FDIC
Federal Deposit Insurance Corporation
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September 3, 2009

TO: The Board of Directors

FROM: Michael Bradfield
General Counsel

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SUBJECT: Final Rule on Deposit Insurance Rules

Recommendation

Last fall, the FDIC issued two separate interim rules concerning deposit insurance coverage. Having reviewed the public comments on those rulemakings, staff recommends that the Board authorize the issuance of the attached final rule. The final rule would implement the temporary increase in the deposit insurance coverage limit from $100,000 to $250,000 and simplify the deposit insurance coverage rules for both revocable trust accounts and mortgage servicing accounts. The final rule makes no substantive changes to the interim rules. Following the Board vote to approve it, the final rule would become effective thirty days after publication in the *Federal Register*.

Summary of the Final Rule

The final rule would: (1) update our current coverage rules to reflect the amendment to the standard maximum deposit insurance amount ("SMDIA") made by the Emergency Economic Stabilization Act of 2008 ("EESA"), and extended through 2013 by the Helping Families Save Their Homes Act of 2009 ("HFSHA"); (2) make the coverage rules for revocable trust accounts easier to understand and apply; and (3) make the coverage rules for mortgage servicing accounts simpler to apply. The final rule also makes technical, conforming amendments to its international banking regulations to substitute several existing references to "$100,000" with references to the SMDIA.

Temporary Increase in Coverage

The EESA temporarily increased the SMDIA from $100,000 to $250,000, effective October 3, 2008 through December 31, 2009. The FDIC's interim rule, adopted in October 2008, implemented this new SMDIA. On May 20, 2009, the President signed the HFSHA, extending the temporary increase in the SMDIA an additional four years, through December 31, 2013. After that date, the SMDIA will, by law, return to $100,000.

The FDIC received no comments on the interim rule's temporary increase in the SMDIA. The final rule thus amends the FDIC's deposit insurance regulations to reflect the temporary increase in the SMDIA, but is revised to make clear that this increase applies through the December 31, 2013 statutory expiration date. The final rule also makes corresponding, consistent changes to the examples provided in the regulation to reflect this increase in the SMDIA.

Revocable Trust Accounts

In September 2008, the FDIC issued an interim rule to make the coverage rules for revocable trust accounts easier to understand and apply. In particular, the interim rule eliminated the "qualifying beneficiary" concept to quicken deposit insurance determinations on revocable trust accounts and to promote greater fairness by broadening the scope of eligible beneficiaries. The interim rule also provided a two-part deposit insurance coverage calculation approach for revocable trust accounts. In addition, the interim rule simplified the application of the deposit insurance rules to life-estate interests, and to irrevocable trusts that spring from a revocable trust.

Comments submitted to the FDIC on the interim rule were highly favorable. Many commenters expressed strong support for the interim rule's deletion of the former rule's "qualifying beneficiary" concept, and supported the two-part coverage approach. Several commenters expressly requested that the FDIC clarify the rules regarding the proper manner of "titling" a payable-on-death, or POD, account in order to ensure that the revocable trust account funds are fully insured. As to these POD accounts, several commenters noted that some banks provide conflicting advice on, and take different approaches to, titling these accounts.

The final rule closely follows the interim rule, with minor technical revisions. In response to commenter concerns about the titling requirements for revocable trust accounts, clarifying language has been incorporated into the final rule to address titling of revocable trust accounts. The final rule retains the requirement that the title of a revocable trust account identify the account as such in order to qualify for coverage under the revocable trust account rules; however, the rule clarifies that the FDIC will consider information in an insured depository institution's *electronic* deposit account records to determine if the titling requirement is satisfied. For example, the FDIC would recognize an account as a revocable trust account even if the account signature card does not designate the account as a revocable trust account provided the institution's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.

Mortgage Servicing Accounts

The FDIC issued an interim rule in October 2008 to make the deposit insurance coverage rules for mortgage servicing accounts easier to understand and apply. The rule provides deposit insurance coverage for a mortgage servicing account based on each mortgagor's payments of principal and interest into the account up to the SMDIA of $250,000 per mortgagor. Coverage is thus provided to the mortgagees/investors as a collective group, based on the cumulative amount of the mortgagors' payments of principal and interest into the account. This is distinguishable from the deposit insurance coverage afforded to payments of taxes and insurance premiums.

Consistent with their historic treatment under the deposit insurance rules, amounts in a mortgage servicing account that represent payments for taxes and insurance are insured on a pass-through basis as the funds of each respective mortgagor.

All comments favored the interim rule's handling of deposit insurance coverage on payments of principal and interest in a mortgage servicing account on a per-mortgagor (or per-borrower) basis. A small number urged the FDIC to apply the interim rule's treatment of principal and interest payments comprising mortgage servicing accounts to other types of servicing accounts that similarly consist of principal and interest payments but for non-mortgage loans, such as motor vehicle loans. The final rule is essentially unchanged from the interim rule.

Technical Amendments

The four-year extension of the increase in the SMDIA, which necessitates revisions to the deposit insurance regulations and examples therein, also affords the FDIC with the opportunity to now make technical amendments to the FDIC's international banking regulations (12 CFR Part 347) to replace several references therein to a "$100,000" benchmark with references to the SMDIA, consistent with the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. 109-173).

Conclusion

For the reasons discussed above, the staff recommends that the Board adopt the attached final rule and authorize its issuance in the Federal Register.

Attachment

Staff contacts: Joe DiNuzzo (x87349) or Daniel Lonergan (x86791).