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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 309, 310

RIN 3064-AD83

Disclosure of Information; Privacy Act Regulations; Notice and Amendments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), abolished the Office of Thrift Supervision (OTS) and, as of July 21, 2011, the statutorily prescribed transfer date (Transfer Date), the functions and regulations of the OTS relating to savings and loan holding companies, Federal savings associations, and State savings associations to the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the FDIC, respectively. The Board of Directors is finalizing an interim rule that confirmed that, effective on the Transfer Date, the OTS Freedom of Information Act (FOIA) and Privacy Act (PA) regulations will not be enforced by the FDIC and that, instead, all FOIA and PA issues will be addressed under the FDIC's regulations involving disclosure of information and the PA, as amended.

EFFECTIVE DATE: The effective date of the final rule is [30 days after publication in *Federal Register*].

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SUPPLEMENTARY INFORMATION:

I. Background

The Act, signed into law on July 21, 2010, substantially reorganized the regulation of savings associations and their holding companies. Beginning July 21, 2011, the Transfer Date established in Dodd-Frank, functions formerly performed by the OTS were divided among the FRB, OCC, and FDIC. Section 316(b) of the Act provides that all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the OTS that were in effect on the day before the Transfer Date continue in effect and are enforceable by the appropriate successor Federal banking agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.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 323(b) of the Act also provides for the transfer on the Transfer Date of OTS property, including books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence relating to such reports, to the respective agencies, that were used by the OTS on the day before the Transfer Date to support OTS functions.

Section 316(c) of the Act further provides for the identification of OTS regulations relating to the supervision of State savings associations to be transferred to the FDIC. On July 6, 2011, the OCC and FDIC published a Joint Notice (Notice) in the Federal Register identifying OTS regulations that will be continued and enforced by each agency. In the Notice, the FDIC

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indicated that it did not intend to continue or enforce existing OTS regulations regarding the Freedom of Information Act or Privacy Act.

II. The Final Rule

On June 21, 2011, the FDIC published for comment an interim rule providing the public with notice that the FDIC would apply the FDIC's existing FOIA and PA regulations, as of the Transfer Date, to all records or other matters transferred from the OTS to the FDIC. The interim rule also included certain technical amendments to the FDIC's existing regulations and substituted the Bureau of Consumer Financial Protection for the OTS as a Federal financial institution supervisory agency, for purposes of section 309.6, to which exempt records could be disclosed.¹

Although the interim rule became effective for all existing and future FOIA and PA issues involving state savings associations as of the Transfer Date, the interim rule prescribed a 30-day comment period. The comment period ended on August 22, 2011 and no comments were received.

The final rule corrects an erroneous facsimile number contained in §309.5(b)(1)(ii) of the interim rule.

III. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed in the interim rule, since the FDIC determined that good cause existed to waive the

¹ 76 FR 35963 (June 21, 2011).

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general notice and comment requirements of the APA, the requirement to prepare a final regulatory flexibility analysis, as described at 5 U.S.C. §604 of the RFA does not apply to this final rule.

B. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that the final rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) (5 U.S.C. 801, *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner and received no comments on the interim rule.

E. Riegle Community Development and Regulatory Improvement Act

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The final rule does not impose any new reporting or disclosure requirements on insured depository institutions under the Riegle Community Development and Regulatory Improvement Act.

List of Subjects in 12 CFR Parts 309 and 310

Banks, banking, Freedom of Information, Privacy, Savings associations

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 309 and 310 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 309 – DISCLOSURE OF INFORMATION

1. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 “Seventh” and “Tenth.”

2. Revise § 309.1 to read as follows:

§ 309.1 Purpose and scope.

This part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information, including disclosure of information transferred to Federal Deposit Insurance Corporation from the Office

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of Thrift Supervision pursuant to sections 312 and 323 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203. Section 309.2 sets forth definitions applicable to this part 309. Section 309.3 describes the types of information and documents typically published in the Federal Register. Section 309.4 explains how to access public records maintained on the Federal Deposit Insurance Corporation's World Wide Web page and in the Federal Deposit Insurance Corporation's Public Information Center or "PIC", and describes the categories of records generally found there. Section 309.5 implements the Freedom of Information Act (5 U.S.C. 552). Section 309.6 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 309.7 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the FDIC.

3. Revise § 309.4(b) to read as follows:

§ 309.4 Publicly available records.

* * * * *

(b) Public Information Center. The FDIC maintains a Public Information Center or "PIC" that contains Corporate records that the Freedom of Information Act requires be made available for regular inspection and copying, as well as any records or information the FDIC, in its discretion, has regularly made available to the public. The PIC has extensive materials of interest to the public, including many Reports, Summaries and Manuals used or published by the Corporation that are made available, by appointment, for inspection and copying. The PIC is open from 9:00 AM to 4:00 PM, Monday through Friday, excepting federal holidays. It is located at 3501 North

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Fairfax Drive, Room E-1005, Arlington, VA 22226. The PIC may be reached during business hours by calling 1-(877) 275-3342 or 1-(703) 562-2000.

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4. In § 309.5 revise paragraphs (b)(1)(ii), (b)(1)(iii), (f)(4)(ii), and (h)(1) to read as follows:

§ 309.5 Procedures for requesting records.

* * * * *

(b) * * *

(1) * * *

(ii) By facsimile clearly marked Freedom of Information Act Request to the FOIA/PA Group:
(703) 562-2797; or

(iii) By sending a letter to: Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550
17th Street, NW., Washington, DC 20429.

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(f) * * *

(4) * * *

(i) * * *

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(ii) The fee schedule will be set forth in the “Notice of Federal Deposit Insurance Corporation Records Fees” issued in December of each year or in such “Interim Notice of Federal Deposit Insurance Corporation Records Fees” as may be issued. Copies of such notices may be obtained at no charge from the Federal Deposit Insurance Corporation, FOIA/PA Group, 550 17th Street NW., Washington, DC 20429, and are available on the FDIC's World Wide Web page as noted in paragraph (f)(4)(i) of this section.

* * * * *

(h) Appeals. (1) Appeals should be addressed to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, FDIC, 550 17th Street, NW., Washington, DC 20429.

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5. In § 309.6, revise paragraphs (b)(3) and (b)(5) to read as follows:

§ 309.6 Disclosure of exempt records.

* * * * *

(b) * * *

(3) Disclosure to federal financial institutions supervisory agencies and certain other agencies.

The Director of the Corporation's Division having primary authority over the exempt records, or designee, may in his or her discretion and for good cause, disclose to any authorized officer or employee of any federal financial institution supervisory agency including the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, Bureau of Consumer Financial

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Protection, the Securities and Exchange Commission, the National Credit Union Administration, or any other agency included in section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et. seq.) (RFPA), any exempt records for a legitimate depository institution supervisory or regulatory purpose. The Director, or designee, may in his or her discretion and for good cause, disclose exempt records, including customer financial records, to certain other federal agencies as referenced in section 1113 of the RFPA for the purposes and to the extent permitted therein, or to any foreign bank regulatory or supervisory authority as provided, and to the extent permitted, by section 206 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 3109). Finally, the Director, or designee, may in his or her discretion and for good cause, disclose reports of examination or other confidential supervisory information concerning any depository institution or other entity examined by the Corporation under authority of Federal law to: any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity; any officer, director, or receiver of such depository institution or entity; and any other person that the Corporation determines to be appropriate.

* * * * *

(5) Disclosure to servicers and serviced institutions. The Director of the Corporation's Division having primary authority over the exempt records, or designee, may disclose copies of any exempt record related to a depository institution data center, service corporation, or any other data center that provides data processing or related services to an insured institution (hereinafter referred to as "data center") to:

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PART 310 – PRIVACY ACT REGULATIONS

6. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

7. Revise § 310.1 to read as follows:

§ 310.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. These regulations delineate the procedures that an individual must follow in exercising his or her access or amendment rights under the Privacy Act to records maintained by the Corporation in systems of records, including information transferred to Federal Deposit Insurance Corporation from the Office of Thrift Supervision pursuant to sections 312 and 323 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203.

* * * * *

8. Revise § 310.3(b) to read as follows:

§ 310.3 Procedures for requests pertaining to individual records in a system of records.

* * * * *

(b) Requests by individuals for access to records pertaining to them and maintained within one of the Corporation's designated systems of records should be submitted in writing to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, N.W., Washington,

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D.C. 20429. Each such request should contain a reasonable description of the records sought, the system or systems in which such record may be contained, and any additional identifying information, as specified in the Corporation's Federal Register "Notice of Systems of Records" for that particular system, copies of which are available upon request from the FOIA/PA Group.

* * * * *

9. Revise § 310.4(a) to read as follows:

§ 310.4 Times, places, and requirements for identification of individuals making requests.

(a) Individuals may request access to records pertaining to themselves by submitting a written request as provided in §310.3 of these regulations, or by appearing in person on weekdays, other than official holidays, at the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429, between the hours of 8:30 a.m. and 5 p.m.

* * * * *

10. Revise § 310.7 to read as follows:

§ 310.7 Request for amendment of record.

The Corporation will maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Corporation amend any portion of a record pertaining to that individual which the Corporation maintains in a designated system of records. Such a request should be submitted in writing to the

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Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429 and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system and category thereof) sufficient to enable the Corporation to identify the particular record or portion thereof with respect to which amendment is sought.

11. Revise § 310.8(a) to read as follows:

§ 310.8 Agency review of request for amendment of record.

(a) Requests by individuals for the amendment of records will be acknowledged by the FOIA/PA Group, and referred to the system manager of the system of records in which the record is contained for determination, within ten business days following receipt of such requests. Promptly thereafter, the FOIA/PA Group will notify the individual of the system manager's decision to grant or deny the request to amend.

* * * * *

12. Revise § 310.9(a) to read as follows:

§ 310.9 Appeal of adverse initial agency determination on access or amendment.

(a) A system manager's denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Corporation's General Counsel (or designee) within 30 business days following receipt of notification of the denial. Such an appeal should be addressed to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street NW., Washington, DC 20429, and contain all the information specified for requests

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for access in §310.3 or for initial requests to amend in §310.7, as well as any other additional information the individual deems relevant for the consideration by the General Counsel (or designee) of the appeal.

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By order of the Board of Directors.

Dated at Washington, DC this XXth day of October, 2011.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary

[FR Doc. 11-XXXXXX Filed]

Billing Code XXXXXXXX

RESOLUTION

WHEREAS, Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred to the Federal Deposit Insurance Corporation (FDIC) certain powers, duties, and functions of the Office of Thrift Supervision (OTS) relating to State saving associations as of July 20, 2011 (the transfer date) and designated the FDIC as the “appropriate Federal banking agency” for State savings associations; and

WHEREAS, as a result of this transfer of authority from the OTS to the FDIC and the designation of the FDIC as the “appropriate Federal banking agency” for State savings associations, the Board adopted an Interim Rule with request for comments to amend 12 CFR Parts 309 and 310, which was published in the *Federal Register* on June 21, 2011; and

WHEREAS, the comment period for the Interim Rule has closed and staff has recommended that the Board adopt a Final Rule amending 12 CFR Parts 309 and 310.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts and issues the Final Rule.

BE IT FURTHER RESOLVED, that the Board hereby directs authorizes the Executive Secretary, or his designee, to cause the attached Final Rule to be published in the *Federal Register* in a form and manner satisfactory to the General Counsel, or his designee, and the Executive Secretary, or his designee.