

provisions requiring a change in control notice for a state nonmember bank in § 303.82; adding to § 303.83(a) exemptions for acquisitions of the voting shares of bank holding companies, and for acquisitions of the voting shares of savings and loan holding companies, and adding technical conforming changes to various sections in 12 CFR 303.80 through 303.83.

It has also been the FDIC's practice not to require a change in control notice in those cases where either the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision reviews a change in control notice for the proposed transaction. For example, where a person proposes to acquire control of a bank holding company that controls a state nonmember bank, and the Board of Governors of the Federal Reserve System reviews a change in control notice for the same transaction, the FDIC considers it an unnecessary duplication for the acquirer to also file a change in control notice with the FDIC. The changes codify the FDIC's practice in that regard.

The FDIC is also clarifying when an acquisition subject to the Change in Bank Control Act may be consummated. Section 7(j) of the FDI Act, 12 U.S.C. 1817(j), generally provides that any person acquiring control of an insured depository institution must give the appropriate federal banking agency sixty days prior written notice of such proposed transaction. Previous § 303.85 could be interpreted to permit consummation of the proposed transaction prior to the expiration of that 60-day period. In order to eliminate the potential for misunderstandings regarding the time period available to the FDIC for considering a proposed change in bank control transaction, the FDIC is amending 12 CFR 303.85 (a) and (b) to make clear that the 60-day notice period commences on the day after the date that the appropriate regional director accepts the notice as substantially complete.

In § 303.86 the FDIC is providing a more descriptive heading for paragraph (c) by including the phrase, "waiving publication, acting before close of public comment period" and amending paragraph (c) by substituting "paragraphs (a) and (d)" for "this paragraph."

The FDIC adopted a technical correction to § 303.244 creating a cross-reference to § 359.4(a)(4) of this chapter regarding golden parachutes and severance plan payments to make clear the responsibilities of an applicant seeking approval of filings. Specifically,

insured depository institutions, depository institution holding companies or institution-affiliated parties making requests for such payments often overlook the requirement that a party submitting such an application demonstrate that it does not possess and is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is made, that the institution-affiliated party who is to benefit from a golden parachute or severance plan engaged in any breach of fiduciary duty or other misconduct that would have a material adverse effect on the bank; is substantially responsible for the bank's insolvency; violated any law which would have a material effect on the bank; or violated certain federal criminal and currency-reporting laws. In addition, with regard to part 359 of this chapter, the FDIC is revising the reference in § 359.1(f)(1)(ii)(C) to part 303 to read, "303.101(c)."

III. Other Regulatory Changes

Technical corrections are made to part 333.4—Conversions from mutual to stock, form to correct references to part 303 of this chapter. The old citations in § 333.4(a) and (c) is replaced with: "subpart I of part 303 of this chapter."

A technical correction is made to part 347—International Banking § 347.108(f) to reference the correct citation with regard to procedures for applications and notices for obtaining FDIC approval to invest in foreign organizations. Procedures are set out in subpart J of part 303 of this chapter, not subpart D of part 347 as provided for in the prior regulation.

A technical correction is also being made to part 348—Management Official Interlocks, § 348.2 regarding the definition of Management official to correct the cross-reference to part 303 of this chapter. The correct citation should be to 12 CFR 303.101(b).

IV. Request for Public Comment as Part EGRPRA and Regulatory Flexibility Act Regulatory Review.

Consistent with our obligation pursuant to Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA, 12 U.S.C. 3311), the FDIC requested public comment to identify any areas of part 303, not merely those sections for which changes were being proposed, that are outdated, unnecessary, or unduly burdensome. The FDIC also requested public comment on whether part 303 should be continued without change, amended or

rescinded to minimize any significant economic impact it may have on a substantial number of small insured institutions (*i.e.*, those with assets of \$150 million or less) consistent with our obligation pursuant to Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC received no comments in response to this EGRPRA request. While no comments were received specifically with regard to the EGRPRA request, the FDIC notes that the federal financial regulatory agencies are soliciting comments on their plan to identify and eliminate outdated, unnecessary or unduly burdensome regulations imposed on insured depository institutions. *See*: 68 FR 35589 (June 16, 2003). The request for comment includes application regulations such as 12 CFR part 303. Written comments must be received no later than September 15, 2003.

V. Overview of Comments Received

As noted above, FDIC published a notice of proposed rulemaking in the **Federal Register** on December 27, 2002, and requested comments on the proposed amendments. The FDIC received 3 comment letters from organizations. All of the comment letters were opposed to the waiver provision in the proposed regulation. The organizations filing comments were two national trade organizations and one state-based nonprofit organization. The commenters stated they believed that if the FDIC waived regulations not required by statute, it is likely that the agency will waive public comment, public notice requirements, and other vital parts of the merger application process. Consequently, they argue, the public's input into mergers that affect access to credit and capital for minority and low- and moderate-income communities will be cut-off. Comments further stated that in order for a regulatory process to be fair to all parties, the agency cannot waive a process for some banks and not others. They argue that waivers on a case-by-case basis are arbitrary and result in uneven regulatory enforcement. In the notice of proposed rulemaking, the waiver provision would be limited to non-statutorily required provisions and for good cause. As such, the provision would not permit the FDIC to waive the public comment, public notice requirements of the merger application process since those procedures are required by statute. *See*: 12 U.S.C. 1828(c)(3). It is the FDIC's intention to utilize the waiver provision only in extraordinary circumstances. For example, the FDIC had seen the need for such a waiver provision from time to