

Federal Deposit Insurance Corporation

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nonmember bank for a period of three years, but the Federal Deposit Insurance Corporation may require that they be retained by the bank for an additional period of time. The reports filed under this section are not required by this regulation to be made available to the public and shall not be filed with the Federal Deposit Insurance Corporation unless specifically requested.

(d) *Bank's responsibility.* Each insured State nonmember bank shall advise each of its executive officers and each of its principal shareholders (to the extent known by the bank) of the reports required by this section and make available to each of these persons a list with the name and address of each of the insured State nonmember bank's correspondent banks.

§ 349.4 Disclosure of indebtedness of executive officers and principal shareholders.

(a) Upon receipt of a written request, an insured State nonmember bank shall disclose to the requester the name of each executive officer or principal shareholder of the bank whose aggregate indebtedness, including the indebtedness of related interests of such person.

(1) At the bank itself as of the end of the latest calendar quarter; or

(2) At the correspondent banks of the disclosing bank at any time during the previous calendar year

equals or exceeds the lesser of five percent (5%) of the disclosing bank's capital stock and unimpaired surplus or \$500,000, but in no event shall an insured State nonmember bank be required to make such disclosure where the aggregate indebtedness of an executive officer or principal shareholder is less than \$25,000.

(b) *Contents of disclosure.* (1) An insured State nonmember bank is not required to disclose any additional information concerning the indebtedness referred to in paragraph (a) of this section, except that it must observe the requirement of paragraph (b)(2) of this section.

(2) Disclosures made pursuant to paragraph (a) of this section shall specify whether the individual or individuals named in the disclosure, who

are indebted in the amount specified in paragraph (a) of this section, are indebted solely to the bank itself or to one or more correspondent banks of the reporting bank or to both.

(c) An insured State nonmember bank shall maintain a copy of any request for information made under paragraph (a) of this section and a record of the bank's disposition of such request for a period of two years.

(d) *OMB review.* The Office of Management and Budget has reviewed and approved the collection of information requirements contained in this part 349 under OMB Control Number 3064-0023.

[48 FR 57114, Dec. 28, 1983, as amended at 49 FR 1176, Jan. 10, 1984]

PART 350—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY FDIC-INSURED STATE NON-MEMBER BANKS

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AUTHORITY: 12 U.S.C. 1817(a)(1), 1819 "Seventh" and "Tenth".

SOURCE: 52 FR 49379, Dec. 31, 1987, unless otherwise noted.

§ 350.1 Scope.

This part applies to FDIC-insured state-chartered banks that are not members of the Federal Reserve System, and to FDIC-Insured state-licensed branches of foreign banks.

§ 350.2 Definitions.

(a) *Bank.* For purposes of this part, the term *bank* means an FDIC-insured state-chartered organization that is not a member of the Federal Reserve System, and an FDIC-insured state-licensed branch of a foreign bank.

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(b) *Call Report*. For purposes of this part, the term *Call Report* means the report filed by a bank pursuant to 12 U.S.C. 1817(a)(1).

§ 350.3 Requirement for annual disclosure statement.

(a) *Contents*. Each bank shall prepare as of December 31 and make available on request an annual disclosure statement. The statement shall contain information required by § 350.4(a) and (b) and may include other information that bank management believes appropriate, as provided in § 350.4(c).

(b) *Availability*. A bank shall make its annual disclosure statement available to the public beginning not later than the following March 31 or, if the bank mails an annual report to its shareholders, beginning not later than five days after the mailing of such reports, whichever occurs first. A bank shall make a disclosure statement available continuously until the disclosure statement for the succeeding year becomes available.

[62 FR 10200, Mar. 6, 1997]

§ 350.4 Contents of annual disclosure statement.

(a) *Financial reports*. The annual disclosure statement for any year shall reflect a fair presentation of the bank's financial condition at the end of that year and the preceding year and, except for state-licensed branches of foreign banks, the results of operations for each such year. The annual disclosure statement may, at the option of bank management, consist of the bank's entire Call Report, or applicable portions thereof, for the relevant dates and periods. At a minimum, the statement must contain information comparable to that provided in the following Call Report schedules:

(1) For insured state-chartered organizations that are not members of the Federal Reserve System:

- (i) Schedule RC (Balance Sheet);
- (ii) Schedule RC-N (Past Due and Nonaccrual, Loans, Leases, and Other Assets—column A covering financial instruments past due 30 through 89 days and still accruing and Memorandum item 1 need not be included);
- (iii) Schedule RI (Income Statement);

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(iv) Schedule RI-A (Changes in Equity Capital); and

(v) Schedule RI-B, Part II (Changes in Allowance for Loan and Lease Losses).

(2) For insured state-licensed branches of foreign banks:

(i) Schedule RAL (Assets and Liabilities);

(ii) Schedule E (Deposit Liabilities and Credit Balances); and

(iii) Schedule P (Other Borrowed Money).

(b) *Other required information*. The annual disclosure statement shall include such other information as the FDIC may require of a particular bank. This could include disclosure of enforcement actions where the FDIC deems it in the public interest to do so.

(c) *Optional information*. A bank may, at its option, provide additional information that bank management considers important to an evaluation of the overall condition of the bank. This information could include, but is not limited to, a discussion of the financial data; information relating to mergers and acquisitions; the existence of and facts relating to regulatory enforcement actions; business plans; and material changes in balance sheet and income statement items.

(d) *Disclaimer*. The following legend shall be included in every annual disclosure statement to advise the public that the FDIC has not reviewed the information contained therein: "This statement has not been reviewed, or confirmed for accuracy or relevance, by the Federal Deposit Insurance Corporation."

[62 FR 10200, Mar. 6, 1997]

§ 350.5 Alternative annual disclosure statements.

The requirements of § 350.4(a) may be satisfied:

(a) *In the case of a bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934*, by the bank's annual report to security holders for meetings at which directors are to be elected or the bank's annual report (see 12 CFR part 335);

(b) *In the case of a bank with independently audited financial statements*, by copies of the audited financial statements and the certificate or report of

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the independent accountant to the extent that such statements contain information comparable to that specified in § 350.4(a); and

(c) *In the case of a bank subsidiary of a one-bank holding company*, by an annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission or by sections in the holding company's consolidated financial statements on Form FR Y-9C pursuant to Regulation Y of the Federal Reserve Board (12 CFR part 225) that are comparable to the Call Report schedules enumerated in § 350.4(a)(1), provided that in either case not less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's consolidated subsidiaries.

(d) *In the case of a bank covered by 12 CFR part 363*, by an annual report prepared pursuant to 12 CFR 363.4. However, if the annual report is for a bank subsidiary of a holding company which provides only the consolidated financial statements of the holding company, this annual report may be used to satisfy the requirements of this part only if it is the report of a one-bank holding company and provided that not less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's consolidated subsidiaries.

[62 FR 10200, Mar. 6, 1997]

§ 350.6 Signature and attestation.

An authorized officer of the bank shall sign the annual disclosure statement. The officer shall also attest to the correctness of the information contained in the statement if the financial reports are not accompanied by a certificate or report of an independent accountant.

[62 FR 10200, Mar. 6, 1997]

§ 350.7 Notice and availability.

(a) *Shareholders*. If the bank provides written notice of the annual meeting of shareholders, the bank shall include with, or as part of, that notice an announcement that the bank's annual disclosure statement will be sent to the

shareholder either automatically or upon request. For disclosure statements available on request, the announcement shall indicate at a minimum an address and telephone number to which requests may be directed. The first copy of the annual disclosure statement shall be provided to a shareholder without charge.

(b) *Customers and the general public*. In the lobby of its main office and each branch, the bank shall at all times display a notice that the annual disclosure statement may be obtained from the bank. The notice shall include at a minimum an address and telephone number of which requests should be directed. The first copy of the annual disclosure statement shall be provided to a requester free of charge.

§ 350.8 Delivery.

Each bank shall, after receiving a request for an annual disclosure statement, promptly mail or otherwise furnish a statement to the requester.

§ 350.9 Disclosure of examination reports.

Except as permitted under specific provisions of the FDIC's regulations (12 CFR part 309), a bank may not disclose any report of examination or report of supervisory activity or any portion thereof prepared by the FDIC. The bank also shall not make any representation concerning such report or the findings therein.

§ 350.10 Prohibited conduct and penalties.

(a) *Misrepresentations*. No officer, director, employee, agent, or other person participating in the affairs of a bank, shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of pertinent or required information in the annual disclosure statement; or

(2) Represent that the FDIC, or any employee thereof, has reviewed, or confirmed the accuracy or relevance of the disclosure statement.

(b) *Participating persons*. For purposes of this part, a person *participating in the affairs of a bank* shall include (but

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not be limited to) any person who provides information contained in, or directly or indirectly assists in the preparation of, the annual disclosure statement.

(c) *Enforcement actions.* Conduct that violates paragraph (a) of this section may constitute an unsafe or unsound banking practice or otherwise serve as a basis for an enforcement action by the FDIC.

§ 350.11 Safe harbor provision.

The provisions of § 350.10 shall not apply unless it is shown that the information disclosed was included without a reasonable basis or other than in good faith.

§ 350.12 Disclosure required by applicable banking or securities law or regulations.

The requirements of this part are not intended to replace or waive any disclosure required to be made under applicable banking or securities law or regulations.

[62 FR 10201, Mar. 6, 1997]

PART 351 [RESERVED]

PART 352—NONDISCRIMINATION ON THE BASIS OF HANDICAP

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AUTHORITY: 12 U.S.C. 1819.

SOURCE: 51 FR 9643, Mar. 20, 1986, unless otherwise noted.

§ 352.1 Purpose.

The purpose of this part is to implement the spirit of section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of

1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by various Executive agencies. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, it has chosen to promulgate this final regulation to ensure that, to the extent practicable, handicapped persons are provided with equal access to FDIC programs and activities.

§ 352.2 Application.

(a) This part applies to all programs and activities conducted by the FDIC. The following programs and activities involve the direct provision of benefits and services to, or participation by, members of the public:

(1) Attending Board of Directors meetings open to the public and all other public meetings;

(2) Making inquiries or filing complaints at the FDIC Office of Congressional Relations and Corporate Communications;

(3) Using the FDIC library in Washington, DC;

(4) Visiting an insured bank at which they conducted business (or an alternative liquidation site selected by the FDIC) and which has become insolvent, or been purchased by another bank under FDIC supervision, for the purpose of:

(i) Collecting FDIC checks for the insured amount of their deposits previously held in such bank; and/or

(ii) Discussing with FDIC representatives matters related to the repayment of debts which they previously owed to such bank, prior to its failure or purchase by another bank under FDIC supervision;

(5) Seeking employment with the FDIC;

(6) Conducting regular banking business at a Deposit Insurance National Bank formed by the FDIC pursuant to the authority in 12 U.S.C. 1821(h).

(b) This regulation governs the conduct of FDIC personnel in their interaction with employees of insured banks and employees of other state or federal agencies while discharging the FDIC's statutory obligations as insurer and/or receiver of financial institutions. It