

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064-AB92

Resolution and Receivership Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) the FDIC is making technical amendments to its receivership regulations. The amendments address least-cost resolutions and the security interests of Federal Home Loan Banks in FDIC-administered receiverships.

EFFECTIVE DATE: August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mitchell Glassman, Deputy Director, Division of Resolutions and Receiverships, (202) 898-6525; Rodney D. Ray, Counsel, Legal Division, (202) 898-3556; Catherine A. Ribnick, Counsel, Legal Division, (202) 736-0117, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Sections 360.1 and 360.2

Section 13(c)(4)(E)(i) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1823(c)(4)(E)(i)) generally prohibits the FDIC from taking any action after August 31, 1994 with respect to a depository institution which would, directly or indirectly, have the effect of increasing losses to any deposit insurance fund by protecting the institution's uninsured depositors or other creditors. Section 360.1 was promulgated in compliance with a statutory mandate, contained in section 13(c)(4)(E)(ii) of the FDI Act (12 U.S.C. 1823(c)(4)(E)(ii)), that the FDIC issue regulations implementing clause (i) not later than January 1, 1994.

Section 360.2 was originally promulgated by the Federal Home Loan Bank Board (FHLBB) to, among other reasons, set forth expressly the rights of Federal Home Loan Banks (Bank or Banks) regarding collateral securing Bank advances in liquidating receivership estates. The regulation was subsequently transferred to the FDIC, pursuant to section 402(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) Pub. L. 101-73, 103 Stat. 183, 357-58 (1989), when the FHLBB and FSLIC

were abolished and has remained substantively unchanged since its transfer to the FDIC.

II. The Proposed Rule

As part of the FDIC's review of its regulations pursuant to section 303(a) of CDRIA, the FDIC previously issued a notice of proposed rulemaking regarding §§ 360.1 and 360.2, 62 FR 7725 (February 20, 1997). The proposal consisted of two parts. The first part proposed a revision to § 360.1, a rule promulgated pursuant to a statutory directive regarding least-cost resolutions. The second part proposed removing § 360.2, addressing secured claims of Banks in FDIC-administered receiverships. The proposed action regarding § 360.2 was premised upon the limited applicability of the regulation to the security interests of a discrete class of creditors, *i.e.*, the Banks, in liquidating receivership estates; the statutory protections enjoyed by the Banks under section 306(d) of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. 100-86, 101 Stat. 552, 601-02 (12 U.S.C. 1430(e), footnote 1) and other subsequently enacted federal statutes; the significant decline in the number of institutions being placed in liquidating receiverships in recent years; and the FDIC's belief that matters addressed therein could be addressed, in the future, on a case by case basis. The FDIC provided a comment period of 60 days from publication of the notice of proposed rulemaking in the **Federal Register**.

Twelve comments were received within the comment period, all of which addressed the proposed removal of § 360.2. After the receipt of the comments, additional information was requested and received by the FDIC from the commenters.

III. Comments on the Proposed Rule

The FDIC received no comments on the proposed amendment to § 360.1, but all of the commenters favored retention of § 360.2. Although the commenters' reasons for retaining the regulation varied, they expressed support for the clarity and certainty the regulation provides in addressing the security interests of Banks when an insured depository institution fails and is placed in receivership. They also expressed concerns that additional measures that the Banks may take to protect their security interests against the risk of a borrower being placed in receivership, absent the regulation, may affect the cost or availability of certain types of credit to borrowers from the Banks.

IV. Retention of § 360.2 and Amendments to §§ 360.1 and 360.2

Based upon a review of the comments received, the Board of Directors has decided to retain § 360.2. This decision is based upon: (1) The concerns over removal of the regulation that have been expressed by the commenters; (2) the fact that the FDIC has, in the past, normally satisfied obligations owed to the Banks shortly after the failure of an institution to obtain a release of the failed institution's collateral; (3) the regulation is currently in place, therefore, retaining it maintains the existing status quo; and (4) there may be operational benefits to retaining the regulation.

As indicated in the FDIC's notice of proposed rulemaking, § 360.1 is being amended to correct an erroneous statutory reference in paragraph (b) from "12 U.S.C. 13(c)(4)(A)" to "12 U.S.C. 1823(c)(4)(A)". In addition, § 360.2 is being amended to add "the claim is" to paragraph (e)(1) to achieve parallel construction with paragraph (e)(2). Paragraph (e)(2) also is being amended to correct a typographical error by replacing the word "by" with the word "but", as well as to revise the reference to section 306(d) of CEBA to replace the Public Laws reference with the appropriate United States Code citation for the paragraph.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are required by this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule", as defined in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 et seq.). SBREFA generally requires an agency to report rules to Congress and the Comptroller General for review. The reporting requirement is imposed when the agency issues a final rule. Accordingly, the FDIC will file the appropriate reports.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605) the Board of Directors certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although the final action differs from the initial proposal, which was previously

certified by the Board of Directors, because the FDIC is retaining a regulation which it had proposed to remove, the final action merely maintains the existing status quo and makes only non-substantive technical revisions to the existing sections.

List of Subjects in 12 CFR Part 360

Savings associations.

For the reasons set out in the preamble, part 360 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(11), 1821(e)(8)(D)(i), 1823(c)(4); Sec. 401(h), Pub. L. 101-73, 103 Stat. 357.

2 Paragraph (b) of § 360.1 is revised to read as follows:

§ 360.1 Least-cost resolution.

* * * * *

(b) Purchase and assumption transactions. Subject to the requirement of section 13(c)(4)(A) of the FDI Act (12 U.S.C. 1823(c)(4)(A)), paragraph (a) of this section shall not be construed as prohibiting the FDIC from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution, for which the FDIC has been appointed conservator or receiver, to acquire uninsured deposit liabilities of such institution as long as the applicable insurance fund does not incur any loss with respect to such uninsured deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

3. Paragraph (e) of § 360.2 is revised to read as follows:

§ 360.2 Federal Home Loan banks as secured creditors.

* * * * *

(e) The receiver for a borrower from a Federal Home Loan Bank shall allow a claim for a prepayment fee by the Bank if, and only if:

(1) The claim is made pursuant to a written contract that provides for a prepayment fee, provided, however, that such prepayment fee allowed by the receiver shall not exceed the present value of the loss attributable to the difference between the contract rate of the secured borrowing and the reinvestment rate then available to the Bank; and

(2) The indebtedness owed to the Bank by such borrower is secured by

sufficient collateral in which a perfected security interest in favor of the Bank exists or as to which the Bank's security interest is entitled to priority under section 306(d) of the Competitive Equality Banking Act of 1987 (CEBA) (12 U.S.C. 1430(e), footnote (1), or otherwise so that the aggregate of the outstanding principal on the advances secured by such collateral, the accrued but unpaid interest thereon and the prepayment fee applicable to such advances can be paid in full from the amounts realized from such collateral. For purposes of this paragraph (e)(2), the adequacy of such collateral shall be determined as of the date such prepayment fees shall be due and payable under the terms of the written contract providing therefor.

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of July 1998.

Federal Deposit Insurance Corporation.

James LaPierre,

Deputy Executive Secretary.

[FR Doc. 98-18620 Filed 7-13-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-17-AD; Amendment 39-10654; AD 98-15-03]

RIN 2120-AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) GE90 series turbofan engines. This action requires initial and repetitive eddy current inspections (ECI) for cracks in the high pressure compressor (HPC) stage 2-6 spool, and, if necessary, replacement with serviceable parts. This amendment is prompted by reports of cracks in the stage 3-4 and stage 4-5 interstage seal teeth and spacer arms. The actions specified in this AD are intended to identify cracks in the HPC stage 2-6 spool, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective July 29, 1998.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the **Federal Register** as of July 29, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-17-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Technical Services, Attention: Leader for distribution/ microfilm, 10525 Chester Road, Cincinnati, OH 45215; telephone (513) 672-8400 Ext. 130, fax (513) 672-8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7178, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of cracked high pressure compressor (HPC) stage 2-6 spools installed on General Electric Company (GE) GE90-76B/ -77B/ -85B/ -90B/ -92B series turbofan engines. There have been 10 HPC spools found with cracks. The investigation into the cause of the cracking is ongoing; however, the FAA has determined that the HPC stage 2-6 spool may develop cracks in the stage 3-4 and stage 4-5 interstage seal teeth that could propagate into the stage 3-4 and stage 4-5 spacer arms, aft of the seal teeth. This AD requires inspection of the spacer arm aft of the seal teeth and also includes an inspection requirement for the spacer arm forward of the seal teeth that provides additional data to support the investigation and mitigates the risk of an HPC stage 2-6 spool failure from a crack propagating into the spacer arm forward of the seal teeth. The FAA has determined the most likely cause of crack initiation is due to areas of heat affected zone in the seal teeth that is the result of excessive heat generated when