

**Authority:** 12 U.S.C. 1819.  
Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.  
Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

### Subpart F—[Removed and Reserved]

■ 8. Remove and reserve subpart F, consisting of §§ 390.100 through 390.135.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about December 15, 2020.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2020–28453 Filed 2–2–21; 8:45 am]

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 362 and 390

RIN 3064–AF37

### Removal of Transferred OTS Regulations Regarding Certain Subordinate Organizations of State Savings Associations

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove rules from the Code of Federal Regulations (CFR) regulations titled *Subordinate Organizations* 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) regarding subordinate organizations of State savings associations because the FDIC has determined that the requirements for State savings association subordinate organizations included therein are substantially similar to the requirements for State savings associations and their subsidiaries set forth by certain sections of the Federal Deposit Insurance Act (FDI Act) and its implementing regulations.

**DATES:** The final rule is effective on March 5, 2021.

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### SUPPLEMENTARY INFORMATION:

#### I. Policy Objective

The policy objective of the final rule is to simplify the FDIC's regulations by removing unnecessary regulations and realigning existing regulations in order to improve the public's understanding of the rules and to improve the ease of the public's reference to them. Thus, as further detailed in this section, the FDIC is rescinding and removing from the CFR rules entitled *Subordinate Organizations* (12 CFR part 390, subpart O) applicable to State savings associations.<sup>1</sup> Pursuant to subpart O, the FDIC may, at any time, limit a State savings association's investment in their subordinate organizations, or may limit or refuse to permit any activities of any of these entities for supervisory, legal, or safety and soundness reasons.<sup>2</sup>

Subpart O includes definitions related to State savings association subsidiaries,<sup>3</sup> a requirement for the parent State savings association and its subsidiaries to maintain separate corporate identities,<sup>4</sup> a prior notice requirement for a State savings association seeking to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary,<sup>5</sup> requirements related to the issuance of securities by a subsidiary,<sup>6</sup> and requirements for the exercise of salvage power by a State savings association.<sup>7</sup>

The FDIC has determined that the requirements for State savings association subordinate organizations set forth in subpart O are substantially similar to requirements of section 28 of the FDI Act and its implementing regulations, 12 CFR part 362 of the FDIC's Rules and Regulations; and section 37 of the FDI Act.<sup>8</sup> Therefore, the FDIC is rescinding and removing subpart O and will apply part 362, subpart C and subpart D, as appropriate, to achieve substantially similar supervisory results for State savings associations and subsidiaries as have been obtained through the application of subpart O.

#### II. Background

The Dodd-Frank Act,<sup>9</sup> 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.<sup>10</sup> Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,<sup>11</sup> 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<sup>12</sup> provides the manner of treatment of 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 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,<sup>13</sup> 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.<sup>14</sup>

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act<sup>15</sup> 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 FDI Act<sup>16</sup> and other laws as the "appropriate Federal banking agency" or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act<sup>17</sup> revised the definition of "appropriate Federal banking agency" contained in section 3(q) of the FDI Act<sup>18</sup> to add State

<sup>9</sup> 12 U.S.C. 5301 *et seq.*

<sup>10</sup> 12 U.S.C. 5411.

<sup>11</sup> *Id.*

<sup>12</sup> 12 U.S.C. 5414(b).

<sup>13</sup> 12 U.S.C. 5414(c).

<sup>14</sup> 76 FR 39246 (July 6, 2011).

<sup>15</sup> 12 U.S.C. 5412(b)(2)(B)(i)(II).

<sup>16</sup> 12 U.S.C. 1811 *et seq.*

<sup>17</sup> 12 U.S.C. 5412(c)(1).

<sup>18</sup> 12 U.S.C. 1813(q).

<sup>1</sup> 12 CFR part 390, subpart O.

<sup>2</sup> 12 CFR 390.250.

<sup>3</sup> 12 CFR 390.251.

<sup>4</sup> 12 CFR 390.252.

<sup>5</sup> 12 CFR 390.253.

<sup>6</sup> 12 CFR 390.254.

<sup>7</sup> 12 CFR 390.255.

<sup>8</sup> 12 U.S.C. 1831e(a); 12 CFR part 362, subparts C and D; 12 U.S.C. 1831n(a).

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 is designated as the “appropriate Federal banking agency” (or under similar terminology) for State savings associations, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

As noted, on July 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.<sup>19</sup> 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.<sup>20</sup>

The final rule adopts, without change, the notice of proposed rulemaking (NPR) published in the **Federal Register** on October 26, 2020, which received no comments.

### III. The Proposed Rule

On October 26, 2020, the FDIC published an NPR regarding the removal of part 390, subpart O (formerly OTS’s 12 CFR part 559),<sup>21</sup> which generally addresses subordinate organizations of State savings associations.<sup>22</sup> The OTS adopted part 559, titled *Subordinate Organizations*, in 1996 to update and streamline its regulations and statements of policy concerning subsidiaries and other subordinate organizations in which savings associations have ownership interests (including operating subsidiaries and service corporations) and equity investments (including pass-through investments).<sup>23</sup> Part 559 consolidated all OTS regulations affecting thrift subsidiaries in order to make it easier for savings associations to find and use these regulations. The former OTS rule was transferred to the FDIC with only nominal changes and is found in the FDIC’s rules at subpart O, entitled *Subordinate Organizations*.<sup>24</sup>

The NPR proposed removing subpart O, because, after careful review and consideration, the FDIC believes it is

duplicative of substantially similar FDIC statutory and regulatory provisions that produce the same supervisory result for an insured State savings association as subpart O.<sup>25</sup>

Section 28 of the FDI Act prohibits a State savings association from engaging as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless the FDIC has determined the activity would pose no significant risk to the Deposit Insurance Fund (DIF); and the State savings association is, and continues to be, in compliance with the capital standards set forth in section 5(t) of the Home Owners Loan Act (HOLA).<sup>26</sup> Pursuant to section 18(m) of the FDI Act, a State savings association must file a notice with the FDIC prior to establishing, acquiring or engaging in new activities of a subsidiary.<sup>27</sup>

The NPR proposed using 12 CFR part 362, *Activities of Insured State Banks and Insured Savings Associations*, to provide a substantially similar process for an insured State savings association, or its subsidiary, to apply for prior consent from the FDIC to engage in certain activities, that are not otherwise prohibited by Federal or State law, while reaching substantially the same result as provided in subpart O without the burden of referring to a duplicative set of regulations. Part 362, which includes subparts C and D, is issued pursuant to several FDIC authorities, including the FDIC’s general rulemaking authority pursuant to section 9(a)(Tenth) and section 28 of the FDI Act, the FDIC’s statutory authority over the activities of State savings associations and subsidiaries, that are substantially similar to the authorizing statutes pursuant to which subpart O was issued.

Subpart C of part 362 governs the activities of insured State savings associations and implements section 28(a) of the FDI Act, which restricts and prohibits insured State savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for a Federal savings association and their service corporations. Subpart D of part 362 governs acquiring, establishing, or conducting new activities through a subsidiary by an insured State savings association, and implements section 18(m) of the FDI Act, which requires that prior notice be given to the FDIC

when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. In doing so it applies the definitions of § 362.2 unless otherwise indicated. The phrase “activity permissible for a Federal savings association” means any activity authorized for a Federal savings association under any statute including HOLA,<sup>28</sup> as well as activities recognized as permissible for a Federal savings association in regulations issued by the OCC or in bulletins, orders or written interpretations issued by the OCC, or by the former OTS until modified, terminated, set aside, or superseded by the OCC.<sup>29</sup>

Rather than restate the rationale for the rescission and removal of each section of subpart O, the reader is referred to the fulsome explanations for the rescission and removal provided in the NPR,<sup>30</sup> which the FDIC references here as the basis for finalizing the regulations as proposed. The regulations or statutes that the FDIC expects State savings associations and subsidiaries to refer to after the removal of subpart O are briefly discussed below.

#### A. Section 390.251—Definitions

Section 390.251 is a definition section related to subordinate organizations. Included in the definitions section are: *Control*, *GAAP-consolidated subsidiary*, *lower-tier entity*, *ownership interest*, *subordinate organization*, and, *subsidiary*. The *control* definition is a cross-reference to the removed OTS § 391.41 definition,<sup>31</sup> which provided that a controlling shareholder is any person who, directly or indirectly, or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company, or controls in any manner the election or appointment of a majority of the company’s board of directors.<sup>32</sup> The FDIC proposed to apply the § 362.2(e) *control* definition which is consistent with the *control* definition applicable to service companies of Federal savings associations which

<sup>28</sup> 12 U.S.C. 1463 *et seq.*

<sup>29</sup> 12 CFR 362.9(a).

<sup>30</sup> 85 FR 67684 (Oct. 26, 2020).

<sup>31</sup> The FDIC rescinded the *control* definition at § 391.41 as part of its 2015 *Filing Requirements and Processing Procedures for Changes in Control with respect to State Nonmember Banks and State Savings Associations* rulemaking. 80 FR 65889 (Oct. 28, 2015).

<sup>32</sup> 12 CFR 391.41 (2015).

<sup>19</sup> 76 FR 47652 (Aug. 5, 2011).

<sup>20</sup> *Id.*

<sup>21</sup> 12 CFR part 390, subpart O.

<sup>22</sup> 85 FR 67684 (Oct. 26, 2020).

<sup>23</sup> 61 FR 66561, 66562 (Dec. 18, 1996).

<sup>24</sup> 12 CFR part 390, subpart O.

<sup>25</sup> 85 FR 67684, 67686 (Oct. 26, 2020).

<sup>26</sup> 12 U.S.C. 1831e(a), referencing 12 U.S.C. 1463 *et seq.*

<sup>27</sup> 12 U.S.C. 1828(m).

references the FRB's 12 CFR part 225, Regulation Y.<sup>33</sup>

The definition of *equity investment* in § 362.2(g) is broader than the definition of *ownership interest* in § 390.251, which means any equity interest in a business organization, limited or general partnership interests, or shares in a limited liability company. Similarly, the definition of *subsidiary* pursuant to § 362.2(r) is substantially similar to the subsidiary definition in § 390.251. The distinction is that § 362.2(r) defines a *subsidiary* as "any company that is owned or controlled directly or indirectly by one or more insured depository institutions," rather than only by a State savings association. Therefore, the State savings associations would refer to those definitions in part 362 after subpart O was removed from the CFR.

A separate definition for *GAAP-consolidated subsidiary* is unnecessary as 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 HOLA.<sup>34</sup> 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 Financial Accounting Standards Board's Accounting Standards Codification.<sup>35</sup> Because State savings associations have existing statutory directives to use GAAP in reporting and financial statements, eliminating a substantially similar regulation regarding GAAP-consolidated subsidiaries likely would not affect the quality of State savings association reporting and financial statements.

*B. Section 390.252—How must separate corporate entities be maintained?*

The core eligibility requirements in § 362.4(c) describe corporate separateness in the context of the State-chartered depository institution-subsubsidiary. The eligible subsidiary requirements in § 362.4(c)(2)—which are more detailed than eligible subsidiary requirements of § 390.252—are designed specifically for the bank/subsidiary relationship, and provide for separation between the State-chartered depository institution and its subsidiary

to lessen the possibility of piercing the corporate veil; deduction of the State-chartered depository institution investment in the subsidiary to segregate the capital supporting the State-chartered depository institution from the capital supporting the subsidiary; and limitations on the State-chartered depository institution's investment in the subsidiary and on transactions with the subsidiary to ensure transactions are arms-length.<sup>36</sup> The eligible subsidiary requirements are also incorporated into § 362.13. Section 362.13 permits a State savings association that previously filed an application, and obtained the FDIC's consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity, to continue the activity or retain the investment without seeking the FDIC's consent, provided the State savings association and the service corporation, if applicable, continue to meet the conditions and restrictions of approval if the insured State savings association and any applicable service corporation meet the requirements of § 362.4(c)(2).<sup>37</sup>

The provisions of § 362.4(c)(2) that are duplicative of § 390.252 require that an eligible subsidiary: (1) Meet applicable statutory or regulatory capital requirements and have sufficient operating capital for normal obligations that are reasonably foreseeable for a business of its size and character; (2) be physically separate and distinct in its operations from the operations of the state-chartered depository institution; (3) maintain separate accounting and other business records; (4) observe separate business entity formalities; (5) conduct business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the State-chartered depository institution; and (6) that the State-chartered depository institution is not responsible for, and does not guarantee, the obligations of the subsidiary.<sup>38</sup>

State savings associations and service corporations that qualify as eligible depository institutions and eligible subsidiaries pursuant to § 362.4(c) maintain separate corporate identities, which should sufficiently insulate State savings associations from the liabilities of subsidiaries.

*C. Section 390.253—What notices are required to establish or acquire a new subsidiary or engage in new activities through a subsidiary?*

This section provides that such a notice must contain all of the information required under § 362.15, is subject to FDIC objection, and must be filed at least 30 days prior to the establishment or acquisition of a subsidiary or commencement of a new activity through a subsidiary. The notice requirements of § 362.15 are substantially similar to the transferred OTS notice requirement in § 390.253.

The proposal included a technical amendment to remove references to Federal savings association notice requirements in § 362.15. Section 18(m) of the FDI Act, as amended by section 363(7) of the Dodd-Frank Act,<sup>39</sup> no longer requires Federal savings associations to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.<sup>40</sup> State savings associations must continue to notify the FDIC at least 30 days prior to establishing or acquiring a subsidiary or prior to commencement of a new activity through a State savings association-controlled subsidiary pursuant to section 18(m) and § 362.15, as described in the NPR.<sup>41</sup>

*D. Section 390.254—How may a subsidiary of a State savings association issue securities?*

State savings association subsidiaries are permitted to issue securities pursuant to section 28 of the FDI Act because the operating subsidiaries and service corporations of Federal savings associations are permitted to issue securities, subject to regulatory limitations. State savings associations and their subsidiaries are reminded that subsidiary issuances, like other permissible activities, are subject to the same restrictions or conditions imposed on the Federal savings association and must be conducted in the same manner in which an operating subsidiary or service corporation is authorized to issue such securities.<sup>42</sup>

Accordingly, a State savings association subsidiary should not state or imply that the securities it issues are covered by Federal deposit insurance, or issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that

<sup>33</sup> 12 CFR 5.59(d); 12 CFR part 225; 12 CFR 362.2(e).

<sup>34</sup> 12 U.S.C. 1831n(a)(2); 12 U.S.C. 1463(b)(2).

<sup>35</sup> 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](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201906_i.pdf).

<sup>36</sup> 12 CFR 362.4(c). See FIL-97-97. September 23, 1997.

<sup>37</sup> 12 CFR 362.13.

<sup>38</sup> Section 362.4(c)(2)(vii) corresponds to § 390.252(a)(4) and (5).

<sup>39</sup> Public Law 111-203, 124 Stat 1376 (2010).

<sup>40</sup> 12 U.S.C. 1828(m).

<sup>41</sup> 85 FR 67684, 67687 (Oct. 26, 2020).

<sup>42</sup> 85 FR 67684, 67688 (Oct. 26, 2020).

the controlling State savings association is insolvent or has been placed into receivership, and for as long as any securities are outstanding, the controlling State savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the FDIC.<sup>43</sup>

*E. Section 390.255—How may a State savings association exercise its salvage power in connection with a service corporation or lower-tier entities?*

In the NPR, staff proposed that State savings associations apply to the FDIC for prior approval pursuant to § 362.11 before making a contribution or a loan to a lower-tier entity (salvage investment) that exceeds the maximum amount otherwise permitted under law or regulation to exercise its power to salvage the underlying asset to be consistent with State law. The applicant would be required to provide evidence that the State approved any exception over the loans to one borrower (LTOB) limit.<sup>44</sup>

As discussed in the NPR, these FDIC statutory and regulatory provisions provide a substantially similar process for an insured State savings association, or its subsidiary, to apply for prior consent from the FDIC to engage in certain activities, that are not otherwise prohibited by Federal or State law, while reaching substantially the same result as provided in subpart O without the burden of referring to a duplicative set of regulations.<sup>45</sup> The NPR concluded the application of these FDIC statutory and regulatory provisions provide substantially similar results for the FDIC to achieve substantially similar supervisory results for State savings associations and subsidiaries as would be obtained through subpart O.<sup>46</sup>

#### IV. Comments

The FDIC issued the NPR with a 30-day comment period, which closed on November 25, 2020.<sup>47</sup> The FDIC received no comments on the NPR.

<sup>43</sup> *Id.*

<sup>44</sup> LTOB limits are established by state law of each chartering authority, and LTOB Limits are not consistent from state to state. Some states allow waivers or modifications, while others do not. Part 362 does not authorize any insured State savings association to make investments or conduct activities that are not authorized or that are prohibited by either Federal or State law. 12 CFR 362.9(c).

<sup>45</sup> 85 FR 67684, 67686 (Oct. 26, 2020).

<sup>46</sup> *Id.*

<sup>47</sup> 85 FR 67684 (Oct. 26, 2020).

Consequently, the proposed rule is adopted as final without change, and part 390, subpart O, will be rescinded in its entirety.

#### V. The Final Rule

The final rule rescinds and removes subpart O and amends § 362.15 to remove references to Federal savings associations made unnecessary because of the amendment of Section 18(m) of the FDI Act, as amended by section 363(7) of the Dodd-Frank Act which no longer requires Federal savings associations to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.<sup>48</sup>

As discussed in the NPR, the FDIC statutory and regulatory provisions applicable to State savings associations and their subsidiaries provide a substantially similar process for an insured State savings association, or its subsidiary, to apply for prior consent from the FDIC to engage in certain activities, that are not otherwise prohibited by Federal or State law, while reaching substantially the same result as provided in subpart O without the burden of referring to a duplicative set of regulations.<sup>49</sup> Under the final rule, the application of part 362, which implements section 28 and section 18(m) of the FDI Act, provides State savings associations with substantially similar procedures for notices and applications related to State savings association subsidiaries and investments. Further, section 37 of the FDI Act and section 4(b) of HOLA already require that State savings association reports and financial statements are uniform and consistent with U.S. generally accepted accounting principles (GAAP).<sup>50</sup> By applying these FDIC statutory and regulatory provisions to State savings associations and subsidiaries, the FDIC will achieve substantially similar supervisory results for State savings associations and subsidiaries under the final rule as would be obtained through subpart O.<sup>51</sup>

#### VI. Expected Effects

As of June 30, 2020, the FDIC supervised 3,270 depository

<sup>48</sup> Public Law 111–203, 124 Stat. 1376 (2010); 12 U.S.C. 1828(m).

<sup>49</sup> Section 28 (12 U.S.C. 1831e(a)), section 18(m) (12 U.S.C. 1828(m)), and section 37 (12 U.S.C. 1831n(a)) of the FDI Act, and section 4(b) of the Home Owners Loan Act (12 U.S.C. 1463(b)), govern the activities of State savings associations and subsidiaries.

<sup>50</sup> 12 U.S.C. 1831n(a)(2); 12 U.S.C. 1463(b)(2).

<sup>51</sup> 85 FR 67684 (Oct. 26, 2020).

institutions, of which 35 (1.1 percent) are State savings associations.<sup>52</sup> The final rule would affect regulations that govern State savings associations. As explained in the NPR, the final rule would remove §§ 390.250, 390.251, 390.252, 390.253, 390.254, and 390.255 of part 390, subpart O, because most of its provisions are duplicative of, or substantially similar to the requirements of section 28 of the FDI Act and its implementing regulations, 12 CFR part 362 of the FDIC's Rules and Regulations; and section 37 of the FDI Act. Additionally, the final rule amends § 362.15 to remove the references to Federal savings association notice requirements because Federal savings associations are no longer required to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.<sup>53</sup> The FDIC does not believe that the final rule will have substantive effects on State savings associations. By removing duplicative or unnecessary regulations the FDIC believes that the final rule will benefit State savings associations by clarifying regulations and improving the ease of references.

#### VII. Alternatives

The FDIC considered alternatives to the final rule but believes that the 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 certain subordinate organizations of State savings associations. 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 to continue to have substantively similar regulations regarding subordinate organizations of State savings associations located in different locations within the CFR. The FDIC believes it would be unnecessarily burdensome for FDIC-supervised institutions to refer to these separate sets of regulations, and, therefore, is rescinding and removing subpart O and

<sup>52</sup> Call Report data, September 30, 2020.

<sup>53</sup> 12 U.S.C. 1828(m).

making a technical amendment to § 362.15 to remove references to Federal savings associations to streamline the FDIC's regulations.

### VIII. Regulatory Analysis and Procedure

#### A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 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 final rule rescinds and removes from part 390, subpart O, and makes a technical amendment to § 362.15 to remove references to Federal savings associations to streamline the FDIC's regulations. The final 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 final rule, an agency prepare a final regulatory flexibility analysis that describes the impact of a proposed rule on small entities.<sup>54</sup> 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.<sup>55</sup> 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 rule will not have a significant economic impact on a substantial number of small banking organizations.

As of June 30, 2020, the FDIC supervised 3,270 insured depository institutions, of which 2,548 are considered small banking organizations for the purposes of RFA. The rule primarily affects regulations that govern State savings associations.<sup>56</sup> There are 33 State savings associations considered to be small banking organizations for the purposes of the RFA.<sup>57</sup>

As previously discussed, the rule rescinds part 390, subpart O, because most of its elements are duplicative of, or substantially similar to the requirements of section 28 of the FDI Act and its implementing regulations, 12 CFR part 362 of the FDIC's Rules and Regulations; and section 37 of the FDI Act.

Additionally, the rule would amend certain sections of part 362 to remove the references to Federal savings association notice requirements because Federal savings associations are no longer required to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.<sup>58</sup> The FDIC does not believe that the rule will have substantive effects on small State savings associations.

Section 390.250 sets forth the FDIC's general rulemaking and supervisory authority under the FDI Act, its specific authority under section 18(m) of the FDI Act<sup>59</sup> and subpart O's application to subordinate organizations of State savings associations. As previously discussed, State savings associations are subject to part 362, subparts C and D, which has the same statutory basis as § 390.350. Therefore, the FDIC believes that the practical application of part 362, subparts C and D, generally achieves the same outcomes for State savings associations as does subpart O. Therefore, the FDIC believes that the rescission of § 390.250 is unlikely to have any substantive effects for small State savings associations or their subordinate organizations.

Section 390.251 is a definition section related to subordinate organizations. As previously discussed, the FDIC believes that the definitions of *subsidiary* and *GAAP-consolidated subsidiary* are

substantially similar to and redundant to other statutory and regulatory requirements to which State savings associations are already subject. As previously discussed, State savings associations are already subject to a definition of *control* in § 362.2(e), a definition that is narrower, however, than the one in § 390.251. Therefore, the rescission of § 390.251 could benefit State savings associations by narrowing the scope of investments in subordinate organizations that may be subject to limitation for supervisory, legal, or safety and soundness reasons asserted by the FDIC. The rescission of the definition of *control* in § 390.251 could further benefit State savings associations by creating parity with the control definition applicable to service companies of Federal savings associations which references the FRB's 12 CFR part 225, Regulation Y.<sup>60</sup> As previously discussed, State savings associations are already subject to a definition of *equity investment* in § 362.2(g), a definition that is broader, however, than the one in § 390.251. Therefore, the rescission of § 390.251 is unlikely to pose additional costs for State savings associations because they are already subject to regulations with a substantively similar and broader defined scope of investments in subordinate organizations. Finally, the rescission of § 390.251 would remove definitions of *lower-tier entity* and *second-tier service corporations* or *service corporation subsidiaries* for which there is no corollary in FDIC regulations. However, as previously discussed, the FDIC does not believe that the existence of these defined terms enhance the quality of State savings association supervision. Therefore, the FDIC believes that the rescission of these definitions is unlikely to have any substantive effects on small State savings associations.

Section 390.252 requires State savings associations and their subordinate organizations to operate in a manner that demonstrates to the public that they are separate corporate entities because of concerns that a failure to maintain separate corporate existences could potentially result in a court, for equitable reasons, holding the savings association liable for the obligations of the subordinate organization.<sup>61</sup> As discussed previously, FDIC-supervised depository institutions, including State savings associations and their subsidiaries, are covered by §§ 362.4(c) and 362.13, which are substantively similar to or broader than the

<sup>54</sup> 5 U.S.C. 601, *et seq.*

<sup>55</sup> The SBA defines a "small banking organization" as one 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.

<sup>56</sup> FDIC Call Report, June 30, 2020.

<sup>57</sup> *Id.*

<sup>58</sup> 12 U.S.C. 1828(m).

<sup>59</sup> 12 U.S.C. 1828(m).

<sup>60</sup> 12 CFR 5.59(d); 12 CFR part 225.

<sup>61</sup> 61 FR 66561, 66567 (Dec. 18, 1996).

obligations in § 390.252. Therefore, the FDIC believes that the rescission of § 390.252 is unlikely to have any substantive effect on small State savings associations or their subsidiaries.

Section 390.253 establishes notification requirements for State savings associations prior to their establishing, acquiring or engaging in new activities of a subsidiary as required under section 18(m) of the FDI Act.<sup>62</sup> As discussed previously, State savings associations are already subject to substantively similar requirements in § 362.15. Therefore, the FDIC believes that the rescission of § 390.253 is unlikely to pose any substantive effects on small State savings associations.

Section 362.15 established notification requirements for State and Federal savings associations prior to their establishing or acquiring a subsidiary, or conducting any new activity through a subsidiary. As discussed previously, after the Dodd Frank Act amendment of section 18(m) of the FDI Act, Federal savings associations are no longer required to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to the commencement of a new activity in a subsidiary controlled by a Federal savings association.<sup>63</sup> Therefore, the FDIC believes that the rescission of references to Federal savings associations from § 362.15 is unlikely to have any substantive effect on small insured depository institutions in that it is simply consistent with existing law.

Section 390.254 permits a State savings association subsidiary to issue, either directly or through a third party intermediary, any securities that its parent State savings association is permitted to issue. As discussed previously, although there is no corollary regulation for FDIC-supervised depository institutions, State savings association subsidiaries are permitted to issue securities pursuant to section 28 of the FDI Act because the operating subsidiaries and service corporations of Federal savings associations are permitted to issue securities, subject to regulatory limitations. Therefore, the FDIC believes that the rescission of § 390.254, if adopted, is unlikely to have any substantive effect on small State savings associations or their subsidiaries.

Section 390.255 generally permits a State savings association to notify the FDIC at least 30 days before making a contribution or a loan (including a guarantee of a loan made by any other

person) to a lower-tier entity (salvage investment) that exceeds the maximum amount otherwise permitted under law or regulation to exercise its power to salvage the underlying asset (typically, an outstanding loan).<sup>64</sup> As discussed previously, State savings associations are currently subject to § 362.11 which requires State savings associations to seek prior approval from the FDIC before making a contribution or a loan to a lower-tier entity (salvage investment) that exceeds the maximum amount otherwise permitted under law or regulation to exercise its power to salvage the underlying asset to be consistent with State law. Therefore, the FDIC believes that the rescission of § 390.255 is unlikely to substantively affect small State savings associations.

By removing duplicative or unnecessary regulations, the FDIC believes that the rule will benefit small State savings associations by clarifying regulations and improving the ease of references.

#### C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule. If a rule is deemed a major rule by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in: (A) An annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

<sup>64</sup> Without the salvage power provision, the maximum amount a State savings association would be permitted would be related the LTOB limit, which is equivalent to the applicable state's legal lending limit.

#### D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act<sup>65</sup> 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 final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

#### E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPA), 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.<sup>66</sup> The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017, (EGRPA Report) discussing how the review was conducted, what has been done to date to address regulatory burdens, and further measures that will be taken to address issues that were identified. As noted in the EGRPA 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 subpart O, this final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPA mandate.

#### F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to

<sup>65</sup> Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

<sup>66</sup> Public Law 104–208, 110 Stat. 3009 (1996).

<sup>62</sup> 12 CFR 390.253. See 12 U.S.C. 1828(m)(1).

<sup>63</sup> 12 U.S.C. 1828(m).

regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply.

#### List of Subjects

##### 12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Investments, Reporting and recordkeeping requirements.

##### 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 amends 12 CFR parts 362 and 390 as follows:

### PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

- 1. The authority citation for part 362 continues to read as follows:

**Authority:** 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

- 2. Revise § 362.15 to read as follows:

#### § 362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with § 303.142(c) of this chapter at least 30 days prior to establishment of the subsidiary or commencement of the activity and the FDIC does not object to the notice. This section does not apply to any state savings association that acquired its principal assets from a Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under state law.

### PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

- 3. The authority citation for part 390 continues to read as follows:

**Authority:** 12 U.S.C. 1819.  
Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.  
Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

#### Subpart O—[Removed and Reserved]

- 4. Remove and reserve subpart O, consisting of §§ 390.250 through 390.255.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 15, 2020.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2020–28454 Filed 2–2–21; 8:45 am]

**BILLING CODE 6714–01–P**

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Parts 308 and 390

RIN 3064–AF38

#### Removal of Transferred OTS Regulations Regarding Prompt Corrective Action Directives and Conforming Amendments to Other 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 entitled “Prompt Corrective Action” 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) and amend certain sections of existing FDIC regulations governing the issuance and review of orders pursuant to the prompt corrective action provisions of the Federal Deposit Insurance Act to make it clear that such rules apply to all insured depository institutions for which the FDIC is the appropriate Federal banking agency.

**DATES:** The final rule is effective on March 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Robert Watkins, Review Examiner, [RoWatkins@FDIC.gov](mailto:RoWatkins@FDIC.gov), Division of Risk

Management Supervision, (202) 898–3865; Seth Rosebrock, Assistant General Counsel, Legal Division, (202) 898–6609, [srosebrock@FDIC.gov](mailto:srosebrock@FDIC.gov); or Kristine Schmidt, Counsel, Legal Division, (202) 898–6686, [krschmidt@fdic.gov](mailto:krschmidt@fdic.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Policy Objective

The policy objective of the rule is to remove unnecessary and duplicative regulations in order to simplify them and improve the public’s understanding of them. Part 390, subpart Y, outlines administrative procedures related to prompt corrective action that are equivalent to procedures outlined in part 308, subpart Q, of the FDIC’s existing regulations. Thus, the FDIC is rescinding the regulations in part 390, subpart Y, and reserving the subpart for future use. In addition, the FDIC is amending certain sections of part 308, subpart Q, of the FDIC’s existing regulations on the issuance and review of orders pursuant to the prompt corrective action provisions of the Federal Deposit Insurance Act to make it clear that part 308, subpart Q, applies to all insured depository institutions for which the FDIC is the appropriate Federal banking agency.

##### II. Background

Part 390, subpart Y, 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 applicable provisions of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>1</sup>

##### A. The Dodd-Frank Act

As of July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,<sup>2</sup> 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<sup>3</sup> provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS.

<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5301 *et seq.*).

<sup>2</sup> Codified at 12 U.S.C. 5411.

<sup>3</sup> Codified at 12 U.S.C. 5414(b).