

important determinants in considering convenience and needs. These population figures should include not only the present population but also data on population trends for the future. Population characteristics such as income, age distribution, educational level, occupation, and stability should be considered.

(c) Competition—Some consideration will be given to the adequacy or inadequacy of existing bank facilities in the community and in nearby communities. The growth rate and size of banks and other financial institutions in the community or trade area may provide meaningful indications of the economic condition of the area and the potential business for a branch. Other financial institutions such as savings and loan associations, credit unions, finance companies, mortgage companies and insurance companies may be considered competing institutions to the extent their services parallel those of the branch.

(d) Other Supporting Data—The extent of new or proposed residential, commercial and industrial development and construction is a significant secondary consideration in resolving the convenience and needs factor. Evidence of plans for development of shopping centers, apartment complexes and other residential subdivisions, factories, or other major facilities near the proposed site of the branch are also relevant.

#### 6. Consistency of Corporate Powers

This factor will rarely be applicable to branch proposals, except in those instances where a bank may contemplate some additional corporate power, not normally exercised by banks, in connection with its application.

#### *D. Statutory Factors—Application or Notification To Establish Remote Service Facility*

In view of the nature of the remote service facility, including that it offers limited service and is generally an unmanned electronic unit, the six statutory factors will not be applied to the same degree and extent as in the case of a traditional branch. For instance, with respect to the earnings factor, detailed projections of deposits, income and expenses are not necessary. A determination that operating expenses of the facility will not burden the bank's future earnings will generally suffice. Similarly, detailed or extensive economic information and demographic data are not required when considering the convenience and needs factor.

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Liability of Commonly Controlled Depository Institutions

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed statement of policy.

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

**DATES:** Comments must be received by January 7, 1998.

**ADDRESSES:** Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898-3838; Internet address: comments@FDIC.gov). Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

#### **FOR FURTHER INFORMATION CONTACT:**

Jesse Snyder, Assistant Director of Operations, Division of Supervision (202) 898-6915, or Grovetta N. Gardiner, Counsel, Legal Division, (202) 736-0665, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Effective April 1, 1997, the Board of Directors of the FDIC revised the Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions, 62 FR 15480. Such liability is a consequence of section 5(e) of the

Federal Deposit Insurance Act (Act), 12 U.S.C. 1815(e), which was added by the passage of section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Section 5(e) created liability for commonly controlled insured depository institutions for losses incurred or anticipated by the FDIC in connection with (i) the default of a commonly controlled insured depository institution; or (ii) any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. The purpose of section 5(e) is to ensure that the assets of healthy depository institution subsidiaries within the same holding company structure, or of a healthy institution which controls a failing institution, will be available to the FDIC to help offset the cost of resolving the failed subsidiary. While the FDIC seeks to recover its losses associated with failing institutions, it also seeks to encourage the acquisition of troubled institutions by those capable of rehabilitating them and to avoid instances in which the assessment of liability against an otherwise healthy institution will cause its failure, thus exposing the FDIC and the insurance funds to greater loss.

The revised Statement of Policy contained information regarding the content of requests for conditional waiver of cross guaranty liability. The revised Statement of Policy also indicated that any changes in part 303 of the FDIC's rules may necessitate further revisions to the policy statement. The decision has been made by the FDIC that all information regarding applications be addressed in revised part 303 of the FDIC Rules and Regulations (Rules). Accordingly, the application procedures for requesting a conditional waiver of cross guaranty liability are being moved to part 303. The appropriate section of part 303 that discusses conditional waiver applications will be referenced in the revised Statement of Policy.

The Statement of Policy provides for the issuance of a Notice of Assessment of Liability, Findings of Fact and Conclusions of Law, an Order to Pay and a Notice of Hearing, a good faith estimate of the FDIC's loss, and the determination of the method and schedule of repayment. The liability under the statute attaches at the time of default of a commonly controlled depository institution. The FDIC, in its discretion, may assess liability for the losses incurred by the default or for any assistance provided by the FDIC to a commonly controlled institution in danger of default. Generally, liability

will be assessed against an institution except in instances of the acquisition of a distressed institution by an unaffiliated entity prior to the default of a commonly controlled institution. A conditional waiver of the liability will be considered when, as determined within the sole discretion of the Board of Directors of the FDIC, the exemption is in the best interests of either of the insurance funds administered by the FDIC or where a waiver facilitates an alternative that is in the best interests of the FDIC. Institutions that believe that an assessment of liability would be inappropriate are required to submit supporting documentation. The contents of an application for requesting a conditional waiver of liability will be located in proposed § 303.245 of the FDIC's Rules, 12 CFR 303.245. Commenters are invited to review the proposed Statement of Policy in conjunction with proposed § 303.245 published elsewhere in today's **Federal Register**.

For the above reasons, the FDIC proposes the following Statement of Policy:

### **Liability of Commonly Controlled Depository Institutions**

#### *Introduction*

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

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

### *Guidelines for Conditional Waiver of Liability*

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

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

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

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

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

making a final determination to forego the issuance of the notice of assessment.

### *Guidelines for Assessment of Liability*

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

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

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

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

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

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

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.  
**Robert E. Feldman,**  
*Executive Secretary.*  
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## FEDERAL DEPOSIT INSURANCE CORPORATION

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

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Proposed rescission of statement of policy.

**SUMMARY:** As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC proposes to rescind its Statement of Policy "Applications to Relocate a Main Office or Branch (Includes Remote Service Facilities)" (Statement of Policy).

The Statement of Policy provides information and guidance to state nonmember banks planning to relocate the bank's main office or a branch. The information and guidance is out-of-date. The FDIC proposes to rescind the Statement of Policy because proposed revisions to its applications regulation published elsewhere in today's **Federal Register** update the requirements and sufficiently address all required application procedures to relocate a main office or a branch.

**DATES:** Comments must be submitted on or before January 7, 1998.

**ADDRESSES:** Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number (202) 898-3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Jesse G. Snyder, Assistant Director, (202/898-6915), Division of Supervision; Susan van den Toorn, Counsel, (202/898-8707), Legal Division, FDIC, 550 17th Street, NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. As part of this review, the FDIC has determined that the Statement of Policy is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks relative to the application process and the evaluation of statutory factors in relocating main office or branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, and Related Acts (FDIC) 5125.

In the time since the Statement of Policy was last amended, the application process for relocating branches and main offices has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement, which although general in nature, are now out-of-date.

As part of the FDIC's comprehensive review of its applications process, elsewhere in today's **Federal Register**, the FDIC is proposing to amend part 303. The proposed revisions to part 303 cover the relocation of main offices and branches in sufficient detail so as to address the required application procedures. Commenters are invited to review subpart C of proposed part 303 in conjunction with the proposal to rescind the Statement of Policy.

For the above reasons, the FDIC proposes to rescind the following Statement of Policy:

### Applications To Relocate Main Office or Branch (Includes Remote Service Facilities)

#### A. Introduction

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d); hereafter the (Act) requires the prior written consent of the Corporation before any state nonmember insured bank may move its main office or any branch. In analyzing these applications, the Corporation must evaluate each application in relation to the six statutory factors prescribed in section 6

of the Act (12 U.S.C. 1816) as well as the requirements of the National Historic Preservation Act, the National Environmental Policy Act of 1969, and the Community Reinvestment Act. The six statutory factors under section 6 of the Act are: the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of management, the convenience and needs of the community to be served by the bank, and whether its corporate powers are consistent with the purposes of the Act.

The degree and extent to which the six statutory factors are applied in reviewing relocation applications depend largely upon the nature and purpose of the relocation which, in the majority of instances, are of two basic types: (1) Relocations to a different primary market area; and (2) relocations within the same primary market area. It is noteworthy that the Corporation will analyze all relocation applications from the standpoint of the convenience and needs of the community the office is leaving as well as the community to which it is moving.

#### B. Procedures

Application forms to relocate and instructions for their completion may be obtained from the regional office of the FDIC region in which the main office of the applicant is located. Upon receipt of an application which is found complete, the regional director will notify the bank, in writing, that the application has been accepted for filing and the date thereof. The procedures governing the administrative processing of relocation applications are contained in part 303 of the Corporation's rules and regulations (12 CFR part 303), particularly §§ 303.3, 303.10, 303.11, 303.12, and 303.14. Section 303.14 sets forth, among other things, the procedures controlling establishment of a public file, publication requirements, and consideration of comments and protests received in connection with an application.

The Corporation will normally not render a decision on any relocation application until the State Authority has approved or expressed its intent to approve the proposal; however, applicants are encouraged to submit their applications to the Corporation at the same time an application is forwarded to the State Authority in order to promote concurrent and more timely processing of the proposal.

Notification of the granting or denial of an application will be provided together with a statement supporting the decision. Under § 303.10(e) within 15