Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

March 19, 2019

MEMORANDUM TO: The Board of Directors

FROM: Bret Edwards
Director, Division of Resolutions and Receiverships

Mark Pearce
Director, Division of Depositor and Consumer Protection

SUBJECT: Notice of Proposed Rulemaking on Joint Deposit Accounts

Recommendation

Staff recommends that the Board of Directors ("Board") adopt the attached Notice of Proposed Rulemaking ("NPR") and authorize its publication in the Federal Register for a 30-day comment period. Through this NPR, the FDIC would propose to amend the regulation governing one of the requirements for an account to be separately insured as a joint account. Specifically, the proposed rule would provide an alternative method to satisfy the "signature card" requirement. Under the proposal, the signature card requirement could be satisfied by information contained in the deposit account records of the insured depository institution establishing co-ownership of the deposit account, such as evidence that the institution has issued an access mechanism for the account to each co-owner or evidence of usage of the deposit account by each co-owner.

Background

The FDIC's deposit insurance regulations currently define several categories of accounts, such as single ownership accounts and joint ownership accounts. If an account meets the regulatory requirements for a particular category, funds in the account are insured up to the $250,000 deposit insurance limit separately from funds in any accounts held by the depositor in a different category at the same insured depository institution ("IDI"). For example, funds in joint accounts held by a particular depositor will be separately insured from funds in single ownership deposit accounts of the same depositor at the same IDI.

Section 330.9 of the FDIC's regulations governs insurance coverage for joint accounts. Under the regulation, accounts generally must satisfy three requirements to be insured under the joint accounts category:

1. All co-owners of the funds in the account are "natural persons";
2. Each co-owner has personally signed a deposit account signature card; and
3. Each co-owner possesses withdrawal rights on the same basis.

If a joint deposit account does not satisfy these requirements, each co-owner's actual ownership interest in the account is aggregated with other single ownership accounts of such

Concur:

Charles Yi
General Counsel

individual or other accounts of such entity. This may result in some funds being uninsured if a depositor's single ownership accounts at the same IDI, including funds in any non-qualifying joint accounts, exceed the $250,000 limit.

The longstanding requirement that each co-owner of a joint account has signed a deposit account signature card was intended to address practices such as the addition of nominal co-owners to an account solely to increase deposit insurance coverage. FDIC staff has taken the position that section 330.9 does not require a signature card to be in any particular format, and IDIs may satisfy the requirement through various forms of documentation used in their account opening processes, such as a signed deposit account agreement. Published guidance also states that IDIs may satisfy the requirement electronically.

The FDIC periodically receives inquiries regarding the signature card requirement. Those inquiries have increased following the issuance of a rule (Recordkeeping Rule) that requires certain large insured depository institutions (covered institutions) to configure their information technology systems to be capable of calculating insurance coverage for deposit accounts in the event of the institution's failure. The Recordkeeping Rule has introduced an element of pre-judgment involving identification of account categories and satisfaction of recordkeeping requirements for the covered institutions subject to that Rule. In particular, covered institutions are required to review their records and update missing and erroneous deposit account information. As part of their legacy data cleanup, covered institutions must obtain signature cards for owners of accounts with multiple co-owners that are missing one or more required signature cards.

Staff at the FDIC has engaged in discussions with these covered institutions as part of the implementation process, and these discussions have brought to light certain issues concerning the application of the signature card requirement, leading the FDIC to reconsider the methods by which joint ownership may be established for purposes of deposit insurance.

Proposed Rule

The proposed rule would provide an alternative method to satisfy the signature card requirement in the event of an IDI's failure. It would allow the signature card requirement to be satisfied by information contained in the deposit account records of the IDI establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner. Under this proposal, for example, the requirement could be satisfied by evidence that an IDI has issued a debit card to each co-owner of the account or evidence that each co-owner of the account has transacted using the deposit account.

The proposed rule would not introduce any new requirements concerning what IDIs must do when opening accounts or what depositors must do to prove their deposit insurance claims if an IDI were to fail. It also would not reduce or affect insurance coverage for any depositor that satisfies the existing joint account requirements. The proposed rule would simply provide an alternative method to satisfy the existing signature card requirement. If each co-owner of a joint account signs, or has previously signed, a signature card in accordance with the existing requirement, the alternative method provided by the proposed rule would be unnecessary. Assuming that the remaining joint account requirements are satisfied – that is, all co-owners of the account are natural persons and possess equal withdrawal rights – the account would be insured as a joint account.

For all IDIs, the proposed rule is intended to reduce the regulatory burden associated with obtaining signature cards. It is also intended to promote the prompt payment of deposit insurance in the event of an IDI's failure by providing a potentially less burdensome alternative method that the FDIC could use to determine the owners of joint accounts, alleviating delays in the recognition of account ownership and uncertainty regarding the extent of deposit insurance coverage. These benefits would promote depositor confidence in the nation's banking system and particularly in FDIC-insured deposits. As stated above, the NPR would not impose any new recordkeeping requirements for joint accounts.

The proposed rule would have a more immediate regulatory burden relief impact on the covered institutions subject to the Recordkeeping Rule. By providing an alternative method to satisfy the signature card requirement that relies on other information in the institution's deposit account records, the proposed rule should reduce the legacy data cleanup burden associated with obtaining missing signature cards for covered institutions subject to the Recordkeeping Rule.

Staff is also proposing a conforming amendment to section 330.9 consistent with the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Specifically, the regulation would be amended to state expressly that the signature card requirement may be satisfied electronically. This is consistent with published guidance and staff interpretations of section 330.9.

Conclusion

Staff recommends that the Board approve the attached Notice of Proposed Rulemaking for publication in the Federal Register for a 30-day comment period.

Staff Contacts

James Watts, Counsel, Legal Division, x86678
Terrie Franks, Associate Director, Division of Resolutions and Receiverships, x88226
Martin Becker, Chief, Deposit Insurance, Division of Depositor and Consumer Protection, x87207