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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 307

RIN 3064-AC93

#### Certification of Assumption of Deposits and Notification of Changes of Insured Status

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

**ACTION:** Final rule.

**SUMMARY:** The FDIC is adopting a final rule which clarifies and simplifies the procedures to be used when all of the deposit liabilities of an insured depository institution have been assumed by another insured depository institution or institutions. The final regulation would modify the current rule's requirements by: Making clear that an insured institution is required to file a "certification" when all of its deposits are assumed, but no certification is required if only a portion of its deposits are assumed; and requiring that the transferring institution, or its legal successor, file the certification rather than the assuming institution. The rule also clarifies that the transferring institution's status as an insured institution automatically terminates upon the FDIC's receipt of an accurate certification stating that: All of its deposits have been assumed by an insured depository institution or institutions, and the legal authority of the transferring institution to accept deposits has been terminated contemporaneously with the deposit assumption. In such a situation, and in a situation in which the FDIC has been appointed receiver of an insured institution, little practical purpose would be served by an order terminating deposit insurance, and the final rule provides that no such order will be issued in such situations. Finally, the rule would provide more specificity

concerning how notice is given to depositors when an insured depository institution voluntarily terminates its insured status without the assumption of all of its deposits by an insured institution. In sum, the revisions would make the insurance termination process somewhat easier for insured depository institutions, and somewhat more efficient for the FDIC.

**DATES:** This rule will be effective on March 23, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Donald R. Hamm, Review Examiner, Division of Supervision and Consumer Protection, (202) 898-3528; Thomas Nixon, Counsel, Legal Division, (202) 898-8766; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On October 14, 2005, the FDIC published a notice of proposed rulemaking concerning its Part 307 (12 CFR) "Notification of Changes in Insured Status." (70 FR 60015) The rule currently has two sections. Section 307.1 applies to situations where one or more insured institutions have assumed the deposit liabilities of another insured institution. Section 307.2 applies to situations where an insured institution seeks to terminate its insured status without its deposit liabilities being assumed. The FDIC received no comments in response to the notice of proposed rulemaking. The FDIC has determined to make its October 2005 proposed revision to Part 307 final. A section-by-section analysis follows.

#### II. Revised Caption; New Section 307.1—Scope and Purpose

The caption of the Part would be changed from "Notification of Changes of Insured Status" to "Certification of Assumption of Deposits and Notification of Changes of Insured Status" to make it more descriptive of the Part's content and alert institutions that the Part addresses deposit assumptions as well as changes in insured status.

The current Part 307 does not have a scope and purpose section. In addition, since Part 307 had not been revised since 1983, §§ 307.1 and 307.2 continued to refer to an "insured bank" rather than to an "insured depository institution," consistent with the changes

made to the FDIC's responsibilities and terminology by sections 201 and 202 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.<sup>1</sup> The final rule adds a new § 307.1 to describe the purpose of the Part and to indicate that the Part applies to insured depository institutions as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2), FDI Act). The existing §§ 307.1 and 307.2 are redesignated as §§ 307.2 and 307.3, respectively.

#### III. Section 307.2—Certification of Assumption of Deposit Liabilities

The current section 307.1 implements section 8(q) of the FDI Act (12 U.S.C. 1818(q)), which states:

Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract

(1) The insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption;

(2) The separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period \* \* \*

All assumptions of insured deposit liabilities, whether a "total" assumption of all the transferring institution's deposits or an assumption of only a portion of its deposits (a "partial" assumption), by an insured institution are subject to the Bank Merger Act and require the prior written approval of the "responsible agency."<sup>2</sup> The responsible agency is the primary Federal regulator of the assuming institution.

The present section 307.1 requires the institution assuming deposits to certify to the FDIC that it has assumed the deposits. It does not specify whether a certification is required only where a total deposit assumption occurs or

<sup>1</sup> Pub. L. 101-73, 103 Stat. 103.

<sup>2</sup> FDI Act section 18(c)(2), (12 U.S.C. 1828(c)(2)), reads as follows:

No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency \* \* \*

whether a certification is also required for a partial deposit assumption, for example, when a single branch of an institution is sold. This rule clarifies that a certification is required only when there has been a total assumption of deposits. No certification is required in the case of a partial transfer of deposits. Clarifying that no certification is necessary for a partial assumption is consistent with the FDIC's goal of reducing regulatory burden pursuant to Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996<sup>3</sup> while obtaining sufficient information for the proper implementation of section 8(q) of the FDI Act.

There may be situations in which an insured depository institution disposes of all of its deposits through a series of simultaneous partial deposit assumptions involving multiple assuming institutions, rather than through a single total deposit assumption by one assuming institution. An example of this would be where all of the deposits of a transferring institution were assumed through a series of branch acquisitions by different assuming institutions that occurred on the same day. Viewed cumulatively, these partial assumptions would amount to a total assumption of the deposits of the transferring institution making certification necessary. In this situation, this final rule would require that the transferring institution file a certification.

The current section 307.1 also does not distinguish between a deposit assumption involving operating institutions versus an assumption involving an institution in default and in FDIC receivership. The FDIC plays an integral role in the transfer and assumption of deposit liabilities when it is appointed as receiver for an insured depository institution in default, and has in its possession information regarding the deposit transfer and assumption transaction. Section 307.2(a) of this final rule creates an explicit exception from the certification requirement when the deposit liabilities are being transferred from an insured depository institution in default and the FDIC has been appointed as receiver.

*Who must make the certification.* As noted, the current section 307.1 requires the assuming institution to provide certification to the FDIC. This final rule requires the transferring institution, or its legal successor ("transferring institution"), to make the certification. Generally, an institution transferring deposit liabilities will be in a better

position than the assuming institution to know whether the transfer constitutes all of its deposits, thus triggering application of Part 307 and FDI Act section 8(q). This is particularly true in the case of an institution that transfers all of its deposit liabilities through multiple transfers to a variety of assuming institutions. In such a situation, it may be difficult for the assuming institutions to have sufficient knowledge of key facts in order to make certifications that make clear whether the transferring institution continues to hold insured deposits. In a merger or consolidation there may be only one surviving entity which is the legal successor to both the transferring and assuming institutions. In such instances, that surviving entity would provide any required certification.

*Content and form of the certification.* Section 307.2(b) of this final rule establishes the certification's content. The requirements are similar to the current section 307.1 but clarify certain issues, such as where certifications should be filed with the FDIC, and the need for the certification to be on the letterhead of the transferring institution or its legal successor and to be signed by an authorized official. The rule also requires an institution that is contemporaneously relinquishing its authority to engage in the business of receiving deposits to provide the date that its authority terminated (or will terminate) as well as the method of termination (e.g., whether by the surrender of its charter, the cancellation of its charter or license to conduct a banking business, or otherwise). As discussed below, this information will be used by the FDIC to evaluate the need to issue an order terminating insurance. To assist the industry with compliance, the rule provides a template (Appendix A) that may be used to satisfy the section 307.2 certification requirements.

*Evidence of Assumption.* Similar to the current section 307.1, section 307.2(d) of this final rule states that the receipt by the FDIC of an accurate certification for a total assumption as required by paragraphs (a), (b) and (c) of section 307.2 shall constitute satisfactory evidence of such deposit assumption, as required by section 8(q) of the FDI Act, and the insured status of the transferring institution shall terminate on the date of the receipt of the certification. The term "accurate" has been included to indicate that a materially inaccurate certification will not trigger the automatic termination of the transferring institution's insured status. Section 307.2(d) allows the FDIC to consider other evidence, in addition

to a certification, of a total deposit assumption to constitute satisfactory evidence of an assumption for the purposes of section 8(q).

*Issuance of an Order.* As noted in the October 2005 notice of proposed rulemaking, section 8(q) can be construed as automatically terminating an institution's insured status upon the FDIC's receipt of satisfactory evidence of a total assumption. The FDIC did not generally issue orders terminating the insured status of transferring institutions before 1983 when the rule was last revised, and the current section 307.1 does not discuss the issuance of such orders. In most cases of total deposit assumptions, the transferring institution's authority to engage in banking is contemporaneously cancelled. In such a situation, an FDIC order terminating insurance has no practical effect and is unnecessary. Accordingly, under this final rule no order terminating an institution's insured status will generally be issued when the transferring institution's authority to engage in banking is cancelled contemporaneously (i.e., generally within five business days after all deposits have been assumed). The rule also will not require orders when deposits are transferred and assumed after a default when the FDIC has been appointed as receiver of an insured institution.

The rule does provide for the issuance of an FDIC order terminating the insured status of a transferring institution in the relatively limited circumstance in which a total transfer of deposit liabilities has occurred but the transferring institution's charter is not contemporaneously cancelled (the proposed rule had referred to this as an order confirming the termination of insurance). Absent the entry of an order terminating insured status, an institution in such a situation might attempt to resume accepting deposits sometime after the assumption transaction occurs. An institution might also attempt to sell its charter, which could allow what is in fact a new entity to conduct banking operations without FDIC review and approval.<sup>4</sup>

#### **IV. Section 307.3—Notice to Depositors When Insurance Is Voluntarily Terminated and Deposits Are Not Assumed**

An insured depository institution that proposes to voluntarily terminate its insured status without transferring all of its deposits to an FDIC-insured

<sup>4</sup> Such a sale would require prior approval by the primary Federal regulator under the Bank Merger Act or the Change in Bank Control Act.

<sup>3</sup> Pub. L. 104–208, Sept. 30, 1996, 12 U.S.C. 3311.

institution must obtain the FDIC's permission.<sup>5</sup> The current § 307.2 requires an insured bank or insured branch of a foreign bank seeking to voluntarily terminate its insured status, but whose deposits will not be assumed by another insured depository institution, to provide notice to its depositors of the date its insured status will terminate. A copy of this notice must be provided to and approved by the appropriate Regional Director of the Division of Supervision and Consumer Protection prior to the notice being distributed to the institution's depositors. This final rule clarifies that the notice must be on the institution's letterhead, signed by a duly authorized officer and sent to the depositor's last known address on the institution's books. To assist the industry with compliance, the rule provides a template (Appendix B) that may be used to satisfy the section 307.3 certification requirements.

## V. Regulatory Analysis and Procedure

### A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this rule was submitted to OMB for review and was approved under control number 3064-0124, which will expire on December 31, 2008.

### B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule will reduce regulatory burden by eliminating the need for a certification to be filed with the FDIC when the liability for some, but not all, of the deposits of an insured institution are transferred to another institution. A certification requires a minimal amount of time and resources since it reports information readily available to the institution making the certification.

<sup>5</sup> FDI Act section 18(i)(3), 12 U.S.C. 1828(i)(3). This rule does not affect the requirements for FDIC approval of voluntary deposit insurance terminations under sections 8(a) and 8(p) of the FDI Act or for prior written consent for the conversion of an insured depository institution into a noninsured bank or institution as required by section 18(i)(3).

### C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104-121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a Federal agency issues a final rule. The FDIC will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the rule does not constitute a "major rule" as defined by SBREFA.

#### List of Subjects in 12 CFR Part 307

Bank deposit insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby revises Part 307 of Title 12 of the Code of Federal Regulations to read as follows:

#### PART 307—CERTIFICATION OF ASSUMPTION OF DEPOSITS AND NOTIFICATION OF CHANGES OF INSURED STATUS

Sec.

307.1 Scope and purpose.

307.2 Certification of assumption of deposit liabilities.

307.3 Notice to depositors when insured status is voluntarily terminated and deposits are not assumed.

Appendix A to Part 307—Transferring Institution Letterhead

Appendix B to Part 307—Institution Letterhead

**Authority:** 12 U.S.C. 1818(a)(6); 1818(q); and 1819(a) [Tenth].

#### § 307.1 Scope and purpose.

(a) *Scope.* This Part applies to all insured depository institutions, as defined in section 3(c)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(c)(2)).

(b) *Purpose.* This Part sets forth the rules governing:

(1) The time and manner for providing certification to the FDIC regarding the assumption of all of the deposit liabilities of an insured depository institution by one or more insured depository institutions; and

(2) The notification that an insured depository institution shall provide its depositors when a depository institution's insured status is being voluntarily terminated without its deposits being assumed by one or more insured depository institutions.

#### § 307.2 Certification of assumption of deposit liabilities.

(a) *When certification is required.* Whenever all of the deposit liabilities of an insured depository institution are assumed by one or more insured depository institutions by merger, consolidation, other statutory assumption, or by contract, the transferring insured depository institution, or its legal successor, shall provide an accurate written certification to the FDIC that its deposit liabilities have been assumed. No certification shall be required when deposit liabilities are assumed by an operating insured depository institution from an insured depository institution in default, as defined in section 3(x)(1) of the FDI Act (12 U.S.C. 1813(x)(1)), and that has been placed under FDIC receivership.

(b) *Certification requirements.* The certification required by paragraph (a) of this section shall be provided on official letterhead of the transferring insured depository institution or its legal successor, signed by a duly authorized official, and state the date the assumption took effect. The certification shall indicate the date on which the transferring institution's authority to engage in banking has terminated or will terminate as well as the method of termination (e.g., whether by the surrender of its charter, by the cancellation of its charter or license to conduct a banking business, or otherwise). The certification may follow the form contained in Appendix A of this part. In a merger or consolidation where there is only one surviving entity which is the legal successor to both the transferring and assuming institutions, the surviving entity shall provide any required certification.

(c) *Filing.* The certification required by paragraph (a) of this section shall be provided within 30 calendar days after the assumption takes effect, and shall be submitted to the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection, as defined in 12 CFR 303.2(g).

(d) *Evidence of assumption.* The receipt by the FDIC of an accurate certification for a total assumption as required by paragraphs (a), (b) and (c) of this section shall constitute satisfactory evidence of such deposit assumption, as required by section 8(q) of the FDI Act (12 U.S.C. 1818(q)), and the insured status of the transferring institution shall terminate on the date of the receipt of the certification. In appropriate circumstances, the FDIC, in its sole discretion, may require additional information, or may consider other evidence of a deposit assumption to

constitute satisfactory evidence of such assumption for purposes of section 8(q).

(e) *Issuance of an order.* The Executive Secretary, upon request from the Director of the Division of Supervision and Consumer Protection and with the concurrence of the General Counsel, or their respective designees, shall issue an order terminating the insured status of the transferring insured depository institution as of the date of receipt by the FDIC of satisfactory evidence of such assumption, pursuant to section 8(q) of the FDI Act and this regulation.

Generally, no order shall be issued, under this paragraph, and insured status shall be cancelled by operation of law:

(1) If the charter of the transferring institution has been cancelled, revoked, rescinded, or otherwise terminated by operation of applicable state or federal statutes or regulations, or by action of the chartering authority for the transferring institution essentially contemporaneously, that is, generally within five business days after all deposits have been assumed; or

(2) If the transferring institution is an insured depository institution in default and for which the FDIC has been appointed receiver.

**§ 307.3 Notice to depositors when insured status is voluntarily terminated and deposits are not assumed.**

(a) *Notice required.* An insured depository institution that has obtained authority from the FDIC to terminate its insured status under sections 8(a), 8(p) or 18(i)(3) of the FDI Act without its deposit liabilities being assumed by one or more insured depository institutions shall provide to each of its depositors, at the depositor's last known address of record on the books of the institution, prior written notification of the date the institution's insured status shall terminate.

(b) *Prior approval of notice.* The insured depository institution shall provide the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection, as defined in 12 CFR 303.2(g), a copy of the proposed notice for approval. After being approved, the notice shall be provided to depositors by the insured depository institution at the time and in the manner specified by the appropriate Regional Director.

(c) *Form of notice.* The notice to depositors required by paragraph (a) of this section shall be provided on the official letterhead of the insured depository institution, shall bear the signature of a duly authorized officer, and, unless otherwise specified by the appropriate Regional Director, may

follow the form of the notice contained in Appendix B of this part.

(d) *Other requirements possible.* The FDIC may require the insured depository institution to take such other actions as the FDIC considers necessary and appropriate for the protection of depositors.

**Appendix A to Part 307—Transferring Institution Letterhead**

[Date]

[Name and Address of appropriate FDIC Regional Director]

SUBJECT: *Certification of Total Assumption of Deposits*

This certification is being provided pursuant to 12 U.S.C. 1818(q) and 12 CFR 307.2. On [state the date the deposit assumption took effect], [state the name of the depository institution assuming the deposit liabilities] assumed all of the deposits of [state the name and location of the transferring institution whose deposits were assumed]. [If applicable, state the date and method by which the transferring institution's authority to engage in banking was or will be terminated.] Please contact the undersigned, at [telephone number], if additional information is needed.

Sincerely,

By:

[Name and Title of Authorized Representative]

**Appendix B to Part 307—Institution Letterhead**

[Date]

[Name and Address of Depositor]

SUBJECT: *Notice to Depositor of Voluntary Termination of Insured Status*

The insured status of [name of insured depository institution], under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on [state the date] ("termination date"). Insured deposits in the [name of insured depository institution] on the termination date, less all withdrawals from such deposits made subsequent to that date, will continue to be insured by the Federal Deposit Insurance Corporation, to the extent provided by law, until [state the date]. The Federal Deposit Insurance Corporation will not insure any new deposits or additions to existing deposits made by you after the termination date.

This Notice is being provided pursuant to 12 CFR 307.3.

Please contact [name of institution official in charge of depositor inquiries], at [name and address of insured depository institution] if additional information is needed regarding this Notice or the insured status of your account(s).

Sincerely,

By:

[Name and Title of Authorized Representative]

By order of the Board of Directors, at Washington, DC, on this 10th day of February, 2006.

Federal Deposit Insurance Corporation.

**Robert Feldman,**

*Executive Secretary.*

[FR Doc. 06-1568 Filed 2-17-06; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2006-23935; Directorate Identifier 2005-NM-060-AD; Amendment 39-14492; AD 2006-04-11]

RIN 2120-AA64

**Airworthiness Directives; Airbus Model A321-100 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A321-111, -112, and -131 series airplanes. That AD currently requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. This AD adds inspections of three additional mounting holes and revises the thresholds for the currently required inspections. This AD results from manufacturer analysis of the fatigue and damage tolerance of the area surrounding certain mounting holes of the MLG. We are issuing this AD to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

**DATES:** This AD becomes effective March 8, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 8, 2006.

The incorporation by reference of Airbus Service Bulletin A320-57-1101, Revision 02, dated October 25, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 21, 2004 (69 FR 17906, April 6, 2004).