

(d) *Exemptions.* (1) A bank need not file a suspicious activity report for a robbery or burglary committed or attempted, that is reported to appropriate law enforcement authorities.

(2) A bank need not file a suspicious activity report for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(e) *Retention of records.* A bank shall maintain a copy of any suspicious activity report filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the suspicious activity report. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the suspicious activity report. A bank must make all supporting documentation available to appropriate law enforcement authorities upon request.

(f) *Notification to board of directors.* The management of a bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section. The term "board of directors" includes the managing official of an insured state-licensed branch of a foreign bank for purposes of this part.

(g) *Confidentiality of suspicious activity reports.* Suspicious activity reports are confidential. Any bank subpoenaed or otherwise requested to disclose a suspicious activity report or the information contained in a suspicious activity report shall decline to produce the suspicious activity report or to provide any information that would disclose that a suspicious activity report has been prepared or filed citing this part, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the appropriate FDIC regional office (Division of Supervision and Consumer Protection (DSC)).

(h) *Safe harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, cover all reports of suspected or known criminal violations and suspicious ac-

tivities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this part or are filed on a voluntary basis.

PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS

AUTHORITY: 12 U.S.C. 1819, 1823(k)(5).

§357.1 Economically depressed regions.

(a) *Purpose.* Section 13(k)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(5)) provides that the FDIC shall consider proposals for financial assistance for eligible Savings Association Insurance Fund members before grounds exist for appointment of a conservator or receiver for such member. One of the criteria for eligibility is that an institution's offices are located in an economically depressed region as determined by the FDIC.

(b) *Economically depressed regions.* (1) For the purpose of determining "economically depressed regions", the FDIC will determine whether an institution qualifies as being located in an "economically depressed region" on a case-by-case basis. That determination will be based on four criteria:

- (i) High unemployment rates;
- (ii) Significant declines in non-farm employment;
- (iii) High delinquency rates of real estate assets at insured depository institutions; and
- (iv) Evidence indicating declining real estate values.

(2) In addition, the FDIC will also consider relevant information from institutions regarding their geographic market area, as well as information on whether that market is "economically depressed".

[55 FR 11161, Mar. 27, 1990, as amended at 63 FR 10295, Mar. 3, 1998]

PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.
359.0 Scope.

§ 359.0

- 359.1 Definitions.
- 359.2 Golden parachute payments prohibited.
- 359.3 Prohibited indemnification payments.
- 359.4 Permissible golden parachute payments.
- 359.5 Permissible indemnification payments.
- 359.6 Filing instructions.
- 359.7 Applicability in the event of receivership.

AUTHORITY: 12 U.S.C. 1828(k).

SOURCE: 61 FR 5930, Feb. 15, 1996, unless otherwise noted.

§ 359.0 Scope.

(a) This part limits and/or prohibits, in certain circumstances, the ability of insured depository institutions, their subsidiaries and affiliated depository institution holding companies to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties (IAPs).

(b) The limitations on golden parachute payments apply to troubled insured depository institutions which seek to enter into contracts to pay or to make golden parachute payments to their IAPs. The limitations also apply to depository institution holding companies which are troubled and seek to enter into contracts to pay or to make golden parachute payments to their IAPs as well as healthy holding companies which seek to enter into contracts to pay or to make golden parachute payments to IAPs of a troubled insured depository institution subsidiary. A "golden parachute payment" is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the insured depository institution making the payment is troubled or, if the payment is being made by an affiliated holding company, either the holding company itself or the insured depository institution employing the IAP, is troubled. The definition of golden parachute payment does not include payments pursuant to qualified retirement plans, non-qualified *bona fide* deferred compensation plans, nondiscriminatory severance pay plans, other types of common benefit plans, state statutes and death benefits. Certain limited exceptions to the golden parachute payment prohibi-

12 CFR Ch. III (1-1-05 Edition)

tion are provided for in cases involving the hiring of a white knight and unassisted changes in control. A procedure is also set forth whereby an institution or IAP can request permission to make what would otherwise be a prohibited golden parachute payment.

(c) The limitations on indemnification payments apply to all insured depository institutions, their subsidiaries and affiliated depository institution holding companies regardless of their financial health. Generally, this part prohibits insured depository institutions, their subsidiaries and affiliated holding companies from indemnifying an IAP for that portion of the costs sustained with regard to an administrative or civil enforcement action commenced by any federal banking agency which results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the affairs of an insured depository institution or required to cease and desist from or take an affirmative action described in section 8(b) (12 U.S.C. 1818(b)) of the Federal Deposit Insurance Act (FDI Act). However, there are exceptions to this general prohibition. First, an institution or holding company may purchase commercial insurance to cover such expenses, except judgments and penalties. Second, the institution or holding company may advance legal and other professional expenses to an IAP directly (except for judgments and penalties) if its board of directors makes certain specific findings and the IAP agrees in writing to reimburse the institution if it is ultimately determined that the IAP violated a law, regulation or other fiduciary duty.

§ 359.1 Definitions.

(a) *Act* means the Federal Deposit Insurance Act, as amended (12 U.S.C. 1811, *et seq.*).

(b) *Appropriate federal banking agency, bank holding company, depository institution holding company and savings and loan holding company* have the meanings given to such terms in section 3 of the Act.

(c) *Benefit plan* means any plan, contract, agreement or other arrangement which is an "employee welfare benefit