institution shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time, but no later than 180 days, and to administer a written security program for each banking office.

§ 326.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification and prosecution; such procedures may include, but are not limited to:

(i) Retaining a record of any robbery, burglary, or larceny committed against the institution;

(ii) Maintaining a camera that records activity in the banking office; and

(iii) Using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices;

(3) Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a robbery, burglar or larceny; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each institution shall have, at a minimum, the following security devices:

(1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary;

(4) Tamper-resistant locks on exterior doors and exterior windows that may be opened; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency or other valuables exposed to robbery, burglary, and larceny;

(iii) The distance of the banking office from the nearest responsible law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the banking office; and

(vi) The physical characteristics of the structure of the banking office and its surroundings.

§ 326.4 Reports.

The security officer for each institution shall report at least annually to the institution's board of directors on the implementation, administration, and effectiveness of the security program.

PART 391—[REMOVED AND RESERVED]

■ 3. Under the authority of 12 U.S.C. 1819(a) Tenth, part 391, consisting of subpart A, is removed and reserved.

Dated at Washington, DC, on March 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2018–06161 Filed 3–30–18; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 343 and 390

RIN 3064–AE49

Removal of Transferred OTS Regulations Regarding Consumer Protection in Sales of Insurance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule to rescind and remove from the Code of Federal Regulations the part entitled ''Consumer Protection in Sales of Insurance'' and to amend current FDIC regulations to make them applicable to state savings associations.

DATES: This final rule is effective on May 2, 2018.

FOR FURTHER INFORMATION CONTACT: Martha L. Ellett, Counsel, Legal Division, (202) 898–6765; John Jackwood, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–3991.

SUPPLEMENTARY INFORMATION: Part 390, subpart I 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''). The requirements for State savings associations in part 390, subpart I are substantively similar to the requirements in the FDIC's 12 CFR part 343 (''part 343'') which is also entitled ''Consumer Protection in Sales of Insurance.''

The FDIC is adopting a final rule to rescind in its entirety part 390, subpart I and to modify the scope of part 343 to include State savings associations and their subsidiaries to conform to and reflect the scope of the FDIC's current supervisory responsibilities as the appropriate Federal banking agency. The final rule also defines ''FDIC-supervised insured depository institution or institution'' and ''State savings association.'' In the final rule, the FDIC also transfers an anticoercion and antitying provision from part 390, subpart I that is applicable to State savings associations.

Upon removal of part 390, subpart I, the Consumer Protection in Sales of Insurance regulations applicable for all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency will be found at 12 CFR part 343.

I. Background

The Dodd-Frank Act

The Dodd-Frank Act [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the 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 (''FRB''), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, codified at 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. This section provides that if such materials were in effect on the day before the transfer date, they continue to be in effect and

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5301 *et seq.*).

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 Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the 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.[2]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), 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 Federal Deposit Insurance Act (''FDI Act'') and other laws as the ''Appropriate Federal Banking Agency'' or under similar statutory 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 Act, 12 U.S.C. 1813(q), 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, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and 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.[3] 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.

One of the OTS rules transferred to the FDIC governed OTS oversight of consumer protections for depository institution sales of insurance. The OTS rule, formerly found at 12 CFR part 536, was transferred to the FDIC with only nominal changes and is now found in the FDIC's rules at part 390, subpart I, entitled ''Consumer Protection in Sales of Insurance.'' Before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 343, entitled ''Consumer Protection in Sales of Insurance,'' a rule governing FDIC oversight of consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product with respect to insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency.

After careful review and comparison of part 390, subpart I, and part 343, the FDIC is adopting a final rule to rescind part 390, subpart I, because, as discussed below, it is substantively redundant to existing part 343 and simultaneously finalize technical conforming edits to the existing rule.

FDIC's Existing 12 CFR Part 343 and Former OTS's Part 536 (Transferred, in Part, to FDIC's Part 390, Subpart I)

Section 305 of the Gramm-Leach-Bliley Act (''GLB Act'')[4] added section 47 to the FDI Act,[5] entitled ''Insurance Consumer Protections.'' Section 47 applies to retail sales practices, solicitations, advertising, or offers of insurance products by depository institutions[6] or persons engaged in these activities at an office of the institution or on behalf of the institution.[7] Section 47 directs the FDIC, the OTS, the OCC, and the FRB (collectively the ''Federal banking agencies'') to include provisions specifically relating to sales practices, disclosures and advertising, the physical separation of banking and nonbanking activities, and domestic violence discrimination.[8] On December 4, 2000, pursuant to section 305 of the GLB Act,[9] the Federal banking agencies published a joint final rule[10] to implement consumer protection in sales of insurance provisions of section 47 of the FDI Act.

Section 47 of the FDI Act instructs the Federal banking agencies to consult and coordinate with one another and prescribe and publish joint consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of insurance products by depository institutions or persons engaged in these activities at an office of the institution or on behalf of the institution.[11] Section 47 also requires the Federal banking agencies to consult with the State insurance regulators, as appropriate.[12] Pursuant to Section 47, the Federal banking agencies consulted and coordinated with respect to this rulemaking and on an interagency basis jointly issued rules that are substantively identical with regard to consumer protection in sales of insurance requirements,[13] including the same definition of a ''covered person'' or ''you.''[14]

The scope of part 343 in the FDIC's regulations and of part 390, subpart I in the OTS's regulations is substantively similar. The FDIC regulations apply to any bank[15] or any other person that is engaged in such activities at an office of the bank or on behalf of the bank.[16] Similarly, the OTS regulations apply to any State savings association or any other person that is engaged in such activities at an office of a State savings association or on behalf of a State savings association.[17] In the FDIC's scope provisions, any other person includes subsidiaries[18] because only subsidiaries that are selling insurance products or annuities at an office of the institution or acting on behalf of the depository institution as defined in the

[2] 76 FR 39247 (July 6, 2011).

[3] 76 FR 47652 (Aug. 5, 2011).

[4] Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338 (1999).

[5] 12 U.S.C. 1831x.

[6] A ''depository institution'' in this context means a national bank in the case of institutions supervised by the OCC, a State member bank in the case of the FRB, a State nonmember bank in the case of the FDIC, and a savings association in the case of the OTS. 65 FR 75822 fn. 1 (Dec. 4, 2000).

[7] 12 U.S.C. 1831x(a)(1)(A).

[8] 12 U.S.C. 1831x.

[9] 12 U.S.C. 1831x(a)(3).

[10] 65 FR 75822 (Dec. 4, 2000).

[11] 12 U.S.C. 1831x(a)(1).

[12] 12 U.S.C. 1831x(a)(3).

[13] 65 FR 75822 (Dec. 4, 2000).

[14] 65 FR 75822, 75824 (Dec. 4, 2000). A ''covered person'' or ''you'' means ''any depository institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer at an office of the institution or on behalf of the institution. A 'covered person' includes any person, including a subsidiary or other affiliate, if that person or one of its employees sells, solicits, advertises, or offers insurance products or annuities at an office of an institution or on behalf of an institution. 65 FR 75824 (Dec. 4, 2000). *See also* 12 CFR 343.20(j)(1) and 12 CFR 390.181.

[15] Bank means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). 12 CFR 343.20(b).

[16] 12 CFR 343.10.

[17] 12 CFR 390.180(a)(1), (2).

[18] *See* 65 FR 75822, 75823 (Dec. 4, 2000).

rules would be subject to the requirements of the rules.[19] The OTS regulation specifically states that its regulation applies to subsidiaries of a State savings association only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a State savings association or on behalf of a State savings association.[20] This OTS provision will not be carried over to the FDIC's part 343 because it is redundant and unnecessary, since the FDIC scope provision already includes subsidiaries within its definition.[21] The rule specifically states that a covered person (or you) includes any person *including a subsidiary or other affiliate* if that person or one of its employees sells, solicits, advertises, or offers insurance products or annuities at an office of an institution or on behalf of an institution.[22]

Accordingly, the portions of the OTS regulations that applied to State savings associations, their subsidiaries and their affiliates, originally codified at 12 CFR part 536 and subsequently transferred to FDIC's part 390, subpart I, are substantively similar to the current FDIC regulations codified at 12 CFR part 343. By amending part 343 to encompass State savings associations and rescinding part 390, subpart I, the FDIC will streamline its regulations and reduce redundancy.

Although the former OTS rule and part 390, subpart I, covers savings and loan holding companies that are affiliated with savings associations in addition to savings associations, the FDIC does not supervise savings and loan or bank holding companies for purposes of this rule. Section 312 of the Dodd-Frank Act[23] divides and transfers the functions of the former OTS to the FDIC, OCC, and FRB by amending section 1813(q) of the FDI Act. Specifically, section 312 transfers the former OTS's power to regulate State savings associations to the FDIC, while it transfers the power to regulate savings and loan holding companies to the FRB.[24] As a result, whereas the former OTS part 536 applied to savings associations, their subsidiaries and their affiliates, including savings and loan holding companies,[25] upon transfer of part 536 to FDIC's part 390, subpart I, only the authority over State savings associations and their subsidiaries and other affiliates was transferred to the FDIC for purposes of this rule.[26] The FRB currently has jurisdiction over the regulation and supervision of consumer protections in connection with retail insurance sales practices as it applies to affiliates, including savings and loan holding companies of State savings associations.[27] For this reason, the existing references to affiliates in part 390, subpart I, are not transferred to part 343 of the FDIC rules.

After careful comparison of the FDIC's part 343 with the transferred OTS rule in part 390, subpart I, the FDIC has concluded that the transferred OTS rules governing consumer protection in sales of insurance are substantively redundant. Based on the foregoing, the FDIC is adopting a final rule to rescind and remove from the Code of Federal Regulations the transferred OTS rules located at part 390, subpart I, and to make technical and conforming changes to part 343 to incorporate State savings associations.

II. Proposed Rule

The functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act, 12 U.S.C. 5414(b)(3), in pertinent part, provide that the former OTS's regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the rules currently found in part 390, subpart I, on November 15, 2016 the FDIC published a Notice of Proposed Rulemaking (''NPR'' or ''Proposed Rule'') to (1) rescind part 390, subpart I, in its entirety; (2) modify to the scope of part 343 to include State savings associations and their subsidiaries to conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency for State savings associations; (3) delete the definition of ''bank'' and replace it with a definition of ''FDIC-supervised insured depository institution or institution'', which means ''any State nonmember insured bank or State savings association for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));'' (4) add a new subsection (i), which would define ''State savings association'' as having ''the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3));'' (5) transfer an anticoercion and antitying provision from part 390, subpart I that is applicable to State savings associations to part 343; and (6) make conforming technical edits throughout, including replacing the term ''institution'' in place of ''bank'' throughout the rule where necessary.

Under the NPR, oversight of consumer protection in sales of insurance in part 343 would apply to all FDIC-supervised institutions, including State savings associations, and part 390, subpart I, would be removed because it is largely redundant of the rules found in part 343. Rescinding part 390, subpart I, would serve to streamline the FDIC's rules and eliminate unnecessary regulations.

III. Comments

The FDIC issued the NPR with a 60-day comment period which closed on January 20, 2017. The FDIC received no comments on its Proposed Rule. The final rule (''Final Rule'') is adopted as proposed without changes.

IV. Explanation of the Final Rule

As discussed in the NPR, part 390, subpart I is substantively the same as the requirements in part 343 and therefore is redundant. The Final Rule removes and rescinds 12 CFR part 390, subpart I in its entirety. This will serve to streamline the FDIC's rules and eliminate unnecessary regulation.

Consistent with the Proposed Rule, the Final Rule also amends the scope of part 343 to include State savings associations and their subsidiaries. The modified scope conforms to and reflects the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency for State savings associations. The Final Rule also deletes the definition of ''bank'' and replaces it with a definition of ''FDIC-supervised insured depository institution or institution'' defined as ''any State nonmember insured bank or State savings association for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).'' As in the Proposed Rule, the Final Rule adds a new subsection (i), which would define ''State savings association'' as ''having the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)).'' The Final Rule, as the NPR, transfers an anticoercion and antitying provision that is applicable to State savings associations from part 390, subpart I, to part 343. As in the

[19] 65 FR 75822, 75823 (Dec. 4, 2000) (footnote omitted).

[20] 12 CFR 390.180(b).

[21] 12 CFR 343.10.

[22] 65 FR 75822, 75824 (Dec. 4, 2000) (italics added).

[23] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5412).

[24] 12 U.S.C. 5412.

[25] 12 CFR 536.1.

[26] 12 CFR 390.180.

[27] 12 CFR part 208, subpart H.

Proposed Rule, the Final Rule also makes conforming technical edits throughout, including using the term ''institution'' in place of ''bank'' throughout the rule where necessary.

V. Regulatory Process

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.

The Final Rule would rescind and remove from the FDIC regulations part 390, subpart I. Part 390, subpart I 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 and is substantively similar to the FDIC's existing part 343 regarding consumer protection in the sales of insurance by depository institutions. The information collections contained in part 343 are cleared by OMB under the FDIC's Insurance Sales Consumer Protections information collection (OMB Control No. 3064–0140). The FDIC reviewed its burden estimates for the collection at the time it assumed responsibility for supervision of State savings associations transferred from the OTS and determined that no changes to the burden estimates were necessary. The Final Rule would not revise the Insurance Sales Consumer Protections information collection under OMB Control No. 3064–0140 or create any new information collection pursuant to the PRA. Consequently, no submission will be made to the Office of Management and Budget for review. In the Proposed Rule, the FDIC requested comment on its conclusion that the NPR did not revise the Insurance Sales Consumer Protections information collection 3064–0140. No comments were received.

The Final Rule, as the Proposed Rule, (1) amends part 343 to include State savings associations and their subsidiaries within its scope; and (2) defines ''FDIC-supervised insured depository institution or institution'' and ''State savings association;'' (3) transfers an anticoercion and antitying provision from part 390, subpart I, that is applicable to State savings associations to part 343; and (4) makes conforming technical edits throughout. These measures clarify that State savings associations, as well as State nonmember banks, are subject to part 343. With respect to part 343, the Final Rule does not revise any existing, or create any new information collection pursuant to the PRA. Consequently, no submission will be made to the Office of Management and Budget for review. The FDIC requested comment on its conclusion that this aspect of the NPR did not create a new or revise and existing information collection. No comments on this issue were received.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final 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).[28] 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. For the reasons provided below, the FDIC certifies that the Final Rule would not have a significant economic impact on a substantial number of small entities.

As discussed in the NPR, Part 390, subpart I, was transferred to the FDIC from OTS part 536, which governed consumer protections for depository institution sales of insurance. OTS part 536 had been in effect since 2001 and all State savings associations were required to comply with it. Because it is substantially the same as existing part 343 of the FDIC's rules and therefore redundant, the FDIC is rescinding and removing the transferred regulation now located in part 390, subpart I, as proposed in the NPR. As a result, all FDIC-supervised institutions—including State savings associations and their subsidiaries—would be required to comply with part 343 if they are selling, soliciting, advertising, or offering any insurance product. Because all State savings associations and their subsidiaries have been required to comply with substantially similar consumer protection rules if they engaged in sales of insurance since 2001,[29] the Final Rule would not place additional requirements or burdens on any State savings association irrespective of its size. Therefore, the Final Rule would not have a significant impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the Final Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), 5 U.S.C. 801 *et seq.* As required by SBREFA, the FDIC will submit the Final Rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the GLB Act, codified at 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 NPR was clearly stated and effectively organized, and how the FDIC might make it easier to understand. No comments on this issue were received. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

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.[30] 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 part 390, subpart I, and modifying part 343, this rule complements other actions the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

E. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of

[28] 5 U.S.C. 601 *et seq.*

[29] 65 FR 75822 (Dec. 4, 2000). The final rule became effective April 1, 2001.

[30] Public Law 104–208, 110 Stat. 3009 (1996).

1994 (RCDRIA) requires the FDIC, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure or other requirements on insured depository institutions to consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, as well as the benefits of such regulations.

In addition, new regulations and amendments to regulations that impose additional reporting, disclosures or other new requirements on insured depository institutions generally must take effect on the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form.[31] The Final Rule has no new reporting or other new requirements on insured depository institutions. Therefore, the final rule is not subject to the requirements of the statute.

List of Subjects

12 CFR Part 343

Banks, banking; Consumer protection in sales of insurance; Savings associations.

12 CFR Part 390

Consumer protection in sales of insurance.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation is amending 12 CFR parts 343 and 390 as follows:

■ 1. Revise part 343 to read as follows:

PART 343—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

Authority: 12 U.S.C. 1819 (Seventh and Tenth); 12 U.S.C. 1831x.

§ 343.10 Purpose and scope.

This part establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(a) Any institution; or

(b) Any other person that is engaged in such activities at an office of the institution or on behalf of the institution.

§ 343.20 Definitions.

As used in this part:

Affiliate means a company that controls, is controlled by, or is under common control with another company.

Company means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

Consumer means an individual who purchases, applies to purchase, or is solicited to purchase from you insurance products or annuities primarily for personal, family, or household purposes.

Control of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

Domestic violence means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

Electronic media includes any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

FDIC-supervised insured depository institution or institution means any State nonmember insured bank or State savings association for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

Office means the premises of an institution where retail deposits are accepted from the public.

State savings association has the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

Subsidiary has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

You—(1) Means:

(i) An institution; or

(ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the institution or on behalf of an institution.

(2) For purposes of this definition, activities on behalf of an institution include activities where a person, whether at an office of the institution or at another location sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the institution;

(ii) The institution refers a consumer to a seller of insurance products or annuities and the institution has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the institution.

§ 343.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) in the case of a State nonmember insured bank and a foreign bank having an insured branch, or in violation of section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)) in the case of a State savings association, is conditional upon either:

(1) The purchase of an insurance product or annuity from the institution or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance

[31] 12 U.S.C. 4802.

product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* You may not engage in any practice or use any advertisement at any office of, or on behalf of, the institution or a subsidiary of the institution that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity sold or offered for sale by you or any subsidiary of the institution is not backed by the Federal government or the institution, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of an institution or subsidiary of the institution at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the institution or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the institution or a subsidiary of the institution; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on domestic violence discrimination.* You may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

§ 343.40 What you must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the institution or an affiliate of the institution;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the institution, or (if applicable) an affiliate of the institution; and

(3) In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that the institution may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the institution or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) *Timing and method of disclosures*—(1) *In general.* The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b) of this section.

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) Any disclosure required by paragraph (a) or (b) of this section that is provided by electronic media is not required to be provided orally.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

(i) ''NOT A DEPOSIT''

(ii) ''NOT FDIC-INSURED''

(iii) ''NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY''

(iv) ''NOT GUARANTEED BY THE INSTITUTION''

(v) ''MAY GO DOWN IN VALUE''

(6) *Disclosures must be meaningful.* (i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

(A) A plain-language heading to call attention to the disclosures;

(B) A typeface and type size that are easy to read;

(C) Wide margins and ample line spacing;

(D) Boldface or italics for key words; and

(E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraph (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraph (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the institution.

§ 343.50 Where insurance activities may take place.

(a) *General rule.* An institution must, to the extent practicable, keep the area where the institution conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the institution's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the institution may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

§ 343.60 Qualification and licensing requirements for insurance sales personnel.

An institution may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Appendix A to Part 343—Consumer Grievance Process

Any consumer who believes that any institution or any other person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the institution or on behalf of the institution has violated the requirements of this part should contact the Division of Depositor and Consumer Protection, Consumer Response Center, Federal Deposit Insurance Corporation, at the following address: 1100 Walnut Street, Box #11, Kansas City, MO 64106, or telephone 1–877–275–3342, or FDIC Electronic Customer Assistance Form at *http://www5.fdic.gov/starsmail/index.asp.*

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

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

Authority: 12 U.S.C. 1831y.

Subpart I—[Removed and Reserved]

■ 3. Remove and reserve subpart I, consisting of §§ 390.180 through 390.185, and appendix A.

Dated at Washington, DC, on March 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2018–06163 Filed 3–30–18; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 745 and 774

[Docket No. 170306234–7234–01]

RIN 0694–AH37

Implementation of the February 2017 Australia Group (AG) Intersessional Decisions and the June 2017 AG Plenary Understandings; Addition of India to the AG

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the recommendations presented at the February 2017 Australia Group (AG) Intersessional Implementation Meeting, and later adopted pursuant to the AG silent approval procedure, and the recommendations made at the June 2017 AG Plenary Implementation Meeting and adopted by the AG Plenary. This rule amends the following Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL) to reflect the February 2017 Intersessional Implementation Meeting recommendations that were adopted by the AG: ECCN 2B350 (by adding certain prefabricated repair assemblies, and specially designed components therefor, that are designed for attachment to glass-lined reaction vessels, reactors, storage tanks, containers or receivers controlled by this entry); ECCN 2B351 (by clarifying that toxic gas monitoring equipment includes toxic gas monitors and monitoring systems, as well as their dedicated detecting components); and ECCN 2B352 (by adding certain nucleic acid assemblers and synthesizers to this entry and clarifying how the capacity of certain fermenters should be measured for purposes of determining whether they are controlled under this entry).

Consistent with the June 2017 AG Plenary Implementation Meeting recommendations that were adopted by the AG, this rule amends the following ECCNs on the CCL: ECCN 1C353 (to clarify that genetically modified organisms include organisms in which the nucleic acid sequences have been created or altered by deliberate molecular manipulation and that inactivated organisms containing recoverable nucleic acids are considered to be genetic elements) and ECCN 1C350 (by adding N,N-Diisopropylaminoethanethiol hydrochloride). This rule also corrects several typographical errors in a note to ECCN 1C351 and updates the advance notification requirements in the EAR that apply to certain exports of saxitoxin. Finally, this rule amends the EAR to reflect the addition of India as a participating country in the AG.

DATES: This rule is effective April 2, 2018.

FOR FURTHER INFORMATION CONTACT: Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343, Email: *Richard.Duncan@bis.doc.gov.*