of proposed rulemaking for test procedures and energy conservations standards. That notification also solicited nominations for membership to the working group. (83 FR 15514) This notification announces the next round of meetings for this working group.

DOE will host a public meeting and webinar on Thursday, February 21, 2019 from 9:00 a.m. to 5:00 p.m. and on Friday, February 22, 2019 from 9:00 a.m. to 1:00 p.m. in Washington, DC.

The purpose of these meetings will be to negotiate in an attempt to reach consensus on proposed Federal test procedures and energy conservation standards for VRF multi-split systems.

Public Participation

Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections of this document. If you plan to attend the public meeting, please notify the ASRAC staff at *asrac@ee.doe.gov.*

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at *https://www.dhs.gov/real-id-enforcement-brief.* A driver's license from a State or territory identified as not compliant by DHS will not be accepted for building entry, and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section of this notification. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by postal mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Conduct of the Public Meeting

ASRAC's Designated Federal Officer will preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. A transcript of the public meeting will be included on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.* In addition, any person may buy a copy of the transcript from the transcribing reporter. Public comment and statements will be allowed prior to the close of the meeting.

Docket

The docket is available for review at *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *https://regulations.gov* index. However, not all documents listed in the index may be publically available, such as information that is exempt from public disclosure.

Signed in Washington, DC, on January 18, 2019.

Steven Chalk,

Acting Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 2019–00885 Filed 2–4–19; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 365 and 390

RIN 3064–AE22

Removal of Transferred OTS Regulations Regarding Lending and Investment; and Conforming Amendments to Other Regulation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to streamline FDIC regulations and reduce regulatory burden, the FDIC proposes to rescind and remove from the Code of Federal Regulations rules entitled ''Lending and Investment'' (part 390, subpart P) that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); amend certain sections of existing FDIC regulations governing real estate lending standards to make it clear that such rules apply to all insured depository institutions for which the FDIC is the appropriate Federal banking agency; and amend part 365 by rescinding in its entirety the subpart concerning registration requirements for residential mortgage loan originators because supervision and rulemaking authority in this area was transferred to the Bureau of Consumer Financial Protection (Bureau) by the Dodd-Frank Act.

DATES: Comments must be received on or before April 8, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *FDIC Website: http://www.fdic.gov/regulations/laws/federal/* Follow instructions for submitting comments on the agency website.
- *FDIC Email: Comments@fdic.gov.* Include RIN 3064–AE22 on the subject line of the message.
- *FDIC Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record

and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Karen J. Currie, Senior Examination Specialist, (202) 898–3981, email address *kcurrie@fdic.gov,* Division of Risk Management Supervision; Cassandra Duhaney, Senior Policy Analyst, (202) 898–6804, Division of Depositor and Consumer Protection; Rodney D. Ray, Counsel, Legal Division, (202) 898–3556 or Linda Hubble Ku, Counsel, Legal Division, (202) 898–6634.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the proposed rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary regulations, or realigning existing regulations in order to improve the public's understanding and to improve the ease of reference. The second is to promote parity between State savings associations and State nonmember banks by making both classes of institutions subject to the same requirements regarding real estate lending standards. Thus, as further detailed in this **SUPPLEMENTARY INFORMATION** Section, the FDIC proposes to rescind and remove from the CFR rules entitled ''Lending and Investment'' (part 390, subpart P) that were transferred to the FDIC from OTS in connection with the implementation of Title III the Dodd-Frank Act. The FDIC takes the view that other existing regulations that concern permissible activities, safety and soundness standards, and real estate lending standards replicate the current requirements in part 390, subpart P. In addition, the proposal would amend certain sections of part 365 of the FDIC's existing regulations on real estate lending standards to make it clear that part 365, subpart A, applies to all insured depository institutions for which the FDIC is the appropriate Federal banking agency. Not only would this approach simplify the FDIC's regulations by removing unnecessary provisions, but it would have the added benefit of creating parity between state savings associations and state nonmenber banks by ensuring that both classes of institutions are subject to the same requirements regarding safety and soundness and real estate lending standards. Finally, the FDIC proposes to amend part 365 by rescinding in its entirety subpart B concerning registration requirements for residential mortgage loan originators because supervision and rulemaking authority in this area was transferred to the Bureau by the Dodd-Frank Act and the Bureau has issued its own regulation, Regulation G.

II. Background

A. The Dodd-Frank Act

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.[1] Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] 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[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and 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.

Pursuant to section 316(c) of the Dodd-Frank Act,[4] 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.[5]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act,[6] 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)[7] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c)(1) of the Dodd-Frank Act[8] revised the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act,[9] 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 above, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors (Board) issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. Also on June 14, 2011, the FDIC's Board reissued and redesignated certain regulations transferred from the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[10] When the FDIC republished the transferred OTS regulations as new FDIC regulations, it specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.[11]

B. Transferred OTS Regulations (Transferred to the FDIC's Part 390, Subpart P)

A subset of the regulations transferred to the FDIC from the OTS concern lending and investment provisions applicable to State savings associations. The OTS regulations, formerly found at 12 CFR part 560, sections 560.1, 560.3, 560.100, 560.101, 560.120, 560.121, 560.130, 560.160, 560.170, and 560.172, were transferred to the FDIC with only nomenclature changes and now comprise part 390, subpart P. Each provision of part 390, subpart P is discussed in Part III of this **SUPPLEMENTARY INFORMATION** section, below.

The FDIC has conducted a careful review and comparison of part 390,

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] Codified at 12 U.S.C. 5411.

[3] Codified at 12 U.S.C. 5414(b).

[4] Codified at 12 U.S.C. 5414(c).

[5] 76 FR 39246 (July 6, 2011).

[6] Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1811 *et seq.*

[8] Codified at 12 U.S.C. 5412(c)(1).

[9] 12 U.S.C. 1813(q).

[10] 76 FR 47652 (Aug. 5, 2011).

[11] *See* 76 FR at 47653.

subpart P and other FDIC regulations concerning permissible activities for State savings associations (12 CFR part 362, subpart C (part 362, subpart C)), activities implicating safety and soundness (12 CFR part 364 (part 364 and its appendix A)), and activities implicating real estate lending standards (part 365, subpart A and its appendix A). As discussed in Part III of this **SUPPLEMENTARY INFORMATION** section, the FDIC proposes to rescind part 390, subpart P because the FDIC considers the provisions contained in part 390, subpart P to be unnecessary because of the applicability of other FDIC regulations.

C. Part 365, Subpart A, Real Estate Lending Standards

The FDIC proposes to further effectuate the transfer of supervisory authority for State savings associations from the former OTS to the FDIC by amending certain parts of part 365 of the FDIC's regulations to clarify that part 365, subpart A applies to all insured depository institutions, including State savings associations, for which the FDIC is the appropriate Federal banking agency. As discussed in Part IV of this **SUPPLEMENTARY INFORMATION** section, the FDIC proposes to amend part 365, subpart A in order to make part 365, subpart A applicable to all insured depository institutions, including State savings associations, for which the FDIC is the appropriate Federal banking agency.

D. Part 365, Subpart B, Registration of Residential Mortgage Loan Originators

Simultaneously, the FDIC proposes to take the opportunity to rescind, in its entirety, subpart B of part 365, which relates to registration requirements for residential mortgage loan originators, due to the Bureau's issuance of its [12] regulation, Regulation G, pursuant to the Bureau's authority under the Dodd-Frank Act.[13] As discussed in Part V of this **SUPPLEMENTARY INFORMATION** section, the FDIC considers the provisions contained in part 365, subpart B to be unnecessary, redundant, or otherwise duplicative of the Bureau regulation governing this area.

III. Comparison of FDIC Regulations With the Transferred OTS Regulations To Be Rescinded

A. Permissible Activities for State Savings Associations

1. FDIC's 12 CFR Part 362, Subpart C—Activities of Insured State Savings Associations

Part 362 of the FDIC's regulations governs the activities and investments in which insured State banks and insured State savings associations may engage as principals. Subpart C of part 362 implements section 28 of the FDI Act.[14] Subpart C specifically addresses insured State savings associations and restricts their activities and investments to those permissible for a Federal savings association under any statute, including the Home Owners' Loan Act [15] (HOLA), and to those recognized as permissible for a Federal savings association by the OCC (or former OTS) or in bulletins, orders, or written interpretations of either the OCC or former OTS.[16] The FDIC has indicated that it will allow State savings associations and their service corporations to ''undertake only safe and sound activities and investments that do not present significant risks to the Deposit Insurance Fund and that are consistent with the purposes of Federal deposit insurance and other applicable law.'' [17]

2. Former OTS Part 560, Sections 560.120 and 560.121 (Transferred to the FDIC as Sections 390.267 and 390.268)

a. Section 390.267—Letters of Credit and Other Independent Undertakings To Pay Against Documents

As part of a regulatory reorganization and modernization initiative, section 560.120 was promulgated by the OTS in 1996. At that time, the OTS incorporated the substance of former section 545.48 (authorizing Federal savings associations to issue letters of credit) into new section 560.120 that applied to both Federal and State savings associations.[18] Section 560.120 was designed to provide uniform authority, standards and restrictions for all savings associations to consider before issuing a letter of credit or entering into another independent undertaking that had been recognized in law or approved by the OTS.[19] The former OTS rule largely mirrored the approach taken by the OCC for national banks, which incorporated market standards and international conventions applicable to letters of credit.[20]

Section 560.120 was transferred to the FDIC and redesignated as section 390.267 to cover letters of credit and other independent undertakings to pay against documents issued by or entered into by State savings associations, and it was also transferred to the OCC and redesignated as section 160.120 to cover Federal savings associations that issue letters of credit and enter into other independent undertakings.[21]

Sections 390.267 and 160.120 provide that subject to safety and soundness considerations, ''a [State/Federal] savings association may issue and commit to issue letters of credit within the scope of applicable laws or rules of practice recognized by law. It may also issue other independent undertakings within the scope of such laws or rules of practice recognized by law, that have been approved by the [FDIC/OCC] (approved undertaking).'' [22]

As noted above in Part III.A.1 of this **SUPPLEMENTARY INFORMATION** section, part 362, subpart C of the FDIC's regulations prohibits insured State savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for a Federal savings association and their service corporations.

Under subpart C of part 362, the phrase ''activities and investments of a type that are not permissible for a Federal savings association'' generally means any activity not authorized expressly by HOLA and activities not recognized as permissible by OCC regulation or other written supervisory directive from the OCC or from the OTS to the extent not modified, terminated, set aside, or superseded by the OCC.[23] Federal savings associations are permitted to issue letters of credit and may issue other independent undertakings pursuant to 12 CFR 160.50, as transferred by the OCC from the OTS, subject to standards and restrictions found in 12 CFR 160.120, discussed above.

Because 12 CFR 362.9 allows State savings associations to exercise the power permitted to Federal savings associations by 12 CFR 160.50 and must

[12] The Secure and Fair Mortgage Licensing Act of 2008 (S.A.F.E. Act) was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, sections 1501–17 (codified at 12 U.S.C. 5101–16) as amended by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376). The S.A.F.E. Act requires residential mortgage loan originators employed by depository institutions, subsidiaries that are owned and controlled by a depository institution and regulated by a federal banking agency, and institutions regulated by the Farm Credit Administration to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain such registration.

[13] *See* 81 FR 25323 (April 28, 2016).

[14] 12 U.S.C. 1831e.

[15] *See* 12 U.S.C. 1461 *et seq.*

[16] 12 CFR 362.9(a).

[17] 12 CFR 362.9(c).

[18] 61 FR 50951, 50958 (Sept. 30, 1996).

[19] 12 CFR 560.120.

[20] 61 FR at 50958.

[21] *See* 76 FR 48950 (Aug. 9, 2011).

[22] 12 CFR 390.267 (a). A footnote lists examples of laws or rules of practice applicable to letters of credit and other independent undertakings.

[23] 12 CFR 362.9(a).

follow State law, the standards and restrictions applicable to Federal savings associations that issue letters of credit and engage in other independent undertakings set forth in 12 CFR 160.120, and considerations of safety and soundness, the FDIC considers section 390.267 to be unnecessary and proposes that it be rescinded.

b. Section 390.268—Investment in State Housing Corporations

Section 390.268 of part 390, subpart P, formerly designated as OTS section 560.121, applies to all savings associations and addresses investments in or loans to State housing corporations.

Under subpart C of part 362, State savings associations generally are permitted to invest in State housing corporations because Federal savings associations are expressly authorized to invest in State housing corporations pursuant to section 5(c)(1)(P) of HOLA.[24] Because such investments are expressly permissible for Federal savings associations to make under HOLA, State savings associations may rely on part 362 in making such investments consistent with State law and in a safe and sound manner. As such, the FDIC considers section 390.268 to be unnecessary and proposes that it be rescinded.

B. Activities Implicating Safety and Soundness

1. FDIC's 12 CFR Part 364—Standards for Safety and Soundness

The FDIC's standards for safety and soundness were promulgated in the mid-1990s jointly by the FDIC, along with the FRB, the OCC, and the OTS (collectively, ''the Agencies'') pursuant to section 39 of the FDI Act.[25] Section 39(a) of the FDI Act [26] required the Agencies to prescribe standards for safety and soundness relating to the following: (A) Internal controls and information systems; (B) internal audit systems; (C) loan documentation; (D) credit underwriting; (E) interest rate exposure; (F) asset growth; (G) asset quality; (H) earnings; and (I) compensation and benefits, as well as such other operational and managerial standards as appropriate. Section 39(b) of the FDI Act required the Agencies to prescribe standards for insured depository institutions related to asset quality, earnings, and stock valuation.[27] Further, section 39(c) of the FDI Act required the Agencies to develop standards related to preventing unsafe and unsound practices related to compensation arrangements.[28]

In 1995, the Agencies published part 364 as a final rule with an appendix that implements Section 39(a) of the FDI Act regarding standards for safety and soundness (appendix A).[29] Later, part 364, appendix A was amended to reflect subsections 39(b) and (c) of the FDI Act.[30] The OTS's part 570, as amended, implemented section 39 of the FDI Act for all savings associations.[31]

The FDIC's part 364, appendix A (regarding safety and soundness) and appendix B (regarding information security) implement section 39 of the FDI Act.[32] Section 364.101 of part 364 provides that appendix A and appendix B apply to all insured State nonmember banks, State-licensed insured branches of foreign banks, and State savings associations.

Generally, part 364, appendix A addresses operational and managerial standards, compensation standards, and standards related to asset quality, earnings, and stock valuation and also provides that an institution should have internal controls and information systems that are appropriate to the size of the institution and the nature, scope, and risk of its activities and that provide for: (1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to established policies; (2) effective risk assessment; (3) timely and accurate financial, operational, and regulatory reports; (4) adequate procedures to safeguard and manage assets; and (5) compliance with applicable laws and regulations.

With respect to timely and accurate financial, operational and regulatory reports, FDIC-supervised institutions are required to prepare such reports in accordance with generally accepted accounting principles [33] (GAAP) and are also required to file quarterly Reports of Condition.[34]

Appendix A of part 364 also addresses loan documentation, requiring institutions to establish and maintain loan documentation practices that: (1) Enable the institution to make informed lending decisions and to assess risk, as necessary, on an ongoing basis; (2) identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; (3) ensure that any claim against a borrow is legally enforceable; (4) demonstrate appropriate administration monitoring of a loan; and (5) take account the size and complexity of the loan.[35]

Appendix A of part 364 sets standards for asset quality and provides that an insured depository institution ''establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration of those assets'' [36] by: (1) Conducting periodic asset quality reviews to identify problem assets; (2) estimating the inherent losses in those assets and establish reserves that are sufficient to absorb estimated losses; (3) comparing problem asset totals to capital; (4) taking appropriate corrective action to resolve problem assets; (5) considering the size and potential risks of material asset concentrations; and (6) providing periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.[37]

Taken together, part 364 and appendix A constitute the FDIC's long-standing expectations for all prudently managed insured depository institutions, but leave specific methods of achieving these objectives to each institution. Specifically, they provide a framework for sound corporate governance and the supervision of operations designed to prompt an institution to identify emerging problems and correct deficiencies before capital becomes impaired. The FDIC uses these standards in its supervisory examination process in order to assess an institution's risk profile and assign an appropriate rating during the supervisory examination process, with

[24] 12 U.S.C. 1464(c)(1)(P); *see* 12 U.S.C. 1469.

[25] 12 U.S.C. 1831p–1. Section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, 105 Stat. 2236 (codified at 12 U.S.C. 1831p–1) added section 39 to the FDI Act. Section 39 was later amended by section 956 of the Housing and Community Development Act of 1992, Public Law 102–550, 106 Stat. 3672 and section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), Public Law 103–325, 108 Stat. 2160.

[26] 12 U.S.C. 1831p–1(a).

[27] 12 U.S.C. 1831p–1(b).

[28] 12 U.S.C. 1831p–1(c).

[29] 60 FR 35674 (Jul. 10, 1995).

[30] 61 FR 43948 (Aug. 27, 1996).

[31] *See* 60 FR at 35686; 61 FR at 43952. The FDIC transferred part 570 of the OTS's regulations to part 391, subpart B, of the Code of Federal Regulations. Subsequently, the FDIC rescinded part 391, subpart B and made conforming amendments to 12 CFR part 364 to reflect its applicability to all entities for which the FDIC is the applicable Federal banking agency. *See* 80 FR 65903 (Oct. 28, 2015).

[32] Appendix B was added in accordance with section 501 of the Gramm-Leach-Bliley Financial Modernization Act of 1999, Public Law 106–102, 113 Stat. 1338, codified at 15 U.S.C. 6801, which statute required the Agencies to establish appropriate information security standards in order to protect nonpublic personal information.

[33] 12 U.S.C. 1831n.

[34] 12 U.S.C. 1817 (a)(3); 12 U.S.C. 1464(v).

[35] 12 CFR part 364 app. A, sec. II.C.

[36] *Id.* sec. II.G.

[37] *Id.*

material deficiencies documented in the Report of Examination. Pursuant to section 39(e) of the FDI Act,[38] an FDIC-supervised institution's failure to meet the standards may cause the FDIC to require the institution to submit a safety and soundness compliance plan and if the institution does not comply with its plan, the FDIC will issue an order to correct safety and soundness deficiencies.[39]

2. Former OTS Safety and Soundness—Part 390, Subpart P, Sections 390.260, 390.262, 390.269, 390.270, 390.271, and 390.272

a. Section 390.260—General

Former OTS section 560.1, as modified by the FDIC in transferred section 390.260, provided the general authority and scope for safety-and-soundness-based lending and investment for State savings associations. It is substantively similar to 12 CFR 364.101. Because the two regulations are substantively similar and section 364.101 already applies to State savings associations, the FDIC considers it duplicative to retain section 390.260. Accordingly, the FDIC proposes that section 390.260 be rescinded.

b. Section 390.262—Definitions

Former section 560.3 provided a set of definitions to several commonly used terms related to lending, such as ''consumer loans,'' home loans,'' ''real estate loans,'' and ''credit card,'' and it is not expressly duplicative of or substantively similar to any corresponding FDIC regulation. However, as transferred and redesignated by the FDIC, the definitions contained in section 390.262 are only relevant to the provisions of part 390, subpart P. Specifically, section 390.262 provides a list of definitions ''[f]or purposes of this subpart.'' [40] Because the FDIC has concluded that the substantive provisions of part 390, subpart P are unnecessary, redundant, or otherwise duplicative of other FDIC regulations, it follows that the definitions contained in section 390.262 that are only relevant to subpart P are also unnecessary. Accordingly, the FDIC considers section 390.262 to be unnecessary and proposes that it be rescinded.

c. Section 390.269—Prohibition on Loan Procurement Fees

Former section 560.130 addressed loan procurement fees, and is not expressly duplicative of or substantively similar to any corresponding FDIC regulation. This section was originally transferred to the OTS from the Bank Board in 1989 [41] and has been the subject of a regulatory clarification and an OTS interpretative letter.[42] Specifically, the provision had applied to affiliated persons of savings associations but, in response to requests for clarification and public comment, the OTS revised it to apply only to natural persons.[43] As transferred to the FDIC, section 390.269 provides,

> If you are a director, officer, or other natural person having the power to direct the management or policies of a State savings association, you must not receive, directly or indirectly, any commission, fee, or other compensation in connection with the procurement of any loan made by the State savings association or a subsidiary of the State savings association.[44]

Although the OTS maintained this provision in its regulations since 1989, of the other Federal banking agencies, only the OCC has a corresponding provision in its regulations, as the OCC also transferred former section 560.130 from the OTS.[45] Rather than identify and prohibit particular types of compensation or fees on a case-by-case basis, the FDIC's approach has been to act against compensation practices that are unsafe or unsound, or represent a breach of an officer's or director's duty not to place his or her own interests ahead of those of the institution; and where necessary, the FDIC can take action under section 8 of the FDI Act.[46] Because the FDIC can act against compensation practices that are demonstrably unsafe or unsound or a breach of fiduciary duty, the FDIC considers section 390.269 to be unnecessary and proposes that it be rescinded.

d. Section 390.270—Asset Classification

Former OTS section 560.160, entitled ''Asset Classification,'' required savings associations to classify their assets on a regular basis in accordance with the OTS's *Thrift Activities Handbook*.[47] The regulation originally was transferred to the OTS from the Bank Board in 1989 and it contained specific accounting classification metrics.[48] It was revised over time in response to initiatives to modernize and streamline Federal banking regulations.[49] Commenters had suggested that the OTS remove the classification metrics from the regulation and move them to the *Thrift Activities Handbook*.[50] In response to these comments, the OTS simplified former section 560.160 but retained portions of the regulation to ensure that a savings association's board of directors would be responsible for monitoring its classification system.

Transferred to the FDIC as section 390.270, the current regulation requires, among other things, State savings associations to classify assets on a regular basis in a manner consistent with the classification system used by the FDIC and to establish adequate valuation allowances or charge-offs, as appropriate, consistent with GAAP and the practices of the Federal banking agencies. The FDIC's implementation of part 364, appendix A provides the FDIC's minimum standards for establishing and maintaining ''a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration of those assets.'' [51]

State savings associations are already expected to maintain an appropriate level of allowance for loan and lease losses in accordance with GAAP. Because safety and soundness principles require all insured depository institutions for which the FDIC is the appropriate Federal banking agency—including State savings associations—to provide timely and accurate financial, operational, and regulatory reports in accordance with GAAP, the FDIC considers section 390.270 to be unnecessary and proposes that it be rescinded.

e. Section 390.271—Records for Lending Transactions

As transferred to the FDIC, section 390.271 requires State savings associations to establish and maintain loan documentation practices that mirror all of the requirements of part 364, appendix A. Because the lending documentation practices and requirements contained in section 390.271 are contained in part 364, appendix A, as discussed above, the

[38] 12 U.S.C. 1831p–1(e).

[39] *See* 12 U.S.C. 1831p–1(e); 12 CFR 308.300, *et seq.*

[40] 12 CFR 390.262.

[41] *See* 54 FR 49411, 49560 (Nov. 30, 1989).

[42] *See* 61 FR 60173, 60176 (Nov. 27, 1996); OTS Interpretative Letter, *Loan Procurement Fees* (Dec. 14, 1994), *available at http://www.occ.gov/static/ots/legal-opinions/ots-lo-12-14-1994a.pdf.* Former section 560.130 was previously listed as section 563.40(a), *see* 61 FR at 60176, and the 1994 OTS interpretive letter references this earlier section number.

[43] 61 FR at 60176.

[44] 12 CFR 390.262.

[45] The OCC prohibition on loan procurement fees is located at 12 CFR 160.130. *See* 76 FR 48950, 49043 (Aug. 9, 2011).

[46] 12 U.S.C. 1818.

[47] 12 CFR 560.160.

[48] *See* 54 FR at 49415.

[49] *See* 61 FR 50951, 50982 (Sept. 30, 1996).

[50] *Id.* at 50963.

[51] 12 CFR 364, app. A, sec. II.G.

FDIC considers section 390.271 to be unnecessary and proposes that it be rescinded.

f. Section 390.272—Re-Evaluation of Real Estate Owned

Former OTS section 560.172 also was part of the transfer to OTS and recodification of Bank Board regulations in 1989.[52] It originally addressed re-evaluation of assets and, among other things, required a savings association to appraise each parcel of real estate owned at the earlier of in-substance foreclosure or at the time of the savings association's acquisition, and at such times thereafter as dictated by prudent management policy or as required by the OTS' regional director.[53] The provision did not apply to real estate owned by the institution that was sold and reacquired less than 12 months subsequent to the most recent appraisal. The form of the regulation transferred to the FDIC as section 390.272 remains substantively the same as the most recent version adopted by the former OTS.[54]

As transferred to the FDIC, section 390.272 is not duplicative of any other existing FDIC regulation. However, as discussed in part III.B.1. of this **SUPPLEMENTARY INFORMATION** section, above, the FDIC relies on part 364, appendix A to convey its expectation that FDIC-supervised institutions should ''establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration of those assets'' [55] and, as State-chartered institutions, to follow State law with respect to the initial and subsequent valuations of other real estate (ORE).[56] The FDIC expects all supervised institutions to adhere to part 364 with regard to maintaining a system to identify and manage problem assets (including ORE) and to provide for timely and accurate financial, operational, and regulatory reports according to GAAP and the Call Report Instructions as it pertains to the appropriate carrying value of ORE. Further, State law generally provides for when an appraisal is necessary for State-chartered institutions (including savings associations). Therefore, the FDIC considers section 390.272 to be unnecessary and proposes that it be rescinded.

Accordingly, as explained in the analysis above, the FDIC proposes to remove sections 390.260, 390.262, 390.269, 390.270, 390.271 and 390.272 of part 390, subpart P because these sections are unnecessary, redundant of, or otherwise duplicative of the safety and soundness standards delineated in part 364 and its appendix A.

C. Activities Implicating Real Estate Lending Provisions

1. The FDIC's Part 365—Real Estate Lending Standards

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) required the Agencies to adopt uniform regulations prescribing standards for extensions of credit that are secured by liens on interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate.[57] The Agencies published their joint rule and appendices for real estate lending on the last day of 1992, and the rules became effective on March 19, 1993.[58] The FDIC's regulation is found at part 365, subpart A, which includes an appendix A regarding real estate lending.

2. Sections 390.264, 390.265, Including Appendix to 390.265—Real Estate Lending

Former OTS sections 560.100 and 560.101 (including the appendix) implemented real estate lending provisions, as required by FDICIA. Former sections 560.100 and 560.101 were transferred to the FDIC as sections 390.264 and 390.265 (including the appendix to part 365, subpart A). These regulations are nearly identical to 12 CFR 365.1 and 365.2 (including appendix A to part 365, subpart A). However, in order to include State savings associations within the scope of part 365 and its appendix A, it is necessary for the FDIC to make the technical amendment as discussed in section IV of this **SUPPLEMENTARY INFORMATION** section, below.

Because the FDIC considers sections 390.264 and 390.265 (including the appendix to section 390.265) to be duplicative of part 365, subpart A, as proposed to be amended herein, the FDIC proposes to rescind and remove them from the Code of Federal Regulations.

IV. Proposed Amendment to Part 365, Subpart A

As discussed in part III.C of this **SUPPLEMENTARY INFORMATION**, the FDIC's part 365 subpart A addresses real estate lending standards for insured State nonmember banks (including State-licensed insured branches of foreign banks). The Dodd-Frank Act added State savings associations to the list of entities for which the FDIC is designated as the appropriate Federal banking agency.[59] To clarify that part 365 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposes to amend sections 365.1 and 365.2 of part 365 to replace the phrases ''insured state nonmember banks (including state-licensed insured branches of foreign banks)'' and ''state nonmember bank'' throughout subpart A with the phrase ''FDIC-supervised institution.'' Under the proposal, section 365.1 would be revised to add the definition of the term ''FDIC-supervised institution'' to mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act.[60]

V. Rescinding Part 365, Subpart B

The FDIC issued part 365, subpart B to implement the Federal registration requirements for mortgage loan originators required by the S.A.F.E. Act. As relevant here, the S.A.F.E. Act required the Agencies, the Farm Credit Administration, and National Credit Union Administration (the ''S.A.F.E. Act Agencies'') to develop and maintain a system for registering mortgage loan originators employed by institutions regulated by the agencies.[61]

However, the Dodd-Frank Act amended the S.A.F.E. Act, transferring that authority from the S.A.F.E. Act Agencies to the Bureau.[62] On December 19, 2011, the Bureau published an interim final rule incorporating the S.A.F.E. Act into its Regulation G. On April 28, 2016, the Bureau finalized the interim final rule, which is substantially duplicative to the FDIC's S.A.F.E. Act regulation at part 365, subpart B. The Bureau's regulation addresses Federal registration requirements for mortgage loan originators and applies to all FDIC-supervised institutions.[63] As such, the FDIC proposes to rescind part 365,

[52] *See* 54 FR at 49587.

[53] 12 CFR 563.172 (1994).

[54] *See* 12 CFR 390.272; *cf* 12 CFR 560.172.

[55] 12 CFR 364, app. A., sec. II.G.

[56] *See* FIL–62–2008.

[57] *See* Public Law 102–242, 105 Stat. 2236 (codified at 12 U.S.C. 1828(o)).

[58] *See* 57 FR 62890, 62900 (Dec. 31, 1992).

[59] *See* section 312(c) of the Dodd-Frank Act, codified at 12 U.S.C. 1813(q).

[60] 12 U.S.C. 1813(q).

[61] 12 U.S.C. 5106.

[62] *See* section 1100 of the Dodd-Frank Act.

[63] 12 CFR 1007.101(c).

subpart B because it is outdated and no longer necessary.

VI. Summary

If the proposal is finalized, 12 CFR part 390, subpart P would be removed because it is largely unnecessary, redundant, or duplicative of existing FDIC regulations; the requirements of part 365, subpart A expressly would apply to all FDIC-supervised insured depository institutions; and part 365 subpart B would be removed because it is outdated and no longer necessary due to the transfer of S.A.F.E. Act rulemaking power to the Bureau. These three initiatives will serve to streamline the FDIC's regulations and reduce the regulatory burden on FDIC-supervised institutions.

VII. Expected Effects

As explained in detail in Section III of this **SUPPLEMENTARY INFORMATION** section, certain OTS regulations transferred to the FDIC by the Dodd-Frank Act relating to lending and investment are either unnecessary or effectively duplicate existing FDIC regulations. This proposal would eliminate those transferred OTS regulations. The proposal also would clarify that the standards in part 365 apply to State savings associations because the FDIC is the ''appropriate Federal banking agency'' pursuant to the FDI Act.

As of June 30, 2018, the FDIC supervises 3,575 depository institutions, of which 41 (1.1%) are State savings associations. The proposed rule primarily would affect regulations that govern State savings associations.

As explained previously, the proposed rule would remove sections 390.260, 390.261, 390.262, 390.263, 390.264, 390.265, 390.266, 390.267, 390.268, 390.269, 390.270, 390.271, and 390.272 of part 390, subpart P because these sections are unnecessary, redundant of, or otherwise duplicative of other FDIC regulations regarding safety and soundness. Because these regulations are redundant to existing regulations, rescinding them will not have any substantive effects on FDIC-supervised institutions.

Thus, for example, as explained previously, part 364 covers State savings associations in section 364.101 and its appendix A. Because the lending documentation practices and standards in part 364, appendix A are substantively similar to existing regulations for State savings associations found in section 390.271, rescission of section 390.271 would not have any substantive effects on FDIC-supervised institutions. The same would be true for the other sections of part 390, subpart P.

The proposed rule would amend part 365, subpart A so that it would expressly apply to State savings associations. Because the real estate lending requirements in sections 365.1 and 365.2 and appendix A to part 365, subpart A are substantively identical to currently applicable regulations for State savings associations found in 390.264 and 390.265 (including the appendix to 390.265), amending part 365, subpart A to include State savings associations would not have any substantive effects on FDIC-supervised institutions.

Finally, as previously explained, the proposed rule would rescind part 365, subpart B because the authority to implement Federal registration requirements for mortgage loan originators has been transferred by statute to the Bureau. Because rulemaking authority for the S.A.F.E. Act was transferred to the Bureau in December 2011, the removal of the FDIC's S.A.F.E. Act regulations would not have any substantive effects on FDIC-supervised institutions.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

VIII. Alternatives

The FDIC has considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to lending and investment of covered entities, including part 365 and part 390, subpart P. The FDIC considered the status quo alternative of retaining the current regulations but did not choose to do so because it would be needlessly complex for substantively similar regulations regarding lending and investment activities of State nonmember banks and State savings associations to be located in different locations within the Code of Federal Regulations. The FDIC believes it would be procedurally complex for FDIC-supervised institutions to continue to refer to these separate sets of regulations. Therefore, the FDIC is proposing to amend and streamline the FDIC's regulations.

IX. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. In particular, the FDIC requests comments on the following questions:

1. *Are the provisions of 12 CFR parts 362, 364, and 365 sufficient to provide consistent and effective requirements related to permissible lending and investment activities for all insured depository institutions for which the FDIC is the appropriate Federal banking agency? Please provide examples, data, or otherwise substantiate your answer.*

2. *What negative impacts, if any, can you foresee in the FDIC's proposal to rescind part 390, subpart P and part 365, subpart B and remove them from the Code of Federal Regulations?*

3. *As to the OTS's former rule prohibiting loan procurement fees, the FDIC noted above that no other Federal banking agency has a similar rule. Do you believe that a separate rule is necessary for safety and soundness reasons? Please provide examples, data, or otherwise substantiate your answer.*

4. *Please provide any other comments you have on the proposal.*

X. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[64] 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 proposed rule would rescind and remove from FDIC regulations part 390, subpart P. With regard to part 365, subpart A, the proposed rule would amend sections 365.1 and 365.2 to clarify that State savings associations, as well as State nonmember banks and foreign banks having insured branches are all subject to part 365. It would also rescind and remove from the FDIC's regulations part 365, subpart B. The proposed rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the

[64] 44 U.S.C. 3501–3521.

impact of the proposed rule on small entities.[65] 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. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[66] For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2018, the FDIC supervised 3,575 insured financial institutions, of which 2,804 are considered small banking organizations for the purposes of RFA. The proposed rule primarily affects regulations that govern State savings associations. There are 38 State savings associations considered to be small banking organizations for the purposes of the RFA.[67]

As explained previously, the proposed rule would remove sections 390.260, 390.261, 390.262, 390.263, 390.264, 390.265, 390.266, 390.267, 390.268, 390.269, 390.270, 390.271, and 390.272 of part 390, subpart P because these sections are unnecessary, redundant of, or otherwise duplicative of other FDIC regulations for safety and soundness standards. Because these regulations are redundant to existing regulations, rescinding them would not have any substantive effects on small FDIC-supervised institutions.

As explained previously, part 364 covers State savings associations in section 364.101 and in appendix A. Because the lending documentation practices and standards in part 364, appendix A are substantively similar to existing regulations for State savings associations found in section 390.271 rescinding section 390.271 and the rest of part 390, subpart P would not have any substantive effects on small FDIC-supervised institutions.

As stated previously, the proposed rule would amend part 365, subpart A so that it would expressly apply to State savings associations. Because the real estate lending requirements in sections 365.1 and 365.2 and part 364, appendix A are substantively identical to currently applicable regulations for State savings associations found in 390.264 and 390.265 (including the appendix to section 390.265), amending part 365, subpart A so that it would apply to all FDIC-supervised institutions would not have any substantive effects on small FDIC-supervised institutions.

As explained previously, the proposed rule would rescind part 365, subpart B because the authority to implement Federal registration requirements for mortgage loan originators has been transferred by statute to the Bureau. Because rulemaking authority for the S.A.F.E. Act was transferred to the Bureau in December 30, 2011, the removal of the FDIC's S.A.F.E. Act regulations would not have any substantive effects on small FDIC-supervised covered institutions.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

5. *The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?*

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[68] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind part 390, subpart P and amend part 365 in a simple and straightforward manner.

6. *The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.*

D. 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.[69] 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 that will be taken 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 P and part 365, subpart B, and amending part 365, subpart A, this rule complements other actions the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

List of Subjects

12 CFR Part 365

Banks, banking, Credit, Mortgages, Savings associations.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend title 12 of the Code of Federal Regulations as follows:

PART 365—REAL ESTATE LENDING STANDARDS

Subpart A—Real Estate Lending Standards [Amended]

■ 1. Revise the authority citation for part 365 to read as follows:

Authority: 12 U.S.C. 1828(o), 5412.

■ 2. Revise § 365.1 to read as follows:

§ 365.1 Purpose and scope.

This subpart, issued pursuant to section 304 of the Federal Deposit

[65] 5 U.S.C. 601, *et seq.*

[66] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[67] FDIC Call Report, March 31st, 2018.

[68] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

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

Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes standards for real estate lending to be used by FDIC-supervised institutions in adopting internal real estate lending policies. For purposes of this subpart, the term ''FDIC-supervised institution'' means any insured depository institution 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).

■ 3. Amend § 365.2 by revising paragraphs (a), (b)(1)(iii), (2)(iii) and (iv), and (c) to read as follows:

§ 365.2 Real estate lending standards.

(a) Each FDIC-supervised institution shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) * * *

(iii) Be reviewed and approved by the FDIC-supervised institution's board of directors at least annually.

(2) * * *

(iii) Loan administration procedures for the FDIC-supervised institution's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the FDIC-supervised institution's real estate lending policies.

(c) Each FDIC-supervised institution must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

* * * * *

Subpart B—[Removed and Reserved]

■ 4. Remove and reserve subpart B, consisting of §§ 365.101, 365.102, 365.103, 365.104, 365.105, and appendix A to subpart B.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 5. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

Subpart P—[Removed and Reserved]

■ 6. Remove and reserve Subpart P, consisting of §§ 390.260, 390.261, 390.262, 390.263, 390.264, 390.265, 390.266, 390.267, 390.268, 390.269, 390.270, 390.271, 390.272.

Dated at Washington, DC, on December 18, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2018–28084 Filed 2–4–19; 8:45 am]

BILLING CODE 6714–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2018–8]

Noncommercial Use of Pre-1972 Sound Recordings That Are Not Being Commercially Exploited

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office (''Copyright Office'' or ''Office'') is issuing a notice of proposed rulemaking regarding the Classics Protection and Access Act, title II of the recently enacted Orrin G. Hatch-Bob Goodlatte Music Modernization Act. In connection with the establishment of federal remedies for unauthorized uses of sound recordings fixed before February 15, 1972 (''Pre-1972 Sound Recordings''), Congress also established an exception for certain noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited. To qualify for this exemption, a user must file a notice of noncommercial use after conducting a good faith, reasonable search to determine whether the Pre-1972 Sound Recording is being commercially exploited, and the rights owner of the sound recording must not object to the use within 90 days. After soliciting public comments through a notice of inquiry, the Office is proposing regulations identifying the specific steps that a user should take to demonstrate she has made a good faith, reasonable search. The proposed rule also details the filing requirements for the user to submit a notice of noncommercial use and for a rights owner to submit a notice objecting to such use.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on March 7, 2019. Meeting requests must be received no later than 11:59 p.m. Eastern Time on March 18, 2019, and all meetings must take place no later than Friday, March 22, 2019. The Office will not consider requests to hold meetings after that date. So that the Copyright Office is able to meet the statutory deadlines set forth in the Music Modernization Act, no further extensions of time will be granted in this rulemaking.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/pre1972-soundrecordings-noncommercial/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov* or Anna Chauvet, Assistant General Counsel, by email at *achau@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, H.R. 1551 (''MMA''). Title II of the MMA, the Classics Protection and Access Act, created chapter 14 of the copyright law, title 17, United States Code, which, among other things, extends remedies for copyright infringement to owners of sound recordings fixed before February 15, 1972 (''Pre-1972 Sound Recordings''). Under the provision, rights owners may be eligible to recover statutory damages and/or attorneys' fees for the unauthorized use of their Pre-1972 Sound Recordings if certain requirements are met. To be eligible for these remedies, rights owners must typically file schedules listing their Pre-1972 Sound Recordings (''Pre-1972 Schedules'') with the U.S. Copyright Office, which are indexed into the Office's public records.[1] The filing requirement is ''designed to operate in place of a formal registration requirement that normally applies to claims involving statutory damages.'' [2]

The MMA also creates a new mechanism for members of the public to obtain authorization to make noncommercial uses of Pre-1972 Sound

[1] 17 U.S.C. 1401(f)(5)(A)(i)(I)–(II).

[2] H.R. Rep. No. 115–651, at 16 (2018); *see* S. Rep. No. 115–339, at 18 (2018).