§ 851.8 [Amended]

■ 24. Section 851.8 is amended in paragraph (b) by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety and Security'', and in paragraph (c), by removing ''Office of Health, Safety and Security, Office of Enforcement, HS–40'', and adding in its place ''Office of Enterprise Assessments, Office of Enforcement''.

§ 851.10 [Amended]

■ 25. Section 851.10(a)(2)(ii) is amended by removing ''With''.

§ 851.11 [Amended]

■ 26. Section 851.11(b)(2) is amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.27 [Amended]

■ 27. Section 851.27(a)(2)(ii) is amended by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety and Security''.

§ 851.30 [Amended]

■ 28. Section 851.30(a) is amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.31 [Amended]

■ 29. Section 851.31 is amended:
■ a. In paragraphs (a)(1), (a)(2), and (a)(3), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security'';
■ b. In paragraph (b) introductory text:
■ i. By removing ''Chief Health, Safety and Security Officer'' and adding in its place ''the Associate Under Secretary for Environment, Health, Safety and Security''; and
■ ii. By removing the Chief, Health, Safety and Security Officer and adding in its place ''the Associate Under Secretary'', and
■ c. In paragraph (c)(5) by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.32 [Amended]

■ 30. Section 851.32 is amended:
■ a. In paragraph (a)(1), by removing ''Chief Health, Safety and Security Officer recommends approval of a variance application, the Chief Health, Safety and Security Officer'', and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security recommends approval of a variance application, the Associate Under Secretary''.
■ b. In paragraph (a)(2), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.
■ c. In paragraph (a)(4), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.
■ d. In paragraph (c)(1), by removing ''Chief Health, Safety and Security Officer recommends denial of a variance application, the Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security recommends denial of a variance application, the Associate Under Secretary''.
■ e. In paragraphs (c)(2)(i) and (ii), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.34 [Amended]

■ 31. In § 851.34, paragraphs (a) and (c) are amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

[FR Doc. 2015–01778 Filed 1–29–15; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 390

RIN 3064–AE08

Removal of Transferred OTS Regulations Regarding Rules of Practice and Procedure and Amendments to FDIC Rules and Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove from the Code of Federal Regulations rules transferred to the FDIC following the dissolution of the former Office of Thrift Supervision (OTS) in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The rule also makes conforming amendments to FDIC regulations.

DATES: The Final Rule is effective on March 2, 2015.

FOR FURTHER INFORMATION CONTACT: Scott Patterson, Senior Review Examiner, Division of Risk Management Supervision, (202) 898–6953, Andrea Winkler, Supervisory Counsel, Legal Division, (202) 898–3727; Heather Walters, Counsel, Legal Division, (202) 898–6729.

SUPPLEMENTARY INFORMATION:

I. Background

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. 5411, the powers, duties and functions of the former 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 as to savings and loan holding companies.[1] Section 316(b) of the Dodd-Frank Act, 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory issuances 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.

The Dodd-Frank Act directed the FDIC and OCC to consult with one another and to publish a list of continued OTS regulations to be enforced by each respective agency that would continue to remain in effect until the appropriate successor agency modified or removed the regulations in accordance with the applicable laws. The list was published by the FDIC and OCC as a Joint Notice in the **Federal Register** on July 6, 2011, and shortly thereafter, the FDIC published its

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

transferred OTS regulations as new FDIC regulations in 12 CFR parts 390 and 391. 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 transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

Further, section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, to add State savings associations to the list of entities for which the FDIC is designated 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 today, it has the authority to issue, modify, and rescind regulations involving such associations as well as for State nonmember banks and insured branches of foreign banks.[2]

II. Proposed Rule

On April 21, 2014, the FDIC published an NPR regarding the removal of certain subparts from 12 CFR part 390 in an effort to streamline regulations for all FDIC-supervised institutions and eliminate duplicative regulations. The NPR also proposed minor technical changes to 12 CFR part 308 to conform the existing FDIC regulations to accommodate State savings associations, add jurisdiction for new statutes, and reflect internal organization changes. The specific changes are set forth below in Section IV.

A. Removal of Part 390, subpart C (Former OTS 12 CFR Part 509, subparts A and B)

Part 390, subpart C governs the rules and procedures applicable to administrative enforcement actions for State savings associations and their institution-affiliated parties (IAPs).[3] The former OTS rule was transferred to the FDIC with only nominal changes. As discussed in the Proposed Rule, the FDIC carefully reviewed part 390, subpart C, and compared it with part 308, subparts A and B, an FDIC regulation that existed before the transfer of part 390, subpart C, and that continues to remain in effect today. Like the transferred rule, part 308, subparts A and B govern the rules and procedures applicable to administrative enforcement proceedings for State nonmember banks and their IAPs.[4] Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308.[5]

B. Removal of Part 390, Subpart E (Former OTS 12 CFR Part 513)

Part 390, subpart E governs the rules of practice before the FDIC and requirements for legal counsel.[6] The FDIC carefully reviewed the transferred rule, part 390, subpart E, and compared it with part 308, subpart C, an FDIC regulation that existed before the transfer of part 390, subpart E and that continues to remain in effect today. Like the transferred rule, part 308, subpart C governs the suspension and debarment rules for legal counsel. Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308.

C. Removal of Part 390, Subpart D (Former OTS 12 CFR Part 512)

Part 390, subpart D sets the rules for investigations and formal examination proceedings. The FDIC carefully reviewed the transferred rule, part 390, subpart D, and compared it with part 308, subpart K, an FDIC regulation that existed before the transfer of part 390, subpart D and that continues to remain in effect today. Like the transferred rule, part 308, subpart K sets the rules for investigative proceedings. Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308. The Final Rule conforms the rules and procedures for State savings associations and provides investigative authority for violations of certain statutes now enforced by the FDIC.

D. Removal of Part 390, Subpart B (Former OTS 12 CFR 508)

Part 390, subpart B sets the rules for removals, suspensions, and prohibitions where a crime is charged. The FDIC carefully reviewed the transferred rule, part 390, subpart B, and compared it with part 308, subpart N, an FDIC regulation that existed before the transfer of part 390, subpart B and that continues to remain in effect today. Like the transferred rule, part 308, subpart N sets the rules for proceedings relating to suspension, removal, and prohibition where a felony is charged. Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308. The Final Rule conforms the rules and procedures for State savings associations.

III. Comments

The FDIC issued the NPR with a 60-day comment period that closed on June 20, 2014. The FDIC received no comments on its Proposed Rule, and consequently the Final Rule is adopted as proposed without any changes.

IV. Explanation of the Final Rule

As discussed in the NPR, part 390, subparts B, C, D, and E are substantively similar to part 308, subparts A, B, C, K, and N. Conforming the rules and procedures for all FDIC-supervised institutions will streamline the FDIC's rules and eliminate unnecessary regulations. To that effect, the Final Rule removes and rescinds 12 CFR part 390, subparts B, C, D, and E in their entirety. The Final Rule also makes minor technical changes to part 308, subparts A, B, C, K, and N to conform the FDIC's rules and accommodate State savings associations, as described below.

A. Technical Amendments to Part 308, Subpart A—Uniform Rules of Practice and Procedure, and Subpart B—General Rules of Procedure

The Final Rule addresses the key difference between part 308, subparts A and B, and part 390, subpart C, which relates to the scope of discovery in administrative enforcement proceedings. Specifically, the FDIC's rules at part 308, subparts A and B restrict discovery to document discovery only. State savings associations, for which the FDIC is the primary federal regulator (PFR), will now follow the same rules as other FDIC-supervised institutions. Additionally, the changes to part 308, subparts A and B include new jurisdictional language to ensure that the FDIC can take the necessary enforcement actions such as the assessment of civil money penalties against State savings associations.

B. Technical Amendments to Part 308, Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

The Final Rule adds language to the suspension and debarment section to require attorneys who appear before the FDIC as legal counsel to disclose any professional disciplinary actions to the Board.

[2] 12 U.S.C. 5412(b)(2)(C).

[3] 79 FR 22056 (Apr. 21, 2014).

[4] *Id.* at 22057.

[5] *Id.*

[6] *Id.* at 22058.

C. Technical Amendments to Part 308, Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

The Final Rule adds language to provide the FDIC with the necessary investigative powers under certain statutes that were previously enforced by the OTS against State savings associations such as section 5(d)(1)(B) of Home Owners' Loan Act of 1933, 12 U.S.C. 1464(c) (''HOLA''). There are also conforming amendments to make subpart K procedures applicable to all enforcement investigations conducted by FDIC. The Final Rule also updates the language of the subpart to reflect internal organizational changes to the FDIC, as well as clarifying the behavioral standards for those participating in an official investigation. Finally, the Final Rule clarifies who may be present during sworn testimony and how a witness requests transcripts of that testimony.

D. Technical Amendments to Part 308, Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

The Final Rule adds language to include State savings associations, provides guidance on immediate compliance with the suspension or prohibition proceeding, and clarifies that the IAP has the burden of proof to show that his or her continued participation in the industry does not pose a threat to, or public confidence in insured institutions.

V. Administrative Law Matters

A. The Paperwork Reduction Act

The Final Rule rescinds and removes from FDIC regulations part 390, subparts B, C, D, and E. Further, with regard to part 308, the Final Rule makes minor amendments to subparts A, B, C, K, and N. The practical effect of these technical amendments to rules and procedures will not involve any new—or revisions to current—collections of information under the PRA.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.,* generally requires an agency to consider whether a final rule will have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million).[7] Pursuant to section 605(b) of the RFA, a final 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. For the reasons provided below, the FDIC certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed previously, part 390, subparts B, C, D, and E were transferred from OTS's rules and procedures governing administrative enforcement proceedings and all State savings associations were required to comply with them. Because these subparts are redundant of existing part 308 of the FDIC's rules, the Final Rule rescinds and removes part 390, subparts B, C, D, and E. As a result, all FDIC-supervised institutions—including State savings associations—must comply with Part 308 if they are subject to administrative enforcement proceedings. Consequently, today's Final Rule will have no significant economic impact on any State savings association.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Final Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.*

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

E. 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.[8] The FDIC's EGRPRA review is ongoing and is expected to be completed by 2016. The NPR solicited comments on whether the proposed rescission of part 390, subparts B, C, D, and E and technical amendments to part 308, subparts A, B, C, K and N would impose any outdated or unnecessary regulatory requirements on insured depository institutions. No comments on this issue were received. Upon review, the FDIC does not believe that part 308, as amended by the Final Rule, imposes any outdated or unnecessary regulatory requirements on any insured depository institutions.

List of Subjects

12 CFR Part 390

Administrative practice and procedure, Banks, Banking, Claims, Investigations lawyers, Penalties, State nonmember banks, State savings associations, and Standards of conduct.

12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Claims, Investigations lawyers, Penalties, State nonmember banks, State savings associations, and Standards of conduct.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 308 and 390 of title 12 of the Code of Federal Regulations as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 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, 5412(b)(2)(C), and 5414(b)(3); 15 U.S.C. 78 (h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358, Pub. L. 109–351, and Pub. L. 111–203, 124 Stat. 1376.

Subpart A—Uniform Rules of Practice and Procedure

■ 2. Section 308.1 is amended by revising paragraphs (e) introductory text and (e)(1) and (9), and adding paragraphs (e)(12) through (14), to read as follows:

[7] 5 U.S.C. 601 *et seq.*

[8] Public Law 104–208 (Sept. 30, 1996).

§ 308.1 Scope.

* * * * *

(e) Assessment of civil money penalties by the FDIC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate regulatory agency for any violation of:

(1) Sections 22(h) and 23 of the Federal Reserve Act (FRA), or any regulation issued thereunder, and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1828(j) or 12 U.S.C. 1468;

* * * * *

(9) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the FDIC or the former Office of Thrift Supervision (OTS), the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

* * * * *

(12) Certain provisions of Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464(d)(1), (5)–(8), (s), and (v);

(13) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(14) Section 10 of HOLA, pursuant to 12 U.S.C. 1467a(a)(2)(D), (g), (i)(2)–(4) and (r); and

* * * * *

■ 2a. Section 308.3 is amended as follows:

■ a. Revise paragraphs (e) and (j)(3).

■ b. Redesignate paragraphs (k) through (r) as paragraphs (l) through (s) and revise newly redesignated paragraphs (l) through (s).

■ c. Add new paragraph (l).

The revisions read as follows:

§ 308.3 Definitions.

* * * * *

(e) *Designee* of the Board of Directors means officers or officials of the Federal Deposit Insurance Corporation acting pursuant to authority delegated by the Board of Directors.

* * * * *

(j) *Institution* includes:

* * * * *

(3) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467a(a));

* * * * *

(l) *Investigation* means any investigation conducted pursuant to section 10(c) of the FDIA or pursuant to section 5(d)(1)(B) of HOLA (12 U.S.C. 1464(d)(1)(B)).

(m) *Local Rules* means those rules promulgated by the FDIC in those subparts of this part other than subpart A.

(n) *Office of Financial Institution Adjudication* (OFIA) means the executive body charged with overseeing the administration of administrative enforcement proceedings of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve Board (FRB), the FDIC, and the National Credit Union Administration (NCUA).

(o) *Party* means the FDIC and any person named as a party in any notice.

(p) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (j) of this section.

(q) *Respondent* means any party other than the FDIC.

(r) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions set forth at § 308.1 and as specified in subparts B through P of this part.

(s) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

■ 3. Section 308.25 is amended by revising paragraph (b) to read as follows:

§ 308.25 Request for document discovery from parties.

* * * * *

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests 250 pages or more of copying, the requesting party shall pay for the copying and shipping charges. Copying charges are the current per page copying rate imposed by 12 CFR part 309 implementing the Freedom of Information Act (5 U.S.C. 552). The party to whom the request is addressed may require payment in advance before producing the documents.

* * * * *

Subpart B—General Rules of Procedure

■ 4. Section 308.101 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 308.101 Scope of Local Rules.

(a) Subparts B and C of the Local Rules prescribe rules of practice and procedure to be followed in the administrative enforcement proceedings initiated by the FDIC as set forth in § 308.1 of the Uniform Rules.

* * * * *

(d) Subparts A, B, and C of this part prescribe the rules of practice and procedure to applicable to adjudicatory proceedings as to which hearings on the record are provided for by the assessment of civil money penalties by the FDIC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate regulatory agency for any violation of section 15(c)(4) of the Exchange Act (15 U.S.C. 78o(c)(4)).

■ 5. Section 308.107 is amended by revising paragraph (a) to read as follows:

§ 308.107 Document discovery.

(a) Parties to proceedings set forth at § 308.1 of the Uniform Rules and as provided in the Local Rules may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

* * * * *

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

■ 6. Section 308.109 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 308.109 Suspension and disbarment.

* * * * *

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the OCC, Board of Governors, the OTS, the NCUA, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been, within the last ten years, convicted of a felony, or of a misdemeanor involving moral turpitude, shall be suspended

automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Any person who fails to so file a copy of the order, judgment, decree, or finding within 30 days after the entry of the order, judgment, decree, or finding or the date such person initiates practice before the FDIC, for that reason alone may be disqualified from practicing before the FDIC until such time as the appropriate filing shall be made. Failure to file any such paper shall not impair the operation of any other provision of this section.

* * * * *

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA and Section 5(d)(1)(B) of HOLA

■ 7. Section 308.144 is revised to read as follows:

§ 308.144 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured depository institution, any institutions making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the FDIA (12 U.S.C. 1820(c)) or section 5(d)(1)(B) of HOLA (12 U.S.C. 1464(d)(1)(B)). The Uniform Rules and subpart B of the Local Rules shall not apply to investigations under this subpart.

■ 8. Section 308.145 is revised to read as follows:

§ 308.145 Conduct of investigation.

An investigation shall be initiated only upon issuance of an order by the Board of Directors; or by the General Counsel, the Director of the Division of Risk Management Supervision, the Director of the Division of Depositor and Consumer Protection, or their respective designees. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

■ 9. Section 308.146 is revised to read as follows:

§ 308.146 Powers of person conducting investigation.

The person designated to conduct the investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board of Directors any instance where any attorney has engaged in contemptuous, dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigation. The Board of Directors, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

■ 10. Section 308.147 is revised to read as follows:

§ 308.147 Investigations confidential.

Investigations shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in part 309 of this chapter and as otherwise required by law.

■ 11. Section 308.148 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 308.148 Rights of witnesses.

In an investigation:

* * * * *

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation. Neither attorney(s) for the institution that is the subject of the investigation, nor attorney(s) for any other interested persons, shall have any right to be present during the testimony of any witness not personally represented by such attorney;

* * * * *

■ 12. Section 308.150 is amended by revising paragraph (a) to read as follows:

§ 308.150 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided that the witness submits a written request for the transcript and the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

* * * * *

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

■ 13. Section 308.161 is amended by republishing the introductory text and revising paragraph (a) to read as follows:

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following:

(a) Proceedings to suspend an institution-affiliated party of an insured State nonmember bank, or an insured State savings association, or to prohibit such party from further participation in the conduct of the affairs of any depository institution, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined at section 1818(g)(1)(E) of Title

12), where the individual is the subject of any state or federal information, indictment, or complaint, involving the commission of, or participation in:

* * * * *

■ 14. Section 308.163 is amended by revising paragraphs (a)(2) and (c), and adding paragraph (d), to read as follows:

§ 308.163 Notice of suspension or prohibition, and orders of removal or prohibition.

(a) * * *

(2) The suspension or prohibition shall be effective immediately upon service on the institution-affiliated party, who shall immediately comply with the requirements thereof, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

* * * * *

(c) The notice of suspension or prohibition or the order of removal or prohibition shall:

(1) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefore, and any supporting evidence, may be filed with the Executive Secretary within 30 days after service of the written notice or order; and

(2) Set forth the basis and facts in support of the notice or order and address the relevant considerations specified in § 308.162.

(d) To obtain a hearing, the institution-affiliated party shall file with the Executive Secretary a written request for a hearing within 30 days after service of the notice of suspension or prohibition or the order of removal or prohibition, which shall:

(1) Admit or deny specifically each allegation in the notice or order, or state that the institution-affiliated party is without knowledge or information, which statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When an institution-affiliated party intends in good faith to deny only a part of or to qualify an allegation, he shall specify so much of it as is true and shall deny only the remainder; and

(2) Shall state whether the institution-affiliated party is requesting termination or modification of the notice or order, and shall state with particularity how he intends to show that his continued service to or participation in the conduct of the affairs of the depository institution would not, or is not likely to, pose a threat to the interests of its depositors or to impair public confidence in the depository institution.

■ 15. Section 308.164 is amended by revising paragraphs (b)(1), (3), and (5), and adding paragraph (b)(10), to read as follows:

§ 308.164 Hearings.

* * * * *

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

* * * * *

(3) The institution-affiliated party may appear at the hearing and shall have the right to introduce relevant and material documents. Members of the FDIC enforcement staff may attend the hearing and participate as representatives of the FDIC enforcement staff. Following the introduction of all evidence, the applicant and the representative of the FDIC enforcement staff shall have an opportunity for oral argument; however, the parties may jointly waive the right to oral argument, and, in lieu thereof, elect to submit written argument.

* * * * *

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the institution-affiliated party afforded the hearing. A copy of the transcript shall be sent directly to the presiding officer, who shall have authority to correct the record sua sponte or upon the motion of any party.

* * * * *

(10) The institution-affiliated party has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of a depository institution does not, or is not likely to, pose a threat to the interests of the depository institution's depositors or threaten to impair public confidence in the depository institution.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 16. 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 I also issued under *12 U.S.C. 1831*x.

Subpart J also issued under *12 U.S.C. 1831*p–1.

Subpart K also issued under *12 U.S.C. 1817*; 1818; *15 U.S.C. 78*c; 78 *l*.

Subpart L also issued under *12 U.S.C. 1831*p–1.

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

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

Subpart P also issued under *12 U.S.C. 1470*; 1831e; 1831n; 1831p–1; 3339.

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

Subpart R also issued under *12 U.S.C. 1463*; 1464; 1831m; 1831n; 1831p–1.

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. 78*b; 78 *l*; 78m; 78n; 78p; 78q; 78w; *31 U.S.C. 5318; 42 U.S.C. 4106*.

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

Subpart U also issued under *12 U.S.C. 1462a*; 1463; 1464; *15 U.S.C. 78*c; 78 *l*; 78m; 78n; 78p; 78w; 78d–1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under *12 U.S.C. 3201*–3208.

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

Subpart X also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1828; 3331 *et seq.*

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

Subpart Z also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1828 (note).

Subpart B—[Removed and reserved]

■ 17. Remove and reserve part 390, subpart B consisting of §§ 390.10 through 390.23.

Subpart C—[Removed and reserved]

■ 18. Remove and reserve part 390, subpart C consisting of §§ 390.30 through 390.75.

Subpart D—[Removed and reserved]

■ 19. Remove and reserve part 390, subpart D consisting of §§ 390.80 through 390.86.

Subpart E—[Removed and reserved]

■ 20. Remove and reserve part 390, subpart E consisting of §§ 390.90 through 390.97.

Dated at Washington, DC, this 21st day of January, 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–01327 Filed 1–29–15; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AE17

Transferred OTS Regulations Regarding Possession by Conservators and Receivers for Federal and State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is rescinding and removing the former OTS regulation entitled ''Possession by Conservators and Receivers for Federal and State Savings Associations'' from the Code of Federal Regulations because it is not necessary. This rule was included in the regulations 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).

DATES: Effective March 2, 2015.

FOR FURTHER INFORMATION CONTACT: Frank C. Campagna, Associate Director, Receivership Operations, Division of Resolutions and Receiverships (972) 761–8025 or *FrCampagna@FDIC.gov*; or Shane Kiernan, Counsel, Legal Division (703) 562–2632 or *skiernan@fdic.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Act,[1] 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. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC as to State savings associations, the Office of 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[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such advisory 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.

Section 316(c) of the Dodd-Frank Act[4] further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC respectively. 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.[5]

FDIC's Authority

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] 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 (the FDI Act)[7] and other laws as the ''appropriate Federal banking agency.'' Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act[8] and designated the FDIC as the ''appropriate Federal banking agency'' for State savings associations. As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations.

As noted, on June 14, 2011, the FDIC's Board of Directors reissued and redesignated certain regulations promulgated by the former OTS. These transferred OTS regulations were published as FDIC interim rules in the **Federal Register** on August 5, 2011.[9] 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 transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the regulations transferred to the FDIC set forth procedures to be followed by conservators and receivers for Federal and State savings associations upon taking possession of said entities and for providing notice of appointment. This OTS regulation, formerly found at 12 CFR part 558, was transferred to the FDIC with only nominal changes and is now subpart N in 12 CFR part 390.

The FDIC's authority to act as conservator or receiver and its powers and duties in those roles are set forth in the FDI Act and in regulations found in 12 CFR part 360. The Board has delegated authority to staff to establish policies and procedures for carrying out receivership operations. The FDI Act and the policies and procedures implemented and followed by FDIC staff subsume the responsibilities set forth in subpart N.[10]

II. Final Rule

Section 316(b) of the Dodd-Frank Act provides that the former OTS's regulations will continue in effect until they are modified, terminated, set aside, or superseded in accordance with applicable law.[11] After careful review of subpart N, the FDIC has determined that it should be rescinded and removed because it is unnecessary, or because it prescribes actions that are duplicative of actions taken by the OCC or state chartering authority. The provisions of the FDI Act and the FDIC's existing policies and procedures sufficiently address the provision of notice of appointment and the authority to take possession of, and exercise control over, the assets of a failed institution, including insured Federal and State savings associations. The FDIC issued a

[1] Public Law 111–203, 12 U.S.C. 5301, *et seq.* (2010).

[2] 12 U.S.C. 5411.

[3] 12 U.S.C. 5414(b).

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

[5] 76 FR 39247 (July 6, 2011).

[6] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1811, *et seq.*

[8] 12 U.S.C. 1813(q).

[9] 76 FR 47652 (August 5, 2011).

[10] Such policies and procedures include the FDIC Division of Resolution and Receivership's Failed Financial Institution Closing Manual.

[11] 12 U.S.C. 5414(b).