evidence that the mere possibility of such entry tends to encourage competitive pricing and to maintain the quality of services offered by the existing competitors in the market.

The FDIC will also consider the extent to which the proposed merger transaction likely would create a stronger, more efficient institution able to compete more vigorously in the relevant geographic markets.

4. *Consideration of the public interest.* The FDIC will deny any proposed merger transaction whose overall effect likely would be to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market(s), unless the anticompetitive effects of the proposed merger transaction are clearly outweighed in the public interest by the convenience and needs of the community to be served. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits would be both substantial and incremental and generally available to seekers of banking services in the relevant geographic market(s) and that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a proposed merger transaction is the only reasonable alternative to the probable failure of an insured depository institution, the FDIC may approve an otherwise anticompetitive merger transaction. The FDIC usually will not consider a less anticompetitive alternative that is substantially more costly to the FDIC to be a reasonable alternative, unless the potential costs to the public of approving the anticompetitive merger transaction are clearly greater than those costs likely to be saved by the FDIC.

Prudential Factors

The FDIC does not wish to create larger weak institutions or to debilitate existing institutions whose overall condition, including capital, management, and earnings, is generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger transaction where the resulting institution would fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect, or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the allowance for loan and lease losses. In evaluating management, the FDIC will rely to a great extent on the supervisory histories of the institutions involved and of the executive officers and directors that are proposed for the resultant institution. In addition, the FDIC may review the adequacy of management's disclosure to shareholders of the material aspects of the merger transaction to ensure that management has properly fulfilled its fiduciary duties.

Convenience and Needs Factor

In assessing the convenience and needs of the community to be served, the FDIC will consider such elements as the extent to which the proposed merger transaction is likely to benefit the general public through higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means. The FDIC, as required by the Community Reinvestment Act, will also note and consider each institution's Community Reinvestment Act performance evaluation record. An unsatisfactory record may form the basis for denial or conditional approval of an application.

IV. Related Considerations

1. *Interstate bank merger transactions.* Where a proposed transaction is an interstate merger transaction between insured banks, the FDIC will consider the additional factors provided for in section 44 of the Federal Deposit Insurance Act, 12 U.S.C. 1831u.

2. *Interim merger transactions.* An interim institution is a state- or federally-chartered institution that does not operate independently, but exists, normally for a very short period of time, solely as a vehicle to accomplish a merger transaction. In cases where the establishment of a new or interim institution is contemplated in connection with a proposed merger transaction, the applicant should contact the FDIC to discuss any relevant deposit insurance requirements. In general, a merger transaction (other than a purchase and assumption) involving an *insured* depository institution and a *federal* interim depository institution will not require an application for deposit insurance, even if the federal interim depository institution will be the surviving institution.

3. *Optional conversion.* Section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(3), provides for ''optional conversions'' (commonly known as Oakar transactions) which, in general, are merger transactions that involve a member of the Bank Insurance Fund and a member of the Savings Association Insurance Fund. These transactions are subject to specific rules regarding deposit insurance coverage and premiums. Applicants may find additional guidance in § 327.31 of the FDIC rules and regulations (12 CFR 327.31).

4. *Branch closings.* Where banking offices are to be closed in connection with the proposed merger transaction, the FDIC will review the merging institutions' conformance to any applicable requirements of section 42 of the FDI Act concerning notice of branch closings as reflected in the Interagency Policy Statement Concerning Branch Closing Notices and Policies. See 2 FDIC Law, Regulations, Related Acts 5391.

5. *Legal fees and other expenses.* The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application reflects adversely upon the management of the applicant institution. The FDIC will closely review expenses for professional or other services rendered by present or prospective board members, major shareholders, or other insiders for any indication of self-dealing to the detriment of the institution. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider. In no case will the FDIC approve an application where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

6. *Trade names.* Where an acquired bank or branch is to be operated under a different trade name than the acquiring bank, the FDIC will review the adequacy of the steps taken to minimize the potential for customer confusion about deposit insurance coverage. Applicants may refer to the Interagency Statement on Branch Names for additional guidance. See FDIC, Financial Institution Letter, 46–98 (May 1, 1998).

By order of the Board of Directors.

Dated at Washington, D.C., this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21489 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Liability of Commonly Controlled Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

SUMMARY: The FDIC is revising its Statement of Policy on Liability of Commonly Controlled Depository Institutions (Statement of Policy) which sets forth the procedures and guidelines the FDIC uses in assessing or waiving liability against commonly controlled depository institutions under section 5(e) of the Federal Deposit Insurance Act. The revised Statement of Policy removes the application procedures for requesting a conditional waiver of the cross-guaranty liability from the Statement of Policy and incorporates those same procedures into § 303.245 of the FDIC's Rules published elsewhere in today's **Federal Register**.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, Division of Supervision (202) 898–6915, or Grovetta N. Gardineer, Counsel, Legal Division, (202) 898–3728, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: In accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)), the FDIC conducted a systematic review of its regulations and written policies and determined that it was appropriate to revise the Statement of Policy. As a result of this review, the Board of Directors of the FDIC revised the Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions to move the application procedures for requesting a conditional waiver of cross guaranty liability from the Statement of Policy to part 303 (12 CFR part 303). Specifically, the contents of an application for requesting a conditional waiver of liability will be located in § 303.245. The purpose of this revision is to place virtually all of FDIC's application procedures into one regulation to facilitate ease of use.

The FDIC received two comments regarding the revision to the Statement of Policy. Both of the commenters supported the FDIC's proposal to revise the Statement of Policy.

For the above reasons, the FDIC is adopting the following revision to the Statement of Policy:

Liability of Commonly Controlled Depository Institutions

Introduction

Section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)), as added by section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, creates liability for commonly controlled insured depository institutions for losses incurred or reasonably anticipated by the Federal Deposit Insurance Corporation (FDIC) in connection with (i) the default of a commonly controlled insured depository institution; or (ii) any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the ''best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.''

The liability of an insured depository institution attaches at the time of default of a commonly controlled institution. It is completely within the discretion of the FDIC whether or not to issue a notice of assessment to the liable institution for the estimated amount of the loss incurred or reasonably anticipated to be incurred by the FDIC.

Guidelines for Conditional Waiver of Liability

The FDIC may, in its discretion, choose not to assess liability based upon analysis of a particular situation, and it may entertain requests for waivers from affiliated or unaffiliated parties of an institution in default or in danger of default. The determination of whether an exemption is in the best interests of either insurance fund rests solely with the Board of Directors of the FDIC (Board). Should the Board make such a determination, a waiver will be issued setting forth terms and conditions that must be met in order to receive an exemption from liability (conditional waiver of liability). The following guidelines apply to conditional waivers of liability under the provisions of this section:

(1) A conditional waiver of liability will be considered in those cases where the waiver facilitates an alternative that would be in the best interests of the FDIC. For example, a conditional waiver may be granted when requisite additional capital and managerial resources are being provided which substantially lessen the exposure of the affected insurance fund. When a conditional waiver is granted to an unaffiliated acquirer of an institution in default or in danger of default it will be granted for a fixed period, generally not to exceed a period of time reasonably required for existing problems to be identified and resolved.

(2) If one or more institutions in a commonly controlled relationship is otherwise solvent, well-managed and viable, it may be in the best interest of the FDIC to waive or reduce claims against such entities. In determining whether a conditional waiver is appropriate, consideration will be given to actions of a holding company which may contribute to or diminish the FDIC's losses, as well as proposals to strengthen other weakened institutions, if any.

(3) Procedures to request a conditional waiver of liability are contained in § 303.245 of the FDIC's Rules and Regulations, 12 CFR 303.245.

(4) In cases where an insured depository institution is sold to an acquirer with no financial interest, directly or indirectly, in the institution prior to the acquisition, it is the general policy of the FDIC to forego the issuance of a notice of assessment to the acquirer and its affiliated institutions in the event of a default of an insured depository institution formerly affiliated with the acquired institution. The FDIC will review all such transactions prior to making a final determination to forego the issuance of the notice of assessment.

Guidelines for Assessment of Liability

Whenever the FDIC determines that assessment of liability in connection with a commonly controlled insured depository institution(s) is appropriate, a Notice of Assessment of Liability, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing (Notice of Assessment) will be served upon the liable institution. In assessing the amount of the FDIC's loss and the liable institution(s'') method of payment, the following guidelines shall apply:

(1) A good faith estimate of the amount of loss the FDIC shall incur shall be based upon (a) the actual sale or calculation of loss from a review by the FDIC of the assets and liabilities of the institution prior to default or the granting of assistance; or (b) any other cost estimate bases as explained in the Notice of Assessment.

(2) If there is more than one commonly controlled depository institution to be assessed, each such institution is jointly and severally liable for all losses; however, the FDIC shall make a good faith estimate of the liability of each institution as determined by (a) first assessing an initial amount on a pro rata capital basis that brings about parity in the capital ratios of the liable institutions, and (b) then apportioning any residual assessment on a pro-rata size basis utilizing the most recent Report of

Condition. Any final assessment can be based on the estimated liability of each institution by the FDIC and/or negotiations with the liable institutions.

(3) In the event that any liable institution is closed prior to paying an assessment, the amount assessed or to have been assessed against that institution may be assessed against the remaining liable institution(s).

(4) The FDIC, after consulting with the appropriate Federal and State financial institutions regulatory agencies, shall establish in each case a schedule for payment which may include a lump sum reimbursement, as well as procedures for receipt of such payment.

(5) Once liability has attached, the FDIC will consider information similar to that provided with a request for a conditional waiver of liability in determining the amount of the estimated loss to be assessed. Such information may also include suggested payment plans.

By order of the Board of Directors.

Dated at Washington, D.C. this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21490 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications to Establish a Domestic Branch (Includes Remote Service Facilities); Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of statement of policy.

SUMMARY: The FDIC is rescinding its Statement of Policy ''Applications to Establish a Domestic Branch (Includes Remote Service Facilities)'' (Statement of Policy). The Statement of Policy provides information and guidance to state nonmember banks planning to establish a domestic branch. However, the information and guidance contained in the Statement of Policy is out-of-date.

This action is being taken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), which requires the federal bank and thrift regulatory agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The FDIC is rescinding the Statement of Policy because the revisions to its applications regulation, published elsewhere in today's **Federal Register**, update requirements and sufficiently address all required application procedures.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, (202)898–6915, Division of Supervision; Susan van den Toorn, Counsel, (202)898–8707, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: In accordance with section 303(a) of the CDRI (12 U.S.C. 4803(a)), the FDIC conducted a systematic review of its regulations and written policies and determined that it was appropriate to rescind the Statement of Policy. A notice of proposed rescission of this Statement of Policy was published on October 9, 1997 (62 FR 52880).

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks on the application process and the evaluation of statutory factors in establishing domestic branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, Related Acts 5105.

Since the Statement of Policy was last amended, the application process for establishing domestic branches has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement are now out-of-date.

As part of the FDIC's comprehensive review of its applications process the FDIC is amending part 303 (Applications) of its regulations elsewhere in today's **Federal Register**. The revisions to part 303 address all required application procedures to establish a domestic branch.

The FDIC received three comments regarding the rescission of the Statement of Policy. Two of the commenters supported the FDIC's proposal to rescind the Statement of Policy and one offered no objection.

For the above reasons, the FDIC rescinds the Statement of Policy on Applications to Establish a Domestic Branch (Includes Remote Service Facilities).

By order of the Board of Directors.

Dated at Washington, D.C. this 7th day of July, 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21553 Filed 8–19–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications to Relocate Main Office or Branch (Includes Remote Service Facilities); Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of statement of policy.

SUMMARY: The FDIC is rescinding its Statement of Policy ''Applications to Relocate a Main Office or Branch (Includes Remote Service Facilities)'' (Statement of Policy). The Statement of Policy provides information and guidance to state nonmember banks planning to relocate a bank's main office or a branch. The information and guidance is out-of-date.

This action is being taken as part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires the federal bank and thrift regulatory agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The FDIC is rescinding the Statement of Policy because the revisions to its applications regulation published elsewhere in today's **Federal Register** update the requirements and sufficiently address all required application procedures to relocate a main office or a branch.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, (202)898–6915, Division of Supervision; Susan van den Toorn, Counsel, (202)898–8707) Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: In accordance with section 303(a) of the CDRIA (12 U.S.C. 4803(a)), the FDIC conducted a systematic review of its regulations and written policies and determined that it was appropriate to rescind the Statement of Policy. A notice of proposed rescission of this