

## Part III

### Federal Deposit Insurance Corporation

#### A. Overview

The FDIC is the independent deposit insurance agency created by Congress to maintain stability and public confidence in the nation's banking system. In its unique role as deposit insurer of banks and savings associations as well as the primary regulator for state-chartered non-member banks, the FDIC promotes the safety and soundness of insured depository institutions and the U.S. financial system. The FDIC also promotes public understanding and sound public policies by providing financial and economic information and analyses. The Corporation's primary mission is to provide protection for the nation's depositors and to otherwise minimize disruptive effects from the failure of banks and savings associations. The FDIC's long and continuing tradition of public service is supported and sustained by a highly skilled and diverse workforce that responds rapidly and successfully to changes in the financial environment.

This report is submitted pursuant to section 303(a) of the *Riegle Community Development and Regulatory Improvement Act of 1994*, 103 Pub. L. 325, 108 Stat. 2160 (Sept. 23, 1994) (codified at 12 U.S.C.A. § 4803(a) (West Supp. 1996), and referred to herein as "CDRI"), which requires the FDIC and the other bank and thrift regulatory agencies to conduct a systematic review of their regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate inconsistencies and outmoded and duplicative requirements. In compliance with the statute, FDIC staff has completed its initial examination of 120 regulations and written statements of policy promulgated or enforced by the Corporation. Of these 120 regulations or policies, 60 were reviewed in conjunction with the efforts of the other banking agencies. The remaining 60, constituting regulations or policies proprietary to the FDIC, were reviewed internally. The interagency portion of this report, Part I, discusses the agencies' joint efforts under the statute.

Section H of the FDIC's portion of the report summarizes the status of Corporation's efforts with respect to each of the 60 regulations and policies that it reviewed internally.

The FDIC is now implementing the staff recommendations generated as part of this review. The Corporation's CDRI effort has resulted in genuine streamlining and burden reduction, as well as increased substantive uniformity with the other banking regulatory agencies. As of September 10, 1996, the FDIC has rescinded or withdrawn 14 regulations or statements of policy, and issued notices of proposed or final rulemaking with respect to 22. It is expected that the implementation phase of the FDIC's CDRI review will be complete by the third quarter of 1997.

All areas of FDIC operations -- including the Corporation's core mission of providing deposit insurance -- have benefitted from this review. As a result of the review, the FDIC

- Has issued a proposal to simplify its deposit insurance rules;
- Is taking steps to streamline and better coordinate its regulatory applications and approval procedures in an effort to reduce burden and improve regulatory responsiveness.
- Has issued a proposal to clarify the assessment of premiums for deposit insurance;
- Has issued a proposal to clarify and simplify its regulations implementing section 805 of Title VIII of the *Civil Rights Act of 1968* (the *Fair Housing Act*);
- Is streamlining its securities registration and reporting requirements by eliminating duplication and making its rules uniform with the other agencies and the Securities and Exchange Commission;

- Has streamlined procedures with respect to external auditing programs.

The Corporation has also rescinded or removed a number of policies that have become outmoded or unnecessarily duplicate information contained in other sources. The removal of obsolete written policies eliminates a potential source of confusion with respect to current FDIC policy.

Looking ahead, the FDIC has made the reduction of regulatory burden a continuing goal of the agency. The Corporation is committed to perpetuating the regulatory development and review structure that was put in place as a result of the CDRI review. Future regulatory development and review will be enhanced as a result of the lessons learned from this review.

## **B. Background**

Over the past 25 years, Congress and the banking agencies have promulgated significant new laws and regulations intended to strengthen financial institutions in the areas of safety and soundness, crime detection, and consumer protection. While these individual laws were enacted to protect consumers and the deposit insurance funds, their cumulative effect has imposed significant additional costs upon banks and savings institutions. Although individual laws or regulations may impose a reasonable level of regulatory burden, the continual layering of regulatory requirements has over time resulted in a highly complex regulatory framework. At times, this cumulative regulatory burden may fall disproportionately on insured banks and thrifts, as compared to other types of financial service providers.

The FDIC recognizes that inconsistent, redundant, and overly complex regulations may place an excessive and undue regulatory burden on the industry. A study conducted by the FFIEC in 1992<sup>1</sup> estimated that the annual cost of regulatory compliance may be as high as \$17.5 billion, or up to 14 percent of the total non-interest expenses of the banking industry. Similarly,

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<sup>1</sup> Federal Financial Institutions Examination Council, *Study on Regulatory Burden* at II-10 (December 17, 1992).

a 1992 study conducted by the Independent Bankers Association of America for community banks indicated that the cost of complying with 13 regulatory areas was estimated at \$3.2 billion.

An informal survey<sup>2</sup> conducted by the FDIC last year supports these basic conclusions. Smaller institutions bear higher proportionate costs from legislative and regulatory requirements than larger ones. The estimated costs incurred from meeting the 15 specific regulatory requirements<sup>3</sup> that were surveyed ranged from over 16 percent of net income at very small institutions to just over one percent at the largest. Not surprisingly, the survey also indicated that significant positive cost savings could be achieved if those legislative and regulatory requirements were eliminated. For all recurring regulatory requirements included in the questionnaire, the median cost of compliance per bank was reported to be approximately \$40,000 per year. In addition, respondents reported that the median cost estimate of submitting various non-recurring applications and notifications ranged from \$500 to \$20,000 per action.

Increased public concern over the economic and societal costs of increased regulatory burden has prompted the federal regulatory community to become more sensitive to the impact of their actions, especially with respect to smaller businesses. For example, the recent *Contract With America Advancement Act of 1996* (Pub. L. 104-121) (March 29, 1996), which strengthened existing requirements that all federal agencies must consider the impact that individual regulatory enactments will have upon small entities, reflects the concern that the growth of federal regulation has been especially felt among smaller businesses and institutions. Such initiatives are significant as one-quarter of

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<sup>2</sup> *Hearings on Oversight of the Federal Financial Institution Regulatory System, House Committee On Banking And Financial Services, 104th Cong., 1st Sess., (Testimony of Chairman Helfer).*

<sup>3</sup> These included: Truth-in-Lending and Truth-in-Savings disclosures, loan data collection and reporting, auditor attestation requirements for bank compliance with law or regulation, as well as the costs of various applications and notifications. *The Economic Growth And Regulatory Paperwork Reduction Act of 1995, Hearing on S. 650 Before The Subcommittee On Financial Institutions And Regulatory Relief, Committee On Banking, Housing, and Urban Affairs, 104th Cong., 1st Sess. (statement of Chairman Helfer).*

the banks supervised by the FDIC have fewer than 13 full-time employees -- a small number to ensure compliance with the comprehensive array of regulatory and legislative requirements. While CDRI was not specifically designed to aid small banks or thrifts, the FDIC's review attempted to consider the special needs of these institutions.

### **C. The CDRI Mandate**

Section 303(a) of CDRI requires that each of the federal banking agencies conduct a review of their "regulations and written policies" in an effort to

- Streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability;
- Remove inconsistencies and outmoded and duplicative requirements;
- With respect to regulations prescribed pursuant to [section 18(o) of the *Federal Deposit Insurance Act*, 12 U.S.C. 1828(o), (Real Estate Lending Standards)], consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities; and
- Work jointly with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies.

While the purpose of this review is to streamline regulatory requirements and reduce burden, Congress also directed that any suggested regulatory reform must produce a result that is "consistent with the principles of safety and soundness, statutory law and policy, and the public interest", 12 U.S.C. § 4803(a).

In carrying out this statutory mandate the FDIC reviewed its regulations and policies against a comprehensive analytical structure. In testimony before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services of the U.S. House of Representatives<sup>4</sup>, Chairman Helfer stated that the FDIC would test regulations in order to determine

- Whether the regulations are necessary to ensure a safe and sound banking system;
- Whether the regulations enhance the functioning of the marketplace; and/or
- Whether the regulations can be justified on strong public policy grounds related to consumer protection.

From the FDIC's perspective, the challenge for the regulators in undertaking this review was to identify those regulations and statements of policy that may be modified, streamlined, or eliminated without adversely affecting the safety and soundness of the banking industry or compromising necessary protections for consumers.

#### **D. The FDIC's CDRI Review**

Consistent with the goals of the statute, and the efforts of the other banking agencies participating in the CDRI review, the FDIC directed its efforts toward examining its regulations and formal statements of policy that establish substantive and procedural requirements that depository institutions and the public are expected to follow.<sup>5</sup> In conjunction with the efforts of the

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<sup>4</sup> *The Financial Institutions Regulatory Relief Act of 1995: Hearings on H.R. 1362 Before the Subcomm. On Financial Institutions And Consumer Credit, Committee On Banking And Financial Services, 104th Cong., 1st Sess. (statement of Chairman Helfer).*

<sup>5</sup> Internal documents or policies relating to the supervision of banks, such as the FDIC's bank examination manuals, were not reviewed as part of the CDRI process. While such supervisory materials may be publicly available, they are internal agency documents

other banking agencies, the FDIC identified 120 formal regulations and written statements of policy that it would review pursuant to section 303(a). Of the 120 regulations and policies that were identified, 60 were deemed to be interagency regulations or policies and, as outlined below, were reviewed in conjunction with the efforts of the other banking agencies. The remaining 60, constituting regulations or policies proprietary to the FDIC, were reviewed internally. The Corporation's efforts with respect to the 60 regulations that were reviewed internally are summarized in Section H of this Part.

The majority of the regulations promulgated by the FDIC are collected at Chapter III of Title 12 of the Code of Federal Regulations. FDIC Statements of Policy are typically adopted by the Corporation's Board of Directors, published for comment in the Federal Register, and then compiled in the FDIC's Loose-Leaf reporting service, which is supplied to all FDIC-insured institutions.

Overall coordination of the FDIC's review project is managed by the Corporation's CDRI Task Force. Operating under the leadership of FDIC Director Joseph H. Neely, this Task Force consists of senior employees representing each of the FDIC's operating divisions or offices that promulgate or administer the majority of the Corporation's regulations and policy statements. The mission of the Task Force is to (1) provide guidance and coordination of the review effort, (2) assure that the review satisfies both the spirit and letter of section 303(a), and (3) assist in the implementation of the recommendations that are developed as a result of this review.

The review of these regulations and statements of policy was pursued in an orderly manner. Each of the regulations and policies identified for review were assigned to an internal working group. These working groups were established as part of the overall CDRI project and reported to the CDRI Task Force. Each working group was charged with completing an initial substantive review of a particular regulation or policy statement. The

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designed solely for the use of FDIC examiners and employees. This is consistent with the approach taken by the other agencies participating in the review. These internal FDIC materials are subject to regular periodic reviews outside of the CDRI process.

Corporation made staff assignments to these working groups on the basis of expertise with respect to the subject matter of the regulation or policy under review.

In order to better identify areas where Corporation regulations or written policies could benefit from review, the Corporation sought public comment<sup>6</sup> in the Federal Register. The FDIC sought guidance from the banking industry and the general public regarding “ways in which its regulation and written policies can be streamlined and made uniform with the other banking agencies.” The FDIC received a total of twenty-six comments.

The banking regulation that received the most criticism and comments was the Federal Reserve Board’s Regulation Z - *Truth in Lending*, which requires banks to disclose certain information to the borrower. Commenters also identified as troublesome the regulations issued pursuant to the *Real Estate Settlement Procedures Act of 1974* (RESPA), which requires financial institutions to follow strict guidelines when engaging in real estate transactions, with the Federal Reserve Board’s Regulation DD-*Truth in Savings* receiving the third-greatest number of comments. The FDIC shared these comments with the Federal Reserve.

Upon completion of its initial review, each of the CDRI working groups developed a recommended course of action regarding each regulation and statement of policy. Each working group reached a threshold conclusion as to whether a specific regulation or policy statement under review addressed Section 303 concerns in an adequate fashion, or whether a revision or complete rescission of the rule was appropriate. These recommendations were reviewed and ultimately approved by the FDIC’s CDRI Task Force.

Next, each working group’s recommendation was subjected to the Corporation’s regular policy development and review procedures under the direction of the FDIC’s Office of Policy Development. This step was especially important to the overall CDRI effort as it helped to ensure that each

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<sup>6</sup> 60 Federal Register 62345, December 6, 1995.

working group proposal reflected and advanced FDIC policy objectives and sound banking policy.

The FDIC's review efforts with respect to interagency regulations and policies were coordinated with the other banking agencies. As discussed in the interagency portion of this report, the regulators developed a list of 65 regulations and statements of policy that implement statutes or supervisory policies common to at least three of the agencies. Of this 65, a total of 60 projects involved regulations or policies that impacted the FDIC. Review of these matters was coordinated through the FFIEC. Once an FDIC working group developed a recommendation regarding one of these regulations or policies, it was brought before the appropriate FFIEC working group.

The FFIEC working groups are staffed by representatives from each of the banking agencies, and support one of several interagency task forces that assist in the development and coordination of regulatory policy. Recommendations from the FDIC and the other banking agencies are considered by the working group and, where consensus exists, a recommendation is forwarded to the appropriate FFIEC Task Force (and, in some cases, the Council itself) for consideration. In instances where the FDIC's recommendation differs from that adopted by an FFIEC working group, the FFIEC proposal is reviewed by the appropriate FDIC Division or Office, as well as the FDIC's Office of Policy Development, to determine whether the new or modified proposal offers an acceptable alternative.

After approval by the CDRI Task Force and the Office of Policy Development, the FDIC working group recommendations are presented to a special CDRI Clearing Committee. This Committee, consisting of senior FDIC staff and chaired by Director Neely, conducts a final substantive review of working group proposals and recommends a course of action to the FDIC's Board of Directors.

## **E. Significant Accomplishments**

The FDIC's CDRI working groups have completed their review of the Corporation's regulations and policies. Each of the initial recommendations

generated by this substantive review have been approved by the CDRI Task Force and Office of Policy Development. Staff is now in the process of developing formal proposals to implement the working group recommendations. The FDIC's CDRI effort is expected to accomplish genuine streamlining and reduction in regulatory burden, as well as increased substantive uniformity with the other banking regulatory agencies. All areas of FDIC operations -- including the Corporation's core mission of providing deposit insurance -- have benefitted from this review.

Overall, FDIC staff recommendations with respect to both interagency and FDIC-only regulations may be summarized as follows:

<b>Summary Of FDIC Staff Recommendations</b>			
	<b>FDIC</b>	<b>Interagency</b>	<b>Total</b>
Rescind/Withdrawn	14	14	28
Revise	29	28	57
Retain As Written	17	18	35
<b>Total</b>	<b>60</b>	<b>60</b>	<b>120</b>

The relatively high overall percentage (71%) of matters generating a recommendation either to rescind or revise reflects the seriousness with which the Corporation regarded the burden reduction mandate of CDRI: the review did not serve to simply validate the status quo.

The FDIC has also made good progress in implementing staff recommendations. As of September 10, 1996, the FDIC has rescinded or withdrawn 14 regulations or statements of policy, and issued notices of proposed or final rulemaking with respect to 22. It is expected that the FDIC

will complete the implementation phase of its CDRI review by the third quarter of 1997. The progress thus far may be summarized below:

<b>CDRI Recommendations Implemented By FDIC</b>			
	<b>FDIC</b>	<b>Interagency</b>	<b>Total</b>
Rescind/Withdrawn	10	4	14
Revise	10	12	22
Retain As Written	17	17	34
<b>Total</b>	<b>37</b>	<b>33</b>	<b>70</b>

The FDIC has moved quickly with respect to staff recommendations as the consideration of CDRI-related projects has been given a high priority within the Corporation.

### **1. Proposed Revision Of The FDIC's Deposit Insurance Regulations**

The FDIC recently issued an advance notice of proposed rulemaking<sup>7</sup> seeking comment on whether the FDIC's deposit insurance rules<sup>8</sup> should be simplified. The comment period closed in mid-August, 1996. Although the insurance rules were revised relatively recently, the Corporation believes that some additional modification to and simplification of the insurance rules could be helpful. The need for these changes has been brought to the FDIC's attention in several ways, especially through the steady receipt of letters and phone calls on insurance questions. Experience with bank and thrift failures also has enabled the staff to identify procedural aspects of the regulations which could be simplified and improved. The ultimate goal of the

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<sup>7</sup> 61 Federal Register 25596, May 22, 1996.

<sup>8</sup> 12 CFR Part 330.

Corporation is to increase the understanding of deposit insurance by both financial institutions and consumers.

The advance notice of proposed rulemaking requested comments on all aspects of streamlining, simplifying and clarifying the insurance rules, including the likely effect of such changes on consumers and the banking industry. The FDIC also sought comment with respect to the following specific proposals:

- Rewriting certain parts of the insurance rules to make them clearer and easier to understand;
- Simplifying the method for determining insurance coverage for joint accounts;
- Revising the recordkeeping rules to allow the FDIC more flexibility (for the benefit of depositors) in determining the ownership of deposits held in a custodial or fiduciary capacity;
- Changing the rules on "payable upon death" accounts;
- Modifying the way the FDIC insures certain types of accounts upon the death of the owner(s) of the accounts;
- Recommending that the *Federal Deposit Insurance Act* be amended to change the way employee benefit plans are insured; and
- Revising the rules on living trust accounts.

The FDIC received an enthusiastic response (over 80 comments) from a true cross-section of the industry, uniformly commending the FDIC for its efforts to clarify and simply the rules governing federal deposit insurance. Based on the comments received and its own internal review, the FDIC is preparing a proposed regulation to revise the current rules on deposit

insurance. The FDIC anticipates issuing the proposal for public comment in the last quarter of 1996.

## **2. Co-ordination and Streamlining Of The FDIC's Regulatory Applications Procedures**

Another project that is expected to reap substantial rewards in simplifying and improving the industry's interaction with the FDIC is the Corporation's effort to coordinate and streamline the regulatory applications process. The regulatory applications involved cover the entire spectrum of regulatory requests and applications filed with the FDIC, including applications for deposit insurance, change in bank control, establishing or moving a branch, and other similar activities. The goal of this effort is to make the applications process easier, especially for the smaller community-based banks that do most of their work in-house, and to improve the FDIC's overall responsiveness.

While this project is still in its early stages, it presents an excellent example of how the FDIC is taking steps to streamline and rationalize its regulations. Under the present structure, it is often difficult for bankers to determine the proper procedures or the required information necessary to obtain FDIC approval in a number of areas. The substantive and procedural requirements for a specific regulatory application may be set forth in different parts of the FDIC's regulations or contained in separate policy statements. The result is sometimes confusion on the part of the industry, and delay in processing requests by the Corporation when an application is deficient.

The FDIC is proposing to re-organize its applications procedures by

- Collecting and organizing the substantive and procedural requirements for a specific application into a single regulation or subsection;
- Streamlining the various application procedures and forms as much as possible; and

- Reviewing the delegation of matters that may be handled at the regional office, rather than being forwarded to Washington, D.C. At present, approximately 90% of all applications are processed and approved at the regional office.

One tangible benefit from a simplified, more “user-friendly” applications process is expected to be reduced frustration (and hopefully increased cost savings) in preparing applications for submission to the Corporation.

Another expected benefit will be increased responsiveness on the part of the Corporation. The FDIC has already taken steps to improve in this area. On May 6, 1996, the FDIC published in a *Financial Institutions Letter*<sup>9</sup> issued to all insured banks its internal time-line guidelines for processing applications, notices, and other formal requests filed by open banks and institution-affiliated parties. These time lines are aggressive and apply to applications filed by well managed banks that do not raise unique issues or involve CRA protests or properties having historic significance. While these time lines represent a kind of expedited processing of routine applications under current regulations, a concerted effort will be made to further expedite processing for well managed banks to the extent possible. The agency's goal is to act as promptly as practicable, while allowing appropriate time for review and evaluation.

Other streamlining efforts may require Congressional action. For example, the FDIC is studying the feasibility in certain instances of shifting from a formal application process to requiring that an institution simply provide prior notice to the of a proposed action. The FDIC supported a 1995 proposal<sup>10</sup> that would have eliminated the necessity of obtaining prior approval for the establishment of a domestic branch by institutions that operate safely and

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<sup>9</sup> FIL-26-96.

<sup>10</sup> *The Economic Growth And Regulatory Paperwork Reduction Act of 1995, Hearing on S. 650 Before The Subcommittee On Financial Institutions And Regulatory Relief, Committee On Banking, Housing, and Urban Affairs, 104th Cong., 1st Sess. (statement of Chairman Helfer).*

soundly. The FDIC is developing similar legislative initiatives that would assist the Corporation in carrying out these recommendations.

This is an ambitious project, and the work is ongoing. The project expects to bring its formal proposals to the FDIC's Board of Directors in 1997.

### **3. Activities And Investments of Insured State Banks**

The FDIC has issued an advance notice of proposed rulemaking<sup>11</sup> amending its requirements for insured state banks wishing to engage in real estate investment activities, indirectly through a subsidiary, and/or in insurance products and annuity contracts, either directly or indirectly through a subsidiary. The FDIC's Part 362<sup>12</sup> governs the activities and investments of insured state banks. Generally speaking, state banks and their subsidiaries are prohibited from engaging in activities and investments not permitted to national banks, unless the bank satisfies all of its capital requirements and the activity or investment does not represent a risk to the deposit insurance fund. The regulation grants exceptions for some activities and details the procedures for banks to apply in other situations.

Part 362 currently requires an insured state bank to file an application with the FDIC for permission to engage in activities that would not be permissible for a national bank. Consistent with the Corporation's effort to streamline its applications procedures, the FDIC is proposing to streamline the approval process by allowing banks to submit a 60-day notice prior to engaging in the activity in lieu of filing an application, provided the bank meets certain criteria. Banks that wish to engage in such activities but do not meet the prescribed criteria would continue to file under the application provisions of Part 362. The use of a notice procedure in place of a formal application promotes efficiency within the industry as well as reducing the regulatory burden for qualifying institutions.

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<sup>11</sup> 61 Federal Register 43486, August 23, 1996.

<sup>12</sup> 12 CFR Part 362.

#### **4. Proposed Simplification Of Deposit Insurance Assessments**

The FDIC has recently issued a notice of proposed rulemaking with respect to the FDIC's assessment regulations.<sup>13</sup> The proposed amendments would clarify assessment procedures with respect to "Oakar" institutions, in particular the calculation of the Adjusted Attributable Deposit Amount (AADA), and efforts to reduce the burden associated with calculating the AADA.<sup>14</sup>

The AADA is used to determine the allocation of an Oakar institution's assessable deposits between the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF). It represents the amount of an institution's assessable deposits that is attributable to the "secondary" insurance fund. For example, for an Oakar institution insured by the BIF, the AADA is the amount of deposits assessable by the SAIF.

The proposed amendments are generally intended to eliminate some anomalies that have arisen in the assessment of Oakar institutions. For example, one of the amendments would change the method by which the AADA is adjusted for an institution's overall deposit growth. The present method excludes deposit sales in calculating the AADA; the growth-adjustment formula assumes that the seller's decrease in deposits is attributable to normal shrinkage. This has the effect of shrinking both primary and secondary fund deposits. However, the growth adjustment formula for the buyer of such deposits treats the transaction as an acquisition of the Oakar institution's "primary" fund deposits. This asymmetric treatment of the deposit sale has the effect of increasing the total amount of primary fund deposits reported and assessed by the FDIC while decreasing the total amount of secondary fund deposits.

The proposed rule would correct this anomaly in the growth-adjustment formula for all deposit sale transactions that occur after June 30, 1996, effective for the year-end 1996 calculation of an Oakar institution's AADA.

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<sup>13</sup> 12 CFR Part 327.

<sup>14</sup> 61 Federal Register 34751, July 3, 1996.

The proposed rule would also adjust the AADA for growth or shrinkage on a quarterly, rather than annual, basis, and would make several other technical adjustments to the AADA calculation.

The Board is also proposing to reduce burden by eliminating the requirement that Oakar institutions submit growth worksheets to adjust their AADAs for normal growth or shrinkage. The AADA would instead be calculated by the FDIC as part of the quarterly payment process and would be reported, along with supporting documentation, in the materials accompanying an institution's quarterly assessment invoice.

Finally, the proposed rule solicits public comment on two alternatives for allocating funds between the BIF and the SAIF at the time that deposit sales by Oakar institutions occur. The first alternative, consistent with a principle previously articulated by the FDIC, would treat deposit sales by Oakar institutions as sales of primary fund deposits only, unless the amount of deposits sold exceeds the total amount of primary fund deposits available. The second alternative is to treat the sale of deposits as a pro rata blend of the Oakar institutions' primary and secondary fund deposits.

## **5. Proposed Revision To The FDIC's Fair Housing Regulations**

The FDIC has issued a notice of proposed rulemaking<sup>15</sup> outlining amendments to its fair housing regulation, 12 CFR Part 338. While the requirements of the *Fair Housing Act* are administered on an interagency basis, the FDIC is proposing to reduce data collection and reporting burden on insured state nonmember banks, thus making the FDIC's recordkeeping and reporting requirements more consistent with those of the other Federal bank and thrift regulatory agencies.

The FDIC's present regulation contains two parts: the nondiscriminatory advertising requirements (Subpart A) and the recordkeeping requirements (Subpart B). Subpart A prohibits insured state nonmember banks from discriminating in home loan advertising and sets forth the text of the Equal

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<sup>15</sup> Adopted September 10, 1996.

Housing Lender poster that must be displayed on bank premises. The intent of Subpart A is to prevent discrimination in connection with any residential real estate-related transaction on the basis of race, color, sex, religion, national origin, familial status or handicap. The regulation specifies that this requirement may be satisfied by including in written and visual advertisements a copy of the logotype with the Equal Housing Lender legend contained in the Equal Housing Lender poster or, in oral advertisements, by including a statement that the bank is an “Equal Housing Lender.” The advertising requirements enforce Section 805 of Title VIII of the *Civil Rights Act of 1968*, as amended by the *Fair Housing Amendments Act of 1988*.

Subpart B (recordkeeping requirements) requires certain insured state nonmember banks to request and retain information regarding the race, national origin, sex, marital status and age of applicants for a home purchase loan. The purpose of collecting and retaining this information is to monitor an institution’s compliance with the *Equal Credit Opportunity Act of 1974* (ECOA). Subpart B also serves as a substitute monitoring program permitted by Regulation B of the Federal Reserve System. *See* 12 CFR Section 202.13(d).

The FDIC’s present data collection and retention requirements in Subpart B go beyond the requirements of the Federal Reserve’s Regulation B. For example, institutions that have no office located in a primary metropolitan statistical area (PMSA) or a metropolitan statistical area (MSA), or that have total assets of \$10 million or less, are also required to request and retain information on the location (street address, city, state, and zip code) of the property to be purchased. Further, insured state nonmember banks that have an office located in a PMSA or a MSA and that have total assets exceeding \$10 million are required to request and retain essentially all of the information listed on the model Residential Loan Application Form contained in Appendix B of Regulation B (*see* 12 CFR Section 202, Appendix B). This includes such data as employment history of the applicant, number of dependents, assets and liabilities, detailed characteristics of the subject property, and the loan request. Appendix B specifies that institutions may delete any information requested on the model form provided that appropriate notices concerning optional use of titles and disclosure of certain income information and limitations

concerning marital status requests are provided. Thus, the other information on the model form is not required by Regulation B.

Subpart B also notifies insured state nonmember banks of their duty to maintain and report a register of home loan applications, and to update the register on a timely basis, in accordance with the Federal Reserve Board's Regulation C, which implements the *Home Mortgage Disclosure Act* (HMDA). Institutions are subject to HMDA and Regulation C if their assets exceed \$10 million and they have offices located in a PMSA or MSA. Information collected under the provisions of this subpart must include the type of loan requested, the purpose of the loan, whether the loan was approved or denied (including an option for collecting denial reasons for disapproved loans), and information on the purchaser, if the loan was sold. This information is consistent with Regulation C.

The FDIC's present Subpart B goes beyond the data reporting requirements contained in the Federal Reserve's Regulation C. Regulation C requires the collection and reporting of the race, sex and income of applicants for home loans only for institutions with assets of \$30 million or more that have offices located in a PMSA or MSA. Additionally, Regulation C specifies that the loan register must be current within 30 calendar days after the end of each calendar quarter in which final action is taken. Subpart B extends the collection and reporting of the race, sex, and income of applicants for home loans to institution with assets between \$10 million and \$30 million and requires that an institution enter all required data onto the register within 30 calendar days after final disposition of the loan application.

The FDIC proposes to revise Subpart A to clarify certain nondiscriminatory advertising requirements that currently reference HUD's regulations. HUD recently removed Part 109 (Fair Housing Advertising) from its regulations (24 CFR Part 109) and intends to relegate the information contained in the former Part 109 to other non-codified guidance. The FDIC proposes to add a new section to Part 338 advising all insured state nonmember banks to refer to HUD for further guidance concerning fair housing advertising.

The FDIC also proposes to revise the nondiscriminatory advertising requirements regarding the fair housing poster and advertising slogan. Currently, insured state nonmember banks are required to include in all written and visual advertisements a copy of the Equal Housing Lender logotype and legend contained in the Equal Housing Lender poster or, with respect to oral advertisements, a statement that the bank is an “Equal Housing Lender.” Under the proposed revision, insured state nonmember banks will have the option of using a copy of the Equal Housing Opportunity logotype and legend contained in the Equal Housing Opportunity poster as prescribed in HUD's rules and regulations (24 CFR Section 110.25(a)) in written and visual advertisements. With respect to oral advertisements, insured state nonmember banks will also have the option of using the slogan “Equal Opportunity Lender” in lieu of the slogan “Equal Housing Lender.” The optional use of either poster or slogan is intended to provide flexibility for institutions that offer a broader array of loan products than mortgage loans (e.g., auto, consumer, and credit card extensions of credit).

The most significant revisions, from the perspective of reducing regulatory burden, are the Corporation’s proposed revisions to Subpart B of Part 338. The FDIC is proposing to reduce data collection and reporting burden on insured state nonmember banks, making the FDIC’s recordkeeping and reporting requirements consistent with those of the other Federal bank and thrift regulatory agencies. Specifically, the proposed revision will eliminate all recordkeeping and reporting requirements -- with the exception of reasons for loan denial -- that exceed the recordkeeping and reporting requirements of the Federal Reserve’s Regulations B and C.

However, the FDIC’s current proposal will require insured state nonmember banks and other lenders reporting HMDA data to the FDIC pursuant to Regulation C to also report reasons for denial of home loan applicants. This is presently optional data under Regulation C. While the mandatory reporting of denial reasons is a new requirement for insured state nonmember banks, the FDIC believes the burden is offset by the amount of data being eliminated under the proposal. Moreover, the reporting of denial reasons is extremely useful in preventing and detecting unlawful discriminatory lending practices.

## 6. Securities Of Nonmember Insured Banks

The FDIC has recently issued a notice of proposed rulemaking<sup>16</sup> which outlines proposed revisions to Part 335 of the FDIC's regulations, which outlines the Corporation's registration and reporting requirements under section 12 of the *Securities Exchange Act of 1934* (Exchange Act). Section 12(i) of the Exchange Act grants authority to the FDIC to issue regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (nonmember banks). These regulations must be substantially similar to the SEC's regulations issued pursuant to section 12 (securities registration), section 13 (periodic reporting), section 14(a) (proxies and proxy solicitation), section 14(c) (information statements), section 14(d) (tender offers), section 14(f) (election of directors contests), and section 16 (beneficial ownership and reporting) of the Exchange Act. Section 12(i) does not, however, require the FDIC to issue substantially similar regulations in the event that the FDIC finds that implementation of such regulation is not necessarily in the public interest or appropriate for protection of investors.

The proposed revisions incorporate by cross reference the comparable rules of the SEC rather than continue to maintain the separate but substantially similar body of rules presently contained in Part 335. Incorporating these SEC regulations by cross-reference would generally make all *Exchange Act* regulations, and amendments thereto, applicable to registered nonmember banks, unless the FDIC acts to vary the SEC's specific requirements. The FDIC believes that this is an effective way to assure that FDIC regulations issued under the Exchange Act remain substantially similar to the SEC's regulations. The regulatory scheme is greatly streamlined, as witnessed by the fact that the proposal would result in the deletion of over 150 pages from the FDIC's regulations.

The proposal would also bring the FDIC into line with the approach taken in this area by the other bank regulators. The Federal Reserve, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision each satisfy

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<sup>16</sup> 61 Federal Register 33696, June 28, 1996.

the statutory mandate by cross-referencing the appropriate SEC regulations with respect to the securities activities of the institutions that they regulate.<sup>17</sup>

## **7. Revisions To Auditing Program Regulations And Policies**

The FDIC has also taken a hard look at its regulations and policy statements pertaining to external auditing programs. As a result, the FDIC has adopted revisions that remove obsolete portions of the regulatory scheme, eliminate inconsistencies, and streamline procedures for compliance.

First, the FDIC amended<sup>18</sup> its regulations concerning annual independent audits and reporting requirements, 12 CFR Part 363, in response to recent amendments to sections 36(i) and 36(g)(2) of the *Federal Deposit Insurance Act*. Section 36 of the *Federal Deposit Insurance Act* is generally intended to facilitate early identification of problems in financial management at larger insured depository institutions through annual independent audits, assessments of the effectiveness of internal controls and of compliance with designated laws and regulations, and more stringent reporting requirements. Section 36 (and Part 363) requires all insured depository institutions with \$500 million or more in total assets at the beginning of their fiscal year to have an annual audit performed by an independent public accountant and to have an audit committee entirely consisting of outside directors who are independent of management. The Congressional amendments to section 36 provide relief from certain duplicative reporting requirements, and requires the Corporation to notify a large insured depository institution in writing if it decides a review by an independent public accountant of such an institution's quarterly financial reports is required. The revisions to the regulation reflect these changes.

In addition, the FDIC made several technical amendments to the *Guidelines and Interpretations* that were published as an appendix to the annual independent audit regulations. The FDIC also amended Schedule A to the appendix, *Agreed Upon Procedures for Determining Compliance with*

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<sup>17</sup> 12 CFR Section 208.16 (Federal Reserve), 12 CFR § 11.2 (OCC), and 12 CFR Section 563d.1 (OTS).

<sup>18</sup> 61 Federal Register 6487, Feb. 21, 1996.

*Designated Laws*, to implement recent amendments to the federal regulations concerning loans to insiders, improve the format of the procedures, streamline the specific procedures, and eliminate ambiguities. These amendments reflect the experience of the Corporation, financial institutions, and accountants using the existing procedures during the past two years.

The FDIC also amended its *Statement of Policy Regarding Independent External Auditing Programs Of State Nonmember Banks*<sup>19</sup> in order to conform the policy to the newly amended statute and Part 363. The policy states that the FDIC strongly encourages each state nonmember bank to adopt an external auditing program that includes an annual audit of its financial statements by an independent public accountant. In addition, the policy statement advises applicants for deposit insurance that they will generally be expected to commit their bank to obtain an audit of its financial statements by an independent public accountant annually for at least the first five years after deposit insurance is granted. The Corporation hopes to eliminate possible confusion in this area by deleting references to a rescinded statement of policy and replacing it with a reference to the current policy, *Applications for Deposit Insurance*.

## **8. Rescission Of Outmoded Or Obsolete Statements Of Policy**

One of the results of the CDRI mandate to “remove inconsistencies and outmoded and duplicative requirements” has been rescission of obsolete statements of policy. The removal of outmoded written policies eliminates a potential source of confusion and ambiguity with respect to current FDIC policy.

- *Insured State Nonmember Banks - Statement of Policy and Guidelines for Investments in "Leeway Securities"*: This statement of policy was originally adopted by the FDIC’s Board of Directors in 1972<sup>20</sup> to clarify the Corporation's position

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<sup>19</sup> 61 Federal Register 32438, June 24, 1996.

<sup>20</sup> 37 Federal Register 16228, Aug. 11, 1972.

regarding bank investments under state “leeway” laws. Leeway laws were adopted by many states to give depository institutions a way to make direct investments in civic or community related projects that would otherwise be prohibited under the standard bank or thrift charter. The policy stated that although examiners may have criticized investments that were not investment quality, the FDIC did not want to inhibit banks from making investments that were primarily of a civic or community nature. Therefore, as long as they are made within reasonable limits as authorized by state laws or no more than an aggregate of 10% of total capital and surplus (whichever is less), FDIC examiners would not criticize them.

Subsequent statutory amendments and revisions to the Corporation’s regulations rendered this policy statement obsolete. Section 24 of the *Federal Deposit Insurance Act* now provides that an insured bank may not engage as principal in any type of activity that is not permissible for a national bank. The statute and implementing regulation, 12 CFR Part 362, list certain exceptions for qualified housing projects, insurance subsidiaries, etc. Since the statute and the FDIC’s regulations address this issue, the policy statement was no longer necessary, and has been rescinded.

- *Time Limits for Filing Reports of Condition:* Adopted by the FDIC’s Board of Directors in 1976<sup>21</sup>, this policy (1) established a deadline for submitting Reports of Condition and Reports of Income (also known as Call Reports), (2) announced that Reports of Condition must be prepared as of the end of each calendar quarter, and (3) recited the statutory penalty for failing to file these reports by the deadline. In 1988, the FFIEC took action to define the term "submission date" for the Reports of Condition and Income and to establish deadlines for submitting reports by various delivery mechanisms. This definition and the deadlines, as well as the quarter-end report date, have been incorporated into

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<sup>21</sup> 41 Federal Register 28583, Jul. 12, 1976.

the Call Report instruction books issued to banks. The policy statement was clearly obsolete as written, and the Corporation concluded that an updated policy statement that simply restates these statutory penalties would be redundant.

- *Guidelines for Implementing a Policy of Capital Forbearance:* Adopted by the FDIC's Board of Directors in 1987<sup>22</sup>, this policy set forth guidelines and criteria for granting requests for capital forbearance to well-managed, solvent and viable banks having loan concentrations in weak economic trade areas. Under the policy, requests for forbearance were to have been received by December 1989, and any forbearance plan was to have assured capital restoration by January 1995. This policy was rescinded as it was plainly obsolete: the program of forbearance described in the statement has expired, and the prompt corrective action provisions of the *Federal Deposit Insurance Act* have foreclosed any type of capital forbearance.
- *Statement of Policy on Contracting With Outside Firms:* This statement of policy<sup>23</sup> was adopted by the FDIC's Board of Directors to set forth minimum standards of fitness and integrity for FDIC contractors. The policy was adopted to conform the FDIC's contracting practices with those of the RTC. The *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* required the RTC -- but not the FDIC -- to promulgate minimum standards of fitness and integrity for its contractors. While there was no statutory requirement that the FDIC adopt similar regulations, the Corporation deemed it prudent to articulate a policy in this area.

Subsequent amendments to the *Federal Deposit Insurance Act* now require the FDIC to prescribe regulations to ensure that

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<sup>22</sup> 52 Federal Register 26182, Jul. 13, 1987.

<sup>23</sup> 58 Federal Register 28866, May 17, 1993.

contractors meet minimum standards of competence, experience, integrity and fitness. The FDIC has issued an interim final rule<sup>24</sup> establishing standards regarding conflicts of interest and ethical responsibilities for independent contractors doing business with the FDIC. As the statement of policy has been superseded by regulation, it was rescinded.

- *Withdrawn Statements Of Policy:* The FDIC has also withdrawn a number of policy statements<sup>25</sup> from the loose-leaf reporting service that the Corporation provides to all insured institutions. While the underlying practices or policies described in these statements remain in place, in most cases it was not necessary for them to be retained as a separate written policy as they duplicate information or guidance more logically found in other readily-accessible sources.

## **F. Areas Requiring Legislative Action**

One of the results of the FDIC's review was to identify areas where a CDRI-related revision is desirable, but would require a legislative change to accomplish. The FDIC is considering the submission of formal requests for legislative action based upon the results of this review.

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<sup>24</sup> 12 CFR Part 366.

<sup>25</sup> *Justice Department Policy On Bank Bribery Prosecution*, FDIC Bank Letter (BL-27-85); *Guidelines for Monitoring Bank Secrecy Act Compliance*, FDIC Bank Letter (BL-16-87); *Federal Financial Institutions Examination Council Statement On The Home Mortgage Disclosure Act*, FDIC Loose-Leaf Service at 5303; *Interagency Policy On Contingency Planning For Financial Institutions*, FDIC Loose-Leaf Service at 5305; *FFIEC-Supervisory Policy On Large-Scale Integrated Financial Software Systems*, FDIC Bank Letter (BL-35-88); *Risks and Controls In End-User Computing*, FDIC Bank Letter (BL-2-87); *Interagency Statement On EDP Service Contracts*, FDIC Loose-Leaf Service at 5325; *FFIEC EDP Interagency Examination, Scheduling and Distribution Policy*, FDIC Loose Leaf at 5345, *Interagency Guidance on Accounting for Dispositions of Other Real Estate Owned*, FDIC Financial Institution Letter (FIL-49-93).

- *Interest on Deposits:* As discussed in the Interagency portion of this report, Section 11 of the ***Banking Act of 1933***<sup>26</sup> prohibits member banks from paying interest on demand deposits. Part 329<sup>27</sup> of the FDIC’s regulations implements Section 18(g) of the ***Federal Deposit Insurance Act***<sup>28</sup>, which requires the FDIC to impose a similar ban by regulation on state nonmember banks.

As discussed in the Interagency portion of the report, the statutory prohibitions against paying interest on demand deposits advance no public policy and Congress should reconsider the continued need for such a bar.

- *Deposit Insurance:* Section 11(a)(1)(D) of the ***Federal Deposit Insurance Act*** prohibits the FDIC from providing *pro rata* or “pass-through” deposit insurance coverage to employee benefit plan deposits that are accepted by an insured depository institution at a time when the institution may not accept brokered deposits under Section 29 of the ***Federal Deposit Insurance Act***. Consequently, if an institution accepts employee benefit plan deposits at a time when it is unable to accept brokered deposits (i.e., when it is undercapitalized), such deposits would only be insured up to \$100,000 per plan (as opposed to \$100,000 per participant or beneficiary). Under existing law, the depositor, rather than the institution, would be penalized for the institution’s behavior.

By limiting “pass-through” coverage on employee benefit plan deposits, the burden is placed on plan administrators every time a deposit is made to inquire as to an institution’s capital category and ability to accept brokered deposits before placing plan deposits with the institution, even though many plan

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<sup>26</sup> 12 U.S.C. § 371(a).

<sup>27</sup> 12 CFR Part 329.

<sup>28</sup> 12 U.S.C. § 1828(g).

administrators may not be aware of such restrictions. Even if they are aware of such restrictions, plan administrators must inquire each time as to the institution's continuing ability to provide "pass-through" coverage.

- *Limits On Extension Of Credit To Executive Officers, Directors, And Principal Shareholders And Their Related Interests:* Section 337.3 of the FDIC's regulations<sup>29</sup> extends the application of the Federal Reserve's Regulation O<sup>30</sup> with respect to insider loans to state nonmember institutions. While most of Regulation O is applied to state nonmember banks by cross reference to the Federal Reserve's rule, the law<sup>31</sup> requires that some sections of Regulation O be excepted. The FDIC's regulations carve out these provisions as required. The result is that the regulatory scheme is not uniform among the agencies, and the required implementing regulations can be confusing and difficult to administer. The statute should be amended to provide for the uniform application of Regulation O. Consideration should also be given to increasing the types of extensions of credit that are exempt without limitation as to the amount, such as equity loans and loans secured by readily marketable assets.
- *Determination of Economically Depressed Regions:* Section 13(k)(5) of the *Federal Deposit Insurance Act*<sup>32</sup> provides that the FDIC shall consider proposals for financial assistance under Section 13(c)<sup>33</sup> for eligible SAIF members located in "economically depressed regions" prior to the appointment of a

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<sup>29</sup> 12 CFR Part 337.3.

<sup>30</sup> 12 CFR Part 215.

<sup>31</sup> Section 22(g)(4) and 22(h)(3) of the *Federal Reserve Act*.

<sup>32</sup> 12 U.S.C. § 1823(k)(5).

<sup>33</sup> 12 U.S.C. § 1823(c).

conservator or receiver. The FDIC promulgated Part 357<sup>34</sup> in 1990, listing eight states that the FDIC determined to be economically depressed under the statute. The FDIC has recently replaced the listing of states with a set of criteria for determining when an area is “economically depressed” that may be applied on a case-by-case basis. However, the fundamental question remains as to whether Section 13(k)(5) serves any useful function: institutions covered by the statute not gain any additional benefit from being located in an “economically depressed region” as any insured institution may apply for Section 13(c) assistance prior to the appointment of a conservator or receiver.

- *Statement Of Policy Regarding Treatment Of Security Interests After Appointment Of The Federal Deposit Insurance Corporation As Conservator Or Receiver:* This policy statement was adopted<sup>35</sup> to provide assurance on the status of certain security interests placed in the hands of the FDIC after the appointment of a receiver or conservator for an insured institution. Under Section 11(e) of the *Federal Deposit Insurance Act*<sup>36</sup> the FDIC may avoid a security interest if, among other reasons, it is not legally enforceable. One consideration regarding whether such agreements are legally enforceable is whether the obligation or collateral subject to the security interest was acquired by the institution contemporaneously with the execution of the security agreement. See 12 U.S.C. § 1823(e).

Because the Policy Statement asserts that it is the FDIC’s intention not to enforce the “contemporaneous acquisition” requirement, it has been viewed as “market friendly” and not burdensome to the industry or public. However, removal of the “contemporaneous acquisition” requirement in Section 13(e) of

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<sup>34</sup> 12 CFR Part 357.

<sup>35</sup> 58 Federal Register 16833, March 31, 1993.

<sup>36</sup> 12 U.S.C. § 1821(e).

the *Federal Deposit Insurance Act*, 12 U.S.C. § 1823(e), would eliminate the need for the Policy Statement.

## **G. Looking Ahead**

The FDIC's efforts to achieve CDRI's goals -- streamlining regulations, reducing burden, and increasing uniformity among the regulators -- will not end with the submission of this report to Congress. The Corporation has been and will continue to be guided by these goals, consistent with broadly-accepted public policies regarding consumer protection and safety and soundness in the financial sector. We foresee a body of banking rules, regulations and policies that are clear, concise, consistent and understandable. The rules, regulations and policies will be written in "plain language," not "legalese". They will satisfy both cost-benefit and common-sense tests.

To underscore the Corporation's commitment to regulatory reform and help ensure its achievement, the FDIC is perpetuating the regulatory review program created to implement CDRI. The Clearing Committee, chaired by Director Neely, will continue to serve as the principal channel through which staff recommendations to streamline regulations, reduce burden, and increase uniformity are taken to the FDIC's Board of Directors. The Task Force, composed of senior representatives from the principal program divisions within the Corporation, will continue to coordinate and support substantive regulatory reviews, maintain standards of consistency and quality, and expedite the progress of individual recommendations to the Board. Program responsibility for the overall effort has been located in a new Regulatory Analysis group within the Office of the Executive Secretary, through a reorganization of existing staff.

This group is developing initiatives designed to (a) incorporate the burden-reduction goals of CDRI into the routine development of the FDIC's regulations and policies, and (b) maintain a review cycle for all existing FDIC regulations and statements of policy, according to which they would receive a rigorous zero-based evaluation at least once every five years.

The FDIC's Board of Directors has previously issued formal staff guidance on the development and review of regulations by the Corporation.<sup>37</sup> This policy requires that

- The FDIC's regulations be clearly and understandably written;
- The need for and purpose of each regulation be clearly established;
- Alternative approaches should be considered;
- Burdens on the public, on the banking industry generally, and on small banks particularly, be minimized; and
- Regulations be reviewed periodically to determine whether they should be continued, revised or eliminated.

One of the FDIC's near-term priorities is revitalizing and updating this policy. Proposed revisions currently under consideration include (1) guidance regarding the need to achieve uniformity among interagency regulations and statements of policy among the bank regulatory agencies where possible; and (2) expanding the scope to include all formal written policies, and not just regulations. Through the aggressive and systematic implementation of this policy, the regulatory reform principles embodied in CDRI have already become part of the standard procedure for developing regulations at the FDIC.

A longer-term priority is to ensure that existing regulations and statements of policy are thoroughly evaluated on a regular basis. The Corporation already requires the periodic review of the Corporation's regulations for the purpose of determining whether the regulation should be continued, revised, or eliminated. Factors to be taken into consideration during this analysis include:

- The continued need for the regulation;

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<sup>37</sup> 44 Federal Register 31007, May 30, 1979.

- Alternative methods of accomplishing the purpose of the regulation;
- The type and number of complaints or suggestions received;
- The need to minimize the burden imposed on those affected by the regulation, especially small banks;
- Possible simplification or clarification of the regulation;
- The need to eliminate overlapping and duplicative regulations or supervisory procedures;
- The length of time since the regulation was last evaluated and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation;
- The need to achieve uniformity among interagency regulations and statements of policy among the bank regulatory agencies; and
- Expanding the scope to include written policies and not just regulations.

This policy clearly defines the Corporation's intention to manage its regulatory responsibilities in a way that minimizes burden on the financial institutions industry. The FDIC has demonstrated its commitment to this policy both by the accomplishments documented in the body of this report and by the staff proposals, documented in the appendix, that have yet to make their way to the Board. Taken together, both the FDIC's actions and its plans show the strength of its ongoing determination to carry out the deposit insurance function with minimal intrusion into the daily operation of insured institutions.

## **H. Summary Status Reports**

The following is a summary of the 60 regulations or policy statements that the FDIC reviewed internally.

## RESCIND

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**Title:** **Insured State Nonmember Banks - Statement of Policy and Guidelines for Investments in "Leeway Securities"**

(37 Federal Register 16228, August 11, 1972)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:** **Time Limits for Filing Reports of Condition**

(41 Federal Register 28583, July 12, 1976)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:** **Statement Of Policy Concerning Interest Rate Futures Contracts, Forward Contracts and Standby Contracts**

(44 Federal Register 6673, November 20, 1979)

**Subject Matter:** This policy sets forth requirements for insured state nonmember bank participation in the futures and forward contract markets to purchase and sell U.S. government and agency securities, as well as in the futures contract market.

**Action/Status:** Since the policy statement was promulgated, the FDIC has issued subsequent, more comprehensive and detailed guidance on the same subjects, thereby rendering the policy statement redundant and unnecessary.

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**Title:** **Guidelines for Implementing a Policy of Capital Forbearance**

(52 Federal Register 26182, July 13, 1987)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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## Rescind

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**Title:**           **Consent To Service Of Persons Convicted Of Offenses Involving Dishonesty Or A Breach Of Trust As Directors, Officers Or Employees Of Insured Banks**  
(41 Federal Register 42699, September 28, 1976)

**Subject Matter:** This policy provides a discussion of factors to be considered in reviewing applications pursuant to section 19 of the *Federal Deposit Insurance Act* to obtain consent to employ persons convicted of offenses involving dishonesty or a breach of trust as directors, officers, or employees of insured banks.

**Action/Status:** This policy has been superseded by another policy statement, *Applications under Section 19 of the Federal Deposit Insurance Act*, which was adopted in 1980. This later policy statement is more expansive and includes, almost verbatim, the content of subject policy statement.

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**Title:**           **Applications To Relocate Main Office Or Branch (Includes Remote Service Facilities)**  
(FDIC Loose Leaf Service at 5125)

**Subject Matter:** This policy describes procedures for filing an application to relocate a branch office or a remote service facility. The policy also describes the statutory factors that the FDIC will consider in processing the application.

**Action/Status:** The FDIC's overall reorganization of its applications process, see 12 CFR Part 303 (*Applications*), may make all or part of this policy statement redundant.

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**Title:**           **[Federal Deposit Insurance Corporation Policy Statement On] Community Reinvestment Act**  
(FDIC Loose Leaf Service at 5165)

**Subject Matter:** This FDIC policy provides a discussion of the Community Reinvestment Act and its implementing regulations, and the impact of an institution's record upon the consideration of regulatory applications filed with the Corporation.

**Action/Status:** New rules implementing Community Reinvestment Act are being phased in. This policy will be largely obsolete at the end of this transition period.

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## Rescind

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**Title:**           **Statement Regarding Eligibility To Make Application To Become An Insured Bank Under Section 5 Of The Federal Deposit Insurance Act**  
(49 Federal Register 7865, March 2, 1984)

**Subject Matter:** This policy statement was adopted to clarify the FDIC's construction of certain amendments under the *Garn-St. Germain Depository Institutions Act of 1982*. These amendments extended eligibility for federal deposit insurance to state-chartered industrial banking companies and similar entities, and set out special factors in section 5(a) of the *Federal Deposit Insurance Act* which the FDIC was required to consider in connection with granting such entities deposit insurance. The policy statement explains the FDIC's views of what legal status an institution must have under state law to be eligible for deposit insurance in light of the *Garn Act* amendments, and specifies what the FDIC would look for in considering the Section 5(a) factors.

**Action/Status:** The Section 5(a) factors were removed by *FIRREA* and the discussion of them in the policy statement as statutory factors is now obsolete. To the extent it is helpful to maintain the remaining portions, it may be appropriate to incorporate them in the FDIC's policy statement, *Applications for Deposit Insurance*, which is also currently being reviewed.

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**Title:**           **Statement Of Policy On Contracting With Outside Firms**  
(58 Federal Register 28866, May 17, 1993)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:**           **Financial Disclosure Requirements For Employees Of The FDIC**  
(5 CFR Part 3202)

**Subject Matter:** This regulation establishes financial disclosure requirements for FDIC employees which are in addition to the government-wide Public and Confidential financial disclosure reporting requirements. The regulation was adopted at the direction of the Office of Government Ethics to address specific FDIC concerns not otherwise reported in government-wide forms regarding employee financial interests.

**Action/Status:** The Office of Government Ethics has subsequently determined that it as the authority to approve supplemental disclosure forms without separate agency regulations. As Part 3202 is no longer necessary, it has been rescinded.

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## WITHDRAWN

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**Title:**           **Justice Department Policy on Bank Bribery Prosecution**  
(FDIC Bank Letter (BL-27-85))

**Subject Matter:** This policy set forth guidelines used by the Department of Justice in prosecution of bank bribery cases.

**Action/Status:** See discussion in Section E. The underlying source document is a now-outdated version of the United States Attorneys Manual. It was removed from Loose Leaf Service as it duplicates information found in other sources.

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**Title:**           **Risks And Controls In End-User Computing**  
(FDIC Bank Letter (BL-2-87))

**Subject Matter:** This policy sets forth the risks associated with end-user computing operations and encourages the implementation of sound controls over these activities.

**Action/Status:** See discussion in Section E. The Policy remains applicable, and the continued expanding use of personal computers and networks in financial institutions requires appropriate policies and controls in order to minimize the risk of loss. Removed from FDIC Loose Leaf Service as it duplicates information found in other sources.

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**Title:**           **Guidelines for Monitoring Bank Secrecy Act Compliance**  
(FDIC Bank Letter (BL-16-87))

**Subject Matter:** Sets forth guidelines to assist banks in complying with the FDIC's Bank Secrecy regulation, 12 CFR Part 326.

**Action/Status:** See discussion in Section E. An interagency working group has reviewed and revised the Bank Secrecy Act examination procedures. Withdrawn from the FDIC's Loose Leaf Service.

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## Withdrawn

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**Title:**           **Interagency Guidance on Accounting for Dispositions of Other Real Estate Owned**  
(FDIC Financial Institution Letter (FIL-49-93))

**Subject Matter:** This policy summarizes the circumstances when it is appropriate to use each of the five methods of accounting for seller-financed dispositions of real estate under generally accepted accounting principles (GAAP). This guidance was issued in conjunction with a change in bank regulatory reporting requirements for such transactions that essentially brought the bank Call Report instructions into conformity with GAAP. The prior Call Report instructions were more stringent than GAAP because they required receivables from sales of other real estate to be reported as "other real estate owned" rather than "loans" on the Call Report balance sheet when the purchaser's down payment was less than 10%.

**Action/Status:** See discussion in Section E. The summary descriptions of the five accounting methods remain current. Accounting for seller-financed dispositions of real estate continues to be a regular source of questions from bankers and examiners. To make the "Accounting Guidance" section of the document more accessible to both groups it was incorporated into the bank Call Report instructions in June, 1996. The policy was removed from the FDIC's Loose Leaf Service.

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## REVISE

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**Title:**           **Forms, Instructions, and Reports**  
                      (12 CFR Part 304)

**Subject Matter:** Fulfills the requirement that the FDIC publish its rules of “procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations . . .”

**Action/Status:** The FDIC is presently considering substantial revisions (or potential rescission) that would make this information more accessible.

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**Title:**           **Notification Of Changes Of Insured Status**  
                      (12 CFR Part 307)

**Subject Matter:** Subsection 1 requires that a bank agreeing to assume the deposit liabilities of another institution (through merger, consolidation, etc.) certify within 30 days after the effective date of the assumption. Subsection 2 requires an insured bank which voluntarily terminates its insured status to notify all depositors of the termination in the manner provided by the FDIC Regional Director.

**Action/Status:** The regulation will be revised to reflect statutory changes contained in *FIRREA* and for clarification regarding applicability to all insured institutions.

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**Title:**           **Privacy Act Regulations**  
                      (12 CFR Part 310)

**Subject Matter:** This regulation sets forth the basic policies of the FDIC regarding the protection of the privacy of individuals on whom the Corporation maintains information retrieved by reference to an individual's name or some other personal identifier. It also delineates the procedures for individuals to request access to such records pertaining to themselves.

**Action/Status:** Although the existing regulation already provides a streamlined and simple procedure for individuals to access records pertaining to themselves, minor changes and technical updates were adopted by the FDIC’s Board of Directors on August 13, 1996.

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## Revise

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**Title:**           **Rules Governing Public Observation of Meetings of the Corporation's Board of Directors**  
(12 CFR Part 311)

**Subject Matter:** Implements the Government in the Sunshine Act, the stated goals of which are to enhance public understanding of agency actions and to improve agency decision making. The Act requires agencies governed by collegial bodies to open meetings of agency members to public observation, except when the subject matter of the meeting falls into one or more of ten specific categories of exemption. The Act also specifies procedures for providing notice to the public of agency meetings; opening or closing a particular meeting or portion of a meeting; and providing public access to transcripts of non-exempt portions of closed meetings.

**Action/Status:** Amended to eliminate obsolete terms and to make other minor revisions.

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**Title:**           **Assessments**  
(12 CFR Part 327)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:**           **Advertisement Of Membership**  
(12 CFR Part 328)

**Subject Matter:** This regulation sets forth requirements regarding the advertisement by insured institutions of FDIC membership. Part 328 also sets forth mandatory requirements for banks, but not for savings associations, for inclusion of a statement concerning FDIC membership in advertisements.

**Action/Status:** Revisions to this regulation are presently under consideration. Section 18 of the *Federal Deposit Insurance Act* previously required insured banks to include such a statement in advertisements, but that requirement was dropped by FIRREA in 1989. The *Federal Deposit Insurance Act* no longer mandates that either banks or thrifts include a statement of insured status in their advertising.

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**Revise**

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**Title:**           **Deposit Insurance Coverage**  
                          (12 CFR Part 330)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:**           **Foreign Banks**  
                          (12 CFR Part 346)

**Subject Matter:** Implements the insurance provisions of Section 6 of the *International Banking Act of 1978* and covers the operations of U.S. branches of foreign banks.

**Action/Status:** Comprehensive revisions under consideration in conjunction with proposed revisions to *Foreign Activities Of Insured State Nonmember Banks* (12 CFR Part 347) and *International Operations* (12 CFR Part 351).

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**Title:**           **Foreign Activities Of Insured State Nonmember Banks**  
                          (12 CFR Part 347)

**Subject Matter:** Governs foreign branching by insured state nonmember banks and investments in, and loans to, foreign banks or other financial entities.

**Action/Status:** Comprehensive revisions under consideration in conjunction with proposed revisions to *Foreign Banks* (12 CFR Part 346) and *International Operations* (12 CFR Part 351).

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**Title:**           **Determination Of Economically Depressed Regions**  
                          (12 CFR Part 357)

**Subject Matter:** See discussion in Section F.

**Action/Status:** See discussion in Section F.

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## Revise

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**Title:**           **Resolution and Receivership Rules**  
(12 CFR Part 360)

**Subject Matter:** This regulation implements a number of statutory provisions regarding the FDIC's failure-resolution and receivership activities. This includes (1) compliance with the "least-cost" test when resolving a failure, (2) Federal Home Loan banks as secured creditors, (3) priority scheme for receivership claims, and (4) administrative expenses of the Receiver.

**Action/Status:** The FDIC is considering revisions to clarify the regulation and correct scrivener's errors, and to update it to be consistent with current law.

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**Title:**           **Activities And Investments Of Insured State Banks**  
(12 CFR Part 362)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:**           **Annual Independent Audits And Reporting Requirements**  
(12 CFR Part 363)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:**           **Development And Review Of FDIC Rules And Regulations**  
(44 Federal Register 31007, May 30, 1979)

**Subject Matter:** This policy sets forth procedures for the development and review of FDIC regulations. The policy also describes the FDIC's responsibilities with respect to the Semiannual Agenda of Regulations, establishes a requirement for the periodic review of existing regulations; and states how the public may petition the FDIC regarding the issuance, amendment, or repeal of any regulation.

**Action/Status:** The policy would benefit from certain revision, including (1) a provision for harmonizing regulations among the bank regulatory agencies; and (2) expanding its scope to require the review of written statements of policy.

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## Revise

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**Title:**           **Changes In Control In Insured Nonmember Banks**  
(44 Federal Register 7226, February 6, 1979)

**Subject Matter:** The policy implements Section 7(j) of the *Federal Deposit Insurance Act*, which requires written notice of a change in control 60 days prior to the proposed acquisition. The policy statement incorporates the statutory and other regulatory requirements and describes circumstances when a notice is not required.

**Action/Status:** Revisions will be made, as necessary, to complement changes to the Change In Bank Control regulations that were adopted on an interagency basis.

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**Title:**           **Applications To Establish A Domestic Branch (Includes Remote Service Facilities)**  
(FDIC Loose Leaf Service at 5105)

**Subject Matter:** Describes the procedures for applying to the FDIC to establish a branch office or establish a remote service facility. The statement also details the statutory factors which the FDIC must consider in processing the application.

**Action/Status:** It is important to provide the industry with guidance in completing applications. It is expected that the FDIC's overall reorganization of its applications regulation, see 12 CFR Part 303 (*Applications*), may make this policy statement redundant. If the statement is still deemed relevant after Part 303 is revised, it will be updated to reflect current practice.

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**Title:**           **FDIC Statement of Policy; Bank Merger Transactions**  
(54 Federal Register 39045, September 22, 1989)

**Subject Matter:** Describes the procedures for applications by insured institutions to merge, consolidate with, or purchase another insured institution if the resulting institution is to be a state non-member bank. Also covers applications for such transactions between insured and non-insured institutions.

**Action/Status:** Revision of the FDIC's regulation regarding applications, 12 CFR Part 303 (*Applications*), may warrant the revision or elimination of this policy statement.

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## Revise

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**Title:**           **Applications Under Section 19 Of The Federal Deposit Insurance Act**  
(FDIC Loose Leaf Service at 5155)

**Subject Matter:** Section 19 of the *Federal Deposit Insurance Act* provides that “except with the written consent of the corporation” no person who has been convicted of an offense involving dishonesty or a breach of trust may serve as an officer, director, or employee of an insured bank. The policy statement establishes standards to be used in determining when an application pursuant to Section 19 must be filed, explains procedures to be followed in filing and processing the applications and discusses factors to be considered in evaluating the applications.

**Action/Status:** Subject policy statement will be amended to incorporate subsequent revisions to Section 19. The FDIC’s overall reorganization of its applications process, see 12 CFR Part 303 (*Applications*), may make this policy statement partially redundant.

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**Title:**           **Statement Of Policy Regarding Independent External Auditing Programs Of State Nonmember Banks**  
(53 Federal Register 47871, November 28, 1988)

**Subject Matter:** See discussion in Section E.

**Action/Status:** See discussion in Section E.

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**Title:**           **National Historic Preservation Act of 1966**  
(FDIC Loose Leaf Service at 5175)

**Subject Matter:** The policy discusses the FDIC's responsibility for determining whether the establishment of a bank or branch or the relocation of an office involves a property which is included in, or eligible for inclusion in, the National Register of Historic Places and describes procedures to be followed when such an undertaking involves a historic property.

**Action/Status:** The policy statement needs to be revised to reflect present practices, such as the FDIC’s reliance upon State Historic Preservation Officers for the identification of historic properties and the assessment of the impact of proposed transactions. This effort is being coordinated with an ongoing review of the applicability of the *National Historic Preservation Act* upon FDIC operations.

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## Revise

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**Title:**           **National Environmental Policy Act of 1969**  
(FDIC Loose Leaf Service at 5185)

**Subject Matter:** This policy sets forth procedures for the consideration of environmental factors when reviewing applications for deposit insurance, branches, mergers and relocations.

**Action/Status:** The policy statement is to be revised in conjunction with an ongoing review of the applicability of the *National Environmental Policy Act* upon FDIC operations.

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**Title:**           **FDIC Statement Of Policy On Retail Repurchase Agreements**  
(46 Federal Register 49197, October 6, 1981)

**Subject Matter:** This policy provides guidelines for the issuance of retail repurchase agreements by banks. The policy statement was adopted in an era when interest rates were legally regulated, and banks issued retail repurchase agreements to offer higher rates of return to customers who would ordinarily otherwise have chosen deposit liabilities. The primary focus of the policy was (1) to ensure that bank retail customers comprehended the nature and risks entailed in these products and (2) to ensure that potentially unsophisticated banks issuing them appreciated that these retail products have unusual supervisory and legal consequences.

**Action/Status:** With the demise of interest rate controls, retail repurchase agreements are not a popular source of funding for depository institutions. The policy is may be revised or rescinded to reflect the changed regulatory environment.

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**Title:**           **FDIC Statement Of Policy On Assistance To Operating Insured Depository Institutions**  
(57 Federal Register 60203, December 18, 1992)

**Subject Matter:** This policy sets forth the basic terms and conditions under which the FDIC will provide assistance to open and operating institutions pursuant to Section 13(c) of *Federal Deposit Insurance Act*.

**Action/Status:** The FDIC has issued proposed revisions to the policy that reflect statutory changes to the FDIC's open bank assistance authority. The *Federal Deposit Insurance Act* now generally requires that the insurance funds not be used to benefit shareholders of assisted institutions; however, assistance may still be provided to any insured depository institution not in default or in danger of default that is acquiring another insured depository institution.

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## Revise

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**Title:**           **Statement Of Policy Providing Guidance On External Auditing Procedures For State Nonmember Banks**  
(55 Federal Register 2145, January 22, 1990)

**Subject Matter:** This policy recommends minimum procedures for annual external auditing programs of FDIC-supervised banks, especially banks that forgo an annual audit of their financial statements by an independent public accountant. The policy statement provides specific auditing procedures to address the following areas common to all banks that may prove to be high risk: loans, the allowance for loan losses, securities investments, transactions involving bank officers, directors, and other "insiders" and internal controls.

**Action/Status:** While federal law requires audits for larger institutions, and many states achieve similar objectives for smaller banks through "directors' exams", this policy statement was intended for smaller banks in states which had minimal or no directors' exams. The American Institute of Certified Public Accountants has recently proposed various revisions to standards for agreed-upon procedures. The policy is under review.

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**Title:**           **Statement Of Policy Regarding Liability Of Commonly Controlled Depository Institutions**  
(55 Federal Register 21935, May 30, 1990)

**Subject Matter:** This policy was designed to provide guidance regarding the manner in which the FDIC issues an assessment or grants a waiver of liability under Section 5(e) of the *Federal Deposit Insurance Act*. The method for dividing any liability between surviving institutions is described as well as the type of information which an institution should provide when applying for a waiver.

**Action/Status:** The Corporation is considering revisions based upon its historic experience in issuing assessments and granting waivers from liability.

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**Title:**           **FDIC Statement Of Policy Regarding The Payment Of State And Local Property Taxes**  
FDIC Loose Leaf Service at 5331

**Subject Matter:** Sets forth the FDIC's policy regarding the payment of state and local property taxes when it is liquidating assets in its corporate or receivership capacity.

**Action/Status:** The policy statement requires minor revisions.

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## Revise

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**Title:** **Statement Of Policy On Foreclosure Consent And Redemption Rights** (57 Federal Register 29491, July 2, 1992)

**Subject Matter:** Section 15(b)(2) of the *Federal Deposit Insurance Act* provides that the property of the Corporation is not subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation. The policy discusses the circumstances under which the FDIC will assert its immunity from foreclosure, and when the FDIC will consent to a foreclosure or other assertion of a security interest with respect to assets in liquidation.

**Action/Status:** The policy will be updated to reflect changes in FDIC's corporate structure. Also, a list of financial institutions in liquidation (as provided for in the statement of policy) will be published in the Federal Register.

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**Title:** **Applications, Legal Fees, And Other Expenses**  
(45 Federal Register 61025, September 15, 1980)

**Subject Matter:** The policy provides general guidelines regarding whether legal fees and other expenses are reasonable. The policy communicates that the payment of unreasonable or excessive fees reflects adversely upon the management of an institution and could have an adverse impact upon the regulatory applications filed with the FDIC.

**Action/Status:** The policy appears to be clearly written and serves a useful purpose. It may be appropriate to eventually revise or relocate this guidance as part of the FDIC's reorganization of its applications process, see 12 CFR Part 303 (*Applications*).

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**Title:** **Applications for Deposit Insurance**  
(57 Federal Register 12822, April 13, 1992)

**Subject Matter:** Provides application instructions and guidance to prospective applicants for federal deposit insurance, to alert applicants to certain minimum requirements and standards, and to inform applicants of the issues with respect to deposit insurance applications that are of concern to the FDIC.

**Action/Status:** The policy, which was last updated in 1992, is clearly written and serves a useful purpose. It may be appropriate to eventually revise or relocate this guidance as part of the FDIC's reorganization of its applications process, see 12 CFR Part 303 (*Applications*).

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## RETAIN AS IS

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**Title:**            **Disclosure of Information**  
                          (12 CFR Part 309)

**Subject Matter:** This regulation sets forth the basic procedures to be used by the public in requesting records maintained by the FDIC, the fees to be charged by the Corporation for responding to such requests, procedures for appealing a denial of access to information or for a waiver of fees, and the circumstances and procedures for the service of legal process/subpoenas upon the Corporation.

**Action/Status:** The regulation was recently reviewed and revisions were implemented in December, 1995.

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**Title:**            **Assessment of Fees Upon Entrance To Or Exit From The Bank Insurance Fund Or The Savings Association Insurance Fund**  
                          (12 CFR Part 312)

**Subject Matter:** This regulation sets forth the criteria to be used in the assessment and collection of “entrance” and “exit fees. These fees are levied against each insured depository institution participating in a conversion transaction resulting in a transfer of insured deposits from a SAIF member to a BIF member, and vice versa.

**Action/Status:** The regulation mirrors the statutory requirement to assess such fees. No change is deemed necessary at this time.

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**Title:**            **Extension of Corporate Powers**  
                          (12 CFR Part 333)

**Subject Matter:** Defines the character of business for state non-member FDIC-insured institutions and addresses mutual-to-stock conversions.

**Action/Status:** The current regulation is simple and concise, and serves to enhance the functioning of the marketplace. The FDIC’s overall reorganization of its applications process, 12 CFR Part 303 (*Applications*), may require revisions to this section.

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## Retain As Is

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**Title:**           **Unsafe and Unsound Banking Practices: Standby Letters Of Credit**  
(12 CFR Sections 337.2, 5, 10, and 11)

**Subject Matter:** The regulation provides that standby letters of credit are combined with all loans for purposes of applying the legal limitation on loans. Section 337.5 of the FDIC's regulations provides a list of exceptions to the definition of standby letter of credit.

**Action/Status:** The rule is considered clear and consistent with other restrictions of the other agencies and applicable state laws. The rule provides clarification on an issue that may be abused if such a rule did not exist. No changes deemed necessary.

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**Title:**           **Unsafe and Unsound Banking Practices: Limits On Extensions Of Credit To Executive Officers, Directors, And Principal Shareholders And Their Related Interests**  
(12 CFR Section 337.3)

**Subject Matter:** Implements the application of Regulation O with respect to insider loans to state nonmember institutions.

**Action/Status:** See discussion in Section F. Legislative amendment necessary to make desired revisions.

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**Title:**           **Unsafe and Unsound Banking Practices: Brokered Deposits**  
(12 CFR Section 337.6)

**Subject Matter:** The regulation establishes a framework for the acceptance of brokered deposits by insured depository institutions. The regulation limits the interest (1) that adequately capitalized institutions may pay on brokered deposits and (2) that undercapitalized institutions may pay on any deposits. It also provides a notification requirement for deposit brokers. The current FDIC regulation defines and clarifies key terms used in the statute. It also prescribes waiver-application and broker-notification procedures. Otherwise, the regulation largely reiterates the statutory language.

**Action/Status:** The FDIC is studying issues relating to volatile deposit restrictions, with the goal of developing and evaluating alternative approaches to supervising the acquisition and use of volatile short-term funds by troubled institutions. It is expected that this study will provide the basis for revising this regulation.

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## Retain As Is

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**Title:**           **Nondiscrimination On The Basis Of Handicap**  
(12 CFR Part 352)

**Subject Matter:** Section 352 reflects the FDIC's voluntary commitment to implement the principles reflected in section 504 of the *Rehabilitation Act of 1973*, even though the FDIC is not subject to that statute. The regulation sets forth policies and procedures to ensure that, to the greatest extent practicable, handicapped persons are provided with equal access to FDIC programs and activities.

**Action/Status:** No change necessary at this time.

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**Title:**           **Minority and Women Outreach Program - Contracting**  
12 CFR Part 361

**Subject Matter:** Implements 12 USC 1833e(c) of the *Federal Deposit Insurance Act*. The regulation establishes the FDIC Minority and Women Outreach Program. It is designed to ensure inclusion, to the maximum extent possible, of minorities and women in all contracts entered into by the FDIC with public or private sector contractors.

**Action/Status:** No change at this time pending FDIC *Adarand* Task Force review of Department of Justice guidelines. FDIC is preparing a directive to expressly include individuals with disabilities in its contracting outreach activities. This directive will be an accord with the principles contained in regulations of other federal financial regulatory agencies.

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**Title:**           **Supplemental Standards Of Conduct For Employees Of The FDIC**  
(5 CFR Part 3201)

**Subject Matter:** This regulation supplements the government-wide Standards Of Ethical Conduct and addresses FDIC-specific issues, including: (1) employee borrowing and extensions of credit, (2) prohibitions regarding certain financial interests, (3) limitations on dealing with former employees, (4) disqualification regarding employment of family members' employers, and (5) outside employment activities.

**Action/Status:** No immediate revision necessary. These rules were promulgated with the concurrence of the Office Of Government Ethics. Technical changes may be advisable to clarify the application of certain provisions to spouses of employees who participate in company-sponsored 401(k) plans (or similarly-defined benefit plans), or hold bank stock.

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## Retain As Is

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**Title:**           **Gold**  
(39 Federal Register 43765, December 18, 1974)

**Subject Matter:** This policy sets forth some basic controls that insured institutions should establish when dealing in or considering dealing in gold for their own accounts or for their customers. The policy statement was issued to inform banks of the possible risks inherent in dealing in any commodity, especially gold. Insured banks that intend to trade in gold either for their own account or as an agent for their customers, are required to submit a written notice to the FDIC at least 10 business days prior to initiation of such trading.

**Action/Status:** The policy statement provides good fundamental information and describes basic controls that should be practiced when trading gold for the bank's own account or for their customers. A review of the other agencies' policies on gold determined the FDIC, the FRB, and the OCC have similar policies. OTS institutions are not allowed to directly trade gold. The policies of the FDIC, the FRB, and the OCC provide appropriate guidance without imposing any excessive burdens for dealing in this specialized activity. Both the FRB and the OCC plan to retain their policies without revision.

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**Title:**           **FDIC Statement Of Policy On Qualified Financial Contracts**  
(FDIC Loose Leaf Service at 5113)

**Subject Matter:** This policy supplements the provisions in the *Federal Deposit Insurance Act* that deal with the acceptance or repudiation of qualified financial contracts when the FDIC is appointed as receiver or conservator for an institution.

**Action/Status:** No revision recommended at this time as an interagency task force, working with several trade associations, is drafting proposed legislation regarding Qualified Financial Contracts.

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## Retain As Is

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**Title:** **FDIC Statement Of Policy On The Applicability Of The Glass-Steagall Act To Securities Activities Of Insured Nonmember Banks**  
(47 Federal Register 38984, September 3, 1982)

**Subject Matter:** This policy assures insured non-member banks that the Glass-Steagall Act does not prohibit any *bona fide* subsidiaries from engaging in securities activities.

**Action/Status:** The present Policy Statement is short, concise, and imposes no burden on banks. It provides assurance on the FDIC's view regarding the legality of certain activities, and thus serves a useful, "market-friendly" purpose.

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**Title:** **Guidelines For Compliance With The Federal Bank Bribery Law**  
(52 Federal Register 43941, November 17, 1987)

**Subject Matter:** This policy sets forth guidelines to be used by insured state nonmember banks to assist them in complying with the Federal bank bribery statute, 18 U.S.C. § 215. The policy was developed by the Interagency Bank Fraud Working Group and published individually by the agencies.

**Action/Status:** The guidelines are required by statute for all financial institution regulatory agencies. They are brief and set forth in "plain language".

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**Title:** **Policy Statement On Encouragement And Preservation Of Minority Ownership Of Financial Institutions**  
(FDIC Loose Leaf Service at 5329)

**Subject Matter:** The policy outlines what the FDIC can do to preserve minority ownership of financial institutions and to encourage minority participation in management of financial institutions as part of the Corporation's mission of preserving the soundness of the banking system.

**Action/Status:** The principles of the Policy Statement remain relevant, no changes necessary.

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## Retain As Is

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**Title:**           **Statement Of Policy Regarding Treatment Of Collateralized Put Obligations After Appointment Of The Federal Deposit Insurance Corporation As Conservator Or Receiver**  
(56 Federal Register 36152, July 31, 1991)

**Subject Matter:** Issued at the request of the industry to provide market certainty and stability, the policy sets forth the treatment that the FDIC will give certain collateralized “put” options issued by an insured depository institution for which the Corporation has been appointed as either conservator or receiver.

**Action/Status:** The principles of the Policy Statement remain relevant, no changes are deemed necessary.

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**Title:**           **Statement Concerning The Responsibilities Of Bank Directors And Officers**  
(FDIC Financial Institution Letter (FIL-87-92))

**Subject Matter:** The policy was adopted in response to concerns expressed by the banking industry. It discusses three topics: (1) the duties of directors and officers, (2) the procedures followed by FDIC-Receiver to institute civil suits against directors and officers after an institution fails, and (3) the nature of civil suits filed by the FDIC against former officers and directors, illustrated with examples of typical fact patterns.

**Action/Status:** The Policy Statement needs no revision at this time. As this area continues to develop, the FDIC will review this policy for continued relevance.

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**Title:**           **Statement Of Policy Regarding Treatment Of Security Interests After Appointment Of The Federal Deposit Insurance Corporation As Conservator Or Receiver**  
(58 Federal Register 16833, March 31, 1993)

**Subject Matter:** See discussion in Section F.

**Action/Status:** See discussion in Section F.

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**Retain As Is**

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**Title:**           **Statement Of Policy On Alternative Dispute Resolution**  
(59 Federal Register 14860, March 30, 1994)

**Subject Matter:** The policy sets forth the FDIC’s policy on alternative dispute resolution (ADR) and designates an ADR Task Force to “assess, design, implement, evaluate, and coordinate ADR efforts across the Corporation.”

**Action/Status:** No revision is necessary. The existing policy concisely states the FDIC’s commitment to ADR.

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**Title:**           **Statement Of Policy Regarding Treatment Of Collateralized Letters Of  
Credit After Appointment Of The Federal Deposit Insurance Corporation As  
Conservator Or Receiver**  
(60 Federal Register 27976, May 26, 1995)

**Subject Matter:** The policy sets forth the treatment that the FDIC as conservator or receiver of an insured depository institution will give certain collateralized letters of credit issued by an institution prior to August 9, 1989.

**Action/Status:** No changes are deemed necessary at this time. It affirms prior statements regarding the treatment of collateralized “put” obligations.

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