FDIC
Federal Deposit Insurance Corporation
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July 16, 2019

MEMORANDUM TO: The Board of Directors

FROM: Maureen Sweeney
Director, Division of Resolutions and Receiverships

Mark Pearce
Director, Division of Depositor and Consumer Protection

SUBJECT: Final Rule on Joint Deposit Accounts

Recommendation

Staff recommends that the Board of Directors ("Board") adopt the attached final rule and authorize its publication in the *Federal Register*. Through the final rule, the FDIC would amend the regulation governing one of the requirements for an account to be separately insured as a joint account. Specifically, the final rule provides an alternative method of satisfying the "signature card" requirement. The final rule allows the signature card requirement to be satisfied by information contained in the deposit account records of the insured depository institution ("IDI") establishing co-ownership of the deposit account, such as evidence that the IDI issued a mechanism for accessing 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 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 existing 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:

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individual or other accounts of such entity. This may result in some funds being uninsured if the aggregate funds in 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 further 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 engaged in discussions with these covered institutions as part of the Recordkeeping Rule implementation process. These discussions 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.

On April 4, 2019, the FDIC published a notice of proposed rulemaking ("NPR") to amend 12 CFR 330.9 to provide an alternative method of satisfying the requirement that each co-owner of a joint account personally sign a deposit account signature card. Under the proposal, the signature card requirement could be satisfied by information contained in the deposit account records of an IDI establishing co-ownership of the account, such as the issuance of a mechanism for accessing the account to each co-owner or evidence of account usage by each co-owner. The FDIC also proposed a conforming amendment to section 330.9 consistent with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"). Specifically, the FDIC proposed to amend section 330.9 to state expressly that the signature card requirement may be satisfied electronically.

After careful consideration of the comments received, staff recommends that the Board adopt the rule generally as proposed, with one additional clarifying cross-reference. The FDIC received comments from four IDIs and four trade associations in response to the NPR. Commenters generally supported the proposed rule. Specific comments are discussed below.

Summary of Final Rule

The final rule amends 12 C.F.R. 330.9 to 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 an IDI establishing co-ownership of a 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. 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.

Commenters requested confirmation that the specific types of evidence described in the NPR are not the only forms of evidence of co-ownership that could satisfy the signature card requirement. The preamble to the NPR stated, for example, that the requirement could be satisfied by evidence that an IDI has issued a debit card to each co-owner of the account. Consistent with the NPR, the preamble to the final rule reiterates that these descriptions are only intended to serve as examples and not to limit the forms of evidence of co-ownership that could satisfy the signature card requirement. The final rule does not attempt to specify all of the forms of evidence of co-ownership that could be used to satisfy the signature card requirement. This flexible approach is intended to accommodate changes in technology and differences in IDIs' records.

One commenter urged the FDIC to memorialize prior staff guidance by amending the regulation to refer to other types of documents that may be used to satisfy the signature card requirement, such as a signed deposit account agreement. The preamble reiterates staff's view that expressly referencing other forms of acceptable documentation in the text of the rule could require additional conforming amendments and would unnecessarily complicate the rule.

A trade association also requested clarification that the final rule would not pre-empt state laws that require signatures to establish ownership rights in deposit accounts. The final rule does not modify or affect any state law requirements generally applicable to IDIs, including requirements to use signatures to establish ownership of a deposit account. Consistent with the NPR, the preamble to the final rule reiterates that IDIs may, for legal or other reasons, find it appropriate or necessary to continue collecting customers' signatures.

Three trade associations expressed concern that, because the FDIC proposed to retain the existing language of the signature card requirement in section 330.9(c)(1)(ii), the addition of paragraph (c)(4), which defines the alternative method of satisfying the requirement, could be confusing. These commenters requested that the FDIC amend section 330.9(c)(1)(ii) to include a cross-reference to paragraph (c)(4). Staff is recommending an amendment to section 330.9(c)(1)(ii) to require that "[e]ach co-owner has personally signed, which may include signing electronically, a deposit account signature card, *or the alternative method provided in paragraph (c)(4) of this section is satisfied.*"

The final rule would become effective 30 days after publication in the *Federal Register*.

Expected Effects

The final rule would apply to all IDIs and provides an alternative method that may be used to satisfy the signature card requirement at the time of an IDI's failure. It is intended to reduce the regulatory burden associated with obtaining signature cards personally signed by each co-owner.

The final rule is expected to have a 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 final rule should reduce the burden associated with obtaining missing or erroneous signature cards for covered institutions subject to the Recordkeeping Rule. Cost savings for covered institutions under the final rule are estimated to be approximately $57 million.

The final rule also may alleviate some of the burden associated with obtaining signature cards for IDIs that are not subject to the Recordkeeping Rule, to the extent they choose to review and update their deposit account records. The final rule is estimated to result in cost savings of up to $23 million for these institutions.

The final rule is 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 should promote depositor confidence in the nation's banking system and particularly in FDIC-insured deposits.

The final rule does 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 does not reduce or affect insurance coverage for any depositor that satisfies the existing joint account requirements. The final rule simply provides an alternative method to satisfy the existing signature card requirement. If each co-owner of a joint account signs, or previously signed, a signature card in accordance with the existing requirement, the alternative method provided by the final rule is 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.

Alternatives Considered

In the NPR, the FDIC solicited comment on a number of alternatives to the proposed rule. As noted above, commenters were generally supportive of the proposed rule; however, three commenters recommended that the FDIC eliminate the signature card requirement (or eliminate the requirement for particular subsets of accounts). Generally, these commenters argued that because depositors have other options available for obtaining additional deposit insurance coverage, they would be unlikely to take the risks entailed in adding nominal co-owners to their accounts solely to increase deposit insurance coverage. While the risks of adding a nominal co-owner to an account may discourage such action in certain circumstances, the ability to increase insurance coverage by several multiples of the standard $250,000 deposit insurance limit may nonetheless motivate some depositors to add nominal co-owners. Staff believes that the signature card requirement helps to ensure consistency with statutory limits on the amount of deposit insurance coverage available to each depositor.

Conclusion

Staff recommends that the Board adopt the attached final rule and authorize its publication in the *Federal Register*.

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