Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AG04

Regulations Implementing the Change in Bank Control Act

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its filing requirements and processing procedures for notices filed under the Change in Bank Control Act (CBCA) by removing the exemption from the notice requirement for acquisitions of voting securities of a depository institution holding company with an FDIC-supervised subsidiary institution for which the Board of Governors of the Federal Reserve System (FRB) reviews a notice under the CBCA and by making conforming definitional changes. The FDIC also seeks information and comment regarding its approach to change in control notices under the CBCA with regard to persons who may be directly or indirectly exercising control over an FDIC-supervised institution. The FDIC is committed to developing an interagency approach to change in control notices with the FRB and the Office of the Comptroller of the Currency.

DATES: Comments must be received by October 18, 2024.

ADDRESSES: You may submit comments, identified by RIN 3064–AG04, by any of the following methods

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow instructions for submitting comments on the FDIC's website.
- *Email: Comments@fdic.gov.* Include ''Change in Bank Control Act/RIN 3064–AG04'' in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Change in Bank Control Act—RIN 3064–AG04, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m. eastern time.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

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SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the proposed rule is to ensure appropriate review of transactions that would result in control over FDIC-supervised institutions by allowing the FDIC to disapprove of a proposed acquisition if the proposed transaction would fail to satisfy any of the statutory factors enumerated in the CBCA.[1] Under the FDIC's current regulations, an entity is exempt from a notification requirement when the FRB reviews a notice under the CBCA. However, recent developments in equity markets may be contributing to elevated risk of excessive indirect control or concentration of ownership in FDIC-supervised institutions. Therefore, the FDIC is proposing to amend its regulations governing change in control notifications to remove the current exemption in order to ensure appropriate review of certain transactions, increasing the likelihood that all the statutory factors in the CBCA are met, and reducing the likelihood that certain transactions would result in an adverse effect on the Deposit Insurance Fund (DIF). The FDIC recognizes the importance of interagency collaboration and consistency with respect to the review of transactions under the CBCA and is committed to engaging in dialogue and coordination with the FRB and Office of the Comptroller of the Currency to develop an interagency approach to the issues discussed in this proposal.[2] The FDIC is also seeking public comment on all aspects of this proposal, including steps that may be taken on an interagency basis to coordinate CBCA notice review.

II. Background

A. The Change in Bank Control Act

The Change in Bank Control Act, section 7(j) of the Federal Deposit Insurance Act (FDI Act), generally provides that no person,[3] acting directly or indirectly, or in concert with other persons, may acquire control of an insured depository institution (IDI) unless the person has provided the appropriate Federal banking agency (AFBA)[4] prior written notice of the proposed transaction and the AFBA has

[1] 12 U.S.C. 1817(j)(7).

[2] The FDIC's commitment includes following standard notice and comment rulemaking practices should an interagency approach be developed and adopted.

[3] 12 CFR 303.81(g) defines ''person'' as ''an individual, corporation, limited liability company (LLC), partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, voting trust, or any other form of entity; and includes each party to a voting agreement and any group of persons acting in concert.''

[4] 12 U.S.C. 1813(q).

not disapproved the transaction within 60 days, as may be extended.[5] ''Control'' for purposes of the CBCA means ''the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution.'' [6] The proposed acquisition may be completed upon receipt of written notice that the AFBA does not disapprove of the acquisition or if the AFBA fails to act on a substantially complete prior notice within the statutory time period.

An AFBA may disapprove a proposed acquisition if it is unable to satisfactorily resolve one or more of the statutory factors enumerated in the CBCA.[7] An AFBA may disapprove of a proposed acquisition if the acquisition would result in a monopoly or may substantially lessen competition and the anticompetitive effects are not clearly outweighed by the public interest; the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the institution or prejudice the interests of its depositors; the competence, experience, or integrity of any acquiring person or any proposed management would not be in the best interests of the depositors or the public; any acquiring person neglects, fails, or refuses to furnish the AFBA with all required information; or the AFBA determines that the proposed transaction would result in an adverse effect on the DIF.

B. FDIC Rules and Regulation—Part 303

Subpart E of 12 CFR part 303 of the FDIC Rules and Regulations (subpart E) [8] implements the CBCA and sets forth the FDIC's filing requirements and processing procedures for notices filed pursuant to the CBCA (notices).[9] Subpart E requires notice to the FDIC before any person, acting directly or indirectly, alone or in concert with others, acquires control of a ''covered institution,'' unless the acquisition is exempt. The FDIC is the AFBA for insured State nonmember banks and insured State savings associations.[10] Because the CBCA applies to direct or indirect acquisitions of control, for purposes of the CBCA, the FDIC also may review a notice for an acquisition of control of any company that directly or indirectly controls an insured State nonmember bank or an insured State savings association.[11] Subpart E therefore defines ''covered institution'' to include an insured State nonmember bank, an insured State savings association, and any company that controls, directly or indirectly, an insured State nonmember bank or an insured State savings association and exempts certain holding companies in situations for which the FDIC does not currently require a notice.[12]

While the CBCA does not describe what constitutes the power to direct the management or policies of a covered institution, the Federal banking agencies have determined that a shareholder who owns or controls a significant block of voting securities generally will have influence in a banking organization. Thus, the FDIC's regulations contain a rebuttable presumption that an acquisition of voting securities of a covered institution constitutes control and triggers the notice requirement if, immediately after the transaction, the acquiring person will own, control, or hold the power to vote 10 percent or more of any class of voting securities, and either the institution has registered securities under section 12 of the Securities Exchange Act of 1934, or no other person will own, control, or hold a greater percentage of that class of voting securities after the transaction.[13] An acquiring person may rebut this presumption of control in writing.[14]

In practice, for transactions above the regulatory threshold of 10 percent of voting securities but below the 25 percent statutory threshold for control, an acquiring person generally will file a notice with the FDIC or rebut the presumption of control. To rebut the presumption of control, the acquiring person generally will set forth factors that demonstrate that it will not have the power, directly or indirectly, to direct the management or policies of the covered institution. These factors may include, for example, commitments by the acquiring person not to seek representation on the board of directors of the covered institution, not to take certain actions to influence the policies of the institution, or not to acquire further voting securities above a certain threshold. The documents describing the actions the acquiring person will or will not take to rebut the presumption of control may be called ''certifications,'' ''passivity agreements,'' or ''passivity commitments'' (passivity commitments). The FDIC generally is a party to such passivity commitments, and these agreements by their terms constitute a ''written agreement'' entered into with a Federal banking agency and enforceable under sections 8 and 50 of the FDI Act.[15] It has long been the policy of the FDIC that any passivity commitments executed in connection with an acquisition of voting securities must be tailored to the facts and circumstances of each situation.[16]

The FDIC has entered into passivity commitments in limited cases with asset managers investing in publicly traded FDIC-supervised institutions. The FDIC currently has in force four passivity commitments with three asset management companies. These commitments are published on the FDIC's website.[17]

Certain transactions are exempt from the notice requirements of subpart E pursuant to § 303.84(a). Among the exempt transactions are the acquisition of voting securities of a depository institution holding company for which the FRB reviews a notice.[18] Subpart E currently codifies the FDIC's policy that it does not require a notice when the FRB actually reviews a notice to acquire voting securities of a depository institution holding company under the CBCA.[19] However, the exemption does not extend to FRB determinations to accept a passivity commitment in lieu of a notice. In such cases, the FDIC evaluates the facts and circumstances to determine whether a notice is required to be filed with the FDIC for the indirect acquisition of control of an FDIC-supervised institution.[20]

[5] 12 U.S.C. 1817(j). The AFBA may, in its discretion, extend an additional 30 days the period during which such a disapproval may be issued. The period of disapproval may be extended two additional times for not more than 45 days each time in certain circumstances. *See* 12 U.S.C. 1817(j)(1)(A) through (D).

[6] 12 U.S.C. 1817(j)(8)(B).

[7] 12 U.S.C. 1817(j)(7).

[8] 12 CFR 303.80 through 303.88.

[9] The FDIC's requirements and procedures are consistent with those of the other Federal banking agencies. *See* 12 CFR 5.50 (Office of the Comptroller of the Currency); 12 CFR 225.41 through 225.44 (FRB).

[10] 12 U.S.C. 1813(q).

[11] Industrial loan companies, which in most cases are State nonmember banks, are not ''banks'' as defined in the Bank Holding Company Act so their parent companies are not required to become bank holding companies. 12 U.S.C. 1841(c)(2)(H).

[12] 12 CFR 303.81(e) (citing 12 CFR 303.84(a)(3) and (8)). Section 303.84(a)(3) exempts transactions described in sections 2(a)(5), 3(a)(A), or 3(a)(B) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B)) by a person described in those provisions because shares held in such capacities do not confer control upon such holding companies. Section 303.84(a)(8) exempts acquisitions of voting securities of a depository institution holding company for which the FRB reviews a notice pursuant to the CBCA.

[13] 12 CFR 303.82(b)(1). *See also* 12 CFR 5.50(f)(2)(iii) (OCC); 12 CFR 225.41(c)(2) (FRB).

[14] 12 CFR 303.82(b)(4).

[15] 12 U.S.C. 1818 and 1831aa.

[16] 80 FR 65889, 65894 (Oct. 28, 2015).

[17] *https://www.fdic.gov/regulations/applications/resources/change-in-control.html.*

[18] 12 CFR 303.84(a)(8).

[19] 80 FR 65897.

[20] *Id.*

In recent years, however, the FDIC typically has not determined that notices must be filed with the FDIC when the FRB accepts a passivity commitment in lieu of a notice. For the reasons described below, developments involving institutional investors and FDIC-supervised institutions have prompted the FDIC to reconsider its procedures regarding transactions exempt from notice requirements pursuant to subpart E, the facts and circumstances under which it will require a notice, and how to monitor compliance with passivity commitments entered into to rebut the presumption of control.

C. Growth in Passive Investments and Implications

Passive investment vehicles such as index mutual funds and exchange-traded funds (ETFs) that aim to replicate the performance of a third-party index such as the S&P 500 Index (collectively, ''index funds'') have grown in popularity in recent decades. Index funds do not hand-pick stocks like actively managed funds do in order to provide a return greater than the market; rather, index funds seek to match market returns by investing proportionally across stocks in the desired index or sector of the national economy. To the extent multiple index funds have the same company or related companies that sponsor, manage, or advise them, these companies are called ''fund complexes.'' By the end of December 2023, according to data released by Morningstar, passive funds exceeded active funds in total assets under management for the first time, with approximately $13.3 trillion in total assets to active funds' $13.2 trillion.[21] For comparison, when the first ETF was listed in 1993, passive funds represented less than 1 percent of total fund assets.[22] Index funds have grown in popularity due to lower management fees relative to active funds, the belief that index funds match or outperform active funds more frequently and consistently, and the growth of target-date funds in retirement plans.[23] Investments in index funds have pulled in more dollars on a net basis than active funds every year since 2013, and if fund flows continue to follow current trends, then they will further exceed total assets in active funds in the future.[24]

The exponential growth of index funds necessarily implicates the statutory and regulatory schemes of the CBCA and other banking laws that are based on ownership thresholds and control of banking organizations.[25] As investments in index funds grow, asset management companies and other institutional investors engaging in similar strategies must continue to invest those funds in the universe of stocks that comprise the index, purchasing ever-greater shares of those companies and increasing their ownership stakes. The FDIC has observed that fund complexes have acquired 10 percent or more of the voting securities at FDIC-supervised institutions or their controlling affiliates and have continued to increase their ownership percentages at more institutions. Additionally, the FDIC in recent years has observed a general pattern of more frequent requests for relief to rebut the presumptions of control under subpart E.

These developments have prompted the FDIC to reconsider its policies under the CBCA and implementing regulations so that the FDIC may more appropriately assess the effects of any control exerted over the management and policies of FDIC-supervised institutions. The FDIC is concerned that fund complexes will continue to increase their ownership percentage of FDIC-supervised institutions to potentially significant amounts as investments in their respective index funds grow. Fund complexes owning such high percentages of voting securities of FDIC-supervised institutions may create situations where the investor can have an outsized influence over the management or policies of an institution.[26] Such outsized influence may flow naturally from exercise of their votes as large shareholders over matters such as mergers, or through other indicia of control, such as engagements with portfolio companies whereby investors meet with directors or management to influence the direction of the company.[27] Fund complexes may seek board representation or management interlocks depending on the nature of existing passivity commitments.

Additionally, there have been changes to proxy access[28] and discretionary broker voting[29] that have given fund complexes more potential for control over the companies in which they hold a large equity stake in voting securities. The potential for fund complexes to exercise significant influence or control over management, business strategies, or

[21] *U.S. Fund Flows December 2023,* Morningstar (Jan. 17, 2024), *https://research.morningstar.com/articles/1202332/us-fund-flows-december-2023* (*login required*). *See also* Adam Sabban, *It's Official: Passive Funds Overtake Active Funds,* Morningstar (Jan. 17, 2024), *https://www.morningstar.com/funds/recovery-us-fund-flows-was-weak-2023.*

[22] Sabban, *supra* note 19.

[23] Morningstar, *Target-Date Strategy Landscape: 2023 Report* (Mar. 28, 2023), *https://newsroom.morningstar.com/newsroom/news-archive/press-release-details/2023/Morningstars-Target-Date-Strategy-Landscape-Report-Finds-Investors-Stayed-the-Course-Despite-Market-Volatility-in-2022/default.aspx.*

[24] Sabban, *supra* note 19.

[25] For example, pursuant to section 22(h) of the Federal Reserve Act, 12 U.S.C. 375b, and Regulation O, 12 CFR part 215 (made applicable to insured nonmember banks by 12 U.S.C. 1828(j)(2)), extensions of credit by banks to ''insiders,'' such as principal shareholders, must comply with certain individual and aggregate lending limits and other requirements. Over the past several years, fund complexes have acquired, or have approached acquiring, more than 10 percent of a class of voting securities of banking organizations. Upon acquiring more than 10 percent of a class of voting securities of a banking firm, a fund complex would be considered a ''principal shareholder'' of the bank for purposes of Regulation O. Any company in which a principal shareholder fund complex owns more than 10 percent of a class of voting securities could, in some instances, be presumed to be a ''related interest'' of the fund complex. In that event, the fund complex, as a principal shareholder of the bank, and any related interests of the fund complex would be considered insiders of the bank under Regulation O. Accordingly, the bank's lending to the principal shareholder fund complex and its controlled portfolio companies would be subject to the lending limits and other requirements of Regulation O. Certain banking firms expressed concerns about the possible unintended consequences of applying Regulation O to these relationships. In response, the Federal banking agencies issued a temporary no-action position in 2019 to provide time for the FRB, in consultation with the other Federal banking agencies, to consider whether to amend Regulation O to address concerns about unintended consequences of the application of Regulation O to companies that sponsor, manage, or advise investment funds and institutional accounts that invest in voting securities of banking organizations. FIL–85–2019 (Dec. 27, 2019), *https://www.fdic.gov/news/inactive-financial-institution-letters/2019/fil19085.html.* This interagency statement provided that the Federal banking agencies will exercise discretion to not take enforcement action against either a fund complex that is a principal shareholder of a bank, or a bank for which a fund complex is a principal shareholder, with respect to extensions of credit by the bank to the related interests of such fund complex that otherwise would violate Regulation O, provided the fund complexes and banks satisfy certain conditions that evidence that there is a lack of control by the fund complex over the bank. This statement was extended several times, most recently on December 15, 2023, until January 1, 2025. FIL–63–2023 (Dec. 15, 2023), *https://www.fdic.gov/news/financial-institution-letters/2023/fil23063.html.*

[26] *See* John Coates, The Problem of Twelve: When a Few Financial Institutions Control Everything, 27–28 (2023).

[27] *See id.* at 47–48 (describing trends of asset managers increasing the number of engagements held with portfolio companies and the companies' responses).

[28] *See* Holly J. Gregory, et al., *The Latest on Proxy Access,* Harv. L. Sch. F. on Corp. Governance & Fin. Reg. (Feb. 1, 2019) (detailing the increase in proxy access at S&P 500 companies since 2015).

[29] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 957, 124 Stat. 1376, 1906 (2010) (codified at 15 U.S.C. 78f(b)(10)) (prohibiting broker members from voting shares on executive compensation, boards of directors, and other ''significant matter[s]'').

major policy decisions at publicly traded FDIC-supervised institutions could increase the risk profile at such institutions and lead to excessive risk-taking to enhance profits, investor returns, or stock price. Finally, as fund complexes continue to purchase more shares of banking organizations across the market to match the growth of investments in index funds, there is the potential to create a concentration of ownership that may result in such investors having excessive influence or control over the banking industry as a whole.

In light of these changes to the economic landscape and ownership of FDIC-supervised institutions, the FDIC reviewed its policies under the CBCA and implementing regulations and believes it is appropriate to amend its current regulations to allow it to review certain transactions under the CBCA to address the concerns and potential risks outlined above. The FDIC also recognizes the interest in and need for collaboration among the Federal banking agencies on these issues to ensure consistency in the review of transactions implicating the CBCA. Accordingly, the FDIC is committed to engaging in dialogue and coordination with the FRB and the Office of the Comptroller of the Currency to develop an interagency approach to the issues discussed in this proposal and seeks public comment regarding further interagency coordination in this area.

III. Proposed Rule

A. Section 303.81(e)—Definitions

As noted above, the defined term ''covered institution'' excludes a holding company that is the subject of an exemption described in either § 303.84(a)(3) or (a)(8).[30] In accordance with the FDIC's proposal to remove the exemption at § 303.84(a)(8), as described below, the FDIC proposes to remove the reference to holding companies and associated exemptions in the definition of ''covered institution.'' Therefore, as shown in the proposed regulatory text, the definition of ''covered institution'' would eliminate the reference to holding companies subject to the regulatory exemptions in § 303.84(a)(3) or (a)(8).

As described below, the FDIC proposes to remove the exemption at § 303.84(a)(8). The FDIC is not proposing to remove the exemption at § 303.84(a)(3), which refers to transactions that are statutorily exempt from the CBCA's notice requirements. However, because the reference to § 303.84(a)(3) in the definition of ''covered institution'' refers to statutorily exempt transactions and not to holding companies themselves, the FDIC believes it is appropriate to remove this reference in the definition of covered institution as well. Some depository institution holding companies may be considered covered institutions.

B. Section 303.84(a)—Transactions That Do Not Require Notice

Section 303.84(a) currently contains eight transactions that are exempt from providing prior notice to the FDIC. The FDIC proposes to remove the exemption at § 303.84(a)(8), acquisitions of depository institution holding company voting securities for which the Board of Governors of the Federal Reserve System reviews a notice pursuant to the CBCA.

The current regulatory exemption only applies when the FRB actually reviews a notice under the CBCA, as described above.[31] Under this proposal, investors that propose to acquire voting securities of a depository institution holding company in transactions for which the FRB reviews a notice would no longer automatically be exempt from providing the FDIC prior notice. A change in control at the holding company level conveys indirect control over the IDI for which the FDIC is the AFBA under the CBCA. The proposal to remove the exemption solely because a notice is being reviewed by the FRB would allow the FDIC to exercise its authority under the CBCA to require and approve or disapprove such a notice at the IDI level.

The FDIC has determined that the original purpose of the current exemption, which was to avoid duplicate regulatory review of the same transaction by both the FRB and the FDIC,[32] is no longer warranted in light of the widespread impacts resulting from growth in, and changes to the nature of, passive investment strategies. As described above, fund complexes' increasingly large ownership of voting securities of FDIC-supervised institutions or companies that control FDIC-supervised institutions, and the evolution of the economic landscape over the past few decades, present new risks. Accordingly, the FDIC has determined that this proposal is necessary in light of the risks created by possible outsized control over and concentration of ownership of FDIC-supervised institutions. The FDIC must have the ability to require a notice so that, as the AFBA for the underlying IDI, it may independently review and determine whether the proposed acquisition satisfies the statutory factors enumerated in the CBCA for the institutions it supervises.[33] While an acquisition may be disapproved if one or more statutory factors in the CBCA are not met, as the Federal agency that also administers the DIF, the FDIC has a particular interest in reviewing whether a proposed acquisition could result in an adverse effect on the DIF.

While this proposal would allow the FDIC to require a notice to the FDIC when the FRB reviews a notice to acquire voting securities of a depository institution holding company, the FDIC would consider the facts and circumstances when deciding whether to exercise this authority for notices filed with the FRB. The FDIC believes it is appropriate to review proposed acquisitions under the CBCA more closely in order to fully address risks regarding outsized influence and increased concentration of ownership, though the FDIC may not do so for every proposed acquisition. Rather, the FDIC's proposal would allow it to consider the full range of options provided for under the CBCA.

Under the FDIC's current regulations, when the FRB accepts a passivity commitment in lieu of a notice, the FDIC evaluates the facts and circumstances of the case to determine whether a notice is required to be filed with the FDIC for the indirect acquisition of control of an FDIC-supervised institution. Similarly, in cases where the FRB accepts a notice, the FDIC under the proposed rule will evaluate the facts and circumstances to determine whether to require a notice to be filed with the FDIC as well.

The proposed rule would mean that for transactions resulting in the acquiring person owning, controlling, or holding with power to vote 10 percent or more of any class of voting securities of a depository institution holding company with an FDIC-supervised subsidiary institution, the FDIC may exercise one of the following options: (1) based on the facts and circumstances, require prior written notice to the FDIC under the CBCA for the indirect acquisition of control of an FDIC-supervised institution; or (2) allow the acquiring person an opportunity to

[30] 12 CFR 303.81(e).

[31] *Supra,* note 18 and accompanying text.

[32] *Id.*

[33] 12 U.S.C. 1817(j)(7). The Office of the Comptroller of the Currency is the AFBA for national banks and the FRB is the AFBA for State member banks. Each agency would have a similar interest.

rebut the presumption of control in writing.[34]

IV. Expected Effects

As previously discussed, the proposed rule would remove an existing regulatory exemption that only applies when the FRB reviews a notice under the CBCA. As of the quarter ending March 31, 2024, the FDIC supervised 2,920 insured depository institutions.[35] This proposed rule, if promulgated, would likely increase the number of change-in-control notices submitted by entities seeking to acquire voting securities of FDIC-supervised institutions or their parent companies, and associated costs. Over the first three months of 2024, the FRB received 13 filings from 11 unique entities to indirectly acquire voting securities of FDIC-supervised institutions by acquiring voting securities of the entity that controls an FDIC-supervised institution.[36] The FDIC expects to receive 52 notices annually as a result of the proposed rule and one request to rebut the presumption of control annually.[37] The FDIC estimates that each notice would require 30.5 labor hours at an hourly cost of $142.40 [38] and that each request to rebut the presumption of control would require 15 labor hours at an hourly cost of $111.40.[39] Therefore, the FDIC estimates that the proposed rule could result in average annual recordkeeping, reporting, and disclosure compliance costs of up to $227,517.40.[40] However, the FDIC believes that this estimate likely is conservative because, as previously stated, the FDIC may not exercise this authority for every notice filed with the FRB.

If adopted, the FDIC believes that the proposed rule would facilitate appropriate review of transactions resulting in control of FDIC-supervised institutions and, thereby, would reduce the likelihood of outsized influence or control over FDIC-supervised institutions and any associated costs. As previously discussed, recent developments in equity markets in concert with the FDIC's current practice of exempting entities from a notification requirement when the FRB reviews a notice under the CBCA may be contributing to elevated risk of excessive or indirect control or concentration of ownership of FDIC-supervised institutions. The proposed rule would facilitate the FDIC's review of certain transactions, thereby increasing the likelihood that all the statutory factors in the CBCA are met, and reducing the likelihood that certain transactions would result in an adverse effect on the DIF. The FDIC does not have the information necessary to quantify such effect.

V. Alternatives Considered

The primary alternative to this proposed rule that the FDIC considered was maintaining the existing regulatory structure in which an entity is exempt from submitting a notice to the FDIC when the FRB actually reviews a notice to acquire voting securities of a depository institution holding company. The FDIC believes that the proposed rule is more appropriate because recent developments in the equity markets, in concert with the FDIC's current policy of not requiring a notice, may be contributing to an elevated risk of excessive indirect control of FDIC-supervised institutions. The FDIC also considered the alternative of compelling an entity to file a notice with the FDIC in each case where the FRB actually reviews a notice to acquire voting securities of a depository institution holding company under the CBCA. However, the FDIC believes that the proposed rule is more appropriate because it would balance the costs associated with duplicate regulatory review of the same transaction with the elevated risks associated with excessive control or concentration of ownership of FDIC-supervised institutions.

VI. Request for Comments

The FDIC is seeking comment on all aspects of the proposed rule and existing regulatory framework that applies to the role played by asset managers and other institutional investors with FDIC-supervised institutions in the context of the CBCA and passivity agreements. While the FDIC continues to perform a comprehensive review of its overall regulatory and supervisory approach to issues that arise under the CBCA, this proposed rule asks a number of questions and seeks public comment regarding monitoring of change in control-related issues, the use of passivity commitments, and specific terms and conditions that may be appropriate to incorporate into such commitments or non-objections in the future. In responding to the following questions, the FDIC asks that commenters please include quantitative as well as qualitative support for their responses, as applicable. The FDIC will consider comments submitted anonymously.

Question 1. Should the FDIC require prior written notice at the bank level when a change of control occurs at the holding company level? Why or why not?

Question 2. If the FDIC should require prior written notice when a change of control occurs at the holding company level, what steps should the FDIC take to avoid duplication of regulatory reviews and reduce regulatory burden? What would be the negative impacts of inconsistent approaches across the Federal banking agencies?

Question 3. Should the FDIC and other AFBAs consider an approach whereby a notice would be required at either the bank level or holding company based on specific criteria, such as the percentage of assets of the insured depository institution in relation to the consolidated assets of the holding company?

Question 4. Does the existing and proposed regulatory and supervisory framework properly consider all aspects of the role played by investors with FDIC-supervised institutions in the context of the CBCA? If not, what areas should be addressed?

Question 5. What, if any, additional requirements or criteria should be included in the existing regulatory framework to address the concerns of passive investors exerting control, direct and indirect, over FDIC-supervised institutions?

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[34] Making passivity commitments is one option the FDIC will consider on whether the presumption of control has been rebutted.

[35] FDIC Call Report data, March 31, 2024.

[36] *See* 89 FR 471 (Jan. 4, 2024), 89 FR 1575 (Jan. 10, 2024), 89 FR 3403 (Jan. 18, 2024), 89 FR 5235 (Jan. 26, 2024), 89 FR 5544 (Jan. 29, 2024), 89 FR 8681 (Feb. 08, 2024), 89 FR 11276 (Feb. 14, 2024), and 89 FR 18410 (Mar. 13, 2024).

[37] Thirteen responses in the first three months of $2024 \times (12/3) = 52$ estimated change in control notices submitted annually.

[38] To derive this estimate, the FDIC used data from the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics for executives and managers, lawyers, compliance officers, financial analysts, and clerical categories in the depository credit intermediation sector as of May 2023. The FDIC increased these estimates by approximately 1.53 using the March 2023 BLS Employer Costs for Employee Compensation data, and then multiplied the resulting values by approximately 1.04 to reflect the change in the BLS Employment Cost Index between March 2023 and March 2024.

[39] *Id.*

[40] $52 \times 30.5 \times \$142.40 + 1 \times 15 \times \$111.40 = \$227,517.40$.

Question 6. What facts and circumstances should the FDIC consider when determining whether to require a notice to be filed with the FDIC for an indirect acquisition of control of an FDIC-supervised institution? What difference should there be in this determination, if any, when a notice is filed at the FRB versus when the FRB determines to accept a passivity commitment in lieu of a notice?

Question 7. Through what methods should the FDIC address the rebuttable presumption of control other than through passivity commitments? Should the FDIC continue entering into passivity agreements, or should it consider a different approach such as other passivity commitment arrangements, no-action letters, or agency opinions? Please identify the benefits and risks to any proposed method.

Question 8. What should the FDIC consider when determining whether a presumption of control has been successfully rebutted?

Question 9. What types of provisions should passivity commitments include and why?

Question 10. What, if any, provisions should be included in passivity commitments to ensure compliance with the written agreements?

Question 11. Should the FDIC enter into blanket passivity agreements with investors that apply to the entire portfolio of the FDIC-supervised institutions in the fund complex or require separate agreements for each FDIC-supervised institution? What should the FDIC consider when making this determination?

Question 12. Are institutional investors, fund complexes asset managers, or other large, passive shareholders directing the management or policies of FDIC-supervised institutions as a result of their voting securities holdings? If so, how? Are there other situations, investors, or risks that the FDIC should consider?

Question 13. Are investors coordinating voting or otherwise acting in concert in ways that the FDIC should be monitoring more closely? If so, please provide any available quantitative and qualitative data.

Question 14. Are there any other considerations for the FDIC in evaluating its current regulatory framework as it relates to the filing requirements and processing procedures for notices filed under the CBCA?

Question 15. Has concentrated ownership of FDIC-supervised institutions and their affiliates affected banking sector competition? If so, please identify the impact and how it has impacted the sector.

Question 16. Has there been any impact on corporate governance, or other safety and soundness considerations, of concentrated ownership of FDIC-supervised institutions and their affiliates? If so, please identify the impact and how it has impacted these areas.

Question 17. Are there other areas of impact on FDIC-supervised institutions and their affiliates as a result of investors owning large proportions of voting securities of covered institutions that the FDIC should consider?

Question 18. Should the FDIC limit the voting power of persons who acquire 10 percent or more of a class of voting securities of an FDIC-supervised institution or its parent company? If so, how? What are the benefits and costs of various approaches?

Question 19. How can the FDIC and the other Federal banking agencies best ensure consistency in the review of notices under the CBCA? What steps should be taken on an interagency basis to ensure the appropriate review of transactions involving an indirect acquisition of control of an institution?

Question 20. Are there any expected effects of the proposed rule that have not been identified?

VII. Regulatory Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[41] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[42]

The proposed rule could impose costs since it would permit the FDIC to require certain entities that acquire control of FDIC-supervised institutions to file notices with the FDIC. Moreover, should these entities rebut the presumption of control, they would likely incur costs in order to do so. As of March 31, 2024, the FDIC supervises 2,920 institutions, of which 2,198 are small entities for the purposes of the RFA.[43] Over the first three months of 2024, 11 different investors indirectly acquired voting securities of 13 FDIC-supervised institutions, including eight that are small entities for the purposes of the RFA,[44] by acquiring voting securities of the companies that controlled those institutions.[45] The FDIC does not have data with which to determine if the acquirers were small entities for the purposes of the RFA.

The FDIC estimates this proposed rule would affect as many as 44 entities annually.[46] Acquirers of voting securities of FDIC-supervised institutions over the first three months of 2024 included individuals, family trusts, private equity firms, and construction companies.[47] Given the wide range of potential acquirers of voting securities of FDIC-supervised institutions, the FDIC believes it is unlikely that these 44 entities represent a substantial number of small entities. In light of the foregoing, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

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

B. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995.[48] In accordance with the requirements of the PRA, 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 FDIC's OMB control

[41] 5 U.S.C. 601, *et seq.*

[42] The SBA defines a small banking organization as having $850 million or less in assets, where an organization'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 by 87 FR 69118, effective December 19, 2022). In its determination, the ''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 an IDI's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the IDI is ''small'' for the purposes of RFA.

[43] FDIC Call Report data, March 31, 2024.

[44] Id.

[45] *See supra* note 33.

[46] $11 \times (12/3) = 44$.

[47] *See supra* note 33.

[48] 44 U.S.C. 3501–3521.

number associated with this proposed rule is 3064–0019 and is titled ''Interagency Notice of Change in Control.''

As stated above, over the first three months of 2024, the FRB received 13 filings from 11 unique filers to indirectly acquire voting securities of an FDIC-supervised institution.[49] The FDIC estimates 43 annual respondents to the information collection (IC) in this ICR that corresponds to notices,[50] and 52 annual responses [51] for an average of 1.21 responses per respondent annually.[52] Subject matter experts (SMEs) at the FDIC recommend retaining the estimate of 30.5 labor hours per response for notices. Further, SMEs at the FDIC estimate that the FDIC will receive one request per year from an acquirer to rebut the presumption of control, and that an entity would spend, on average, 15 labor hours to prepare and submit such a request at an average hourly cost of $111.40.[53] The FDIC estimates that change in control applicants will incur labor costs at an hourly cost estimate of $142.40.[54] Therefore, the FDIC estimates that the annual reporting burden hours associated with this NPR, if finalized, would be 1,601 as shown in table 1, and that the annual cost would be $227,517.40.[55]

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Applications for Change in Bank Control, 12 CFR 303.80 et seq. (Mandatory).	Reporting (On occasion).	43	1.21	30:30	1,586
2. Requests to rebut the presumption of control 12 CFR 303.82(b)(4) (Voluntary).	Reporting (On occasion).	1	1	15:00	15
Total Annual Burden (Hours):	.....	.....	.....	.....	*1,601*

Source: FDIC.

Note: The estimated annual IC time burden is the product, rounded to the nearest hour, of the estimated annual number of responses and the estimated time per response for a given IC. The estimated annual number of responses is the product, rounded to the nearest whole number, of the estimated annual number of respondents and the estimated annual number of responses per respondent. This methodology ensures the estimated annual burdens in the table are consistent with the values recorded in OMB's consolidated information system.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on the collection of information should be sent to the address listed in the **ADDRESSES** section of this document. Written comments and recommendations for this information collection also should be sent within 30 days of publication of this document to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 [56] (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on affected depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of the RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[57] The FDIC invites comments that will further inform its consideration of RCDRIA.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [58] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner and invites comment on the use of plain language. For example:

- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could the FDIC do to make the proposed rule easier to understand?

[49] *See supra* note 33.

[50] 11 × (12/3) = 44. SMEs at the FDIC estimate that one respondent per year would rebut the presumption of change in control rather than submit a change in control notice. Therefore, the estimated annual number of respondents to the first information collection (IC) is 43 (44—1) and the estimated annual number of respondents to the second IC is 1.

[51] 13 × (12/3) = 52.

[52] 52/4335 = 1.21.

[53] *See supra* note 35.

[54] *Id.*

[55] 1,586 × $142.40 + 15 × $111.40 = $227,517.40.

[56] 12 U.S.C. 4802(a).

[57] 12 U.S.C. 4802(b).

[58] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999).

E. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 [59] requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002.[60]

The FDIC is proposing to amend the current regulation by removing one exempt transaction from § 303.84(a) that currently does not require prior written notice to the FDIC. Transactions involving the acquisition of voting securities of a depository institution holding company for which the FRB reviews a notice would no longer be an exempt transaction under § 303.84(a). The proposed rule is intended for the FDIC to strengthen its review and approval process for acquisitions of voting securities that involve FDIC-supervised institutions. The proposal and required summary can be found at *https://www.fdic.gov/resources/regulations/federal-register-publications/.*

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Change in bank control, Filing procedures, Procedure and rules of practice, Reporting and recordkeeping requirements, and Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 303 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1463, 1467a, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831i, 1831e, 1831o, 1831p–1, 1831w, 1831z, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601–1607.

■ 2. Amend § 303.81 by revising paragraph (e) to read as follows:

§ 303.81 Definitions.

* * * * *

(e) *Covered institution* means an insured State nonmember bank, an insured State savings association, and any company that controls, directly or indirectly, an insured State nonmember bank or an insured State savings association.

* * * * *

§ 303.84 [Amended]

■ 3. Amend § 303.84 by removing paragraph (a)(8).

By order of the Board of Directors.

Dated at Washington, DC, on July 30, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–18187 Filed 8–16–24; 8:45 am]

BILLING CODE 6714–01–P

[59] 5 U.S.C. 553(b)(4).

[60] 44 U.S.C. 3501 note.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2026; Project Identifier AD–2024–00163–E]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pratt & Whitney (PW) Model PW1519G, PW1521G, PW1521GA, PW1521G–3, PW1524G, PW1524G–3, PW1525G, PW1525G–3, PW1919G, PW1921G, PW1922G, PW1923G, and PW1923G–A engines with a certain high-pressure compressor (HPC) 7th-stage axial rotor installed. This proposed AD was prompted by an analysis of an event involving an International Aero Engines, LLC (IAE LLC) Model PW1127GA–JM engine, which experienced an HPC 7th-stage integrally bladed rotor (IBR–7) separation that resulted in an aborted takeoff. This proposed AD would require performing initial and repetitive angled ultrasonic inspections (AUSI) of certain HPC 7th-stage axial rotors for cracks and replacing the HPC 7th-stage axial rotors if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 3, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2026; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For PW material identified in this proposed AD, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: *help24@prattwhitney.com*; website: *connect.prattwhitney.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2026; Project Identifier AD–2024–00163–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may revise this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.