

6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 333, and 390

RIN 3064-AE23

Transferred OTS Regulations Regarding Fiduciary Powers of State Savings Associations and Consent Requirements for the Exercise of Trust Powers

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 390 subpart J, entitled *Fiduciary Powers of State Savings Associations* (subpart J) and all references thereto, and amend 12 CFR parts 333 and 303 (part 333 and part 303 respectively) regarding consent to exercise trust powers to reflect the applicability of these parts to both State savings associations and State nonmember banks. Part 390 subpart J was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Upon the removal of part 390 subpart J from the FDIC rules and regulations and the amendment of parts 333 and 303 as proposed herein, all State nonmember banks and State savings associations (collectively, FDIC-supervised institutions) seeking consent to exercise trust powers granted by their chartering authorities would be required to comply with FDIC rules governing applications for consent to exercise trust powers. Specifically, the proposed rule would

revise part 333 by adding a new section, § 333.3, to state that both State savings associations and State nonmember banks must obtain the FDIC's prior written consent to exercise trust powers. For State nonmember banks, § 333.3 would only serve to clarify FDIC's existing policy that State nonmember banks must receive FDIC's consent before exercising trust powers. The rule would represent a change for State savings associations, however, as they are not currently required by regulation to receive FDIC's consent before exercising trust powers granted by their chartering authorities. The proposed rule would also amend section 333.101(b) to provide that State savings associations, like State nonmember banks are not considered to be exercising trust powers when they act as a trustee or custodian of certain qualifying accounts. Section 303.242 would be revised by inserting the term "State savings association" where appropriate, so that the procedures to obtain consent from the FDIC to exercise trust powers would be the same for both State nonmember banks and State savings associations, and to further describe the information that should be submitted by applicants seeking to exercise trust powers.

DATES: Comments must be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: You may submit comments, identified by RIN 3064-AE23, by any of the following methods:

- **Agency Website:** <http://www.fdic.gov/regulations/laws/federal/propose.html>.
Follow instructions for submitting comments on the Agency website.
- **E-mail:** Comments@fdic.gov. Include the RIN 3064-AE23 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Please Note: All comments received must include the agency name and RIN 3064-AE23 for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/>, including any personal information provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 877-275-3342 or 703-562-2200.

FOR FURTHER INFORMATION CONTACT:

Michael W. Orange, Trust Examination Specialist, Division of Risk Management and Supervision, 678-916-2289 or mOrange@fdic.gov; or Annmarie H. Boyd, Counsel, Legal Division, 202-898-3714 or a Boyd@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.¹ Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,² the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 12 U.S.C. 5301 *et seq.* (2010).

² 12 U.S.C. 5411.

savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (Federal Reserve Board), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act³ provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act⁴ further directed the FDIC and OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a "List of OTS Regulations to be enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act." This list was published by the FDIC and the OCC as a Joint Notice in the Federal Register on July 6, 2011.⁵

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act⁶ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the "appropriate Federal banking agency" or under similar statutory

³ 12 U.S.C. 5414(b).

⁴ 12 U.S.C. 5414(c).

⁵ 76 FR 39247 (July 6, 2011).

⁶ 12 U.S.C. 5412(b)(2)(B)(i)(II).

terminology. Section 312(c) of the Dodd-Frank Act amended the definition of “appropriate Federal banking agency” contained in section 3(q) of the FDI Act⁷ to add State savings associations to the list of entities for which the FDIC is designated as the “appropriate Federal banking agency.” As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar terminology) for State savings associations and State nonmember banks, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such institutions, as well as insured branches of foreign banks.

As noted, on June 14, 2011, pursuant to this authority, the FDIC’s Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the Federal Register on August 5, 2011.⁸ When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that it would evaluate the transferred OTS regulations and might later incorporate the transferred OTS regulations into other FDIC rules, amend them, or rescind them, as appropriate.

One of the regulations transferred to the FDIC governed the fiduciary powers (also known as trust powers) of State savings associations. The OTS regulation, formerly found at 12 CFR 550.10(b)(1), was transferred to the FDIC with only nominal changes and is now found in the FDIC’s rules at 12 CFR part 390 subpart J.

II. Part 390 Subpart J: Fiduciary Powers of State Savings Associations

12 CFR part 390 subpart J provides that a State savings association must conduct its fiduciary (trust) operations in accordance with applicable State law and must exercise its

⁷ 12 U.S.C. 1813(q).

⁸ 76 FR 47652 (August 5, 2011).

fiduciary powers in a safe and sound manner. Subpart J was derived from former OTS rule 12 CFR 550.10(b)(1) regarding fiduciary operations of Federal savings associations,⁹ which was added originally in order to recognize the OTS's interest in ensuring that State savings associations conduct their trust operations in a safe and sound manner and in accordance with State law.¹⁰

III. State Nonmember Banks and Trust Powers

Unlike the explicit requirement applicable to State savings associations in subpart J, there is no express rule that requires State nonmember banks to conduct fiduciary operations in accordance with applicable State law and to exercise their fiduciary powers in a safe and sound manner. However, the FDIC has long recognized that State nonmember banks, like State savings associations, must comply with State law when exercising trust or fiduciary powers.¹¹ This reflects a widely understood industry principle that the trust powers of State chartered institutions are granted under State law and are primarily administered by the State chartering authority.¹²

State nonmember banks approved for Federal deposit insurance after December 1, 1950, are generally required to file an application for consent to exercise trust powers.¹³

⁹ Generally, section 5(n) of HOLA authorizes the OCC (previously, the OTS) to grant special permits to Federal savings associations for the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. 12 U.S.C. 1464(n).

¹⁰ Office of Thrift Supervision, Final Rule, 62 FR 67696-01 (Dec. 30, 1997).

¹¹ FDIC Trust Examination Manual, available at: http://www.fdic.gov/regulations/examinations/trustmanual/section_10/section_x.html#B1 (The trust powers of State nonmember banks are granted under State law and that the administration of trust powers primarily goes to the State as the State nonmember bank's chartering authority.)

¹² *Id.*

¹³ Banks granted trust powers by statute or charter prior to December 1, 1950, are considered grandfathered from the requirement to obtain consent to exercise trust powers.

Therefore, if a State nonmember bank seeks to change the nature of its current business to include trust activities, section 333.2 requires the bank to obtain the FDIC's prior written consent.¹⁴ Under section 333.101(b), however, prior written consent is not required when a State nonmember bank seeks to act as trustee or custodian of certain qualified retirement, education, and health savings accounts, or other similar accounts in which the bank's duties are essentially custodial or ministerial in nature and the acceptance of such accounts without trust powers is not contrary to applicable State law.¹⁵

Section 303.242 of the FDIC rules contains application procedures that a State nonmember bank must follow to obtain the FDIC's prior written consent before engaging in trust activities. Prior to granting such consent, the FDIC considers whether the bank will conduct trust operations in a safe and sound manner, consistent with State law.

IV. The Proposal

After careful review, the FDIC has concluded that the retention of part 390 subpart J is unnecessary and that rescission of subpart J in its entirety would streamline the FDIC rules and regulations.

Consistent with its legal authority to issue and modify regulations as the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act, the FDIC also proposes to amend and revise certain provisions of parts 333 and 303 to clarify and state

¹⁴ 12 CFR 333.2 requires the FDIC's prior written consent for a change in the general character or type of business exercised by a state nonmember bank.

¹⁵ These accounts include Individual Retirement Accounts (IRAs), Self-Employed Retirement Plans, Roth IRAs, Coverdell Education Savings Accounts, Health Savings Accounts, and other accounts in which: (1) the bank's duties are essentially custodial or ministerial in nature; (2) the bank is required to invest the funds from such plans only in its own time or savings deposits or in any other assets at the direction of the customer; and (3) the bank's acceptance of such accounts without trust powers is not contrary to applicable State law.

explicitly that both State savings associations and State nonmember banks are required to obtain the FDIC's prior written consent to exercise trust powers. The FDIC, as the appropriate Federal banking agency for State savings associations and State nonmember banks, is responsible for ensuring that they engage in the safe and sound exercise of their trust powers and in accordance with applicable state law.¹⁶ State nonmember banks and State savings associations are required to comply with State laws governing the administration of trusts, such as State law implementation of the Uniform Trust Code, Uniform Prudent Investor Act, and Uniform Probate Code, as well as applicable Federal laws, such as the Employee Retirement Income Security Act of 1974. Moreover, State savings associations and State nonmember banks are subject to potential liability for breaches of fiduciary duty as provided for under State law. Accordingly, the proposed rule will further ensure the consistent exercise of the FDIC's supervisory authority with regard to trust activities of both State savings associations and State nonmember banks and provide for the safe and sound exercise of trust powers in accordance with the applicable law.¹⁷

The proposed revisions would add a new section 333.3 to clarify that State savings associations and State nonmember banks must seek prior written consent from the FDIC to exercise trust powers. For State nonmember banks, § 333.3 would make explicit the FDIC's existing requirement that State nonmember banks must receive FDIC's consent before exercising trust powers as a change in the general character of business under 12 CFR § 333.2. However, § 333.3 would represent a change for State savings associations, which are not currently required to receive FDIC's consent before exercising trust powers granted by their chartering authorities. Section 333.3 would explicitly state that both State nonmember

¹⁶ 12 U.S.C. 1813(q).

¹⁷ 12 U.S.C. 1819(a)(Tenth); 12 U.S.C. 1818; 12 U.S.C. 1831p-1.

banks and State savings associations would be required to follow the application procedures set forth in section 303.242. Section 333.101(b) also would be revised to permit State savings associations to act as custodians of certain qualifying accounts without obtaining prior written consent from the FDIC, in the same manner as is permitted for State nonmember banks.

As noted above, the proposed rule would make section 303.242 applicable to State savings associations in addition to State nonmember banks. Similar to State nonmember banks, under the proposed rule, State savings associations would not be required to receive the FDIC's prior written consent to exercise trust powers in the following circumstances:

- (1) Where the institution received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or
- (2) Where the institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

In order to provide more information to State nonmember banks and State savings associations, section 303.242 would also be amended to provide a more complete description of the application's required documentation.

V. Alternatives

The FDIC considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board of Directors reissued and redesignated certain transferred

regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC rules, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations regarding fiduciary trust operations of covered entities, including sections 303, 333, and 390, subpart J. The FDIC considered the status quo alternative of retaining the current, bifurcated regulations but determined that it would be unnecessarily complex and potentially confusing to maintain substantively similar regulations regarding fiduciary trust powers of State non-member banks and State savings associations in different locations within the Code of Federal Regulations. Therefore, the FDIC proposes to amend the regulations and make them consistent for both State savings associations and State nonmember banks.

VI. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. In particular, the FDIC requests comments on the following questions:

1. Should part 390 subpart J pertaining to the fiduciary powers of State savings associations be retained in whole or in part? Please substantiate your response.
2. What positive or negative impacts, if any, can you foresee in the FDIC's proposal to revise parts 333 and 303 of the Code of Federal Regulations?

Written comments must be received by the FDIC no later than [insert date 60 days after publication in the Federal Register].

VII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (“PRA”) of 1995 (44 U.S.C. 3501-3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (“OMB”) control number.

This rule proposes to amend part 333 and 303 to clarify the existing consent and application requirements for State nonmember banks and to incorporate references to State savings associations into those parts. The revision of parts 333 and 303 to include State savings associations would add additional burden to the FDIC’s current information collection under OMB control number 3064-0025,¹⁸ Application for Consent to Exercise Trust Powers, as State savings associations would be required to complete the designated application and submit required documentation to comply with parts 333 and 303. Currently, there is only one State savings association that exercises trust powers, and there are 45 State savings associations that would be potentially affected by the proposed revision to parts 333 and 303 if they choose to exercise trust powers.¹⁹ The FDIC proposes to revise this information collection as follows:

Title: Application for Consent to Exercise Trust Powers

OMB Number: 3064-0025

Form Number: FDIC 6200/09

Affected Public: Insured State nonmember banks and insured State savings associations wishing to exercise trust powers.

¹⁸ The information collection for Application for Consent to Exercise Trust Powers, OMB No. 3064-0025, was renewed by OMB on August 30, 2017 and now expires on August 31, 2020.

¹⁹ CALL Report Data, September 2017.

	Type of Burden	Estimated Number of Respondents	Estimated Hours per Response	Frequency of Response	Total Annual Estimated Burden
Eligible depository institutions	Reporting	9	8	On Occasion	72 hours
Not-eligible depository institutions	Reporting	4	24	On Occasion	96 Hours
Totals		13			168 Hours

In the chart above, eligible depository institutions are those that satisfy the criteria for expedited processing in 12 CFR 303.2(r) and not-eligible depository institutions are those that do not meet the expedited processing criteria. The numbers of respondents are estimated based on the number of filers annually, and the numbers of hours per response are estimated based on the supporting information typically requested of filers (which may include additional supporting financial projections for applicants ineligible for expedited processing). Because the proposed rule will affect State savings associations as described above, and most filers are eligible for expedited processing, the FDIC is proposing to increase the estimated number of respondents in the eligible category from eight to nine.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information. All comments will become a matter of public record.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)²⁰ requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$550 million). However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the Federal Register together with the rule. As discussed in Section I. of this proposal, the FDIC has authority to issue, modify and rescind regulations as the appropriate Federal banking agency for State savings associations and State nonmember banks. The FDIC also considered alternatives as outlined in Section V of this proposal, including maintaining the status quo or amending the regulations to be consistent for both State savings associations and State non-member banks.

The FDIC supervises 3,674 institutions, of which 2,950 are “small entities” according to the terms of RFA. There are 2,907 small state non-member banks and 43 small state savings associations.²¹

The proposed rule amends section 333 to state that both State savings associations and State nonmember banks that seek to exercise trust powers need to obtain FDIC consent. The proposed rule is not expected to have any effect on State nonmember banks. With

²⁰ 5 U.S.C. 601 *et seq.*

²¹ CALL Report Data, September 2017.

respect to State nonmember banks, the proposed rule includes no substantive changes and only includes clarifying changes to explicitly state the longstanding requirement that State nonmember banks receive FDIC's consent before newly exercising trust powers granted by their chartering authorities as a change in the character of business under 12 CFR § 333.2. As discussed above, the proposed amendments to section 333 would represent a new requirement for State savings associations to receive FDIC's consent before exercising trust powers granted by their chartering authorities. The application to seek consent to exercise trust powers would be a one-time process that is not anticipated to create a significant economic impact for State savings associations. The information requested in the application would require an applicant State savings association to identify the type of trust power it wishes to exercise and to provide documentation that includes proof of the adoption of the FDIC's Statement of Principles of Trust Department Management, identification of the applicable trust officer, trust committee, and trust counsel, servicing arrangements, proof of the requisite approvals by the appropriate State authority, a projection of the proposed trust activity's three-year performance, and a statement of its impact on the applicant.²² Based on the FDIC's supervisory experience, most of the documentation required, such as requisite State approval, servicing arrangements, and designation of personnel to serve as appropriate trust counsel, trust officer, and trust committee directors, is based on information and resources that an applicant State savings association would already possess or have to establish in order to exercise trust powers, regardless of whether it seeks the FDIC's prior written consent. Submitting already existing information is not expected to create significant, additional expenses for a State savings association seeking the FDIC's prior

²² FDIC 6200/09 (10-05).

written consent to exercise trust powers. The FDIC also estimates that it will receive relatively few applications, given the small overall number of State savings associations (45), which would be affected only if they propose to exercise trust powers.

For these reasons, the FDIC certifies that the Proposed Rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act²³ requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind part 390 subpart J and revise parts 333 and 303 of the FDIC rules in a simple and straightforward manner. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

- Has the FDIC organized the material to inform your needs? If not, how could the FDIC present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

²³ 12 U.S.C. 4809.

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the FDIC incorporate to make the regulation easier to understand?

D. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.²⁴

The FDIC notes that comment on these matters have been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be

²⁴ 12 U.S.C. 4802.

considered as part of the overall rulemaking process. In addition, the FDIC also invites any other comments that further will inform its consideration of RCDRIA.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.²⁵ The FDIC, along with the other federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (“EGRPRA Report”) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures we will take to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as subpart J, and amending parts 333 and 303, this rule complements other actions the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

List of Subjects

12 CFR part 303

Administrative practice and procedure, Authority Delegations (Government agencies),

Banks, banking, Savings associations, Trusts and trustees.

12 CFR part 333

Banks, banking, corporate powers, Savings associations, Trusts and trustees.

²⁵ Pub. L. No. 104-208, 110 Stat. 3009 (1996).

12 CFR part 390

Savings associations, Trusts and trustees.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 390 of title 12 of the Code of Federal Regulations by removing subpart J and all references to subpart J therein and amend parts 303 and 333 of title 12 of the Code of Federal Regulations as follows:

PART 303 Subpart M—Other Filings

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1464, 1601-1607, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415 and 15 U.S.C. 1601-1607.

2. Revise § 303.242 to read as follows:

§ 303.242 Exercise of trust powers

(a) *Scope.* This section contains the procedures to be followed by a state nonmember bank or state savings association that seeks to obtain the FDIC's prior written consent to exercise trust powers. The FDIC's prior written consent to exercise trust powers is not required in the following circumstances:

(1) Where a state nonmember bank or state savings association received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where the institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Where to file.* Applicants shall submit to the appropriate FDIC office a completed form, “Application for Consent to Exercise Trust Powers.” This form may be obtained from any FDIC regional director.

(c) *Content of filing.* The filing shall consist of the completed trust application form indicating whether the respective state nonmember bank or state savings association will exercise full or limited trust powers and all required documentation as provided in the application instructions, including:

- (1) A certified copy of the resolution of the applicant’s board of directors certifying the extent of the institution’s compliance with applicable FDIC guidance;
- (2) Information regarding the trust powers granted by the state authority;
- (3) Information on the individual designated as the primary Trust Officer;
- (4) Servicing arrangements, if any;
- (5) A list of proposed members of the Trust Committee;
- (6) Information on the individual or law firm designated to serve as trust counsel;
- (7) Projection of trust accounts, assets, and profitability for the first three calendar years after the trust department begins operations and analysis of any adverse impact of potential net operating losses of the applicant institution arising from the offering of trust services.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

PART 333 – Extension of Corporate Powers

3. Authority citation for part 333 is revised to read as follows:

AUTHORITY: 12 U.S.C. 1816; 1817(i); 1818; 1819(a) (“Seventh”, “Eighth”, and “Tenth”), 1828, 1828(m), 1831p-1(c), 5414 and 5415.

4. Add § 333.3 to read as follows:

§ 333.3 Consent Required for Exercise of Trust Powers

Except as provided in 12 CFR 303.242(a), a State nonmember bank or State savings association seeking to exercise trust powers must obtain prior written consent from the FDIC. Procedures for obtaining the FDIC’s prior written consent are set forth in 12 CFR 303.242.

5. Revise § 333.101(b) to read as follows:

(b) An insured State nonmember bank or State savings association, not exercising trust powers, may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts established pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts without the prior written consent of the Corporation provided:

- (1) The bank's or savings association's duties as trustee or custodian are essentially custodial or ministerial in nature,
- (2) The bank or savings association is required to invest the funds from such plans only
 - (i) In its own time or savings deposits, or
 - (ii) In any other assets at the direction of the customer, provided the bank or savings association does not exercise any investment discretion or provide any investment advice with respect to such account assets, and
- (3) The bank's or savings association's acceptance of such accounts without trust powers is not contrary to applicable State law.

PART 390 -- REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

6. The authority citation for part 390 is revised to read as follows:

AUTHORITY: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 et seq.

Subpart G also issued under 12 U.S.C. 2810 et seq., 2901 et seq.; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart I also issued under 12 U.S.C. 1831x.

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

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

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

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

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

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

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78 l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

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

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

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

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

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

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

Subpart J – [Removed and Reserved]

7. Part 390 subpart J – [Removed and reserved]

Remove and reserve part 390 subpart J consisting of § 390.190.

Dated at Washington, D.C., this ____ day of February, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman
Executive Secretary