related to the offerings of mutual capital certificates and debt securities. Therefore, the FDIC has concluded that the practical impact of the differences in level of disclosure detail is negligible and does not justify maintaining separate disclosure regulations applicable solely to State savings associations. The FDIC continues to evaluate whether to update the 1996 statement of policy related to the use of offering circulars in connection with the public distribution of bank securities to include issuances of mutual capital certificates and debt securities by State savings associations. The statement of policy currently applies only to insured state nonmember banks.[52]

IV. Summary

If the proposal is finalized, 12 CFR part 390, subpart T would be rescinded and removed because the financial statement and disclosure requirements set forth in part 390, subpart T are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that a State savings association must satisfy under federal banking or securities laws or regulations. The FDI Act has long required that reports and statements to be filed with the FDIC by insured depository institutions, including insured State saving associations, be uniform and consistent with GAAP. Moreover, the HOLA has required that savings association reports and financial statements be consistent with GAAP since CEBA was enacted in 1987. State savings associations with securities traded in the secondary market are subject to the registration provisions and reporting requirements of the Exchange Act as implemented by the FDIC, pursuant to the authority granted by Section 12(i) of the Exchange Act. As a result, a State savings association, like a State nonmember bank, is required to file reports and other filings containing generally the same information that would be included in Exchange Act reports with the FDIC pursuant to part 335, instead of filing with the SEC.

The form and content of financial statements used in connection with proxy solicitations and offering circulars for the conversion of a State savings association from mutual to stock form remain subject to the OCC conversion regulations at part 192 and offering materials for the issuance of mutual capital certificates remain subject to the OCC regulations at 12 CFR 163.74, in addition to GAAP and any applicable Exchange Act requirements. While State savings association public offerings of securities are exempt from Securities Act registration requirements, the FDIC reviews offering circulars to ascertain that they were prepared in compliance with the anti-fraud provisions of the federal securities laws which require full and adequate disclosure of material facts and meet the needs of investors, depositors, and are uniform and consistent with GAAP, including financial statement disclosure requirements. Removing part 390, subpart T will streamline the FDIC's regulations and will not increase regulatory burden for FDIC-supervised institutions.

V. Expected Effects

As of March 31, 2019, the FDIC supervises 3,465 insured depository institutions, of which 38 (1.1%) are insured State saving associations.[53] The proposed rule primarily would only affect regulations that govern State savings associations. As explained previously, the proposed rule would remove sections 390.380, 390.381, 390.382, 390.383, and 390.384 of part 390, subpart T because other federal banking or securities laws or regulations contain similar requirements. Because these regulations are largely redundant, rescinding them will not have any substantive effects on FDIC-supervised institutions.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

VI. Alternatives

The FDIC considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to State savings association accounting requirements and part 390, subpart T (including the

[49] 12 CFR 337.12.

[50] 12 CFR part 324.

[51] 15 U.S.C. 77q; 15 U.S.C. 78j(b) and 17 CFR 240.10b–5.

[52] 44 FR 39381 (July 6, 1979); 61 FR 46808 (Sept. 5, 1996).

[53] FDIC Call Report, March 31, 2019.

Appendix to 12 CFR 390.384). The FDIC considered the alternative of retaining the current regulations, but did not choose to do so because it would be needlessly complex and confusing for its supervised institutions if substantively similar regulations regarding accounting requirements for Exchange Act filers were located in different locations within the Code of Federal Regulations. The FDIC believes it would be burdensome for FDIC-supervised institutions to refer to these separate sets of regulations. Therefore, the FDIC is proposing to rescind part 390, subpart T (including the Appendix to 12 CFR 390.384) and streamline the FDIC's regulations.

VII. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

1. Are the provisions of part 192, part 335, and section 37 of the FDI Act sufficient to provide consistent and effective filing and disclosure requirements for securities registered under the Exchange Act, mutual-to-stock conversions, and mutual capital certificates and debt securities for State savings associations? Please provide a detailed response.

2. Should part 390, subpart T pertaining to the accounting requirements for State savings associations be retained in whole or in part? Please substantiate your response.

3. What negative impacts, if any, can you foresee in the FDIC's proposal to rescind part 390, subpart T and remove it from the Code of Federal Regulations?

4. What negative impacts to State savings associations, if any, do you foresee in the FDIC's proposal to rescind part 390, subpart T and rely on 12 CFR part 192 and section 37 of the FDI Act with respect to the accounting requirements that would be applicable to public offerings?

5. What negative impacts to State savings associations, if any, do you foresee in the FDIC's proposal to rescind the accounting requirements in part 390, subpart T that are applicable to State savings association mutual-to-stock conversions involving a public offering of securities and registration of the securities under the Exchange Act?

Written comments must be received by the FDIC no later than November 4, 2019.

VIII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[54] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed rule would rescind and remove from FDIC regulations part 390, subpart T (including the Appendix to 12 CFR 390.384). The proposed rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[55] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[56] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of March 31, 2019, the FDIC supervised 3,465 insured depository institutions, of which 2,705 are considered small banking organizations for the purposes of RFA. The proposed rule primarily affects regulations that govern State savings associations.[57] There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.[58]

As explained previously, the proposed rule would remove sections 390.380, 390.381, 390.382, 390.383, and 390.364 of part 390, subpart T because these sections are unnecessary or redundant of existing federal banking and securities laws or regulations that prescribe accounting requirements for State savings associations. Because these regulations are redundant to existing regulations, rescinding them would not have any substantive effects on small FDIC-supervised institutions.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

6. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[59] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind part 390, subpart T in a simple and straightforward manner.

7. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[60] The FDIC, along with the other federal banking agencies, submitted a Joint Report to Congress on March 21, 2017,

[54] 44 U.S.C. 3501–3521.

[55] 5 U.S.C. 601, *et seq.*

[56] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[57] FDIC Call Report, March 31, 2019.

[58] *Id.*

[59] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

[60] Public Law 104–208, 110 Stat. 3009 (1996).

(EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart T, this proposal complements other actions the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

List of Subjects in 12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR 390 as follows:

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 1. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart M also issued under 12 U.S.C. 1818.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C.1831o.

Subpart T—[Removed and Reserved]

■ 2. Remove and reserve subpart T, consisting of §§ 390.380 through 390.384.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–20770 Filed 10–2–19; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF07

Removal of Transferred OTS Regulation Regarding Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; supplemental notice.

SUMMARY: On August 26, 2019, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to deposits that apply to State savings associations. The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards, which were adjusted for inflation as of August 19, 2019.

DATES: Comments on the updated regulatory flexibility analysis must be received on or before November 4, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *FDIC Website: https://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF07on 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 to FDIC:* 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.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Public Inspection: All comments received will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ryan T. Singer, Chief, Regulatory Analysis Section, Division of Insurance and Research, (202) 898–7352, *rsinger@fdic.gov;* Laura J. McNulty, Counsel, Legal Division, (202–898–3817), *lmcnulty@fdic.gov;* Jennifer M. Jones, Counsel, Legal Division, (202) 898–6768, *jennjones@fdic.gov.*

SUPPLEMENTARY INFORMATION: On August 26, 2019, the FDIC issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to deposits that apply to State savings associations. (See 84 FR 44558 (August 26, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards, which were adjusted for inflation as of August 19, 2019. (See 84 FR 34261 (July 18, 2019).)

Updated Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[1] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register**, together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[2] Generally, the FDIC considers a significant effect to be a quantified

[1] 5 U.S.C. 601, *et seq.*

[2] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for purposes of the RFA.