

**6714-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Parts 336 and 390**

**RIN 3064-AD98**

**Removal of Transferred OTS Regulations Regarding Post-Employment Activities of Senior and Amendments to 12 CFR Part 336**

**AGENCY:** Federal Deposit Insurance Corporation

**ACTION:** Final Rule

**SUMMARY:** The Federal Deposit Insurance Corporation (“FDIC”) is adopting a final rule (“Final Rule”) to rescind and remove 12 CFR part 390, subpart A (“part 390, subpart A”), entitled “Restrictions on Post-Employment Activities of Senior Examiners,” and to amend 12 CFR part 336 (“part 336”), entitled “One-Year Restriction on Post-employment Activities of Senior Examiners.” Part 390, subpart A was one of several rules transferred to the FDIC following dissolution of the former Office of Thrift Supervision (“OTS”) 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”). Section 316(b)(3) of the Dodd-Frank Act provided that the former OTS rules that were transferred to the FDIC would be enforceable by or against the FDIC until they were modified, terminated, set aside, or superseded in accordance with applicable law by the FDIC, by any court of competent jurisdiction, or by operation of law. On September 4, 2013, the FDIC published in the Federal Register a notice of proposed rulemaking (“NPR” or “Proposed Rule”) that explained and solicited public comment on a proposal to rescind and remove part 390, subpart A. The NPR also proposed to amend part 336, subpart B by deleting a reference to the “Office of Thrift Supervision” in the

definition of “Federal banking agency” described in part 336.3(e) and adding the words “predecessors or” in front of the word “successors”.

The FDIC received no comments on the Proposed Rule and consequently is adopting the Final Rule as proposed in the NPR without change.

**DATES:** The Final Rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Robert J. Fagan, Ethics Program Manager, Legal Division (703) 562-2704 or [rfagan@fdic.gov](mailto:rfagan@fdic.gov); Michelle Borzillo, Senior Counsel, Legal Division (703) 562-6083 or [mborzillo@fdic.gov](mailto:mborzillo@fdic.gov); or Randy Thomas, Counsel, Legal Division (703) 562-6454 or [ranthomas@fdic.gov](mailto:ranthomas@fdic.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. 5411, the powers, duties, and functions of the former OTS were divided among the FDIC as to State savings associations, the Office of the Comptroller of the Currency (“OCC”) as to Federal savings associations, and the Board of Governors of the Federal Reserve System as to savings and loan holding companies.<sup>1</sup> Section 316(b) of the Dodd-Frank Act, 12 U.S.C. 5414(b), 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 regulatory issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

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.

The Dodd-Frank Act directed the FDIC and OCC to consult with one another and to publish a list of continued OTS regulations to be enforced by each respective agency that would continue to remain in effect until the appropriate successor agency modified or removed the regulations in accordance with the applicable laws. The list was published by the FDIC and OCC as a Joint Notice in the Federal Register on July 6, 2011, and shortly thereafter, the FDIC published its transferred OTS regulations as new FDIC regulations in 12 CFR parts 390 and 391. When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

Further, section 312(c) of the Dodd-Frank Act amended the definition of “appropriate Federal banking agency” contained in section 3(q) of the FDI Act, to add State savings associations to the list of entities for which the FDIC is designated 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, as it does today, it has the authority to issue, modify, and rescind regulations involving such associations as well as for State nonmember banks and insured branches of foreign banks.<sup>2</sup>

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<sup>2</sup> 12 U.S.C. 5412(b)-(c).

## II. Proposed Rule

### *A. Removal of part 390, subpart A (Former OTS 12 CFR part 507)*

On September 4, 2013, the FDIC published an NPR regarding the removal of part 390, subpart A (formerly OTS part 507), which governs post-employment activities of senior examiners.<sup>3</sup> The former OTS rule had been transferred to the FDIC with only nominal changes. The NPR proposed removing part 390, subpart A from the CFR in an effort to streamline FDIC's rules and eliminate unnecessary regulations. As discussed in the Proposed Rule, the FDIC carefully reviewed the transferred rule, part 390, subpart A, and compared it with part 336, an FDIC regulation that existed before the transfer of part 390, subpart A and that continues to remain in effect today. Like the transferred rule, part 336 governs post-employment activities of senior examiners.<sup>4</sup> Although the two rules were substantively the same, the FDIC noted that part 336 was more appropriate because it focuses on the post-employment activities of senior examiners of all insured depository institutions, while the part 390, subpart A rules apply only to senior examiners of savings associations and their holding companies.<sup>5</sup>

### *B. Amendments to part 336*

In addition, the Proposed Rule proposed to revise 12 CFR part 336, subpart B by deleting a reference to the "Office of Thrift Supervision" in the definition of "Federal banking agency" described in part 336.3(e) and adding the words "predecessors or" in front of the word "successors". As stated in the Proposed Rule, the FDIC believes this revision will help avoid any public confusion by deleting the reference to the former

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<sup>3</sup> 78 FR 54401, 54403 (Sept. 4, 2013).

<sup>4</sup> *Id.* at 54402.

<sup>5</sup> *Id.*

Office of Thrift Supervision while retaining the indirect reference to that former agency by adding a reference to “predecessors” to the definition of “Federal Banking agency”. Further, by including predecessor agencies of the FDIC as Federal banking agencies for purposes of this part, the proposed rule would restrict a potential employee who had been associated with a State savings association from future FDIC employment if the potential employee had been subject to a final enforcement action by the former OTS. *See* 12 CFR 336.4(a)(2) and 336.5(a)(2).<sup>6</sup>

### **III. Comments**

The FDIC issued the NPR with a 60-day comment period, which closed on November 4, 2013. The FDIC received no comments on its Proposed Rule, and consequently the Final Rule is adopted as proposed without any changes.

### **IV. Explanation of the Final Rule**

As discussed in the NPR, part 390, subpart A is substantively similar to part 336, and the designation of part 336 as the single authority for the post-employment activities of FDIC senior examiners will serve to streamline the FDIC’s rules and eliminate unnecessary regulations. To that effect, the Final Rule removes and rescinds 12 CFR part 390, subpart A in its entirety.

Consistent with the Proposed Rule, the Final Rule also amends section 336.3(e) to revise 12 CFR part 336, subpart B by deleting a reference to the “Office of Thrift Supervision” in the definition of “Federal banking agency” described in part 336.3(e) and adding the words “predecessors or” in front of the word “successors”.

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<sup>6</sup> 78 FR at 54406.

## V. Administrative Law Matters

### A. Paperwork Reduction Act

Pursuant to the Proposed Rule, the FDIC will rescind and remove from its regulations 12 CFR part 390, subpart A. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 390, subpart A is redundant and largely duplicative of the FDIC's rule at part 336 regarding the one-year post-employment restrictions for senior examiners. Removing part 390, subpart A and revising the definition of *Federal banking agency* in part 336.3(e) will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

### B. The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), requires that each federal agency either (1) certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities, or (2) prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. Twelve CFR part 336, subpart C was issued as part of an interagency rulemaking designed to implement section 10(k) of the FDI Act, 12 U.S.C. 1820(k). This rule has a limited scope: it imposes post-employment restrictions on certain senior examiners employed by the FDIC and does not impose any obligations or restrictions on banking organizations, including small banking organizations. On this basis, the FDIC certifies that the present rule revision will not have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA.

*C. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

**List of Subjects**

12 CFR part 336 subpart B and 12 CFR part 390, subpart A

Banks, banking; Conflicts of interest; Government Employees; Savings Associations

**Authority and Issuance**

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 336, subpart B of title 12 of the Code of Federal Regulations and amends part 390 of title 12 of the Code of Federal Regulations by removing subpart A as set forth below:

**PART 336—FDIC EMPLOYEES**

1. Revise § 336.3(e) to read as follows:

**336.3 Definitions.\* \* \* \* \***

(e) *Federal Banking agency* means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, or their predecessors or successors.

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

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

\* \* \* \* \*

AUTHORITY: 12 U.S.C. 1819.

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

Subpart C also issued under 5 U.S.C. 504; 554-557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78 l; 78o-5; 78u-2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78 l.

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

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 J also issued under 12 U.S.C. 1831p-1.

Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78 l.

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

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

Subpart N also issued under 12 U.S.C. 1821.

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; 78 l; 78m; 78n; 78w.

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

Subpart V also issued under 12 U.S.C. 3201-3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 l; 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).

3. Remove and reserve Subpart A consisting of §§ 390.1 through 390.5.

Subpart A – [Removed and reserved]

Dated at Washington, D.C., this \_\_\_ day of \_\_\_\_\_, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman

Executive Secretary