

Federal Deposit Insurance Corporation

§ 340.4

(1) A judgment has been rendered in favor of the FDIC or a failed institution; or

(2) In the case of a secured obligation, the property securing such obligation is foreclosed on.

(c) *FDIC* means the Federal Deposit Insurance Corporation.

(d) *Failed institution* means any bank or savings association that has been under the conservatorship or receivership of the FDIC or RTC. For the purpose of this part, "failed institution" includes any entity owned and controlled by a failed institution.

(e) *Obligation* means any debt or duty to pay money owed to the FDIC or a failed institution, including any guarantee of any such debt or duty.

(f) *Person* means an individual, or an entity with a legally independent existence, including: a trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a corporation; an association; or other organization or society.

(g) *RTC* means the former Resolution Trust Corporation.

(h) *Substantial loss* means:

(1) An obligation that is delinquent for ninety (90) or more days and on which there remains an outstanding balance of more than \$50,000;

(2) An unpaid final judgment in excess of \$50,000 regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(3) A deficiency balance following a foreclosure of collateral in excess of \$50,000, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(4) Any loss in excess of \$50,000 evidenced by an IRS Form 1099-C (Information Reporting for Discharge of Indebtedness).

§ 340.3 What are the restrictions on the sale of assets by the FDIC if the buyer wants to finance the purchase with a loan from the FDIC?

A person may not borrow money or accept credit from the FDIC in connection with the purchase of any assets from the FDIC or any failed institution if:

(a) There has been a default with respect to one or more obligations totaling in excess of \$1,000,000 owed by that person or its associated person; and

(b) The person or its associated person made any fraudulent misrepresentations in connection with any such obligation(s).

§ 340.4 What are the restrictions on the sale of assets by the FDIC regardless of the method of financing?

(a) A person may not acquire any assets from the FDIC or from any failed institution if the person or its associated person:

(1) Has participated, as an officer or director of a failed institution or of an affiliate of a failed institution, in a material way in one or more transaction(s) that caused a substantial loss to that failed institution;

(2) Has been removed from, or prohibited from participating in the affairs of, a failed institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the FDIC, or any of their successors;

(3) Has demonstrated a pattern or practice of defalcation regarding obligations to any failed institution; or

(4) Has been convicted of committing or conspiring to commit any offense under 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 affecting any failed institution and there has been a default with respect to one or more obligations owed by that person or its associated person.

(b) For purposes of paragraph (a) of this section, a person has participated "in a material way in a transaction that caused a substantial loss to a failed institution" if, in connection with a substantial loss to a failed institution, the person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the FDIC or by any component of the government of the United States or of any state:

(1) To have violated any law, regulation, or order issued by a federal or state banking agency, or breached or defaulted on a written agreement with a federal or state banking agency, or breached a written agreement with a failed institution;

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(2) To have engaged in an unsafe or unsound practice in conducting the affairs of a failed institution; or

(3) To have breached a fiduciary duty owed to a failed institution.

(c) For purposes of paragraph (a) of this section, a person or its associated person has demonstrated a "pattern or practice of defalcation" regarding obligations to a failed institution if the person or associated person has:

(1) Engaged in more than one transaction that created an obligation on the part of such person or its associated person with intent to cause a loss to any financial institution insured by the FDIC or with reckless disregard for whether such transactions would cause a loss to any such insured financial institution; and

(2) The transactions, in the aggregate, caused a substantial loss to one or more failed institution(s).

§ 340.5 Can the FDIC deny a loan to a buyer who is not disqualified from purchasing assets using seller-financing under this regulation?

The FDIC still has the right to make an independent determination, based upon all relevant facts of a person's financial condition and history, of that person's eligibility to receive any loan or extension of credit from the FDIC, even if the person is not in any way disqualified from purchasing assets from the FDIC under the restrictions set forth in this part.

§ 340.6 What is the effect of this part on transactions that were entered into before its effective date?

This part does not affect the enforceability of a contract of sale and/or agreement for seller financing in effect prior to July 1, 2000.

§ 340.7 When is a certification required, and who does not have to provide a certification?

(a) Before any person may purchase any asset from the FDIC that person must certify, under penalty of perjury, that none of the restrictions contained in this part applies to the purchase. The FDIC may establish the form of the certification and may change the form from time to time.

(b) Notwithstanding paragraph (a) of this section, a state or political sub-

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division of a state, a federal agency or instrumentality such as the Government National Mortgage Association, or a federally-regulated, government-sponsored enterprise such as Fannie Mae or Freddie Mac does not have to give a certification before it can purchase assets from the FDIC, unless the Director of the FDIC's Division of Resolutions and Receiverships, or his designee, in his discretion, requires a certification of any such entity.

§ 340.8 Does this part apply in the case of a workout, resolution, or settlement of obligations?

The restrictions of §§ 340.3 and 340.4 do not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, one or more obligations, regardless of the amount of such obligations.

PART 341—REGISTRATION OF SECURITIES TRANSFER AGENTS

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AUTHORITY: Secs. 2, 3, 17, 17A and 23(a), Securities Exchange Act of 1934, as amended (15 U.S.C. 78b, 78c, 78q, 78q-1 and 78w(a)).

SOURCE: 47 FR 38106, Aug. 30, 1982, unless otherwise noted.

§ 341.1 Scope.

This part is issued by the Federal Deposit Insurance Corporation (the *FDIC*) under sections 2, 3(a)(34)(B), 17, 17A and 23(a) of the Securities Exchange Act of 1934 (the *Act*), as amended (15 U.S.C. 78b, 78c(a)(34)(B), 78q, 78q-1 and 78w(a)) and applies to all insured nonmember banks, or subsidiaries of such banks, that act as transfer agents for securities registered under section 12 of the Act (15 U.S.C. 78j), or for securities exempt from registration under subsections (g)(2)(B) or (g)(2)(G) of section 12 (15 U.S.C. 78j(g)(2)(B) and (G)) (securities of investment companies, including mutual funds, and insurance companies). Such securities are *qualifying securities* for purposes of this part.