habitat. Regulations controlling consultation under ESA section 7 are codified at 50 CFR part 402. EPA's approval of the State permitting program under section 402 of the Clean Water Act is a federal action subject to this requirement, but the State's subsequent OPDES permit actions are not. EPA completed informal consultation with the U.S. Fish and Wildlife Service (FWS or the Service). In the consultation, EPA, the Service, and ODEQ outlined procedures by which ODEQ and FWS, will confer on permits which are likely to affect federally listed species. These processes are reflected in a Memorandum of Understanding between the State and FWS. In addition, a consultation agreement has been reached between EPA and FWS on EPA's oversight role and objection procedures when ODEQ and FWS cannot agree on the protection of species in an individual State permit action. These conditions are reflected in the EPA/ODEQ MOA.

I hereby authorize the OPDES program in accordance with 40 CFR part 123.

Dated: November 19, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–31274 Filed 12–9–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

December 3, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

OMB Number: 3060–0704.

Expiration Date: 05/31/97.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form Number: N/A.

Estimated Annual Burden: 138,175.5 total annual hours; 266.2 hours per respondent (avg.); 519 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $435,000.

Description: In the Second Report and Order (Order), adopted in CC Docket No. 96–61, the Commission eliminated the requirement that nondominant interexchange carriers file tariffs for interstate, domestic interexchange telecommunications services. In order to facilitate enforcement of such carriers' statutory obligation to geographically average and integrate their rates, and to make it easier for customers to compare carriers' service offerings, the Order requires affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate, domestic interexchange services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–31257 Filed 12–9–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding the Payment of State and Local Property Taxes

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Revision and Reissuance of Policy Statement.

SUMMARY: The Statement of Policy revises and reissues the FDIC's ''Statement of Policy Regarding the Payment of State and Local Property Taxes'' issued on June 4, 1991. As required by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (''the RCDRIA''), the FDIC is conducting a systematic review of its regulations and statements of policy that might be inefficient, cause unnecessary burden, or contain outmoded, duplicative, or inconsistent provisions (see 60 FR 62345 (Dec. 6, 1995)). The FDIC has reviewed its 1991 Policy Statement and has concluded that it should be revised and reissued. This revised Statement of Policy would replace the 1991 Policy Statement.

The revised Statement of Policy would reflect (1) the statutory ''sunset'' of the Resolution Trust Corporation (''RTC'') on December 31, 1995, resulting in the FDIC's succession to the RTC's remaining responsibilities; and (2) the developing caselaw in the area.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: William P. Stewart, Real Estate Specialist, ORE, FDIC (202) 416–4229; David N. Wall, Senior Counsel, FDIC Legal Division (202) 736–0115; or David Fisher, Counsel, FDIC Legal Division (202) 736–3103.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Statement of Policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., it is certified that the Statement of Policy will not have a significant economic impact on a substantial number of small entities. In addition, the Statement of Policy will not impose regulatory compliance requirements on depository institutions of any size.

DISCUSSION

I. Introduction

Section 15 of the Federal Deposit Insurance Act (''FDIA''), 12 U.S.C. 1825, provides immunity from all taxation imposed by any state, county, municipal, or local taxing authority, except for ad valorem real property taxation. This immunity from taxation, and its limited exception for real property taxation, apply to the FDIC both in its corporate capacity and when it is acting as a receiver for a failed financial institution. 12 U.S.C. 1825 (a) and (b),[1] respectively. See also 12 U.S.C. 1823(d)(3)(A).

On June 4, 1991, the FDIC and the RTC each issued a ''Statement of Policy Regarding the Payment of State and Local Property Taxes.'' The two policy statements were essentially identical. The RTC statement was published at 56 FR 28426 (June 20, 1991); the FDIC statement was not published in the Federal Register but was made publicly available in FDIC's Law, Regulations, and Related Acts. Since their issuance, several cases involving the FDIC's and RTC's tax immunity and the Corporations' implementation of their policy statements have been litigated to conclusion. Moreover, on December 31, 1995, the RTC terminated and the FDIC

[1] Section 219 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') added subsection (b) to clarify that the FDIC's immunity extends to receiverships.

succeeded to its remaining responsibilities. Accordingly, the RTC termination, the developing judicial interpretation of the FDIC's tax immunity, and the requirements of the RCDRIA warrant a reissuance of the FDIC policy statement with certain minor changes.

II. Background

In providing for the orderly liquidation of a failed financial institution, the FDIC has only a limited ability to prepare in advance for managing the assets of a financial institution for which it has been appointed receiver. Moreover, the difficulties of administration may often be compounded by the poor quality of the affected institution's records, which may be incomplete or in disarray, or both.

Frequently, records regarding ad valorem real property tax liabilities are not current. In many instances, taxes that are already delinquent at the time the receiver is appointed become further delinquent, and taxes that are not delinquent become so. Because of the importance of property tax revenues for state and local municipal finances, and given the magnitude of the FDIC holdings of real property and the potential effect thereon of section 15(b) of the FDIA, the FDIC in 1991 adopted a Statement of Policy Regarding the Payment of State and Local Property Taxes (''Policy'') to provide guidance concerning its payment of such taxes. Having had five years of experience with that Policy, the FDIC now adopts a revised policy (hereinafter ''Revised Policy'') to reflect certain minor changes now deemed advisable as a result of litigation and practical experience.

Application to Resolution Trust Corporation Assets

On December 31, 1995, the RTC terminated. Pursuant to 12 U.S.C. 1441a(m), the FDIC has succeeded the RTC as receiver for all institutions for which the RTC was acting as receiver at the time of its termination, as well as to any assets which the RTC held in its corporate capacity at that point. Therefore, it is appropriate to issue this Revised Policy to clarify that its provisions apply equally to all receiverships and assets transferred from the RTC.

III. Explanation

A. Scope and Applicability

Section 15 of the FDIA is silent about the immunity of the FDIC when acting as conservator. The legislative history of section 15(b), however, as well as the similarity of powers and duties of conservators and receivers, suggest that the FDIC, as conservator, should enjoy similar tax immunity. On the other hand, the FDIC recognizes that financial institutions in conservatorship continue to operate as business entities. Similar considerations obtain with respect to a bridge bank, and when the FDIC is managing a special asset pool arising out of a large bank assisted transaction. Accordingly, the Revised Policy conforms with the former Policy and provides that the FDIC, when acting in such capacities, will not assert the tax immunity recognized in section 15(b), although it reserves the right to reconsider this position in the future.

The FDIC is sometimes appointed as conservator for an institution that has acquired certain assets and assumed certain liabilities from a receiver pursuant to a purchase and assumption agreement. In such cases, the liabilities assumed generally do not include all tax obligations. The Revised Policy provides, as did the original Policy, that the FDIC, as conservator, will not be liable for those obligations not assumed from the receiver. This disclaimer of liability is not based on a claim of conservatorship immunity; rather, liability is disclaimed because the institution in conservatorship has not legally assumed those obligations. A bridge bank that has acquired assets and assumed liabilities in a similar manner is also entitled to disclaim tax-related obligations it has not legally assumed.

Section 15 of the FDIA is also silent as to whether immunity applies to the operations of a subsidiary of an institution in receivership or conservatorship. Certain legal and policy considerations may support the position that immunity applies to the operations of a subsidiary in the same manner as it applies to the operations of the receivership or conservatorship. Nevertheless, because of various concerns, including the maintenance of the separate corporate identities of subsidiaries, the Revised Policy provides that such immunity will not be asserted at this time. The FDIC reserves the right to reconsider whether immunity applies to the operations of subsidiaries.

The Revised Policy eliminates the discussion of these points appearing in Section A of the original Policy in favor of the more extensive discussion in Section H.

B. Taxes

1. Payment of Taxes

Like the original Policy, the Revised Policy provides that the FDIC will pay proper tax obligations, but recognizes that prompt payment must be consistent with sound business judgement and the orderly administration of receiverships. It confirms that Section 15 immunity applies to all assets acquired in the course of the FDIC's liquidation operations.

2. Taxes on Owned Real Property

Section 15(b) of the FDIA expressly waives the FDIC's immunity with respect to ad valorem real property taxation. Accordingly, like the original Policy, the Revised Policy acknowledges that property which the FDIC owns in fee, however acquired, is subject to ad valorem real property taxation. Like the original Policy, the Revised Policy also recognizes that the waiver of immunity in section 15(b) is only for real property taxes assessed according to the property's value. Thus, immunity has not been waived for taxes imposed on real property that are not based on value, and the Revised Policy so states. For example, some types of special assessments, which traditionally are based on property factors other than value, such as front footage, are not ad valorem real property taxes and therefore the FDIC is not liable for them. See *Federal Reserve Bank of St. Louis* v. *Metrocentre Improvement District* #1, City of Little Rock, Arkansas, 657 F.2d 183 (8th Cir. 1981); *United States* v. *City of Adair*, 539 F.2d 1185 (8th Cir. 1976).

3. Taxes on Secured Interests in Real Property

The largest category of assets which the FDIC acquires as receiver is loans secured by mortgage interests in real property. Like the original Policy, the Revised Policy acknowledges that real property which is the subject of such interests is also subject to ad valorem real property taxation.

4. Taxes on Personal Property

Because section 15 of the FDIA waives immunity only for ad valorem real property taxation, the Revised Policy, like the original Policy, provides that the FDIC is immune from all forms of personal property taxation.

5. Other Related Taxes

Like the original Policy, the Revised Policy makes clear that the FDIC is immune from taxes imposed on it as a result of transactions involving real property, even if the tax is measured by the value of the property. Such taxes are not taxes on the property itself, but rather excise taxes on transactions involving real property. Among these are transfer and recordation taxes, and certain fees for handling foreclosure sales, which the FDIC will not pay. For example, in *Resolution Trust Corporation* v. *Lanzaro,* 140 N.J. 244, 658 A.2d 282 (N.J. 1995), the New Jersey Supreme Court held that a sheriff's fee for handling a foreclosure sale so far exceeded the value of the services rendered that it amounted to a tax from which the RTC was immune under section 15(b) of the FDIA.

C. Interest and Penalties

State statutes typically provide for the accrual of interest and penalties if real property taxes are not paid when due. The character and amount of such charges vary from state to state. Section 15(b)(3) of the FDIA expressly provides that the FDIC is not liable for any amounts ''in the nature of penalties or fines, including those arising from the failure of any person to pay any . . . tax . . . when due.'' This provision expresses the common law rule, see, e.g., *Missouri Pacific Railway Co.* v. *Ault,* 256 U.S. 554 (1921), and is consistent with the general rule that receivers (and innocent creditors) should not be burdened by punitive assessments. See *Professional Asset Management* v. *Penn Square Bank,* 566 F. Supp. 134 (W.D. Okla. 1983). The Revised Policy implements this provision by providing that the FDIC will neither pay, nor recognize liens for, such amounts. Similarly, the FDIC will not pay attorneys' fees or other costs which state law may impose upon delinquent taxpayers. *Irving Independent School District, et. al* v. *Packard Properties Ltd., et. al.,* 762 F. Supp. 699 (N.D. Texas 1991).

While the FDIC is not liable for penalties arising from taxes not timely paid either by it or by previous owners of the property, the Fifth Circuit Court of Appeals has held that liens for such penalties that were imposed prior to the FDIC's ownership remain on the property during the FDIC's ownership. And, while the FDIC is not obligated to pay the penalties secured by such liens during its ownership of the property, the liens remain on the property, and the penalties so secured become the obligation of any subsequent owner. *Irving Independent School District, et al.* v. *Packard Properties Ltd., et. al.,* 970 F.2d 58 (5th Cir. 1992).

The FDIC believes that the Fifth Circuit decision is directly contrary to the decision of the United States Supreme Court in *Simonson* v. *Grandquist,* 287 U.S. 489 (1961). Accordingly, the FDIC reserves the right to challenge this position in jurisdictions not covered by the Fifth Circuit Court of Appeals.

Historically, the United States and its instrumentalities have always been immune from claims for interest, except where Congress has expressly waived such immunity. See, e.g., *Library of Congress* v. *Shaw,* 478 U.S. 310 (1986). Section 15 of the FDIA is silent as to whether immunity is waived for interest accruing on delinquent tax amounts, and that silence suggests immunity has not been waived. In analogous situations, courts have utilized varying analytical approaches to determine whether the waiver of immunity from real property taxes implicitly carried with it a waiver for interest. Compare, *Reconstruction Finance Corp.* v. *Texas,* 229 F.2d 9 (5th Cir. 1956), cert. denied, 351 U.S. 907 (1956), with *United States* v. *Consumers Scrap Iron Corp.,* 384 F.2d 62 (6th Cir. 1967).

Recent Supreme Court decisions raise further uncertainty whether immunity from interest should be considered to be waived in the absence of an express provision. Compare, *Loeffler* v. *Frank,* 486 U.S. 549 (1988), with *Library of Congress* v. *Shaw,* 478 U.S. 310 (1986). The FDIC recognizes the importance to state and local governments of revenues derived from real property taxes. Thus, the Revised Policy continues to provide that the FDIC generally will pay interest on delinquent real property taxes, but adds language clarifying that payment of a delinquency charge in the nature of interest for periods before and during FDIC ownership will be made only to the extent the interest payment obligation is secured by a valid lien. Otherwise, post-ownership interest will be paid pursuant to generally applicable FDIC rules and procedures.

The purpose of interest is to compensate for the loss of the use of funds resulting from the failure to pay taxes when due. Thus, interest is to be distinguished from additional amounts which are charged as punishment for failure to pay when due. There is no uniformity among the states regarding the imposition of interest or penalties for late payment of taxes. Some states impose both an interest charge and a penalty, while others impose only interest or a penalty.

The characterization of the charge under state law as ''interest,'' ''penalty,'' ''compensatory,'' or ''punitive'' is not determinative. That is a question determined under federal law. See *Missouri Pacific Railroad* v. *Ault,* 256 U.S. 554 (1921). Compare *United States* v. *La Franca,* 282 U.S. 568 (1931). Nonetheless, the FDIC has determined to follow generally the characterization of additional charges as ''interest'' or ''penalty'' as determined by the law of the state, and will normally pay those charges which state law denominates as ''interest'' at the state statutory rate. In some states, although the state statute denominates a charge as ''interest,'' the supreme court of the state has held that the charge is a penalty. In such instances, the judicial rule will be applied and no interest will be paid.[2]

In addition, state law will continue to be monitored and, in the event that a state legislature or court characterizes as interest a charge which is clearly and demonstrably a penalty, the FDIC will not pay such amount. This could be the result, for example, if a fixed ''interest'' amount is charged without reference to the time the base tax amount is delinquent. The FDIC specifically reserves all rights to challenge any interest charge it believes to be a penalty.

D. Tax Liens

1. Foreclosure

Section 15(b)(2) of the FDIA provides that ''no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation.'' Even in the absence of such an express provision, the courts have held that a real estate tax lien could not be foreclosed in derogation of an interest (whether fee or mortgage interest) held by an entity invested with federal immunity where that immunity had not been waived. See *New Brunswick* v. *United States,* 276 U.S. 547 (1928); *Rust* v. *Johnson,* 597 F.2d 174 (9th Cir. 1979).

Section 15(b)(2) makes clear that, notwithstanding the waiver of immunity for ad valorem real property taxation, state and local taxing authorities may not sell or foreclose against property in which the FDIC holds an interest without fully protecting that interest. This prohibition recognizes the considerable burden faced by the FDIC in administering the assets involuntarily acquired by it, and that substantial value would be lost to the Corporation solely because of lack of knowledge of the property interest if real estate tax liens could be enforced through traditional sale or foreclosure remedies. The original Policy asserted the

[2] While this was formerly the case in the State of Texas, its legislature amended the pertinent Texas Tax Code section, effective August 26, 1991, to provide that interest payable under that section ''is to compensate the taxing unit for revenue lost because of the delinquency.'' Tex. Tax Code Ann. section 33.01(c). The purpose of that amendment was to reverse the Texas Supreme Court's decision in *Jones* v. *Williams,* 121 Tex. 94, 45 S.W.2d 130 (Tex. 1931), which held that amounts denominated as interest were in reality penalties imposed for failure of duty to pay taxes in a timely manner, rather than charges made for the use or detention of money.

position, based on the New Brunswick and Rust cases, that a mortgage interest held by the FDIC is ''property'' and that a taxing authority could not foreclose out that interest without the FDIC's consent.

In *Matagorda County, et al.* v. *Law, et al.*, 19 F.3d 215 (5th Cir. 1994), the Fifth Circuit Court of Appeals upheld the FDIC's position that a mortgage lien interest held by it is ''property'' within the meaning of section 15(b)(2) of the FDIA. Thus, the court of appeals concluded that, while the taxing unit's lien was valid and senior to the FDIC's lien interest, the tax lien could not be foreclosed so as to extinguish the FDIC's interest in the property unless the FDIC so consents. Accordingly, like the original Policy, the Revised Policy continues to provide that a mortgage lien held by the FDIC cannot be eliminated without its consent. See also, *Simon* v. *Cebrick, et al.*, 53 F.3d 17 (3rd Cir. 1995).

2. Attachment

Section 15(b)(2) of the FDIA provides that no involuntary lien shall attach to the property of the Corporation. One example of an involuntary lien is a lien that automatically attaches for delinquent taxes. Because the assets of a financial institution for which the FDIC has been appointed receiver do not become the ''property of the Corporation'' until the receivership appointment, any involuntary liens that attached prior to the appointment of the receiver are valid. Although in most states a real estate mortgage interest represents an interest in the real property, it is not tantamount to ownership of the property itself. Because the involuntary lien for delinquent real property taxes attaches to the property itself, nonconsensual liens purporting to attach to property owned in fee by the FDIC are considered void, but liens may attach to property in which the FDIC holds only a mortgage interest as security for a loan. See *New Brunswick* v. *U.S., supra.*

3. Priority

The waiver of immunity from ad valorem real property taxes indicates that, with respect to liens that properly attached to property before the FDIC obtained fee title to such property (whether by appointment as receiver, lien foreclosure, or otherwise), the taxing authority is entitled to have its lien satisfied from the value of the property. With respect to property owned in fee, therefore, the effect of the prohibition against foreclosure or sale by the taxing authority is that the FDIC, by granting or withholding consent to foreclosure, can control the time and manner in which property is sold.

The FDIC takes the same position with respect to such tax liens when it holds only a mortgage interest in the property. Thus, a valid lien for ad valorem real property taxes and interest will be recognized as being entitled to priority over the FDIC's mortgage interest (assuming that the tax lien would be entitled to priority under state law over a non-federal mortgage holder).

The FDIC will recognize any state law priority given to property tax liens that attached prior to its obtaining any interest in the property. However, because immunity is not waived for taxes other than ad valorem real property taxes (such as personal property taxes), any liens for taxes other than ad valorem real property taxes that attach to property after the FDIC acquires a lien or security interest in such property will be subordinate to the Corporation's interest. Such subordination is required because if the value of the property is not sufficient to cover both the FDIC's lien and the tax lien, to provide priority for the tax lien would diminish the value of the Corporation's interest, thereby subjecting it to the taxation from which it is immune.

4. Sale of Tax Liens

Some states provide for a different, usually higher rate of interest if the tax lien has been sold in satisfaction of tax claims. Moreover, this rate is applied to the entire amount of taxes, interest, and penalties paid by the tax lien or property purchaser. In this case, if a tax sale takes place before the FDIC obtains a fee interest in the property, or with respect to a tax lien that has priority over a lien held by the Corporation, the FDIC will pay the entire amount due to the purchaser of the lien. The charges are considered to be merged together in the hands of the purchaser to whom the amount paid is simply the purchase price for the release of the lien or property, subject to redemption. For a sale that takes place with respect to a lien that is junior to the lien of the FDIC, or after the FDIC obtains a fee interest in the property, the sale must protect fully the FDIC's fee interest or lien. Some states may provide for the accrual of an additional penalty after the tax lien on the property has been sold in satisfaction of the tax claims. Regardless of when the sale takes place with respect to the FDIC's acquisition of an interest in the property, such penalties will not be paid.

5. Liens for Undetermined Amounts

A new section has been added to the former Policy Statement to address a minor difference between the FDIC's and the RTC's treatment of certain non ad valorem taxes. Generally, the FDIC does not recognize claims against a receiver unless the amount of the claim is fixed and certain at the time of receivership. In most cases, property tax assessments are for fixed amounts, and a statutory lien arises on the tax assessment date to secure that fixed amount. If such a fixed tax obligation arises prior to the receiver's ownership of the property, section 15(b)(1) does not eliminate the liability. Similarly, the lien may attach if the FDIC does not own the property (although under some circumstances the lien may effectively be subordinated to the FDIC's interest—see discussion under D.3., supra).

Under some municipal tax procedures, however, such as those established pursuant to the California Mello-Roos Community Facilities Act of 1982, a non ad valorem tax lien may be recorded at the time such tax is authorized (such as upon the establishment of a community facilities district), but the amount of a particular periodic tax obligation will not be fixed until a date in the future. The amount may fluctuate from period to period depending on a factor such as a prevailing interest rate or the rate of delinquency in the tax district.

Such a tax is in fact not imposed until the date the amount is determined and therefore is barred by section 15(b)(1) if that date does not precede the date upon which the receiver became owner of the property. Similarly, any lien that purports to secure such a tax is inchoate and therefore void under section 15(b)(2), even if the lien was recorded prior to the receiver's ownership of the property. The RTC as a matter of policy elected to pay such taxes in the particular case of California Mello-Roos special taxes when the notice of lien was recorded prior to receivership. In view of the past reliance of California local community facilities districts on the RTC policy (particularly in their assumptions as to revenues), and the potentially disruptive effect of any change in such policy, the FDIC has elected to continue the RTC's policy in California with respect to Mello-Roos assessments on those properties now owned by the FDIC that (1) were owned by the RTC on December 31, 1995, or (2) have become property of the FDIC through foreclosure of a security interest held by the RTC on that date. Otherwise, the FDIC may challenge such assessments.

E. Challenges to Assessed Valuation

Section 15(b)(1) of the FDIA provides that ''notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.'' This language permits the receiver to challenge the assessed value of a real property it currently owns whether or not the receiver was the owner of the property at the time of assessment.

The statute is very broad on its face. For example, it authorizes a receiver to challenge a prior assessment which served as the basis for a tax paid by a borrower prior to the receivership, when the institution held only a mortgage interest. The apparent purpose of this provision, however, was to permit the receiver to contest tax assessments made at the time property was owned in fee and especially where such tax has not been paid, on the ground that the taxes were based on an incorrect assessed valuation.

Because high assessed valuations could help a troubled institution avoid required regulatory write downs, it was often not in the institution's interest to challenge overstated assessment valuations. Like the original Policy, the Revised Policy focuses on this and provides that challenges generally will be limited to the current and immediately preceding tax years, and to situations involving previously filed tax protests. The Revised Policy also recognizes, however, that where substantial amounts are at issue, and the likelihood of success is great, assessments may be challenged to the full extent permitted by federal law, including periods when the property was owned in fee by the FDIC as receiver or by an institution subsequently placed in receivership. The Tenth Circuit Court of Appeals has affirmed the FDIC's position, holding that ''we perceive nothing in the plain language of the statute temporally limiting the right of the FDIC to seek and obtain revaluation. The Congress established that right without limitation, and it is improper to judicially ingrain such a restriction on that right.'' *FDIC* v. *Lowery, et al.*, 12 F.3d 995, 997 (10th Cir. 1993).

Although under the statute the FDIC is not obligated to pay any amounts based on a challenged assessment until the challenge is resolved, the Revised Policy permits the Corporation to tender payment of taxes during the pendency of a challenge based on the assessment level it deems appropriate, provided such payment will not prejudice any challenge.

The text of the Revised Policy Statement follows:

FDIC Statement of Policy Regarding the Payment of State and Local Property Taxes

After considering (1) the powers granted to it under the Constitution and federal law, (2) its obligation to maximize recoveries from the disposition of financial institutions and their assets, and (3) the potential effect of its actions upon state and local tax administration, the Federal Deposit Insurance Corporation (the ''FDIC'') has issued the following policy statement to provide guidance as to how it will administer its statutory responsibilities in this area.

A. Authority

This Statement of Policy is issued pursuant to the FDIC's powers and authorities granted by the Federal Deposit Insurance Act (''FDIA''), 12 U.S.C. §§ 1811, et seq., and in particular section 15 of the FDIA, 12 U.S.C. § 1825.

B. Scope and Applicability

This policy statement supersedes the Statements of Policy issued by the FDIC and the Resolution Trust Corporation (''RTC'') in 1991. It generally applies to the Corporation when it is liquidating assets of an insured depository institution in its corporate or receivership capacities (the ''Corporation''). It applies to any tax, penalty, interest, or other related charge imposed or sought to be imposed on property to whose ownership the FDIC succeeds in such capacities.

C. Taxes

Payment of Taxes: The Corporation will pay its proper tax obligations when they come due. Furthermore, the Corporation will pay claims for delinquencies as promptly as is consistent with sound business practice and the orderly administration of the insured depository institution's affairs. The Corporation may decline to pay property taxes, including delinquency charges or other claims, in situations where abandonment of its interest in the property is appropriate.

Owned Real Property: Owned real property of the Corporation is subject to state and local real property taxes, if those taxes are assessed according to the property's value. The Corporation is immune from real property taxes assessed on other bases.

Secured Interests in Real Property: Real property which is subject to a security or lien interest in favor of the FDIC is subject to ad valorem taxes and taxes assessed on other bases.

Personal Property: The Corporation is immune from all forms of taxation on personal property.

Other Related Taxes: The Corporation is immune from taxes other than ad valorem real property taxes. Taxes on sales, transfers, or other dispositions of Corporation property are generally in the nature of excise taxes which are levied on the transaction and not on the property (although the calculation of the amount of tax may be based on the property's sales price); the Corporation is immune from such taxes.

D. Interest and Penalties

Interest: The Corporation will pay interest for periods before and during FDIC ownership on delinquent taxes properly owed at the rate provided under state law but only to the extent the interest payment obligation is secured by a valid lien. The Corporation will generally follow a state's own characterization as to whether a delinquency charge constitutes a penalty, but will reserve its right to challenge any charge (or portion thereof) called interest that is demonstrably a penalty.

Penalties: The Corporation is not liable for any amounts in the nature of fines or penalties. The Corporation will not pay, or recognize liens for, such amounts. The Corporation will not pay attorneys' fees or other similar costs that may be imposed under state law in connection with the resolution of tax disputes.

E. Tax Liens

General Principles: If any ad valorem real property taxes (including interest) on Corporation owned property are secured by a valid lien (in effect before the property became owned by the Corporation), the Corporation will pay those claims. With respect to property not owned by the Corporation, but in which the Corporation has a lien interest, any ad valorem real property taxes (including interest) will be paid so long as they are secured by a valid lien with priority over the Corporation's lien interest. Any taxes other than *ad valorem* real property taxes which are secured by a valid lien in effect before the Corporation acquired an interest in the property, and which have priority under state law over any lien interest of the Corporation, will be paid. However, if abandonment of its interest in the property is appropriate, the Corporation may elect not to pay such claims.

Foreclosure: No property of the Corporation is subject to levy, attachment, garnishment, foreclosure, or sale without the Corporation's consent. Furthermore, a lien for taxes and interest may attach to property in which the Corporation has a lien or security interest, but the Corporation will not permit a lien or security interest held by it to be eliminated by foreclosure without the Corporation's consent.

Sale of Tax Liens: In cases in which a tax lien has been sold to a private party under state law, if (1) the sale takes place before the Corporation obtains a fee interest in the property, or if the Corporation has a lien interest in the property and the tax lien has priority over the Corporation's lien, and (2) the Corporation desires to eliminate the tax lien purchaser's interest, the Corporation will pay the amount required by state law to satisfy such interest (other than any fees or penalties specifically imposed to redeem such interest). If the tax lien does not have priority, the Corporation will take whatever action is necessary to ensure that its own interest is satisfied first. If the Corporation has a fee interest, the sale must protect the Corporation's interest.

Liens for Undetermined Amounts: The Corporation generally will not pay non ad valorem taxes, including special assessments, on property in which it has a fee interest unless the amount of tax is fixed at the time that the Corporation acquires its fee interest in the property, nor will it recognize the validity of any lien to the extent it purports to secure the payment of any such amounts. With respect to property in California now owned by the Corporation that was owned by the RTC on December 31, 1995, or that became property of the Corporation through foreclosure of a security interest held by the RTC on that date, the Corporation will continue the RTC practice of paying special taxes imposed pursuant to the Mello-Roos Community Facilities Act of 1982 if the taxes were imposed prior to the RTC's acquisition of an interest in the property.

F. Challenges to Assessments

The Corporation is only liable for state and local taxes which are based on the value of the property during the period for which the tax is imposed, notwithstanding the failure of any person, including prior record owners, to challenge an assessment under the procedures available under state law. In the exercise of its business judgment, the Corporation may challenge assessments which do not conform with the statutory provisions, and during the challenge may pay tax claims based on the assessment level deemed appropriate, provided such payment will not prejudice the challenge. The Corporation will generally limit challenges to the current and immediately preceding taxable year and to the pursuit of previously filed tax protests. However, the Corporation may, in the exercise of its business judgment, challenge any prior taxes and assessments provided that (1) the Corporation's records (including appraisals, offers or bids received for the purchase of the property, etc.) indicate that the assessed value is clearly excessive, (2) a successful challenge will result in a substantial savings to the Corporation, (3) the challenge will not unduly delay the sale of the property, and (4) there is a reasonable likelihood of a successful challenge.

G. Dispute and Notification Procedures

Disputes: The Corporation will attempt to advise taxing authorities of its statutory rights and resolve all tax disputes as taxes become due. In order to dispose of property subject to disputed tax claims, the Corporation may, as business judgment dictates, enter into agreements with taxing authorities, title companies, or prospective purchasers which provide for the disputed amount to be held in escrow. When the closing of a transaction is threatened because of the disputed tax amounts, the Corporation may, as business judgment dictates, elect to pay the disputed tax claims under protest. In all such cases the Corporation shall reserve its legal rights to a refund of such disputed amounts and may pursue, through litigation if necessary, a reimbursement of the disputed amounts and any attendant costs, expenses and interest.

Notification: The Corporation will attempt to notify state and local taxing authorities of the existence of an interest in property which the Corporation believes to be within the authority's jurisdiction.

H. Subsidiaries, Bridge Banks and Conservatorships

For the present, the Corporation will not assert section 15 tax immunity for bridge banks, special asset pools covered by assistance transactions where the Corporation does not retain ownership, or conservatorships. However, a bridge bank, conservatorship of a newly-formed institution, or an assisted acquirer is not liable for any obligations not specifically assumed from a receiver (as in a ''pass-through receivership''). In this situation, the acquiring institution may not be liable for any penalties that continue to accrue after the establishment of the *de novo* institution.

Additionally, for the present, the Corporation has determined generally not to assert section 15 tax immunity on behalf of state-chartered corporations, the stock of which is wholly or partially owned by the Corporation acting in any of its capacities.

By Order of the Board of Directors. Dated at Washington, D.C., this 26th day of November 1996.

Federal Deposit Insurance Corporation.

Jerry Langley,

Executive Secretary.

[FR Doc. 96–31208 Filed 12–9–96; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice and request for comments.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (''ASC''), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The ASC is soliciting comments on 12 CFR part 1102, subpart D, entitled, ''Description of Office, Procedures, Public Information,'' regarding: (a) whether the proposed collection of information is necessary for the proper performance of the ASC's functions, including whether the information shall have practical utility; (b) the accuracy of the ASC's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments and recommendation on this proposal must be received on or before February 10, 1997.

ADDRESSES: Send comments to Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2100 Pennsylvania Avenue, N.W., Suite 200; Washington, D.C. 20037., or via Internet e-mail to marcw1(@)asc.gov. All written