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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Parts 1, 100, 103, 204, 207, 208, 211, 212, 214, 216, 236, 244, 245, 248, 264, 274a, 301, 316, 320, 322, 324, 327, 328, 329, 330, 334, and 392

[CIS No. 2405-07; DHS Docket No. USCIS-2007-0005]

RIN 1615-AB56

Removing References to Filing Locations and Obsolete References to Legacy Immigration and Naturalization Service; Adding a Provision To Facilitate the Expansion of the Use of Approved Electronic Equivalents of Paper Forms

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of Homeland Security (DHS) regulations by eliminating certain references to the Immigration and Naturalization Service (INS) organizational structure and removing all references in the Code of Federal Regulations (CFR) to INS and U.S. Citizenship and Immigration Services (USCIS) Offices. This rule also removes all references in the CFR to filing locations, so that USCIS may provide such information on petition and application forms and through any other means. In addition, this rule adds a definition of the term "form" to the CFR, which will facilitate the expansion of the use of approved electronic equivalents of USCIS paper forms; this will support USCIS' transition from a paper-based filing and processing environment to an electronic one.

Overall, the rule is intended to eliminate confusion and certain obsolete

references to the INS organizational structure from USCIS regulations, help the public determine where to file forms with USCIS, create a more efficient and streamlined process for future changes to filing instructions, and allow the component to better manage its workload through, among other things, affording greater flexibility to accept and process applications and petitions in an electronic environment.

DATES:

Effective Date: This rule is effective July 6, 2009.

Comment Date: Written comments must be submitted on or before August 4, 2009.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2007-0005, by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2210. To ensure proper handling, please reference DHS Docket No. USCIS-2007-0005 on your correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529-2210. Contact Telephone Number (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Roxanne Alonso, Adjudications Officer, Policy and Regulation Management Division, Domestic Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., MS 2211, Washington, DC 20529-2211, telephone (202) 272-8100.

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and the DHS docket number (USCIS-2007-0005) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See **ADDRESSES** above for information on how to submit comments.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

II. Background

A. What effect does this rule have?

This interim rule eliminates certain references to the organizational structure of the Immigration and Naturalization Service (INS), which was abolished on March 1, 2003, pursuant to the Homeland Security Act of 2002, Public Law 107-609 (November 22, 2002), 116 Stat. 2135. The Secretary of Homeland Security has approved the organizational structure of each new component pursuant to 8 CFR 2.1, which provides that the Secretary may delegate authority and functions by regulation, directive, memorandum, or other means as deemed appropriate. Eliminating references to the organizational structure of INS is necessary, because U.S. Citizenship and Immigration Services (USCIS) is modifying aspects of the command and control structure that was temporarily retained from the INS field management structure. These changes to the regulations will not affect the locations of USCIS local offices or other sites.

This interim rule also removes from the regulations all instructions regarding the filing locations for petitions and applications. These regulatory provisions are unnecessary and restrict USCIS' ability to vary petition and application filing locations as necessary to address fluctuations in the volume of applications, shifting workload needs, and benefits processing modifications. Removing these regulatory provisions will allow USCIS to better utilize its resources and serve its customers. Filing locations and procedures will still be available on USCIS forms and the USCIS Web site. Customers may also call the USCIS '800-number' customer service line for information on where to submit their documents, or simply call the agency listing in the government resources pages of their local telephone directory. This change does not affect any evidentiary requirement or substantive eligibility requirement for a particular benefit.

This interim rule removes current geographic jurisdictional service boundaries. This change will allow USCIS the flexibility to manage workloads and facilitate interaction with, and services to, the public. For those few applications and petitions that are currently filed at USCIS local offices, customers will be able to file these specific forms at the office closest to them. Regarding services that require an alien to make an appearance at a USCIS office, by removing the geographic parameters on the office with jurisdiction for adjudicating specific immigration or naturalization benefits, USCIS will have the flexibility to offer interviews and other services at different offices in the area based on the ability to schedule appointments most effectively. *See* 8 CFR 103.2(b)(9).

The rule adds a definition of the term "Form" to 8 CFR part 1. USCIS has added this definition to clarify that references to the term "form" and to form numbers throughout USCIS regulations are now intended to encompass both the traditional paper form and all approved electronic equivalents used for on-line filing with USCIS or other similar purposes.

Finally, the rule amends 8 CFR 100.4 to remove all references to INS and USCIS Offices. However, this rule does not alter the regulations in paragraphs (c)(2) for ports of entry for aliens arriving by vessel or by land transportation or (c)(3) for the method of identifying ports-of-entry for aliens arriving by aircraft. The designation of ports of entry is within the authority of the U.S. Customs and Border Protection (CBP) and generally governed by 19 CFR 101.3. Maintenance of the current

erroneous references to District Offices in 8 CFR 101.3 will have no legal effect on the distribution of workload or acceptance applications by USCIS. CBP has indicated that they may amend how 8 CFR part 100 references ports of entry, and classes of ports of entry, and will remove references to the INS district in which they are located in a future rulemaking.

B. Why is USCIS issuing this rule?

This rule is necessary to remove references to USCIS office locations and geographical jurisdictions from the Code of Federal Regulations. USCIS will provide information regarding the proper locations on the filing instructions on the respective USCIS forms. As USCIS workload has increased and as USCIS has managed that workload to eliminate processing backlogs of petitions and applications for immigration benefits, it has become clear that the agency on occasion needs to redistribute work within its adjudicative resources. Changing the applicable regulations each time a workload redistribution occurs is a lengthy process and an inefficient management tool. The ability to make changes to filing instructions to reflect a redistribution of workload will enable USCIS to efficiently reallocate its adjudications resources. Thus, this interim rule is intended to enhance USCIS' ability to provide updated, clear information, and to increase its administrative flexibility to adapt to changing situations. Information about the agency's organizational structure, where to file an application or petition, and where and how individuals can seek services or assistance from USCIS will continue to be widely available.

This rule is also necessary to assist the agency in transforming its business environment from a paper-based petition and application process to an electronic environment. This major change effort is referred to as the USCIS Transformation Initiative. This regulation is the first in a series to be published to implement this initiative. As the USCIS Transformation Initiative progresses, USCIS expects that electronic versions of forms and digital images of supporting documents will largely replace paper forms and documents for filing, adjudication, and records retention purposes.

III. Regulatory Requirements

A. Administrative Procedure Act

This interim rule will not change the eligibility rules governing any immigration benefit. It will not confer rights or obligations upon any party.

USCIS expects that this rule will further the public's interest in receiving clear instruction on where and in what format to file applications and petitions for immigration benefits. Accordingly, USCIS has determined that the public notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), do not apply because the rule is procedural in nature and does not alter the substantive rights of the affected parties. Therefore, this rule satisfies the exemption from notice and comment rulemaking in 5 U.S.C. 553(b)(A). USCIS nevertheless invites comments on this rule and will consider all timely comments in the preparation of a final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required "to publish a general notice of proposed rulemaking for any proposed rule." Because this rule is being issued as an interim rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects*8 CFR Part 1*

Administrative practice and procedure, Immigration.

8 CFR Part 100

Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedures, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, reporting and recordkeeping requirements, Students.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 301

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 320

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 324

Citizenship and naturalization, Reporting and recordkeeping requirements, Women.

8 CFR Part 327

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements.

8 CFR Part 328

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements.

8 CFR Part 329

Citizenship and naturalization, Reporting and recordkeeping requirements, Veterans.

8 CFR Part 330

Reporting and recordkeeping requirements, Seamen.

8 CFR Part 334

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 392

Citizenship and naturalization, Reporting and recordkeeping requirements.

■ Accordingly, chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

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

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

■ 2. Section 1.1 is amended by adding paragraph (aa) to read as follows:

§ 1.1 Definitions.

* * * * *

(aa) The term *Form* when used in connection with a petition, application, or other instrument to be filed with USCIS in order to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in paper format or in an electronic format as may be prescribed by USCIS on its official Web site at <http://www.uscis.gov>. The term *Form* followed by a USCIS approved electronic equivalent of such form as USCIS may prescribe on

its official Web site at <http://www.uscis.gov>.

PART 100—STATEMENT OF ORGANIZATION

■ 3. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

■ 4. Section 100.1 is revised to read as follows:

§ 100.1 Introduction.

The following components have been delegated authority under the Immigration and Nationality Act to administer and enforce certain provisions of the Immigration and Nationality Act and all other laws relating to immigration: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).

§ 100.2 [Removed and Reserved]

■ 5. Section 100.2 is removed and reserved.

■ 6. Section 100.3 is revised to read as follows:

§ 100.3 Places where, and methods whereby, information may be secured or submittals or requests made.

Any person desiring information relative to a matter handled by CBP, ICE or USCIS or any person desiring to make a submittal or request in connection with such a matter, should communicate either orally or in writing, with either CBP, ICE or USCIS as appropriate. When the submittal or request consists of a formal application for one of the documents, privileges, or other benefits provided for in the laws administered by CBP, ICE or USCIS or the regulations implementing those laws, follow the instructions on the form as to preparation and place of submission. Individuals can seek service or assistance from CBP, ICE or USCIS by visiting the CBP, ICE or USCIS Web site or calling CBP, ICE or USCIS.

§ 100.4 [Amended]

■ 7. Section 100.4 is amended by:

- a. Removing the introductory text;
- b. Removing paragraphs (a), (b), (c)(1) and (c)(4), (e) and (f);
- c. Removing paragraph (c) heading and introductory text;
- d. Redesignating paragraph (c)(2), as paragraph (a);
- e. Redesignating paragraph (c)(3) as paragraph (b); and
- f. Redesignating paragraph (d) as paragraph (c).

§ 100.5 [Amended]

■ 8. Section 100.5 is amended by revising the term “Immigration and Naturalization Service” to read “Department of Homeland Security”.

§ 100.6 [Removed and Reserved]

■ 9. Section 100.6 is removed and reserved.

§ 100.7 [Amended]

■ 10. Section 100.7 is amended by revising the term “Immigration and Naturalization Service” to read “Department of Homeland Security”.

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 11. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 12. Section 103.2 is amended by:

- a. Revising the first sentence of paragraph (a)(1); and by
- b. Revising paragraph (a)(6).

The revisions read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) * * *

(1) * * * Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission. * * *

* * * * *

(6) *Where to file.* An application or petition must be filed as indicated in the instructions on the respective form.

* * * * *

PART 204—IMMIGRANT PETITIONS

■ 13. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

■ 14. Section 204.1, is amended by revising paragraph (e) to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) *Jurisdiction.* A petition described in this part must be filed in accordance with the instructions on the form. A

United States consular officer in a country in which USCIS does not have an office may accept and approve a relative petition or a petition filed by a widow or widower if the petitioner resides in the area over which the post has jurisdiction, regardless of the beneficiary’s residence or physical presence at the time of filing. In emergency or humanitarian cases and cases of national interest, a United States consular officer may accept a petition filed by a petitioner who does not reside within the consulate’s jurisdiction. While consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate USCIS office. Consular officers may consult with the appropriate USCIS office abroad prior to stateside referral, if they deem it necessary. A consular official may not accept or approve a self-petition filed by the spouse or child of an abusive citizen or lawful permanent resident of the United States under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. These self-petitions must be filed with a USCIS office in the United States as indicated in the instructions to the applicable petition form as prescribed by USCIS.

* * * * *

■ 15. Section 204.3(g) is revised to read as follows:

§ 204.3 Orphans.

* * * * *

(g) *Where to file.* Form I–600, Petition to Classify Orphan as an Immediate Relative, and Form I–600A, Application for Advanced Processing of Orphan Petition, must be filed in accordance with the instructions on the form.

* * * * *

§ 204.4 [Amended]

■ 16. Section 204.4 is amended by:

- a. Revising the phrase “with the Service office having jurisdiction over the place of the alien’s intended residence in the United States or with the overseas Service office having jurisdiction over the alien’s residence abroad” in paragraph (c) to read: “in accordance with the instructions on the form”; and
- b. Revising the phrase “with the Service office having jurisdiction over the beneficiary’s residence in the United States” in the second sentence of paragraph (i) to read: “with USCIS”.

§ 204.5 [Amended]

■ 17. Section 204.5(b), is amended by revising the phrase “with the Service Center having jurisdiction over the

intended place of employment, unless specifically designated for local filing by the Associate Commissioner for Examinations” to read: “in accordance with the instructions on the form”.

§ 204.6 [Amended]

- 18. Section 204.6 is amended by removing and reserving paragraph (b).

§ 204.8 [Removed and Reserved]

- 19. Section 204.8 is removed and reserved.

- 20. Section 204.9 is amended by:

- a. Revising paragraph (a)(2); and
- b. Revising the phrase “with the director having jurisdiction over his or her place of residence,” in the first sentence of paragraph (c)(2) to read “in accordance with the instructions on the form”.

The revision reads as follows:

§ 204.9 Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

(a) * * *

(2) *Where to file.* The petition must be filed in accordance with the instructions on the form.

* * * * *

§ 204.10 [Amended]

- 21. Section 204.10 is amended by removing and reserving paragraph (c)(2).
- 22. Section 204.11 is amended by revising paragraph (b) to read as follows:

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

* * * * *

(b) *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The alien, or any person acting on the alien’s behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

* * * * *

§ 204.13 [Amended]

- 23. Section 204.13 is amended by removing the last sentence in paragraph (c).

PART 207—ADMISSION OF REFUGEES

- 24. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

§ 207.1 [Amended]

- 25. Section 207.1 is amended by removing the phrase “with the Service office having jurisdiction over the area where the applicant is located” in the first sentence of paragraph (a).

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

- 26. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

- 27. Section 208.4 is amended by revising paragraph (b) to read as follows:

§ 208.4 Filing the application.

* * * * *

(b) *Filing location.* Form I-589, Application for Asylum and Withholding of Removal, must be filed in accordance with the instructions on the form.

* * * * *

§ 208.5 [Amended]

- 28. Section 208.5(b)(1)(ii) is amended in the first sentence by revising the phrase “to the district director having jurisdiction over the port-of-entry” to read: “in accordance with the instructions on the form”, and by revising the term “district director” to read “DHS office” wherever that term appears.

PART 211—DOCUMENTARY REQUIREMENTS; IMMIGRANTS; WAIVERS

- 29. The authority citation for part 211 continues to read as follows:

Authority: 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

- 30. Section 211.1 is amended by revising paragraph (b)(3) to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an immigrant visa, Form I-551, or reentry permit, the alien may file

an application for a waiver of this requirement with the DHS *officer with jurisdiction over the port of entry where the alien arrives*. To apply for this waiver, the alien must file Form I-193, Application for Waiver of Passport and/ or Visa, with the fee prescribed in 8 CFR 103.7(b)(1), except that if the alien’s Form I-551 was lost or stolen, the alien must instead file Form I-90, Application to Replace Permanent Resident Card, with the fee prescribed in 8 CFR 103.7(b)(1), provided the temporary absence did not exceed 1 year. In the exercise of discretion, the DHS *officer who has jurisdiction over the port of entry where the alien arrives* may waive the alien’s lack of an immigrant visa, Form I-551, or reentry permit and admit the alien as a returning resident *if DHS* is satisfied that the alien has established good cause for the alien’s failure to present an immigrant visa, Form I-551, or reentry permit. Filing the Form I-90 will serve as both application for replacement and as application for waiver of passport and visa, without the obligation to file a separate waiver application.

* * * * *

- 31. Section 211.2 is amended by revising paragraph (b) to read as follows:

§ 211.2 Passports.

* * * * *

(b) Except as provided in paragraph (a) of this section, if an alien seeking admission as an immigrant with an immigrant visa believes that good cause exists for his or her failure to present a passport, the alien may file an application for a waiver of this requirement with the *DHS officer who has jurisdiction over the port of entry where the alien arrives*. To apply for this waiver, the alien must file Form I-193, Application for Waiver of Passport and/ or Visa, with the fee prescribed in 8 CFR 103.7(b)(1). In the exercise of discretion, the *DHS officer with jurisdiction over the port of entry*, may waive the alien’s lack of passport and admit the alien as an immigrant, if DHS is satisfied that the alien has established good cause for his or her failure to present a passport.

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

- 32. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

- 33. Section 212.2 is amended by:
- a. Revising paragraph (d);

- b. Removing the phrase “an application for permission to reapply, Form I–212, with the district director having jurisdiction over the place where the alien resides” in the second sentence of paragraph (e) and adding in its place “Form I–212, Application for Permission to Reapply”;
- c. Revising paragraph (f);
- d. Revising paragraph (g)(2); and
- e. Removing paragraph (g)(3).

The revisions read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

* * * * *

(d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(2) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I–212. Except as provided in paragraph (g)(2) of this section, if the applicant also requires a waiver under section 212(g), (h), or (i) of the Act, Form I–601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I–212.

* * * * *

(f) *Applicant for admission at port of entry.* An alien may request permission at a port of entry to reapply for admission to the United States within 5 years of the deportation or removal, or 20 years in the case of an alien deported, or removed 2 or more times, or at any time after deportation or removal in the case of an alien convicted of an aggravated felony. The alien must file the Form I–212, where required, with the DHS officer having jurisdiction over the port of entry.

(g) * * *

(2) An alien who is an applicant for parole authorization under 8 CFR 245.15(t)(2) and requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, must file the requisite Form I–212 or Form I–601 concurrently with the Form I–131, Application for Travel Document. An alien who is an applicant for parole authorization under 8 CFR 245.13(k)(2) and requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, must file the requisite Form I–212 or Form I–601 concurrently with the Form I–131, Application for Travel Document.

* * * * *

- 34. Section 212.3 is amended by:
- a. Revising paragraph (a);

- b. Removing the phrase “with the appropriate district director” at the end of the last sentence in paragraph (d); and by

- c. Revising paragraph (f) introductory text.

The revisions read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(a) *Jurisdiction.* An application for the exercise of discretion under section 212(c) of the Act must be submitted on Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile. If the application is made in the course of proceedings under sections 235, 236, or 242 of the Act, the application shall be made to the Immigration Court.

* * * * *

(f) Limitations on discretion to grant an application under section 212(c) of the Act. An application for advance permission to enter under section 212 of the Act shall be denied if:

* * * * *

- 35. Section 212.7 is amended by:
- a. Revising paragraph (a)(1); and by
- b. Removing and reserving paragraph (b)(2).

The revision reads as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

(a) * * *

(1) Form I–601 must be filed in accordance with the instructions on the form. When filed at a consular office, Form I–601 shall be forwarded to USCIS for a decision upon conclusion that the alien is admissible but for the grounds for which a waiver is sought.

* * * * *

§ 212.15 [Amended]

- 36. Section 212.15 is amended by:
- a. Removing the phrase, “, and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1)” in the first sentence of paragraph (j)(1) introductory text;
- b. Removing the phrase “to the Director, Nebraska Service Center,” in first sentence of paragraph (j)(2)(i);
- c. Removing the phrase “to the Director, Nebraska Service Center,” in the first sentence of paragraph (j)(2)(ii); and
- d. Revising the term “the Director, Nebraska Service Center” to read: “USCIS” in the first sentence of paragraph (j)(3)(i).

PART 214—NONIMMIGRANT CLASSES

- 37. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1372, 1379, 1731–32; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

- 38. Section 214.2 is amended by:
- a. Revising paragraph (a)(6)(iii);
- b. Removing the phrase “with the appropriate Service Center” in paragraph (e)(8)(iv)(B);
- c. Removing the word “State” in the first sentence of paragraph (e)(8)(iv)(C) and adding in its place “Department of State”;
- d. Removing the phrase “with the Service Center” in the first sentence of paragraph (e)(8)(v);
- e. Removing the phrase “a Service Center” in the second sentence of paragraph (e)(8)(v) and adding in its place “USCIS”;
- f. Removing the last sentence of paragraph (e)(8)(v);
- g. Revising paragraph (g)(6)(iii);
- h. Removing paragraph (h)(3)(i)(D);
- i. Removing the second sentence in paragraph (k)(1);
- j. Removing the last sentence in paragraph (k)(7);
- k. Revising paragraph (l)(2);
- l. Removing the phrase “Service Center” in paragraph (l)(5)(ii)(C) and adding in its place “USCIS office”;
- m. Revising paragraph (l)(5)(ii)(F);
- n. Removing the third sentence in paragraph (l)(7)(i) introductory text and by revising the word “Service” in the fourth sentence to read “USCIS”;
- o. Revising paragraph (l)(7)(i)(C);
- p. Removing the term “Service Center” in the second sentence of paragraph (l)(8)(ii) and adding in its place “USCIS office”;
- q. Removing the third sentence in paragraph (m)(11)(ii)(A);
- r. Removing the phrase “to the service center with jurisdiction over the current school” in the fourth sentence of paragraph (m)(11)(ii)(B);
- s. Removing the phrase “, with the Service Center which has jurisdiction in the area where the alien will work” in the first sentence of paragraph (o)(2)(i);
- t. Removing the phrase “and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located” in the first sentence of paragraph (o)(2)(iv)(A), and by removing the second sentence;
- u. Removing the phrase “with the Service Center that has jurisdiction over the area where the alien will perform services,” in paragraph (o)(2)(iv)(B);

- v. Removing the phrase “with the Service Center having jurisdiction over the new place of employment” in the first sentence of paragraph (o)(2)(iv)(C);
 - w. Removing the phrase “with the Service Center where the original petition was filed” in the first sentence of paragraph (o)(2)(iv)(D);
 - x. Revising the ninth sentence in (p)(2)(i);
 - y. Removing the phrase “and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located” in the first sentence of (p)(2)(iv)(A), and by removing the second sentence;
 - z. Removing the phrase “with the Service Center that has jurisdiction over the area where the alien will perform the services,” in (p)(2)(iv)(B);
 - aa. Removing the phrase “with the appropriate Service Center” in the last sentence of (p)(2)(iv)(H);
 - bb. Removing the second sentence of paragraph (q)(5)(i);
 - cc. Removing the phrase “with the service center having jurisdiction over the area where the alien will perform services or labor, or receive training” in the first sentence of paragraph (q)(5)(iv);
- The revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

- (a) * * *
- (6) * * *
- (iii) If the Department of State’s endorsement is favorable, the dependent may apply to USCIS for employment authorization. When applying to USCIS for employment authorization, the dependent must present his or her Form I-566 with a favorable endorsement from the Department of State and any additional documentation as may be required by the Secretary.
- * * * * *
- (g) * * *
- (6) * * *
- (iii) If the Department of State’s endorsement is favorable, the dependent may apply to USCIS for employment authorization. When applying to USCIS for employment authorization, the dependent must present his or her Form I-566 with a favorable endorsement from the Department of State and any additional documentation as may be required by the Secretary.
- * * * * *
- (l) * * *
- (2) * * *
- (i) Except as provided in paragraph (l)(2)(ii) and (l)(17) of this section, a petitioner seeking to classify an alien as an intracompany transferee must file a petition on Form I-129, Petition for Nonimmigrant Worker. The petitioner

shall advise USCIS whether a previous petition for the same beneficiary has been filed, and certify that another petition for the same beneficiary will not be filed unless the circumstances and conditions in the initial petition have changed. Failure to make a full disclosure of previous petitions filed may result in a denial of the petition.

(ii) A United States petitioner which meets the requirements of paragraph (l)(4) of this section and seeks continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of the Act multiple numbers of aliens employed by itself, its parent, or those branches, subsidiaries, or affiliates may file a blanket petition on Form I-129. The blanket petition shall be maintained at the adjudicating office. The petitioner shall be the single representative for the qualifying organizations with which USCIS will deal regarding the blanket petition.

* * * * *

(5) * * *

(ii) * * *

(F) If the consular officer determines that the alien is ineligible for L classification under a blanket petition, the consular officer’s decision shall be final. The consular officer shall record the reasons for the denial on Form I-129S, retain one copy, return the original of I-129S to the USCIS office which approved the blanket petition, and provide a copy to the alien. In such a case, an individual petition may be filed for the alien on Form I-129, Petition for Nonimmigrant Worker. The petition shall state the reason the alien was denied L classification and specify the consular office which made the determination and the date of the determination.

* * * * *

(7) * * *

(i) * * *

(C) *Amendments.* The petitioner must file an amended petition, with fee, at the USCIS office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (*i.e.*, from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary’s eligibility under section 101(a)(15)(L) of the Act.

* * * * *

(p) * * *

(2) * * *

(j) * * * The petitioner must file a P petition on Form I-129, Petition for Nonimmigrant Worker. * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 39. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.4 [Amended]

■ 40. Section 216.4 is amended by removing and reserving paragraph (a)(3).

§ 216.5 [Amended]

■ 41. Section 216.5 is amended by removing and reserving paragraph (c).

§ 216.6 [Amended]

■ 42. Section 216.6, is amended by removing and reserving paragraph (a)(2).

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 43. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

§ 236.14 [Amended]

■ 44. Section 236.14 is amended by removing the first sentence of paragraph (a).

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 45. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105-100 (111 Stat 2160, 2193); sec. 902, Pub. L. 105-277 (112 Stat. 2681); 8 CFR 2.

§ 240.63 [Amended]

■ 46. Section 240.63 is amended by removing the phrase “at the appropriate Service Center” in paragraph (c).

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 47. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.7 [Amended]

■ 48. Section 244.7 is amended by removing the phrase “shall be filed with the director having jurisdiction over the applicant’s place of residence” in paragraph (a) and adding in its place “must be filed on Form I–821, Application for Temporary Protected Status”.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE

■ 49. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

§ 245.2 [Amended]

■ 50. Section 245.2 is amended by:

- a. Removing the phrase “, and shall be submitted to the director having jurisdiction over the applicant’s place of residence in the United States” in the second sentence in paragraph (b);
- b. Removing the third sentence in paragraph (b);
- c. Removing the word “his” in the fourth sentence of paragraph (b) and adding in its place “the”;
- d. Removing the phrase “with the director having jurisdiction over the applicant’s place of residence” in the first sentence in paragraph (c);
- e. Removing the phrase “the director” in the third sentence of paragraph (c) and adding in its place “USCIS”;
- f. Removing the phrase “by the director” in the fifth sentence of paragraph (c).

§ 245.7 [Amended]

■ 51. Section 245.7 is amended by removing the phrase “with the director having jurisdiction over the applicant’s place of residence” from the first sentence of paragraph (a).

§ 245.8 [Amended]

■ 52. Section 245.8 is amended by removing the phrase “with the director having jurisdiction over the applicant’s place of residence” from the first sentence of paragraph (a).

§ 245.12 [Amended]

■ 53. Section 245.12 is amended by removing the phrase “, with the Service director having jurisdiction over the applicant’s place of residence” in paragraph (a)(1).

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 54. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§ 248.3 [Amended]

■ 55. Section 248.3 is amended by removing the phrase “, to the Nebraska Service Center” in paragraph (d).

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 56. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

§ 264.2 [Amended]

■ 57. Section 264.2 is amended by removing the phrase “to the Service office having jurisdiction over the applicant’s place of residence in the United States” in paragraph (a) and adding in its place “on Form I–485 in accordance with the instructions on the form and paragraph (c) of this section”.

■ 58. Section 264.5 is amended by revising the first sentence in paragraph (e)(2)(i) to read as follows:

§ 264.5 Application for a replacement Permanent Resident Card.

(e) * * *
(2) * * *
(i) Form I–90 must be filed in accordance with the instructions on the form. * * *
* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

■ 59. The authority citation for part 274A continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

§ 274a.13 [Amended]

■ 60. Section 274a.13 is amended by:

- a. Removing the phrase “with the director having jurisdiction over applicant’s residence, or the director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as the Commissioner may designate” in the first sentence of paragraph (a)(1) and add in its place “, Application for Employment Authorization”;
- b. Removing the phrase “the director or such other officer as the Commissioner may designate” in the second sentence in paragraph (a)(1) and adding in its place “USCIS”;
- c. Removing the phrase “with the appropriate Service Center or with such other Service office as the Commissioner may designate” in the first and last sentences in paragraph (a)(2);

■ d. Removing the phrase “the district director” in the first sentence of paragraph (d) and adding in its place “USCIS”;

■ e. Removing the phrase “the INS” in the first sentence of paragraph (d) and adding in its place “USCIS”.

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

■ 61. The authority citation for part 301 continues to read as follows:

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

§ 301.1 [Amended]

■ 62. In section 301.1, paragraph (a)(1) is amended by removing the term “Service” in the first and last sentences and adding in its place “USCIS”, and by removing the second sentence.

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

■ 63. The authority citation for part 316 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1427, 1443, 1447; 8 CFR part 2.

§ 316.3 [Removed and Reserved]

■ 64. Section 316.3 is removed and reserved.

PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

■ 65. The authority citation for part 320 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 320.3 [Amended]

■ 66. Section 320.3 is amended by removing the fourth sentence in paragraph (a).

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

■ 67. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 322.3 [Amended]

■ 68. Section 322.3 is amended by removing the third sentence in paragraph (a).

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

■ 69. The authority citation for part 324 continues to read as follows:

Authority: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

§ 324.2 [Amended]

■ 70. Section 324.2 is amended by removing the final sentence of paragraph (b).

§ 324.3 [Amended]

■ 71. Section 324.3 is amended by:

■ a. Removing the phrase “the office of the Service having jurisdiction over her place of residence as evidence of her desire to take the oath” in paragraph (b)(1) and adding in its place “USCIS in accordance with the instructions on the form.”;

■ b. Removing the phrase “the district director” in paragraph (b)(2) and adding in its place “USCIS”;

■ c. Removing the phrase “the Service” in paragraph (b)(2) and adding in its place “USCIS”.

§ 324.4 [Amended]

■ 72. Section 324.4 is amended by removing the phrase “office of the Service” and adding in its place “USCIS office”.

§ 324.5 [Amended]

■ 73. Section 324.5 is amended by removing the phrase “the Service” wherever it appears and adding in its place “USCIS”.

PART 327—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO LOST UNITED STATES CITIZENSHIP THROUGH SERVICE IN ARMED FORCES OF FOREIGN COUNTRY DURING WORLD WAR II

■ 74. The authority citation for part 327 continues to read as follows:

Authority: 8 U.S.C. 1103, 1438, 1443.

§ 327.2 [Amended]

■ 75. Section 327.2 is amended by removing the phrase “, to the Service office having jurisdiction over the applicant’s place of residence” in the first sentence of paragraph (a).

PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH THREE YEARS’ SERVICE IN ARMED FORCES OF THE UNITED STATES

■ 76. The authority citation for part 328 continues to read as follows:

Authority: 8 U.S.C. 1103, 1439, 1443.

§ 328.3 [Removed and Reserved]

■ 77. Section 328.3 is removed and reserved.

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

■ 78. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

§ 329.3 [Removed and Reserved]

■ 79. Section 329.3 is removed and reserved.

§ 329.5 [Amended]

■ 80. Section 329.5 is amended by removing and reserving paragraph (c).

PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN

■ 81. The authority citation for part 330 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 330.2 [Amended]

■ 82. Section 330.2 is amended by adding a period immediately after the phrase “An applicant for naturalization under section 330 of the Act must submit an Application for Naturalization, Form N–400” and removing the remaining text in paragraph (a).

PART 334—APPLICATION FOR NATURALIZATION

■ 83. The authority citation for part 334 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 334.1 [Amended]

■ 84. Section 334.1 is amended by removing the phrase “at the Service office indicated in the appropriate part of this chapter” and adding in its place “in accordance with the instructions on the form”.

§ 334.11 [Amended]

■ 85. Section 334.11 is amended by removing the phrase “with the Service

office having jurisdiction over the applicant’s place of residence in the United States” from the second sentence of paragraph (a).

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

■ 86. The authority citation for part 392 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.

§ 392.3 [Amended]

■ 87. Section 392.3(b)(1), is amended by adding a period immediately after the phrase “An application for posthumous citizenship must be submitted by mail on Form N–644” and removing the remaining text from the first sentence and removing the second sentence.

Janet Napolitano,

Secretary.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Modification of Temporary Liquidity Guarantee Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is issuing this Final Rule to make permanent a minor modification to the Temporary Liquidity Guarantee Program (TLGP) to include certain issuances of mandatory convertible debt (MCD) under the TLGP debt guarantee program (DGP).

DATES: The final rule becomes effective on June 5, 2009.

FOR FURTHER INFORMATION CONTACT:

Steven Burton, Senior Financial Analyst, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–3539 or sburton@fdic.gov; Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or rfick@fdic.gov; A. Ann Johnson, Counsel, Legal Division (202) 898–3573 or aajohnson@fdic.gov; Mark L. Handzlik, Senior Attorney, Legal Division, (202) 898–3990 or mhandzlik@fdic.gov; Gail Patelunas, Deputy Director, Division of Resolutions