FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Division of Supervision

Executive Benefits

FIL-8-96
February 16, 1996

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: *Final Rule Limiting "Golden Parachutes" and Indemnification*

The FDIC Board of Directors has issued a final rule that, with certain exceptions, prohibits troubled holdinq companies, hanks and thrifts from making "golden parachute" payments. These are typically large cash payments to executives who resign Just before an institution is closed or sold. The new rule also limits the ability of any holding company or FDIC-insured institution to pay the liabilities or legal expenses of an employee or director who is subject to an enforcement proceeding. A copy of the final rule is attached.

The regulation was issued under authority granted by the Crime Control Act of 1990, which includes provisions designed to stop abuses in golden parachutes and indemnification payments. The law permits the FDIC to prohibit or limit golden parachute and indemnification payments but provides several exceptions. The agency first proposed rules in this area in 1991, and then issued a second proposal for additional comment in March of last year. The final rule, which is similar to the 1995 proposal, becomes effective on April 1, 1996. It applies to all FDIC-insured financial institutions and their holding companies.

Golden Parachutes

For purposes of this regulation, a golden parachute generally is defined as any payment to an "institution-affiliated party" (typically an officer or director) while an institution is in a troubled condition and is contingent on this person's resignation. The FDIC has encountered past abuses with golden parachutes when institutions pay substantial sums to top executives who decide to resign after the institution is troubled or immediately before the institution is sold or closed.

With certain exceptions, the FDIC's final rule prohibits golden parachute agreements or payments by troubled institutions, by troubled holding companies or by healthy holding companies on behalf of a troubled subsidiary. The exceptions include what may be considered legitimate business expenses, such as: qualified retirement plans: nonqualified "bona fide" deferred compensation plans: nondiscriminatory severance pay plans: other types of common benefit plans: certain payments required by state law; and death benefits.

Other limited exceptions are provided for in cases involving the hiring of a "white knight" (a new manager to improve the institution's condition) or when a troubled institution is sold without FDIC assistance. Under the final rule, an institution or an institution-affiliated party also can request FDIC permission to make or receive what would otherwise be a prohibited golden parachute payment, or to enter into an agreement to do so.

Indemnification Payments

The FDIC believes that individuals who violate banking laws should pay penalties and legal expenses out of their own pockets and not be reimbursed by insured institutions. This helps deter fraud and protect the deposit insurance funds.

The new rule limiting indemnification payments applies to all FDIC- insured institutions, their subsidiaries and affiliated depository institution holding companies regardless of their financial health. Generally, the rule prohibits indemnification payments made to or for an institution-affiliated party in connection with a federal administrative or civil enforcement action that results in a civil money penalty, removal from office, prohibition from service or other penalties described in the attached Federal Register notice.

However, there are exceptions to this general prohibition. An institution or holding company may purchase commercial insurance to cover expenses other than judgments and penalties. Also, an institution or holding company can pay "up front" for an employee's legal or other professional expenses if: (1) its board of directors makes certain findings, and (2) the employee agrees in writing to reimburse the institution if the alleged violations of law, regulation or fiduciary duty are upheld.

For More Information

Questions about the new regulation may be directed to Michael D. Jenkins, an Examination Specialist in the Division of Supervision (202-898-6896), or Jeffrey M. Kopchik, a Counsel in the Legal Division (202-898-3872).

Nicholas J. Ketcha Jr.

Director

Attachment: PDF Format (69 kb, PDF help or hard copy),HTML Format
Distribution: Insured Banks and Savings Associations

Last Updated 11/13/2018 communications@fdic.gov