will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

## List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

## Signing Authority

This document of the Department of Energy was signed on July 22, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 23, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix I to subpart B of part 430 is amended by:

■ a. Adding an introductory note; and

■ b. Revising section 2.1.1;

The addition and revision read as follows:

## Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Cooking Products

*Note:* Prior to [Date 180 days after publication of a final rule], representations with respect to the energy use or efficiency of a microwave oven, including compliance certifications, must be based on testing conducted in accordance with either this appendix as it now appears or appendix I as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2021. Beginning on [Date 180 days after publication of a final rule] representations with respect to energy use or efficiency of a microwave oven, including compliance certifications, must be based on testing conducted in accordance with this appendix.

* * * * *

2.1.1 *Microwave ovens, excluding any microwave oven component of a combined cooking product.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix. Install the microwave oven in accordance with section 5, paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. If the microwave oven can communicate through a network (*e.g.,* Bluetooth® or internet connection), disable the network function, by means provided in the manufacturer's user manual, for the duration of testing. If the manufacturer's user manual does not provide a means for disabling the network function, test the microwave oven with the network function in the factory default setting or in the as-shipped condition as instructed in Section 5, Paragraph 5.2 of IEC 62301 (Second Edition). The clock display must be on, regardless of manufacturer's instructions or default setting or supplied setting. The clock display must remain on during testing, unless the clock display powers down automatically with no option for the consumer to override this function. Install a watt meter in the circuit that meets the requirements of section 2.6.1.1 of this appendix.

* * * * *

[FR Doc. 2021–16023 Filed 8–2–21; 8:45 am]

BILLING CODE 6450–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 330

**RIN 3064–AF27**

## Simplification of Deposit Insurance Rules

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Deposit Insurance Corporation is seeking comment on proposed amendments to its regulations governing deposit insurance coverage. The proposed rule would simplify the deposit insurance regulations by establishing a "trust accounts" category that would provide for coverage of deposits of both revocable trusts and irrevocable trusts, and provide consistent deposit insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender.

**DATES:** Comments will be accepted until October 4, 2021.

**ADDRESSES:** You may submit comments on the notice of proposed rulemaking using any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF27 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments-RIN 3064–AF27, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.*

**FOR FURTHER INFORMATION CONTACT:** James Watts, Counsel, Legal Division, (202) 898–6678, *jwatts@fdic.gov;* Kathryn Marks, Counsel, Legal Division, (202) 898–3896, *kmarks@fdic.gov.*

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

## I. Simplification of Deposit Insurance Trust Rules

### *A. Policy Objectives*

The Federal Deposit Insurance Corporation (FDIC) is seeking comment on proposed amendments to its regulations governing deposit insurance coverage for deposits held in connection with trusts.[1] The proposed amendments are intended to (1) provide depositors and bankers with a rule for trust account coverage that is easy to understand and (2) to facilitate the prompt payment of deposit insurance in accordance with the Federal Deposit Insurance Act (FDI Act), among other objectives. Accomplishing these objectives also would further the FDIC's mission in other respects, as discussed in greater detail below.

#### Clarifying Insurance Coverage for Trust Deposits

The proposed amendments would clarify for depositors, bankers, and other interested parties the insurance rules and limits for trust accounts. The proposal both reduces the number of rules governing coverage for trust accounts and establishes a straightforward calculation to determine coverage. The deposit insurance trust rules have evolved over time and can be difficult to apply in some circumstances. The proposed amendments are intended to alleviate some of the confusion that depositors and bankers may experience with respect to insurance coverage and limits. Under the current regulations, there are distinct and separate sets of rules applicable to deposits of revocable trusts and irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the FDIC's efforts to simplify the revocable trust rules in 2008,[2] over the last 13 years FDIC deposit insurance specialists have responded to approximately 20,000 complex insurance inquiries per year on average. More than 50 percent of inquiries pertain to deposit insurance coverage for trust accounts (revocable or irrevocable). The consistently high volume of complex inquiries about trust accounts over an extended period of time suggests continued confusion about insurance limits. To help clarify insurance limits, the proposed amendments would further simplify insurance coverage of trust accounts (revocable and irrevocable) by harmonizing the coverage criteria for certain types of trust accounts and by establishing a simplified formula for calculating coverage that would apply to these deposits. The FDIC proposes using the calculation that the FDIC first adopted in 2008 for revocable trust accounts with five or fewer beneficiaries. This formula is straightforward and is already generally familiar to bankers and depositors.[3]

#### Prompt Payment of Deposit Insurance

The FDI Act requires the FDIC to pay depositors ''as soon as possible'' after a bank failure. However, the insurance determination and subsequent payment for many trust deposits can be delayed when FDIC staff must review complex trust agreements and apply various rules for determining deposit insurance coverage. The proposed amendments are intended to facilitate more timely deposit insurance determinations for trust accounts by reducing the amount of time needed to review trust agreements and determine coverage. These amendments should promote the FDIC's ability to pay insurance to depositors promptly following the failure of an insured depository institution (IDI), enabling depositors to meet their financial needs and obligations.

#### Facilitating Resolutions

The proposed changes will also facilitate the resolution of failed IDIs. The FDIC is routinely required to make deposit insurance determinations in connection with IDI failures. In many of these instances, however, deposit insurance coverage for trust deposits is based upon information that is not maintained in the failed IDI's deposit account records. As a result, FDIC staff work with depositors, trustees, and other parties to obtain trust documentation following an IDI's failure in order to complete deposit insurance determinations. The difficulties associated with completing such a determination are exacerbated by the substantial growth in the use of formal trusts in recent decades. The proposed amendments could reduce the time spent reviewing such information and provide greater flexibility to automate deposit insurance determinations, thereby reducing potential delays in the completion of deposit insurance determinations and payments. Timely payment of deposit insurance also helps to avoid reductions in the franchise value of failed IDIs, expanding resolution options and mitigating losses.

#### Effects on the Deposit Insurance Fund

The FDIC is also mindful of the effect that the proposed changes to the deposit insurance regulations could have on deposit insurance coverage and generally on the Deposit Insurance Fund (DIF), which is used to pay deposit insurance in the event of an IDI's failure. The FDIC manages the DIF according to parameters established by Congress and continually evaluates the adequacy of the DIF to protect insured depositors. The FDIC's general intent is that proposed amendments to the trust rules be neutral with respect to the DIF.

### *B. Background*

#### 1. Deposit Insurance and the FDIC's Statutory and Regulatory Authority

The FDIC is an independent agency that maintains stability and public confidence in the nation's financial system by: Insuring deposits; examining and supervising IDIs for safety and soundness and compliance with consumer financial protection laws; and resolving IDIs, including large and complex financial institutions, and managing receiverships. The FDIC has helped to maintain public confidence in

[1] Trusts include informal revocable trusts (commonly referred to as payable-on-death accounts, in-trust-for accounts, or Totten trusts), formal revocable trusts, and irrevocable trusts.

[2] *See* 73 FR 56706 (Sep. 30, 2008).

[3] In 2008, the FDIC adopted an insurance calculation for revocable trusts that have five or fewer beneficiaries. Under this rule, 12 CFR 330.10(a), each trust grantor is insured up to $250,000 per beneficiary.

times of financial turmoil, including the period from 2008 to 2013, when the United States experienced a severe financial crisis, and more recently in 2020 during the financial stress associated with the COVID–19 pandemic. During the more than 88 years since the FDIC was established, no depositor has lost a penny of FDIC-insured funds.

The FDI Act establishes the key parameters of deposit insurance coverage, including the standard maximum deposit insurance amount (SMDIA), currently $250,000.[4] In addition to providing deposit insurance coverage up to the SMDIA at each IDI where a depositor maintains deposits, the FDI Act also provides separate insurance coverage for deposits that a depositor maintains in different rights and capacities (also known as insurance categories) at the same IDI.[5] For example, deposits in the single ownership category are separately insured from deposits in the joint ownership category at the same IDI.

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress.[6] Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category.

2. Evolution of Insurance Coverage of Trust Deposits

Over the years, deposit insurance coverage has evolved to reflect both the FDIC's experience and changes in the banking industry. The FDI Act includes provisions defining the coverage for certain trust deposits,[7] while coverage for other trust deposits has been defined by regulation.[8] The following review of historical coverage for trust deposits provides context for the FDIC's proposed amendments to the trust rules.

In the FDIC's earliest years, deposit insurance coverage for trust deposits depended upon whether the beneficiaries of the trust were named in the bank's records. If the beneficiaries were named in the bank's records, the trust deposit was insured according to the beneficiaries' respective interests because the deposit was held in trust for the beneficiaries. If beneficiaries were not named in the bank's records, the grantor trustee was treated as the depositor instead and insured to the applicable limit (then $5,000); however, the trust deposit was insured separately from the trustee's other deposits, if any, at the same bank.[9] If the bank itself was designated as trustee of the trust, deposits of the trust were insured up to the $5,000 limit for each trust estate pursuant to statute.[10]

Over time, some states began recognizing the existence of a trust based on a designation in the bank's records that a deposit was held in trust for another person—even in the absence of a written trust agreement. In 1955, the FDIC's then-General Counsel concluded that if relevant state law recognized these ''Totten trusts'' [11] and the depositor complied with the law in establishing the trust, the FDIC would insure these deposits separately from the depositor's other deposit accounts.[12] This was the first time the FDIC insured informal trusts as trust deposits.

The FDIC further clarified insurance coverage for trust deposits in 1967 when it issued rules defining the deposit insurance categories that the FDIC had recognized.[13] These rules defined a ''testamentary accounts'' category that included revocable trust accounts, tentative or Totten trust accounts, and payable-on-death accounts and similar accounts evidencing an intention that the funds shall belong to another person upon the depositor's death. Testamentary deposits were insured up to the applicable limit (which Congress had raised to $15,000) for each named beneficiary who was the depositor's spouse, child, or grandchild. If the named beneficiary did not satisfy this kinship requirement, the deposit was aggregated with the depositor's individual accounts for purposes of deposit insurance coverage. The rules also included a separate ''trust accounts'' category for irrevocable trusts with coverage of up to $15,000 for each beneficiary's trust interests in deposit accounts established by the same grantor pursuant to a trust agreement. Irrevocable trust accounts were insured separately from other deposit accounts of the trustee, grantor, or beneficiary, including testamentary accounts.

In 1989, Congress transferred responsibility for insuring deposits of savings associations from the Federal Savings and Loan Insurance Corporation (FSLIC) to the FDIC. As part of this transition, the FDIC issued uniform deposit insurance rules for the deposits of banks and savings associations, reconciling the differences between the FDIC and FSLIC insurance rules.[14] These uniform rules redesignated the ''testamentary accounts'' category as ''revocable trust accounts,'' and continued to require beneficiaries for revocable trust deposits to be named, but added the requirement that these beneficiaries be named in the failed IDI's deposit account records in order for per-beneficiary coverage to apply. In the notice of proposed rulemaking discussing this change, the FDIC explained that the change was expected to simplify the deposit insurance determination process for revocable trust deposits and expedite the payment of deposit insurance.[15] These rules also redesignated the ''trust accounts'' category as ''irrevocable trust accounts'' and introduced a distinction between contingent interests and non-contingent interests in irrevocable trusts that would affect deposit insurance coverage. Non-contingent interests were each insured up to the applicable limit (then $100,000), while contingent interests were aggregated and insured up to $100,000 in total.[16]

As revocable trusts increased in popularity during the late 1980s and early 1990s as an estate planning tool, the FDIC began receiving more inquiries about the revocable trust rules. Many of these inquiries were prompted by complex trust agreements that included numerous conditions prescribing whether, when, or how a named beneficiary would receive trust assets. FDIC staff generally interpreted the revocable trust rules to require

[4] *See* 12 U.S.C. 1821(a)(1)(E).

[5] *See* 12 U.S.C. 1821(a)(1)(C) (deposits ''maintained by a depositor in the same capacity and the same right'' at the same IDI are aggregated for purposes of the deposit insurance limit).

[6] 12 U.S.C. 1821(a)(2).

[7] *See* 12 U.S.C. 1817(i), 1821(a).

[8] See 12 CFR 330.10, 330.13.

[9] *See* 1934 FDIC Annual Report at 143.

[10] *See* Banking Act of 1935, Public Law 74–305 (Aug. 23, 1935), section 101 (''Trust funds held by an insured bank in a fiduciary capacity whether held in its trust or deposited in any other department or in another bank shall be insured in an amount not to exceed $5,000 for each trust estate, and when deposited by the fiduciary bank in another insured bank such trust funds shall be similarly insured to the fiduciary bank according to the trust estates represented.'').

[11] The name ''Totten trust'' is derived from an early New York court decision recognizing this form of trust, *Matter of Totten,* 179 N.Y. 112 (N.Y. 1904). Many other states have recognized similar types of accounts, commonly known as ''payable-on-death'' accounts or tentative trust accounts.

[12] *Separate Insurability of ''Totten Trust'' Accounts* (June 1, 1955), Federal Banking Law Reporter ¶ 92,583.

[13] 32 FR 10408 (July 14, 1967).

[14] 55 FR 20111 (May 15, 1990).

[15] 54 FR 52399, 52408 (Dec. 21, 1989) (notice of proposed rulemaking).

[16] 55 FR 20126 (May 15, 1990).

beneficiaries' interests in formal and informal revocable trusts to be *vested* in order to qualify for separate insurance coverage, meaning that, after a grantor's death, there was no condition attached to the beneficiary's interest that would make the interest contingent (referred to as a ''defeating contingency'').[17] Staff reasoned that only a vested trust interest could establish a reasonable expectation that the revocable trust deposit ''shall belong to'' the beneficiary, as the regulation required.

In 1996, the FDIC sought public comment on potential simplification of the deposit insurance rules, noting that its experience with bank and savings association failures and a steady volume of inquiries on deposit insurance coverage suggested that simplification could be beneficial.[18] Among other changes, the FDIC proposed specific amendments to the rules for revocable trust deposits. Certain of these changes were finalized in 1998, when a provision was added to the rules defining the conditions that would constitute a defeating contingency.[19] Soon afterward, the FDIC expanded the list of beneficiaries that would qualify for per-beneficiary coverage to include siblings and parents, noting that some depositors had lost money in bank failures because they had named non-qualifying beneficiaries.[20]

In 2003, the FDIC proposed amending the revocable trust rules, pointing to continued confusion about the coverage for revocable trust deposits.[21] Specifically, the FDIC proposed to eliminate the defeating contingency provisions of the rules, with the result that coverage would be based on the interests of qualifying beneficiaries, irrespective of any defeating contingencies in the trust agreement. The FDIC subsequently adopted this change, noting that it more closely aligned coverage for living trust accounts with payable-on-death accounts.[22] Defeating contingency provisions were not eliminated for irrevocable trusts. At the same time, the FDIC also eliminated the requirement to name the beneficiaries of a formal revocable trust in the IDI's deposit account records.[23] Because the FDIC had to obtain and review trust agreements from depositors following an IDI's failure to determine the eligibility of the beneficiaries and allocation of funds to each beneficiary, eliminating this requirement was based on the conclusion that also requiring IDIs to maintain records of trust beneficiaries, or requiring grantors to inform IDIs of changes in their trust agreements, was unnecessary and burdensome. Though the additional information might expedite deposit insurance payments, the FDIC determined that removing this recordkeeping requirement would support ongoing efforts under the Economic Growth and Regulatory Paperwork Reduction Act to eliminate unnecessary regulatory requirements.

The FDIC's experience with making deposit insurance determinations during the early stages of the most recent financial crisis suggested that further changes to the trust rules were necessary. In 2008, the FDIC simplified the rules in several respects.[24] First, it eliminated the kinship requirement for revocable trust beneficiaries, instead allowing any natural person, charitable organization, or non-profit, to qualify for per-beneficiary coverage. Second, a simplified calculation was established if a revocable trust named five or fewer beneficiaries; coverage would be determined without regard to the allocation of interests among the beneficiaries. This eliminated the need to discern and consider beneficial interests in many cases.

A different insurance calculation applied to revocable trusts with more than five beneficiaries. Specifically, at that time, the SMDIA was $100,000 and thus if more than five beneficiaries were named in a revocable trust, coverage would be the greater of: (1) $500,000; or (2) the aggregate amount of all beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary. When the SMDIA was increased to $250,000, a similar adjustment was made from $100,000 to $250,000 for the calculation of per beneficiary coverage.

3. Current Rules for Coverage of Trust Deposits

The FDIC currently recognizes three different insurance categories for deposits held in connection with trusts: (1) Revocable trusts; (2) irrevocable trusts; and (3) irrevocable trusts with an IDI as trustee. The current rules for determining insurance coverage for deposits in each of these categories are described below.

Revocable Trust Deposits

The revocable trust category applies to deposits for which the depositor has evidenced an intention that the deposit shall belong to one or more beneficiaries upon his or her death. This category includes deposits held in connection with formal revocable trusts—that is, revocable trusts established through a written trust agreement. It also includes deposits that are not subject to a formal trust agreement, where the IDI makes payment to the beneficiaries identified in the IDI's records upon the depositor's death based on account titling and applicable state law. The FDIC refers to these types of deposits, including Totten trust accounts, payable-on-death accounts, and similar accounts, as ''informal revocable trusts.'' Deposits associated with formal and informal revocable trusts are aggregated for purposes of the deposit insurance rules; thus, deposits that will pass from the same grantor to beneficiaries are aggregated and insured up to the SMDIA, currently $250,000, per beneficiary, regardless of whether the transfer would be accomplished through a written revocable trust or an informal revocable trust.[25]

Under the current revocable trust rules, beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986.[26] If a named beneficiary does not satisfy this requirement, funds held in trust for that beneficiary are treated as single ownership funds of the grantor and aggregated with any other single ownership accounts that the grantor maintains at the same IDI.[27]

Certain requirements also must be satisfied for a deposit to be insured in the revocable trust category. The required intention that the funds shall belong to the beneficiaries upon the depositor's death must be manifested in the ''title'' of the account using commonly accepted terms such as ''in trust for,'' ''as trustee for,'' ''payable-on-death to,'' or any acronym for these terms. For purposes of this requirement, ''title'' includes the IDI's electronic deposit account records. For example, an IDI's electronic deposit account records could identify the account as a revocable trust account through coding or a similar mechanism.[28] In addition,

[17] *See, e.g.,* Advisory Opinion 94–32, *Guidelines for Insurance Coverage of Revocable Trust Accounts (Including* ''*Living Trust*'' *Accounts),* (May 18, 1994). While the vested interest requirement applied to both formal and informal trusts, interests in informal trusts were generally considered to be vested because they automatically passed to the designated beneficiaries upon the death of the last grantor.

[18] 61 FR 25596 (May 22, 1996).

[19] 63 FR 25750 (May 11, 1998).

[20] 64 FR 15653 (Apr. 1, 1999).

[21] 68 FR 38645 (June 30, 2003).

[22] 69 FR 2825 (Jan. 21, 2004).

[23] 69 FR 2825, 2828 (Jan. 21, 2004).

[24] 73 FR 56706 (Sep. 30, 2008).

[25] 12 CFR 330.10(a).

[26] 12 CFR 330.10(c).

[27] 12 CFR 330.10(d).

[28] 12 CFR 330.10(b)(1).

the beneficiaries of informal trusts (*i.e.,* payable-on-death accounts) must be named in the IDI's deposit account records.[29] Since 2004, the requirement to name beneficiaries in the IDI's deposit account records has not applied to formal revocable trusts; the FDIC generally obtains information on beneficiaries of such trusts from depositors following an IDI's failure. Therefore, if a formal revocable trust deposit exceeds $250,000 and the depositor's IDI were to fail, this will likely result in a hold being placed on the deposit until the FDIC can review the trust agreement and verify that the beneficiary rules are satisfied, thereby delaying insurance determinations and payments to insured depositors.

The calculation of deposit insurance coverage for revocable trust deposits depends upon the number of unique beneficiaries named by a depositor. If five or fewer beneficiaries have been named, the depositor is insured in an amount up to the total number of named beneficiaries multiplied by the SMDIA, and the specific allocation of interests among the beneficiaries is not considered.[30] If more than five beneficiaries have been named, the depositor is insured up to the greater of: (1) Five times the SMDIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMDIA.[31] For purposes of this calculation, a life estate interest is valued at the SMDIA.[32]

Where a revocable trust deposit is jointly owned by multiple co-owners, the interests of each account owner are separately insured up to the SMDIA per beneficiary.[33] However, if the co-owners are the only beneficiaries of the trust, the account is instead insured under the FDIC's joint account rule.[34]

The current revocable trust rule also contains a provision that was intended to reduce confusion and the potential for a decrease in deposit insurance coverage in the case of the death of a grantor. Specifically, if a revocable trust becomes irrevocable due to the death of the grantor, the trust's deposit may continue to be insured under the revocable trust rules.[35] Absent this provision, the irrevocable trust rules would apply following the grantor's death, as the revocable trust becomes irrevocable at that time, which could result in a reduction in coverage.[36]

Irrevocable Trust Deposits

Deposits held by an irrevocable trust that has been established either by written agreement or by statute are insured in the irrevocable trust deposit insurance category. Calculating coverage for deposits insured in this category requires a determination of whether beneficiaries' interests in the trust are contingent or non-contingent. Non-contingent interests are interests that may be determined without evaluation of any contingencies, except for those covered by the present worth and life expectancy tables and the rules for their use set forth in the IRS Federal Estate Tax Regulations.[37] Funds held for non-contingent trust interests are insured up to the SMDIA for each such beneficiary.[38] Funds held for contingent trust interests are aggregated and insured up to the SMDIA in total.[39]

The irrevocable trust rules do not apply to deposits held for a grantor's retained interest in an irrevocable trust.[40] Such deposits are aggregated with the grantor's other single ownership deposits for purposes of applying the deposit insurance limit.

Deposits Held by an IDI as Trustee of an Irrevocable Trust

For deposits held by an IDI in its capacity as trustee of an irrevocable trust, deposit insurance coverage is governed by section 7(i) of the FDI Act, a provision rooted in the Banking Act of 1935. Section 7(i) provides that ''trust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed the standard maximum deposit insurance amount . . . for each trust estate.'' [41]

The FDIC's regulations governing coverage for deposits held by an IDI in its capacity as trustee of an irrevocable trust are found in § 330.12. The rule provides that ''trust funds'' held by an IDI in its capacity as trustee of an irrevocable trust, whether held in the IDI's trust department or another department, or deposited by the fiduciary institution in another IDI, are insured up to the SMDIA for each owner or beneficiary represented.[42] This coverage is separate from the coverage provided for other deposits of the owners or the beneficiaries,[43] and deposits held for a grantor's retained interest are *not* aggregated with the grantor's single ownership deposits. Given the statutory basis for coverage, the FDIC is not proposing any changes to § 330.12.

4. Part 370 and Recordkeeping at the Largest IDIs

Simplification of the deposit insurance rules would make deposit insurance coverage easier to understand and improve the FDIC's ability to resolve insurance claims in a timely manner, broadly benefiting the public and IDIs, and it would have particular significance for the large IDIs that are subject to part 370 of the FDIC's regulations. Part 370 was adopted in 2016 to promote the timely payment of deposit insurance in the event of the failure of a large IDI.[44] Its development was prompted by the FDIC's goal of ensuring a timely insurance determination in the event a large IDI with a high volume of deposit accounts fails. Part 370 requires ''covered institutions,'' which generally include IDIs with two million or more deposit accounts, to maintain complete and accurate depositor information and to configure their information technology systems so as to permit the FDIC to calculate deposit insurance coverage

[29] 12 CFR 330.10(b)(2).

[30] 12 CFR 330.10(a).

[31] 12 CFR 330.10(e).

[32] 12 CFR 330.10(g). For example, if a revocable trust provides a life estate for the depositor's spouse and remainder interests for six other beneficiaries, the spouse's life estate interest would be valued at $250,000 for purposes of the deposit insurance calculation.

[33] 12 CFR 330.10(f)(1).

[34] 12 CFR 330.10(f)(2).

[35] 12 CFR 330.10(h).

[36] The revocable trust rules tend to provide greater coverage than the irrevocable trust rules because contingencies are not considered for revocable trusts. In addition, where five or fewer beneficiaries are named by a revocable trust, specific allocations to beneficiaries also are not considered.

[37] 12 CFR 330.1(m). For example, a life estate interest is generally non-contingent, as it may be valued using the life expectancy tables. However, where a trustee has discretion to divert funds from one beneficiary to another to provide for the second beneficiary's medical needs, the first beneficiary's interest is contingent upon the trustee's discretion.

[38] 12 CFR 330.13(a).

[39] 12 CFR 330.13(b).

[40] *See* 12 CFR 330.1(r) (definition of ''trust interest'' does not include any interest retained by the settlor).

[41] 12 U.S.C. 1817(i).

[42] Part 330 defines ''trust funds'' as ''funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.'' 12 CFR 330.1(q).

[43] 12 CFR 330.12(a).

[44] 81 FR 87734 (Dec. 5, 2016).

promptly in the event of the IDI's failure. To implement part 370, covered institutions are updating their deposit account records and developing systems capable of applying the deposit insurance rules in an automated manner.

In addition to broadly benefiting the public and all IDIs, simplification of the deposit insurance rules complements part 370 in that it would further promote the timely payment of deposit insurance for depositors of the largest IDIs. For instance, neither part 370 nor any other rule requires covered institutions to maintain certain records necessary to make an insurance determination for formal trust deposits, meaning that the FDIC would need to obtain and review revocable and irrevocable trust agreements following a covered institution's failure. Analysis of data from part 370 covered institutions suggest the number of revocable trusts is significant and, if a covered institution were to fail, processing of deposit insurance for formal revocable trusts would likely extend well beyond normal FDIC payment timeframes. Simplification of the deposit insurance rules would streamline insurance determinations for trust accounts. The FDIC expects that capabilities developed in accordance with part 370 will be helpful in addressing many of the challenges involved in making deposit insurance determinations in connection with a very large IDI's failure. Simplification of the deposit insurance rules would provide additional benefits by reducing the amount of time needed to collect and process trust information after failure in order to make use of a covered institution's part 370 deposit insurance calculation capabilities. With less time needed to calculate insurance coverage, the FDIC would be able to make more timely insurance payments to insured depositors.

5. Need for Further Rulemaking

The rules governing deposit insurance coverage for trust deposits have been simplified on several occasions, but are still frequently misunderstood, and can present some implementation challenges. For example, the current trust rules often require detailed, time-consuming, and resource-intensive review of trust documentation to obtain the information that is necessary to calculate deposit insurance coverage. This information is often not found in an IDI's records and must be obtained from depositors after an IDI's failure. For example, the FDIC's deposit insurance determinations for depositors of IndyMac Bank, F.S.B. (IndyMac) following its failure in 2008 were challenging in part because IndyMac had a large number of trust accounts for which deposit insurance coverage was governed by complex deposit insurance rules.[45] FDIC claims personnel contacted more than 10,500 IndyMac depositors to obtain the trust documentation necessary to complete deposit insurance determinations for their revocable trust and irrevocable trust deposits. In some cases, this process took several months. Revision of the deposit insurance coverage rules for trust deposits along the lines proposed would reduce the amount of information that must be provided by trust depositors, as well as the complexity of the FDIC's review. This revision should enable the FDIC to complete deposit insurance determinations more rapidly if another IDI with a large number of trust accounts were to fail in the future. Delays in the payment of deposit insurance can be consequential, as revocable trust deposits in particular are often used by depositors to satisfy their daily financial obligations, and the proposal would help to mitigate those delays.

Several factors contribute to the challenges of making insurance determinations for trust deposits. First, there are three different sets of rules governing deposit insurance coverage for trust deposits. Understanding the coverage for a particular deposit requires a threshold inquiry to determine which set of rules to apply—the revocable trust rules, the irrevocable trust rules, or the rules for deposits held by an IDI as trustee of an irrevocable trust. This requires review of the trust agreement to determine the type of trust (revocable or irrevocable), and the inquiry may be complicated by innovations in state trust law that are intended to increase the flexibility and utility of trusts. In some cases, this threshold inquiry is also complicated by the provision of the revocable trust rules that allows for continued coverage under those rules where a trust becomes irrevocable upon the grantor's death. The result of an irrevocable trust deposit being insured under the revocable trust rules has proven confusing for both depositors and bankers.

Second, even after determining which set of rules applies to a particular deposit, it may be challenging to apply the rules. For example, the revocable trust rules include unique titling requirements and beneficiary requirements. These rules also provide for two separate calculations to determine insurance coverage, depending in part upon whether there are five or fewer trust beneficiaries or at least six beneficiaries. In addition, for revocable trusts that provide benefits to multiple generations of potential beneficiaries, the FDIC needs to evaluate the trust agreement to determine whether a beneficiary is a primary beneficiary (immediately entitled to funds when a grantor dies), contingent beneficiary, or remainder beneficiary. Only ''eligible'' primary beneficiaries and remainder beneficiaries are considered in calculating FDIC deposit insurance coverage. The irrevocable trust rules may require detailed review of trust agreements to determine whether beneficiaries' interests are contingent and may also require actuarial or present value calculations. These types of requirements complicate the determination of insurance coverage for trust deposits, have proven confusing for depositors, and extend the amount of time needed to complete a deposit insurance determination and insurance payment.

Third, the complexity and variety of depositors' trust arrangements adds to the difficulty of determining deposit insurance coverage. For example, trust interests are sometimes defined through numerous conditions and formulas, and a careful analysis of these provisions may be necessary in order to calculate deposit insurance coverage under the current rules. Arrangements involving multiple trusts where the same beneficiaries are named by the same grantor(s) in different trusts add to the difficulty of applying the trust rules.

The FDIC believes that simplification of the deposit insurance rules also presents an opportunity to more closely align the coverage provided for different types of trust deposits. For example, the revocable trust rules generally provide for a greater amount of coverage than the irrevocable trust rules. This outcome occurs because contingent interests for irrevocable trusts are aggregated and insured up to the SMDIA rather than being insured up to the SMDIA per beneficiary, while contingencies are not considered and therefore do not limit coverage in the same manner for revocable trusts.

*C. Description of Proposed Rule*

The FDIC is proposing to amend the rules governing deposit insurance coverage for trust deposits. Generally, the proposed amendments would: Merge the revocable and irrevocable trust categories into one category; apply a simpler, common calculation method

[45] *See Crisis and Response: An FDIC History, 2008–2013* at 197, FN 48, Federal Deposit Insurance Corporation 2017.

to determine insurance coverage for deposits held by revocable and irrevocable trusts; and eliminate certain requirements found in the current rules for revocable and irrevocable trusts.

Merger of Revocable and Irrevocable Trust Categories

As discussed above, the FDIC historically has insured revocable trust deposits and irrevocable trust deposits under two separate insurance categories. Staff's experience has been that this bifurcation often confuses depositors and bankers, as it requires a threshold inquiry to determine which set of rules to apply to a trust deposit. Moreover, each trust deposit must be categorized before the aggregation of trust deposits within each category can be completed.

The FDIC believes that trust deposits held in connection with revocable and irrevocable trusts are sufficiently similar, for purposes of deposit insurance coverage, to warrant the merger of these two categories into one category. Under the FDIC's current rules, deposit insurance coverage is provided because the trustee maintains the deposit for the benefit of the beneficiaries. This is true regardless of whether the trust is revocable or irrevocable. Merger of the revocable and irrevocable trust categories would better conform deposit insurance coverage to the substance—rather than the legal form—of the trust arrangement. This underlying principle of the deposit insurance rules is particularly important in the context of trusts, as state law often provides flexibility to structure arrangements in different ways to accomplish a given purpose.[46] Depositors may have a variety of reasons for selecting a particular legal arrangement, but that decision should not significantly affect deposit insurance coverage. Importantly, the proposed merger of the revocable trust and irrevocable trust categories into one category for deposit insurance purposes would not affect the application or operation of state trust law; this only would affect the determination of deposit insurance coverage for these types of trust deposits in the event of an IDI's failure.

Accordingly, the FDIC is proposing to amend § 330.10 of its regulations, which currently applies only to revocable trust deposits, to establish a new ''trust accounts'' category that would include both revocable and irrevocable trust deposits. The proposed rule defines the deposits that would be included in this category: (1) Informal revocable trust deposits, such as payable-on-death accounts, in-trust-for accounts, and Totten trust accounts; (2) formal revocable trust deposits, defined to mean deposits held pursuant to a written revocable trust agreement under which a deposit passes to one or more beneficiaries upon the grantor's death; and (3) irrevocable trust deposits, meaning deposits held pursuant to an irrevocable trust established by written agreement or by statute. Section 330.10 would not apply to deposits maintained by an IDI in its capacity as trustee of an irrevocable trust; these deposits would continue to be insured separately pursuant to section 7(i) of the FDI Act and § 330.12 of the deposit insurance regulations.

In addition, the merger of the revocable trust and irrevocable trust categories eliminates the need for § 330.10(h)–(i) of the current revocable trust rules, which provides that the revocable trust rules may continue to apply to a deposit where a revocable trust becomes irrevocable due to the death of one or more of the trust's grantors. These provisions were intended to benefit depositors, who sometimes were unaware that a trust owner's death could also trigger a significant decrease in insurance coverage as a revocable trust becomes irrevocable. However, in the FDIC's experience, this rule has proven complex in part because it results in some irrevocable trusts being insured per the revocable trust rules, while other irrevocable trusts are insured under the irrevocable trust rules.[47] As a result, a depositor could know a trust was irrevocable but not know which deposit insurance rules to apply. The proposed rule would insure deposits of revocable trusts and irrevocable trusts according to a common set of rules, eliminating the need for these provisions (§ 330.10(h)–(i)) and simplifying coverage for depositors. Accordingly, the death of a revocable trust owner would not result in a decrease in deposit insurance coverage for the trust. Coverage for irrevocable and revocable trusts would fall under the same category and deposit insurance coverage would remain the same, even after the expiration of the six-month grace period following the death of a deposit owner.[48]

Calculation of Coverage

The FDIC is proposing to use one streamlined calculation to determine the amount of deposit insurance coverage for deposits of revocable and irrevocable trusts. This method is already utilized by the FDIC to calculate coverage for revocable trusts that have five or fewer beneficiaries and it is an aspect of the rules that is generally well-understood by bankers and trust depositors.

The proposed rule would provide that a grantor's trust deposits are insured in an amount up to the SMDIA (currently $250,000) multiplied by the number of trust beneficiaries, not to exceed five beneficiaries. The FDIC would presume that, for deposit insurance purposes, the trust provides for equal treatment of beneficiaries such that specific allocation of the funds to the respective beneficiaries will not be relevant, consistent with the FDIC's current treatment of revocable trusts with five or fewer beneficiaries. This would, in effect, limit coverage for a grantor's trust deposits at each IDI to a total of $1,250,000; in other words, maximum coverage would be equivalent to $250,000 per beneficiary up to five beneficiaries. In determining deposit insurance coverage, the FDIC would continue to only consider beneficiaries that are expected to receive the deposit held by the trust in the IDI; the FDIC would not consider beneficiaries who are expected to receive only non-deposit assets of the trust.

The FDIC is proposing to calculate coverage in this manner based on its experience with the revocable trust rules after the most recent modifications to these rules in 2008. The FDIC has found that the deposit insurance calculation method for revocable trusts with five or fewer beneficiaries has been the most straightforward and is easy for bankers and the public to understand. This calculation provides for insurance in an amount up to the total number of unique grantor-beneficiary trust relationships (*i.e.,* the number of grantors, multiplied by the total number of beneficiaries, multiplied by the SMDIA).[49] In addition to being simpler,

[46] For example, the FDIC currently aggregates deposits in payable-on-death accounts and deposits of written revocable trusts for purposes of deposit insurance coverage, despite their separate and distinct legal mechanisms. Also, where the co-owners of a revocable trust are also that trust's sole beneficiaries, the FDIC instead insures the trust's deposits as joint deposits, reflecting the arrangement's substance rather than its legal form.

[47] As noted above, if a revocable trust becomes irrevocable due to the death of the grantor, the trust's deposit continues to be insured under the revocable trust rules. 12 CFR 330.10(h).

[48] The death of an account owner can affect deposit insurance coverage, often reducing the amount of coverage that applies to a family's accounts. To ensure that families dealing with the death of a family member have adequate time to review and restructure accounts if necessary, the FDIC insures a deceased owner's accounts as if he or she were still alive for a period of six months after his or her death. 12 CFR 330.3(j).

[49] For example, two co-grantors that designate five beneficiaries are insured for up to $2,500,000 (2 × 5 × $250,000).

this calculation has proven beneficial in resolutions, as it leads to more prompt deposit insurance determinations and quicker access to insured deposits for depositors. Accordingly, the FDIC proposes to calculate deposit insurance coverage for trust deposits based on the simpler calculation currently used for revocable trusts with five or fewer beneficiaries.

The streamlined calculation that would be used to determine coverage for revocable trust deposits and irrevocable trust deposits includes a limit on the total amount of deposit insurance coverage for all of a depositor's funds in the trust category at the same IDI. The proposed rule would provide coverage for trust deposits at each IDI up to a total of $1,250,000 per grantor; in other words, each grantor's insurance limit would be $250,000 per beneficiary up to a maximum of five beneficiaries. The level of five beneficiaries is an important threshold in the current revocable trust rules, as it defines whether a grantor's coverage is determined using the simpler calculation of the number of beneficiaries multiplied by the SMDIA, rather than the more complex calculation involving the consideration of the amount of each beneficiary's specific interest (which applies when there are six or more beneficiaries). The trust rules currently limit coverage by tying coverage to the specific interests of each beneficiary of an irrevocable trust or of each beneficiary of a revocable trust with more than five beneficiaries. The proposed rule's $1,250,000 per-grantor, per-IDI limit is more straightforward and balances the objectives of simplifying the trust rules, promoting timely payment of deposit insurance, facilitating resolutions, ensuring consistency with the FDI Act, and limiting risk to the DIF.

The FDIC anticipates that limiting coverage to $1,250,000 per grantor, per IDI, for trust deposits would affect very few depositors, as most trust deposits in past IDI failures have had balances well below this level. For example, data obtained from a sample of IDI failures from 2010–2020 suggests that only about 0.085 percent of depositors maintaining trust deposits might be affected by the proposed $1,250,000 limit.[50] The FDIC does not possess sufficient information, however, to enable it to project the effects of the proposed limit on current depositors, and requests that commenters provide information that might be helpful in this regard.

Under the proposed rule, to determine the level of insurance coverage that would apply to trust deposits, depositors would still need to identify the grantors and the eligible beneficiaries of the trust. The level of coverage that applies to trust deposits would no longer be affected by the specific allocation of trust funds to each of the beneficiaries of the trust or by contingencies outlined in the trust agreement. Instead, the proposed rule would provide that a grantor's trust deposits are insured up to a total of $1,250,000 per grantor, or an amount up to the SMDIA multiplied by the number of eligible beneficiaries, with a limit of no more than five beneficiaries.

Aggregation

The proposed rule also provides for the aggregation of revocable and irrevocable trust deposits for purposes of applying the deposit insurance limit. Under the current rules, deposits of informal revocable trusts and formal revocable trusts are aggregated for this purpose.[51] The proposed rule would aggregate a grantor's informal and formal revocable trust deposits, as well as irrevocable trust deposits. For example, all informal revocable trusts, formal revocable trusts and irrevocable trusts held for the same grantor, at the same IDI would be aggregated and the grantor's insurance limit would be determined by how many eligible and unique beneficiaries were identified between all of their trust accounts.[52] The deposit insurance coverage provided in the ''trust accounts'' category would continue to remain separate from the coverage provided for other deposits held in a different right and capacity at the same IDI. However, a small number of depositors that currently maintain both revocable trust and irrevocable trust deposits at the same IDI may have deposits in excess of the insurance limit if these separate categories are combined. The FDIC does not have data on depositors' trust arrangements that would allow it to estimate the number of depositors that might be affected in this manner, and requests that commenters provide information that might be helpful in this regard.

Eligible Beneficiaries

Currently, the revocable trust rules provide that beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986,[53] while the irrevocable trust rules do not establish criteria for beneficiaries. The FDIC believes that a single definition should be used to determine whether an entity is an ''eligible'' beneficiary for all trust deposits, and proposes to use the current revocable trust rule's definition. The FDIC believes that this will result in a change in deposit insurance coverage only in very rare cases.

The proposed rule also would exclude from the calculation of deposit insurance coverage beneficiaries that only would obtain an interest in a trust if one or more named beneficiaries are deceased (often referred to as contingent beneficiaries). In this respect, the proposed rule would codify existing practice to include only primary, unique beneficiaries in the deposit insurance calculation.[54] This would not represent a substantive change in coverage. Consistent with treatment under the current trust rules, naming a chain of contingent beneficiaries that would obtain trust interests only in event of a beneficiary's death would not increase deposit insurance coverage.

Finally, the proposed rule would codify a longstanding interpretation of the trust rules where an informal

[50] Data from 2,550,001 depositors, including 249,257 trust account depositors, at 246 failed banks from September 17, 2010–April 3, 2020. A total of 212 out of 249,257 (.085 percent) trust account depositors had more than $1.25 million in deposits across all of their trust accounts. Of these depositors, only 24 had more than five beneficiaries named in the bank's records. However, not all trust accounts in the sample maintained beneficiary records at the bank, so this likely underestimates the number of affected depositors.

[51] *See* 12 CFR 330.10(a) (''all funds that a depositor holds in both living trust accounts and payable-on-death accounts, at the same FDIC-insured institution and naming the same beneficiaries, are aggregated for insurance purposes'').

[52] For example, if a grantor maintained both an informal revocable trust account with three beneficiaries and a formal revocable trust account with three separate and unique beneficiaries, the two accounts would be aggregated and the maximum deposit insurance available would be $1.25 million (1 grantor × SMDIA × number of unique beneficiaries, limited to 5). However, if the same three people were the beneficiaries of both accounts, the maximum deposit insurance available would be $750,000 (1 grantor × SMDIA × 3 unique beneficiaries).

[53] 12 CFR 330.10(c).

[54] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 51 (''Sometimes the trust agreement will provide that if a primary beneficiary predeceases the owner, the deceased beneficiary's share will pass to an alternative or contingent beneficiary. Regardless of such language, if the primary beneficiary is alive at the time of an IDI's failure, only the primary beneficiary, and not the alternative or contingent beneficiary, is taken into account in calculating deposit insurance coverage.''). Including only unique beneficiaries means that when an owner names the same beneficiary on multiple trust accounts, the beneficiary will only be counted once in calculating trust coverage. For example, if a grantor has two trust deposit accounts and names the same beneficiary in both trust documents, the total deposit insurance coverage associated with that beneficiary is limited to $250,000 in total.

revocable trust designates the depositor's formal trust as its beneficiary. A formal trust generally does not meet the definition of an eligible beneficiary for deposit insurance purposes, but the FDIC has treated such accounts as revocable trust accounts under the trust rules, insuring the account as if it were titled in the name of the formal trust.[55]

Retained Interests and Ineligible Beneficiaries' Interests

The current trust rules provide that in some instances, funds corresponding to specific beneficiaries are aggregated with a grantor's single ownership deposits at the same IDI for purposes of the deposit insurance calculation. These instances include a grantor's retained interest in an irrevocable trust[56] and interests of beneficiaries that do not satisfy the definition of ''beneficiary.''[57] This adds complexity to the deposit insurance calculation, as detailed review of a trust agreement may be required to value such interests in order to aggregate them with a grantor's other funds. In order to implement the streamlined calculation for trust deposits, the FDIC is proposing to eliminate these provisions. Under the proposed rules, the grantor and other beneficiaries that do not satisfy the definition of ''eligible beneficiary'' would not be included for purposes of the deposit insurance calculation.[58] Importantly, this would not in any way limit a grantor's ability to establish such trust interests under State law. These interests simply would not factor into the calculation of deposit insurance coverage.

Future Trusts Named as Beneficiaries

Trusts often contain provisions for the establishment of one or more new trusts upon the grantor's death, and the proposed rule also would clarify deposit insurance coverage in these situations. Specifically, if a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor (or grantors), the future trust (or trusts) would not be treated as beneficiaries for purposes of the calculation. The future trust(s) instead would be considered mechanisms for distributing trust funds, and the natural persons or organizations that receive the trust funds through the future trusts would be considered the beneficiaries for purposes of the deposit insurance calculation. This clarification is consistent with published guidance and would not represent a substantive change in deposit insurance coverage.[59]

Naming of Beneficiaries in Deposit Account Records

Consistent with the current revocable trust rules, the proposed rule would continue to require the beneficiaries of an informal revocable trust to be specifically named in the deposit account records of the IDI.[60] The FDIC does not believe this requirement imposes a burden on IDIs, as informal revocable trusts by their nature require the IDI to be able to identify the individuals or entities to which a deposit would be paid upon the depositor's death.

Presumption of Ownership

The proposed rule also would state that, unless otherwise specified in an IDI's deposit account records, a deposit of a trust established by multiple grantors is presumed to be owned in equal shares. This presumption is consistent with the current revocable trust rules.[61]

Bankruptcy Trustee Deposits

The proposed rule would continue the current treatment of deposits placed at an IDI by a bankruptcy trustee. If funds of multiple bankruptcy estates were commingled in a single account at the IDI, each estate would be separately insured up to the SMDIA.

Deposits Covered Under Other Rules

The proposed rule would exclude from coverage under § 330.10 certain trust deposits that are covered by other sections of the deposit insurance regulations. For example, employee benefit plan deposits are insured pursuant to § 330.14, and investment company deposits are insured as corporate deposits pursuant to § 330.11. Deposits held by an insured depository institution in its capacity as trustee of an irrevocable trust are insured pursuant to § 330.12. In addition, if the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, deposits held in connection with the trust would be treated as joint deposits under § 330.9. In each of these cases, the FDIC is not proposing to change the current rule.

Conforming Changes

The proposed simplification of the calculation for insurance coverage for trust deposits also would permit the elimination of certain definitions from § 330.1 of the regulations. Specifically, § 330.1 defines ''trust interest'' and ''non-contingent trust interest,'' terms that are used in connection with the current irrevocable trust rules. Because the proposed rule would eliminate the evaluation of contingencies in determining coverage for trust deposits, the FDIC is proposing to remove these definitions from the regulation.

Enhancements to Claims Processes

The FDIC is also considering enhancements to its claims processes to further promote prompt insurance determinations for trust deposits. For example, the FDIC may be able to establish enhanced processes and systems for reaching out to depositors and obtaining trust documentation following an IDI's failure. The claims process enhancements adopted by the FDIC will likely depend upon the amendments to the deposit insurance rules, if any, that are adopted through this rulemaking.

*D. Examples Demonstrating Coverage Under Current and Proposed Rules*

To assist commenters, the FDIC is providing examples demonstrating how the proposed rule would apply to determine deposit insurance coverage for trust deposits. These examples are not intended to be all-inclusive; they merely address a few possible scenarios involving trust deposits. The FDIC expects that for the vast majority of depositors, insurance coverage would not change under the proposed rule. The examples here specifically highlight a few instances where coverage could be reduced to ensure that commenters are aware of them. In addition, in any instances where a trust is established, the examples assume that the trustee is not an IDI.

Example 1: Payable-on-Death Account

Depositor A establishes a payable-on-death account at an FDIC-insured bank. A has designated three beneficiaries for this deposit—B, C, and D—who will receive the funds upon her death, and listed all three on a form provided to the bank. The only other deposit account that A maintains at the same bank is a checking account with no designated beneficiaries. What is the maximum amount of deposit insurance coverage for A's deposits at the bank?

[55] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 71.

[56] *See* 12 CFR 330.1(r); *see also FDIC Financial Institution Employee's Guide to Deposit Insurance* at 87.

[57] 12 CFR 330.10(d).

[58] In the unlikely event a trust does not name any eligible beneficiaries, the FDIC would treat the trust's deposits as single ownership deposits. Such deposits would be aggregated with any other single ownership deposits that the grantor maintains at the same IDI and insured up to the SMDIA of $250,000.

[59] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 74.

[60] *See* 12 CFR 330.10(b)(2).

[61] *See* 12 CFR 330.10(f).

Under the proposed rule, Depositor A's payable-on-death account represents an informal revocable trust and would be insured in the trust accounts category. The maximum coverage for this deposit would be equal to the SMDIA (currently $250,000) multiplied by the number of grantors (in this case, one because A established the account herself) multiplied by the number of beneficiaries, up to a maximum of five (here three, the number of beneficiaries, is less than five). A's payable-on-death account would be insured for up to: ($250,000) × (1) × (3) = $750,000.

The coverage for A's payable-on-death account is separate from the coverage provided for A's checking account, which would be insured in the single ownership category because she has not named any beneficiaries for that account. The single ownership checking account would be insured up to the SMDIA, $250,000. A's total insurance coverage for her deposits at the bank would be: $750,000 + $250,000 = $1,000,000. Notably, this level of coverage is the same as that provided by the current deposit insurance rules.

Example 2: Formal Revocable Trust and Informal Revocable Trust

Depositors E and F jointly establish a payable-on-death account at an FDIC-insured bank. E and F have designated three beneficiaries for this deposit—G, H and I—who will receive the funds after both E and F are deceased. They list these beneficiaries on a form provided to the bank. E and F also jointly establish an account titled in the name of the ''E and F Living Trust'' at the same bank. E and F are the grantors of the living trust, a formal revocable trust that includes the same three beneficiaries, G, H, and I. The grantors, E and F, do not maintain any other deposit accounts at this same bank. What is the maximum amount of deposit insurance coverage for E and F's deposits?

Under the proposed rule, E and F's payable-on-death account represents an informal revocable trust and would be insured in the trust accounts category. E and F's living trust account constitutes a formal revocable trust and also would be insured in the trust accounts category. To the extent these deposits would pass from the same grantor (E or F) to beneficiaries (G, H, and I), they would be aggregated for purposes of applying the deposit insurance limit. As under the current rules, it would be irrelevant that the grantors' deposits are divided between the payable-on-death account and the living trust account.

The maximum coverage for E and F's deposits would be equal to the SMDIA ($250,000) multiplied by the number of grantors (two, because E and F are the grantors with respect to both deposits) multiplied by the number of unique beneficiaries, up to a maximum of five (here three, the number of beneficiaries, is less than five). Therefore, the coverage for E and F's trust deposits would be: ($250,000) × (2) × (3) = $1,500,000. This level of coverage is the same as that provided by the current deposit insurance rules.

Example 3: Two-Owner Trust and a One-Owner Trust

Depositors J and K jointly establish a payable-on-death account at an FDIC-insured bank. J and K have designated three beneficiaries for this deposit—L, M and N—who will receive the funds after both J and K are deceased. They list these beneficiaries on a form provided to the bank. At the same FDIC-insured bank, J establishes a payable-on-death account and designates K as the beneficiary upon J's death. What is the maximum amount of coverage for J and K's deposits?

Under the proposed rule, both accounts would be insured under the trust account category. To the extent these deposits would pass from the same grantor (J or K) to beneficiaries (such as L, M, and N), they would be aggregated for purposes of applying the deposit insurance limit. For example, K identified three beneficiaries (L, M and N), and therefore, K's insurance limit is $750,000 (or 1 × 3 × SMDIA). K would be fully insured as long as one-half interest of the co-owned trust account was $750,000 or less, which is the same level of coverage provided under current rules.

In this example, J's situation differs from K because J has a second trust account, but the insurance calculation remains the same. Specifically, J has two trust accounts and identified four unique beneficiaries (L, M, N, and K); therefore, J's insurance limit is $1,000,000 (or 1 × 4 × SMDIA). J would remain fully insured as long as J's trust deposits—equal to one-half of the co-owned trust account plus J's personal trust account—total no more than $1,000,000. This methodology and level of coverage is the same as that provided by the current deposit insurance rules.

Example 4: Revocable and Irrevocable Trusts

Depositor O establishes a deposit account at an FDIC-insured bank titled the ''O Living Trust''. O is the grantor of this living trust, a formal revocable trust that includes three beneficiaries—P, Q, and R. The grantor, O, also establishes an irrevocable trust for the benefit of the same three beneficiaries. The trustee of the irrevocable trust maintains a deposit account at the same bank as the living trust account, titled in the name of the irrevocable trust. Neither O nor the trustee maintains other deposit accounts at the same bank. What is the insurance coverage for these deposits?

Under the proposed rule, the living trust account is a deposit of a formal revocable trust and would be insured in the trust accounts category. The deposit of the irrevocable trust also would be insured in the trust accounts category. To the extent these deposits would pass from the same grantor (O) to beneficiaries (P, Q, or R), they would be aggregated for purposes of applying the deposit insurance limit. It would be irrelevant that the deposits are divided between the living trust account and the irrevocable trust account. The maximum coverage for these deposits would be equal to the SMDIA ($250,000) multiplied by the number of grantors (one, because O is the grantor with respect to both deposits) multiplied by the number of beneficiaries, up to a maximum of five (here three, the number of beneficiaries, is less than five). Therefore, the maximum coverage for the trust deposits would be: ($250,000) × (1) × (3) = $750,000.

This is one of the isolated instances where the proposed rule may provide a reduced amount of coverage as a result of the aggregation of revocable and irrevocable trust deposits, depending on the structure of the trust agreement. Under the current rules, O would be insured for up to $750,000 for revocable trust deposits and separately insured for up to $750,000 for irrevocable trust deposits (assuming non-contingent beneficial interests), resulting in $1,500,000 in total coverage. If that were the case, current coverage would exceed that provided by the proposed rule. However, the terms of irrevocable trusts sometimes lead to less coverage than depositors might expect. FDIC staff's experience is that irrevocable trust deposits are often insured only up to $250,000 under the current rules due to contingencies in the trust agreement, but determining this with certainty often requires careful consideration of the trust agreement's contingency provisions. Under the current rule, if contingencies existed, current coverage would exceed that provided by the proposed rule, as O would be insured up to $1,000,000; $750,000 for his revocable trust and $250,000 for his irrevocable trust. In the FDIC's view, one of the key benefits of the proposed rule versus the current rule would be greater clarity and predictability in deposit insurance coverage because whether contingencies exist would no longer be a factor that could affect deposit insurance.

Example 5: Many Beneficiaries Named

Depositor S establishes a deposit account at an FDIC-insured bank titled in the name of the ''S Living Trust''. This trust is a revocable trust naming seven beneficiaries—T, U, V, W, X, Y, and Z. The grantor, S, does not maintain any other deposits at the same bank. What is the coverage for this deposit?

Under the proposed rule, the living trust account is a deposit of a formal revocable trust and would be insured in the trust accounts category. The maximum coverage for this deposit would be equal to the SMDIA ($250,000) multiplied by the number of grantors (one, because S is the sole grantor) multiplied by the number of beneficiaries, up to a maximum of five. Here the number of named beneficiaries (seven) exceeds the maximum (five) so insurance is calculated using the maximum (five). Coverage for the deposit would be: ($250,000) × (1) × (5) = $1,250,000.

This is another limited instance where the proposed rule may provide for less coverage than the current rule. Under the current rule, because more than five beneficiaries are named, the deposit is insured up to the greater of: (1) Five times the SMDIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMDIA. Determining coverage requires review of the trust agreement to ascertain each beneficiary's interest. Each such insurable interest is limited to the SMDIA, and the total of all of these interests is compared with $1,250,000 (five times the SMDIA). The current rule provides coverage in the greater of these two amounts. The result would fall into a range from $1,250,000 to $1,750,000, depending on the precise allocation of trust interests among the beneficiaries.[62] In the FDIC's view, one of the key benefits of the proposed rule versus the current rule would be greater clarity and predictability in deposit insurance coverage because a single formula would be used to determine maximum coverage, and this formula would not depend upon the specific allocation of funds among beneficiaries.

[62] For example, if all of the beneficiaries' interests were equal, coverage would be: $250,000 × (7 beneficiaries) = $1,750,000. This is the maximum coverage possible under the current rule. Conversely, if a few beneficiaries had a large interest in the trust, the total of all beneficiaries' interests (limited to the SMDIA per beneficiary) could be less than $1,250,000, in which case the current rule would provide a minimum of $1,250,000 in coverage. Depending upon the precise allocation of interests, the amount of coverage provided would fall somewhere within this range.

### *E. Alternatives Considered*

The FDIC has considered a number of alternatives to the proposed rule that could meet its objectives in this rulemaking. Some of these alternatives are described below.

Insuring Revocable Trust Deposits up to $250,000 per Grantor and Irrevocable Trust Deposits up to $250,000 per Trust

The FDIC considered limiting the total amount of deposit insurance coverage for revocable trust deposits to the SMDIA (currently $250,000) for each grantor and irrevocable trust deposits up to $250,000 per trust. This would dramatically simplify the trust rules because the determination of coverage would no longer require the review of trust agreements or the consideration of beneficiaries' interests. This alternative would therefore provide significant benefits in terms of supporting the timely payment of deposit insurance. However, this would substantially reduce deposit insurance coverage for many trust deposits that currently exceed $250,000. The FDIC therefore declined to pursue this proposal.

Provide Per-Beneficiary Coverage Where Beneficiary Information Is Maintained at the IDI

The FDIC considered changing the trust rules to provide coverage of $250,000 per beneficiary for trust deposits only where the trust documentation necessary to determine insurance coverage is maintained in an IDI's deposit account records. This would promote the timely payment of deposit insurance and simplify insurance determinations, as the information required to calculate coverage would be immediately available to the FDIC following the failure of an IDI. However, such a requirement could prove burdensome and difficult to comply with for IDIs and depositors. Furthermore, even if depositors were to provide the necessary documentation to IDIs, they could be unaware as to whether the IDIs are maintaining that information in their records. Accordingly, the FDIC believes that this alternative may not promote depositor confidence in the level of coverage for their deposits.

Retain Separate Trust Categories, Harmonize Rules

The FDIC also considered harmonizing the rules for calculating coverage for revocable and irrevocable trusts while maintaining these two categories as separate for deposit insurance purposes. The use of common rules would reduce complexity to some extent. However, so long as these categories remain separate, determining the level of coverage for a trust deposit would require the threshold inquiry as to whether the trust is revocable or irrevocable. This is because the deposits in each category would still be aggregated within each deposit insurance category for purposes of applying the insurance limit. The FDIC believes that the proposed rule provides greater benefits than this alternative.

Status Quo

The FDIC is proposing amendments to the trust rules to advance the objectives discussed above, including making the rules more understandable for the public and depositors, promoting the timely payment of deposit insurance, and facilitating the administration of resolutions. The FDIC considered the status quo alternative to not amend the existing trust rules and not propose the amendments. However, for reasons previously stated in Section I.B entitled ''Background,'' the FDIC considers the proposed rule to be a more appropriate alternative.

### *F. Request for Comment*

The FDIC is requesting comment on all aspects of the proposed rule, including the alternatives presented. Comment is specifically invited with respect to the following questions:

- Would the proposed amendments to the deposit insurance rules make insurance coverage for trust deposits easier to understand for bankers and the public?
- The FDIC believes that depositors generally would have the information necessary to readily calculate deposit insurance coverage for their trust deposits under the proposed rule, allowing them to better understand insurance coverage for their trust deposits. Are there instances where a depositor would not likely have the necessary information?
- Are there any other types of trusts not described in this proposal whose deposits would be affected by the proposed rule if adopted? What types of trusts are those and how would they be impacted?
- While the FDIC has substantial experience regarding trust arrangements, the FDIC does not possess sufficiently detailed information on depositors' existing trust arrangements to allow the FDIC to project the proposed rule's effects on current depositors. Are there any other sources of empirical information that the FDIC should consider that may be helpful in

understanding the effects of the proposed rule? The FDIC also encourages commenters to provide such information, if possible.

• Grandfathering of the deposit insurance rules would result in significantly greater complexity for the period of time during which two sets of rules could apply to deposits—especially in conducting resolutions. Therefore, the FDIC is not inclined to consider allowing grandfathering, but rather rely on a delayed implementation date to allow stakeholders to make necessary adjustments as a result of the new rules. However, the FDIC recognizes there are instances, such as trusts holding time deposits or other deposit relationships, which may not be easily restructured without adverse consequences to the depositor. Are there fact patterns where grandfathering the current rules may be appropriate? Would grandfathering be appropriate with respect to the proposed rule's coverage limit of $1,250,000 per IDI for a depositor's trust deposits?

• Are the examples provided clear and understandable? Are there other common trust deposit scenarios that would benefit from an example being provided?

• Would any of the alternatives described above better meet the FDIC's objectives in connection with this rulemaking? Are there any other alternatives that would better meet those objectives? Are there any other amendments to the deposit insurance rules applicable to trusts that the FDIC should consider?

• For the covered institutions subject to part 370, what cost and time frame might be required to update information technology systems and deposit account records to be capable of calculating insurance coverage under the proposed rule? The FDIC also seeks any supporting information that commenters might be able to provide on this topic.

## II. Amendments to Mortgage Servicing Account Rule

### *A. Policy Objectives*

The FDIC's regulations governing deposit insurance coverage include specific rules on deposits maintained at IDIs by mortgage servicers. These rules are intended to be easy to understand and apply in determining the amount of deposit insurance coverage for a mortgage servicer's deposits. The FDIC also seeks to avoid uncertainty concerning the extent of deposit insurance coverage for such deposits, as deposits in mortgage servicing accounts (MSAs) provide a source of funding for IDIs.

The FDIC is proposing an amendment to its rules governing insurance coverage for deposits maintained at IDIs by mortgage servicers that consist of mortgagors' principal and interest payments. The proposed rule is intended to address a servicing arrangement that is not specifically addressed in the current rules. Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the MSA with principal and interest payments collected directly from mortgagors. This may be required, for example, under certain mortgage securitizations. The FDIC believes that the factors that motivated the FDIC to establish its current rules for mortgage servicing accounts, described below, argue for treating funds advanced by a mortgage servicer in order to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers.

### *B. Background and Need for Rulemaking*

The FDIC's rules governing coverage for mortgage servicing accounts were adopted in 1990 following the transfer of responsibility for insuring deposits of savings associations from the FSLIC to the FDIC. Under the rules adopted in 1990, funds representing payments of principal and interest were insured on a pass-through basis to mortgagees, investors, or security holders. In adopting this rule, the FDIC focused on the fact that principal and interest funds were generally owned by investors, on whose behalf the servicer, as agent, accepted principal and interest payments. By contrast, payments of taxes and insurance were insured to the mortgagors or borrowers on a pass-through basis because the borrower owns such funds until tax and insurance bills are paid by the servicer.

In 2008, however, the FDIC recognized that securitization methods and vehicles for mortgages had become more complex, exacerbating the difficulty of determining the ownership of deposits consisting of principal and interest payments by mortgagors and extending the time required to make a deposit insurance determination for deposits of a mortgage servicer in the event of an IDI's failure.[63] The FDIC expressed concern that a lengthy insurance determination could lead to continuous withdrawal of deposits of principal and interest payments from IDIs and unnecessarily reduce a funding source for such institutions. The FDIC therefore amended its rules to provide coverage to lenders based on each mortgagor's payments of principal and interest into the mortgage servicing account, up to the SMDIA (currently $250,000) per mortgagor. The FDIC did not amend the rule for coverage of tax and insurance payments, which continued to be insured to each mortgagor on a pass-through basis and aggregated with any other deposits maintained by each mortgagor at the same IDI in the same right and capacity.

The 2008 amendments to the rules for mortgage servicing accounts did not provide for the fact that servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders. However, this is required of mortgage servicers in some instances. For example, insured depository institutions covered by 12 CFR part 370, the FDIC's rule requiring recordkeeping and information technology capabilities for deposit insurance purposes (covered institutions), identified challenges to implementing certain recordkeeping requirements with respect to MSA deposit balances as a result of the way in which servicer advances are administered and accounted.[64]

The current rule provides coverage for principal and interest funds only to the extent ''paid into the account by the mortgagors''; it does not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments. As a result, advances are not provided the same level of coverage as other deposits in a mortgage servicing account consisting of principal and interest payments directly from the borrower, which are insured up to the SMDIA for each borrower. Instead, the advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. The FDIC is concerned that this inconsistent treatment of principal and interest amounts could result in financial instability during times of stress, and could further complicate the insurance determination process, a result that is inconsistent with the FDIC's policy objective.

[63] *See* 73 FR 61658, 61658–59 (Oct. 17, 2008).

[64] In order to fulfill their contractual obligations with investors, covered institutions maintain mortgage principal and interest balances at a pool level and remittances, advances, advance reimbursement and excess funds applications that affect pool-level balances are not allocated back to individual borrowers.

*C. Proposed Rule*

The FDIC is proposing to amend the rules governing coverage for deposits in mortgage servicing accounts to provide consistent deposit insurance treatment for all MSA deposit balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers, or paid into the account by another party (such as the servicer) in order to satisfy a periodic obligation to remit principal and interest due to the lender. Under the proposed rule, accounts maintained by a mortgage servicer in an agency, custodial, or fiduciary capacity, which consist of payments of principal and interest, would be insured for the cumulative balance paid into the account in order to satisfy principal and interest obligations to the lender, whether paid directly by the borrower or by another party, up to the limit of the SMDIA per mortgagor. Mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers would therefore be insured up to the SMDIA per mortgagor, consistent with the coverage rules for payments of principal and interest collected directly from borrowers.[65]

The composition of an MSA attributable to principal and interest payments would also include collections by a servicer, such as foreclosure proceeds, that are used to satisfy a borrower's principal and interest obligation to the lender. In some cases, foreclosure proceeds may not be paid directly by a mortgagor. The current rule does not address whether foreclosure collections represent payments of principal and interest by a mortgagor. Under the proposed rule, foreclosure proceeds used to satisfy a borrower's principal and interest obligation would be insured up to the limit of the SMDIA per mortgagor.

The proposed rule would make no change to the deposit insurance coverage provided for mortgage servicing accounts comprised of payments from mortgagors of taxes and insurance premiums. Such aggregate escrow accounts are held separately from the principal and interest MSAs and the deposits therein are held in trust for the mortgagors until such time as tax and insurance payments are disbursed by the servicer on the borrower's behalf. Under the proposed rule, such deposits would continue to be insured based on the ownership interest of each mortgagor in the account and aggregated with other deposits maintained by the mortgagor at the same IDI in the same capacity and right.

*D. Request for Comment*

The FDIC is requesting comment on all aspects of the proposed rule. Comment is specifically invited with respect to the following questions:

- Would the proposed amendments to the rules governing coverage for mortgage servicing accounts adequately address servicers' practices with respect to these accounts, as described above? Are there any other funds representing principal and interest that are commingled with borrowers' payments that the FDIC should take into account in the deposit insurance calculation, consistent with its policy objectives?
- Would deposit insurance coverage of servicer principal and interest advances help to promote financial stability in the financial system? If the FDIC does not amend the rule as proposed, how would mortgage servicers react if their insured depository institution, or the banking industry as a whole, appears stressed? If so, how would funding arrangements or deposit relationships change?
- Does the proposed rule reduce the compliance burden for part 370 covered institutions?
- Are there any alternatives to the proposed rule that would better achieve the FDIC's policy objectives in connection with this rulemaking? Are there any other amendments to the deposit insurance rules applicable to MSAs that the FDIC should consider?

## III. Regulatory Analysis

*A. Expected Effects*

1. Simplification of Trust Rules

Generally, the proposed simplification of the trust rules is expected to have benefits including clarifying depositors' and bankers' understanding of the insurance rules, promoting the timely payment of deposit insurance following an IDI's failure, facilitating the transfer of deposit relationships to failed bank acquirers (thereby potentially reducing the FDIC's resolution costs), and addressing differences in the treatment of revocable trust deposits and irrevocable trust deposits contained in the current rules. The proposed amendments would directly affect the level of deposit insurance coverage provided to some depositors with trust deposits. In some cases, which the FDIC expects are rare, the proposed amendments could reduce deposit insurance coverage; for the vast majority of depositors, the FDIC expects the coverage level to be unchanged. The FDIC has also considered the impact of any changes in the deposit insurance rules on the DIF and on the covered institutions that are subject to part 370. Finally, the FDIC describes other potential effects of the proposal, such as the effects on information technology (IT) service providers to the institutions that could be affected by the proposed rule. These effects are discussed in greater detail below.

Effects on Deposit Insurance Coverage

The proposed rule would affect deposit insurance coverage for deposits held in connection with trusts. According to the March 31, 2021 Call Report data, the FDIC insures 4,987 depository institutions[66] that report holding approximately 641 million deposit accounts. Additionally, 1,573 IDIs have powers granted by a state or national regulatory authority to administer accounts in a fiduciary capacity (*i.e.,* trust powers) and 1,167 exercise those powers, comprising 31.5 percent and 23.4 percent, respectively, of all IDIs.[67] However, individual depositors may establish a trust account at an IDI even if that IDI does not itself have or exercise trust powers, and in fact, as discussed below, 99 percent of a sample of failed banks had trust accounts. Therefore, the FDIC estimates that the proposed rule, if adopted, could affect between 1,167 and 4,987 IDIs.

The FDIC does not have detailed data on depositors' trust arrangements that would allow the FDIC to precisely estimate the number of trust accounts that are currently held by FDIC-insured institutions. However, the FDIC estimated the number of trust accounts and trust account depositors utilizing data from failed banks. Based on data from 249 failed banks[68] between 2010 and 2020, 335,657 deposit accounts—owned by 250,139 distinct depositors—were trust accounts (revocable or irrevocable), out of a total of 3,013,575 deposit accounts. Thus, about 11.14 percent of the deposit accounts at the 249 failed banks were trust accounts. Of

[65] Servicers' advances may have been insured under the rule that applied to mortgage servicing account deposits prior to 2008. Prior to 2008, mortgage servicing deposits were insured on a pass-through basis. Under the pass-through insurance rules, the identity of the party that pays funds into a deposit account does not generally factor into insurance coverage. In this sense, the proposed rule can be viewed as restoring coverage to the previous level.

[66] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[67] FDIC Call Report data, March 31, 2021.

[68] Data on failed banks comes from the FDIC's Claims Administration System, which contains data on depositors' funds from every failed IDI since September 2010.

the 249 institutions, 247 (99 percent) reported having trust accounts at time of failure. Of the 247 failed banks that reported trust accounts, 212 reported not having trust powers as of their last Call Report. Assuming the percentage of trust accounts at failed banks is representative of the percentage of trust accounts among all FDIC-insured institutions, the FDIC estimates, for purposes of this analysis, that there are approximately 71.4 million trust accounts in existence at FDIC-insured institutions.[69] Additionally, based on the observed number of trust account depositors per trust account in the population of 249 failed banks, the FDIC estimates, for purposes of this analysis, that there are approximately 53.2 million trust depositors.[70] These estimates are subject to considerable uncertainty, since the percentage of deposit accounts that are trust accounts and the number of depositors per trust account for all FDIC insured institutions may differ from what was observed at the 249 failed banks. The FDIC does not have information that would shed light on whether or how the numbers of trust accounts and trust depositors at failed banks differs from the corresponding numbers for other FDIC-insured institutions.

The FDIC also does not have detailed data on depositors' trust arrangements that would allow the FDIC to precisely estimate the quantitative effects of the proposed rule on deposit insurance coverage. Thus, the effects of the proposed changes to the insurance rules are outlined qualitatively below. The FDIC expects that most depositors would experience no change in the coverage for their deposits under the proposed rule. However, some depositors that maintain trust deposits would experience a change in their insurance coverage under the proposed rule.

The FDIC anticipates that deposit insurance coverage for some irrevocable trust deposits would increase under the proposed rule. The FDIC's experience suggests that the provisions of the current irrevocable trust rules that require the identification and aggregation of contingent interests often apply due to the inclusion of contingencies in such trusts.[71] Thus, even where an irrevocable trust names multiple beneficiaries, the current trust rules often provide a total of only $250,000 in deposit insurance coverage. The proposed rule would not consider such contingencies in the calculation of coverage, and per-beneficiary coverage would apply.

In limited instances, the proposed merger of the revocable trust and irrevocable trust categories may decrease coverage for depositors. Deposits of revocable trusts and deposits of irrevocable trusts are currently insured separately. The proposed rule would require aggregation for purposes of applying the deposit insurance limit, thereby increasing the likelihood of the combined trust account balances exceeding the insurance limit.[72] However, the FDIC's experience is that irrevocable trust deposits comprise a relatively small share of the average IDI's deposit base,[73] and that it is rare for IDIs to hold deposits in connection with irrevocable and revocable trusts established by the same grantor(s).[74] Individual grantors' trust deposits held for the benefit of up to five different beneficiaries would continue to be separately insured.

With respect to revocable and irrevocable trusts, depositors who have designated more than five beneficiaries and structured their trust accounts in a manner that provides for more than $1,250,000 in coverage per grantor, per IDI under the current rules would experience a reduction in coverage. The FDIC's experience suggests that the $1,250,000 maximum coverage amount per grantor, per IDI would not affect the vast majority of trust depositors, as most trusts have either five or fewer beneficiaries, less than $1,250,000 per grantor on deposit at the same IDI, or are structured in a manner that results in only $1,250,000 in coverage under the current rules. The FDIC estimates that approximately 21,268 trust account depositors and approximately 28,539 trust accounts could be directly affected by this aspect of the proposed rule, representing about 0.04 percent of both the estimated number of trust account depositors and the estimated number of trust accounts.[75] The actual number of trust depositors and trust accounts impacted will likely differ, as the estimates rely on data from failed banks, and failed banks may differ from other institutions in their percentages of trust depositors or trust accounts. It is also possible depositors may restructure their deposits in response to changes to the rule, thus mitigating the potential effects on deposit insurance coverage.

Clarification of Insurance Rules

The proposed merger of certain revocable and irrevocable trust categories is intended to clarify deposit insurance coverage for trust accounts. Specifically, the merger of these categories would mostly eliminate the need to distinguish revocable and irrevocable trusts currently required to determine coverage for a particular trust deposit. The benefit of the common set of rules would likely be particularly significant for depositors that have established arrangements involving multiple trusts, as they would no longer need to apply two different sets of rules to determine the level of deposit insurance coverage that would apply to their deposits. For example, the

[69] There were approximately 641 million deposit accounts reported by FDIC-insured institutions as of March 31, 2021, based on Call Report data. Assuming that 11.14 percent of accounts are trust accounts, then there are an estimated 71.4 million trust accounts as of March 31, 2021.

[70] Using the data from failed banks, 250,139 distinct depositors held 335,657 revocable or irrevocable trust accounts, or there were 0.745 trust account depositors per trust account (250,139 divided by 335,657). The estimated number of trust depositors at FDIC-insured institutions (53.2 million) is obtained by multiplying the estimated number of trust accounts by the number of trust account depositors per trust account (71.4 million multiplied by 0.745).

[71] As discussed above, the provisions relating to contingent interests may not apply when a trust has become irrevocable due to the death of one or more grantors. In such instances, the revocable trust rules continue to apply.

[72] As discussed above, deposits maintained by an IDI as trustee of an irrevocable trust would not be included in this aggregation, and would remain separately insured pursuant to section 7(i) of the FDI Act and 12 CFR 330.12.

[73] Data obtained in connection with IDI failures during the recent financial crisis suggests that irrevocable trust deposits comprise less than one percent of trust deposits. However, as discussed above, the FDIC does not possess sufficient information to enable it to estimate the effects of the proposed rule on trust account depositors at all IDIs.

[74] In the data obtained in connection with IDI failures during the recent financial crisis, only 51 out of 250,139 depositors with trust accounts had both revocable and irrevocable types. Of these 51 depositors, nine had total trust account balances greater than $250,000, and only one had a total trust balance of more than $1.25 million.

[75] To estimate the numbers of trust account depositors and trust accounts affected, the FDIC performed the following calculation. First, based on data from 249 failed banks between 2010 and 2020, the FDIC determined that there were 335,657 trust accounts out of 3,013,575 deposit accounts (trust account share). Second, the FDIC determined the number of trust accounts per trust depositor (335,657/250,139). The FDIC then estimated the number of trust accounts by multiplying the trust account share (335,657/3,013,575) by the number of deposit accounts across all IDIs (640,918,226) according to March 31, 2021, Call Report data. This step yielded an estimate of 71,386,539 trust accounts. Based on the estimated number of trust accounts per trust depositor from the failed bank data, the FDIC estimated the total number of trust depositors to be 53,198,823. Using failed bank data, 100 out of 250,139 trust depositors had balances in excess of $1.25 million in their trust accounts. Thus, the FDIC estimated that, of the approximately 53.2 million trust depositors, (100/250,139) of them—approximately 21,268—had balances in excess of $1.25 million in their trust accounts, and therefore could be directly affected by the proposal. These estimated 21,268 trust depositors are associated with an estimated 28,539 trust accounts, based on the observed number of trust accounts per trust depositor from the data from 249 failed banks between 2010 and 2020.

proposed rule would eliminate the need to consider the specific allocation of interests among the beneficiaries of revocable trusts with six or more beneficiaries, as well as contingencies established in irrevocable trusts. The merger of the categories also would eliminate the need for current § 330.10(h) and (i), which allows for the continued application of the revocable trust rules to the account of a revocable trust that becomes irrevocable due to the death of the trust's owner. As previously discussed, these provisions of the current trust rules have proven confusing as illustrated by the numerous inquiries that are consistently submitted to the FDIC on these topics.

FDIC-insured depository institutions will incur some regulatory costs associated with making necessary changes to internal processes and systems and bank personnel training in order to accommodate the proposed rule's definition of ''trust accounts'' and attendant deposit insurance coverage terms, if adopted. There also may be some initial cost for institutions to become familiar with the proposed changes to the trust insurance coverage rules in order to be able to explain them to potential trust customers, counterbalanced to some extent by the fact that the proposed rules should be simpler for institutions to understand and explain going forward. As the business impacts and costs associated with operationalizing the proposed changes to the trust rules may vary significantly across IDIs, the FDIC would welcome industry comments in this regard.

Prompt Payment of Deposit Insurance

The FDIC also expects that simplification of the trust rules would promote the timely payment of deposit insurance in the event of an IDI's failure. The FDIC's experience has been that the current trust rules often require detailed, time-consuming, and resource-intensive review of trust documentation to obtain the information that is necessary to calculate deposit insurance coverage. This information is often not found in an IDI's records and must be obtained from depositors after the IDI's failure. The proposed rule would ameliorate the operational challenge of calculating deposit insurance coverage, which could be particularly acute in the case of a failure of a large IDI with a large number of trust accounts. The proposed rule would streamline the review of trust documents required to make a deposit insurance determination, promoting more prompt payment of deposit insurance. Timely payment of deposit insurance also can help to facilitate the transfer of depositor relationships to a failed bank's acquirer, potentially expand resolution options, potentially reduce the FDIC's resolution costs, and support greater confidence in the banking system.

Deposit Insurance Fund Impact

As discussed above, the proposed rule is expected to have mixed effects on the level of insurance coverage provided for trust deposits. Coverage for some irrevocable trust deposits would be expected to increase, but in the FDIC's experience, irrevocable trust deposits are not nearly as common as revocable trust deposits. The level of coverage for some trust deposits would be expected to decrease due to the proposed rule's simplified calculation of coverage and its aggregation of revocable and irrevocable trust deposits. As noted above, the FDIC does not have detailed data on depositors' trust arrangements to allow it to precisely project the quantitative effects of the proposed rule on deposit insurance coverage.

Indirect Effects

A change in the level of deposit insurance coverage does not necessarily result in a direct economic impact, as deposit insurance is only paid to depositors in the event of an IDI's failure. However, changes in deposit insurance coverage may prompt depositors to take actions with respect to their deposits. In response to changes in the level of coverage under the proposed rules, trust depositors could maximize coverage relative to the coverage under the current rule by transferring some of their trust deposits to other types of accounts that provide similar or higher amounts of coverage or by amending the terms of their trusts. Parties affected could include IDIs, depositors, and other firms in the financial services marketplace (*e.g.,* deposit brokers). Any costs borne by the depositor in moving a portion of the funds to a different IDI to stay under the insurance limit would be accompanied by benefits, such as more prompt deposit insurance determinations, and quicker access to insured deposits for depositors during the resolution process. The FDIC cannot estimate these effects because it does not have information on the individual costs of each action that confronts each depositor, their ability to amend their trust structure or move funds, and their subjective risk preference with respect to holding insured and uninsured deposits.

Part 370 Covered Institutions

As discussed previously, institutions covered by part 370 must maintain deposit account records and systems capable of applying the deposit insurance rules in an automated manner. The proposed rule would change certain aspects of how coverage is determined for trust deposits. This could require covered institutions to reprogram certain systems to ensure that they continue to be capable of applying the deposit insurance rules as part 370 requires. A covered institution is not considered to be in violation of part 370 as a result of a change in law that alters the availability or calculation of deposit insurance for such period as specified by the FDIC following the effective date of such change.[76]

The FDIC expects that the proposed rule would make the deposit insurance status of a trust account generally clearer. Moreover, since part 370 requires covered institutions to develop and maintain the capacity to calculate deposit insurance for its deposits, the proposed rule could make compliance with part 370 relatively less burdensome. This is because the underlying rules that would be applied to most trust deposits would be simplified. In particular, the proposed rule would require the aggregation of revocable and irrevocable trust deposits, categories that are currently separated for purposes of part 370's recordkeeping provisions. The FDIC does not expect that the proposed rule would require significant changes with respect to covered institutions' treatment of informal revocable trust deposits. Moreover, many deposits of formal revocable trusts and irrevocable trusts currently fall within the scope of part 370's alternative recordkeeping provisions, meaning that covered institutions are not required to maintain all of the records necessary to calculate the maximum amount of deposit insurance coverage available for these deposits. These factors may diminish the impact of the proposed rule on the part 370 covered institutions, but the FDIC does not have sufficient information on covered institutions' systems and records to quantify this.

Although the FDIC does not have sufficient information to determine the time that might be required to reprogram systems, it believes that a two-year period of time may be reasonable. The FDIC requests comment on this proposal, including any information that commenters may be able to provide to support their views

[76] *See* 12 CFR 370.10(d).

on the time necessary to attain compliance with part 370 if the proposed rule is adopted.

Other Potential Effects

Although the FDIC expects that coverage for most trust depositors would be unchanged under the proposal, and that the proposed changes simplify the FDIC's insurance rules for trust accounts, the proposal may have other potential effects. For example, the institutions affected by the proposal may rely on third-party IT service providers to perform insurance coverage estimates for their trust depositors. The proposal may lead such IT service providers to revise their systems to account for the proposal's changes.

2. Amendments to Mortgage Servicing Account Rule

The proposed rule would affect the deposit insurance coverage for certain principal and interest payments within MSA deposits maintained at IDIs by mortgage servicers. According to the March 31, 2021 Call Report data, the FDIC insures 4,987 IDIs.[77] Of the 4,987 IDIs, 1,167 IDIs (23.4 percent) report holding mortgage servicing assets, which indicates that they service mortgage loans and could thus be affected by the proposed rule. In addition, mortgage servicing accounts may be maintained at IDIs that do not themselves service mortgage loans. The FDIC does not know how many IDIs are recipients of mortgage servicing account deposits, but believes that most IDIs are not. Therefore, the FDIC estimates that the number of IDIs potentially affected by the proposed rule, if adopted, would be greater than 1,167 and substantially less than 4,987.

The FDIC does not have detailed data on MSAs that would allow the FDIC to reliably estimate the number of MSAs maintained at IDIs that would be affected by the proposed rule, or any potential change in the total amount of insured deposits. Thus, the potential effects of the proposed amendments regarding governing deposit insurance coverage for MSAs are outlined qualitatively below.

The proposed rule would directly affect the level of deposit insurance coverage provided for some MSAs. Under the proposed rule, the composition of an MSA attributable to mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers and collections such as foreclosure proceeds would be insured up to the SMDIA per mortgagor, consistent with the coverage for payments of principal and interest collected directly from borrowers. Under the current rules, principal and interest funds advanced by a servicer to cover delinquencies, and foreclosure proceeds collected by servicers, are not be insured under the rules for MSA deposits, but instead are insured to the servicer as corporate funds up to the SMDIA. Therefore, the proposed rule would expand deposit insurance coverage in instances where an account maintained by a mortgage servicer contains principal and interest funds advanced by the servicer in order to satisfy the obligations of delinquent borrowers to the lender, or foreclosure proceeds collected by the servicers; and where the funds in such instances exceed the mortgage servicer's SMDIA.

If enacted, the proposed rule is likely to benefit a servicer compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders when a borrower is delinquent, and therefore the servicer has not received such funds from the borrower. In the event that the IDI hosting the MSA for the servicer fails, the proposal reduces the likelihood that the funds advanced by the servicer are uninsured, and thereby facilitates access to, and helps avoids losses of, those funds. As previously discussed, the FDIC does not have detailed data on MSAs held at IDIs, pooling and servicing agreements for outstanding mortgage loans, or servicer payments into MSAs that would allow the FDIC to reliably estimate the number of, and volume of funds within, MSAs maintained at IDIs that would be affected by the proposed rule.

Further, the proposed rule is likely to benefit an IDI who is hosting an MSA for a servicer that is compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders on behalf of delinquent borrowers by increasing the volume of insured funds. In the event that the IDI enters into a troubled condition, the proposed rule could marginally increase the stability of MSA deposits from such servicers, thereby increasing the general stability of funding.

Finally, the FDIC believes that the proposed rule, if enacted, would pose general benefits to parties that provide or utilize financial services related to mortgage products by amending an inconsistency in the deposit insurance treatment for principal and interest payments made by the borrower and such payments made by the servicer on behalf of the borrower.

Effects on Part 370 Covered Institutions

Institutions subject to the enhanced requirements of part 370 may bear some costs in recognizing the expanded coverage for servicer advances and foreclosure proceeds. However, institutions subject to the requirements of part 370 already are responsible for determining coverage for MSA accounts based on each borrower's payments. Therefore, the FDIC does not believe the impact of the proposal on part 370 covered IDIs will be significant.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[78] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[79] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for small entities. The FDIC does not believe that the proposed rule, if adopted, will have a significant economic effect on a substantial number of small entities. However, some expected effects of the proposed rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included an Initial Regulatory Flexibility Act Analysis in this section.

[77] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[78] 5 U.S.C. 601 *et seq.*

[79] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

1. Simplification of Trust Rules

Reasons Why This Action Is Being Considered

As previously discussed, the rules governing deposit insurance coverage for trust deposits have been amended on several occasions, but still frequently cause confusion for depositors. Under the current regulations, there are distinct and separate sets of rules applicable to deposits of revocable trusts and irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the FDIC's efforts to simplify the revocable trust rules in 2008,[80] over the last 10 years, FDIC deposit insurance specialists have responded to approximately 20,000 complex insurance inquiries per year on average. More than 50 percent pertain to deposit insurance coverage for trust accounts (revocable or irrevocable). The consistently high volume of complex inquiries about trust accounts over an extended period of time suggests continued confusion about insurance limits.

The FDI Act requires the FDIC to pay depositors ''as soon as possible'' after a bank failure. However, the insurance determination and subsequent payment for many trust deposits can be delayed while FDIC staff reviews complex trust agreements and apply the rules for determining deposit insurance coverage. Moreover, in many of these instances, deposit insurance coverage for trust deposits is based upon information that is not maintained in the failed IDI's deposit account records. This requires FDIC staff to work with depositors, trustees, and other parties to obtain trust documentation following an IDI's failure in order to complete deposit insurance determinations. The difficulties associated with this are exacerbated by the substantial growth in the use of formal trusts in recent decades. For example, following the 2008 failure of IndyMac Federal Bank, FSB (IndyMac), FDIC claims personnel contacted more than 10,500 IndyMac depositors to obtain the trust documentation necessary to complete deposit insurance determinations for their revocable trust and irrevocable trust deposits. As noted previously, delays in the payment of deposit insurance could be consequential, as revocable trust deposits in particular can be used by depositors to satisfy their daily financial obligations.

Policy Objectives

As discussed previously, the proposed amendments are intended to provide depositors and bankers with a rule for trust account coverage that is easy to understand, and also to facilitate the prompt payment of deposit insurance in accordance with the FDI Act. The FDIC believes that accomplishing these objectives also would further the agency's mission in other respects. Specifically, the proposed amendments would promote depositor confidence and further the FDIC's mission to maintain stability and promote public confidence in the U.S. financial system by assisting depositors to more readily and accurately determine their insurance limits. The proposed changes will also facilitate the resolution of failed IDIs in a least costly manner. The proposed amendments could reduce the FDIC's reliance on trust documentation (which could be difficult to obtain in a timely manner during resolutions of IDI failures) and provide greater flexibility to automate deposit insurance determinations, thereby reducing potential delays in the completion of deposit insurance determinations and payments. Finally, in proposing amendments to the trust rules, the FDIC's intent is that the changes would generally be neutral with respect to the DIF.

Legal Basis

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress.[81] Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category. The FDIC proposes to amend § 330.10 of its regulations, which currently applies only to revocable trust deposits, to establish a new ''trust accounts'' category that would include both revocable and irrevocable trust deposits. For a more detailed discussion of the proposal's legal basis please refer to Section I.C entitled ''Description of Proposed Rule.''

The Proposed Rule

The FDIC is proposing to amend the rules governing deposit insurance coverage for trust deposits. Generally, the proposed amendments would: Merge the revocable and irrevocable trust categories into one category; apply a simpler, common calculation method to determine insurance coverage for deposits held by revocable and irrevocable trusts; eliminate certain requirements found in the current rules for revocable and irrevocable trusts; and amend certain recordkeeping requirements for trust accounts. For a more detailed discussion of the proposed rule please refer to Section I.C entitled ''Description of Proposed Rule.''

Small Entities Affected

Based on the March 31, 2021 Call Report data, the FDIC insures 4,987 depository institutions,[82] of which 3,431 are considered small entities for the purposes of RFA.[83] Of the 3,431 small IDIs, 826 have powers granted by a state or national regulatory authority to administer accounts in a fiduciary capacity and 567 exercise those powers, comprising 24.1 percent and 16.5 percent, respectively, of small IDIs.[84] However, individuals may establish trust accounts at an IDI even if that IDI does not itself have or exercise authority to administer accounts in a fiduciary capacity, and in fact, as noted earlier, 99 percent of a sample of failed banks had trust accounts. Therefore, the FDIC estimates that the proposed rule, if adopted, could affect between 567 and 3,431 small, FDIC-insured institutions.

As noted in the *Aggregation* sub-section of Section I.C ''Description of Proposed Rule,'' the FDIC does not have detailed data on depositors' trust arrangements for trust accounts held at small FDIC-insured institutions. Therefore, it is difficult to accurately estimate the number of small IDIs that would be potentially affected by the proposed rule. However, the FDIC believes that the number of small IDIs that will be directly affected by the proposal is likely to be small, given that in the agency's resolution experience only a small number of trust accounts have balances above the proposed coverage limit of $1,250,000 per grantor, per IDI for trust deposits. For example, data obtained from a sample of 249 IDIs that failed between 2010 and 2020 show that only 100 depositors out of 250,139 (or 0.04 percent) had trust account balances greater than $1.25 million; at small IDIs, 18 out of 34,304 depositors (or 0.05 percent) had trust account

[80] *See* 73 FR 56706 (Sep. 30, 2008).

[81] 12 U.S.C. 1821(a)(2).

[82] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[83] FDIC Call Report data, March 31, 2021.

[84] Id.

balances greater than $1.25 million.[85] The data from failed banks suggest small IDIs could be affected by the proposal roughly in proportion to the share of trust depositors with account balances greater than $1.25 million at IDIs of all sizes which failed between 2010 and 2020.

Expected Effects

The proposed simplification of the deposit insurance rules for trust deposits is expected to have a variety of effects. The proposed amendments would directly affect the level of deposit insurance coverage provided to some depositors with trust deposits. In addition, simplification of the rules is expected to have benefits in terms of promoting the timely payment of deposit insurance following a small IDI's failure, facilitating the transfer of deposit relationships to failed bank acquirers with consequent potential reductions to the FDIC's resolution costs, and addressing differences in the treatment of revocable trust deposits and irrevocable trust deposits contained in the current rules. The FDIC has also considered the impact of any changes in the deposit insurance rules on the DIF and other potential effects.[86] These effects are discussed in greater detail in Section III.A entitled ''Expected Effects.''

Overall, due to the fact that the FDIC expects most small IDIs to have only a small number of trust accounts with balances above the proposed coverage limit of $1,250,000 per grantor, per IDI for trust deposits, effects on the deposit insurance coverage of small entities' customers are likely to be small. There also may be some initial cost for small entities to become familiar with the proposed changes to the trust insurance coverage rules in order to be able to explain them to potential trust customers, counterbalanced to some extent by the fact that the proposed rules should be simpler to understand and explain going forward. As the business impacts and costs associated with operationalizing the proposed changes to the trust rules may vary significantly across IDIs, the FDIC would welcome industry comments in this regard.

Alternatives Considered

The FDIC has considered a number of alternatives to the proposed rule that could meet its objectives in this rulemaking. However, for reasons previously stated in Section I.E ''Alternatives Considered,'' the FDIC considers the proposed rule to be a more appropriate alternative.

The FDIC also considered the status quo alternative to not amend the existing trust rules. However, for reasons previously stated in Section I.E ''Alternatives Considered,'' the FDIC considers the proposed rule to be a more appropriate alternative.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposal and any other federal rule.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would the proposal have any significant effects on small entities that the FDIC has not identified?

2. Amendments to Mortgage Servicing Account Rule

Reasons Why This Action Is Being Considered

As previously discussed, the FDIC provides coverage, up to the SMDIA for each borrower, for principal and interest funds in MSAs only to the extent ''paid into the account by the mortgagors,'' and does not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments under the current rules. The advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. Under some servicing arrangements, however, mortgage servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders in certain circumstances. Thus, under the current rules, such advances are not provided the same level of coverage as other deposits in a mortgage servicing account comprised of principal and interest payments directly from the borrower. This could result in delayed access to certain funds in an MSA, or to the extent that aggregated advances insured to the servicer exceed the insurance limit, loss of such funds, in the event of an IDI's failure. The FDIC is therefore proposing to amend its rules governing coverage for deposits in mortgage servicing accounts to address this inconsistency.

Policy Objectives

As discussed previously, the FDIC's regulations governing deposit insurance coverage include specific rules on deposits maintained at IDIs by mortgage servicers. With the proposed amendments, the FDIC seeks to address an inconsistency concerning the extent of deposit insurance coverage for such deposits, as in the event of an IDI's failure the current rules could result in delayed access to certain funds in a mortgage servicing account (MSA) that have been aggregated and insured to a mortgage servicer, or to the extent that aggregated funds insured to a servicer exceed the insurance limit, loss of such funds.

The proposed rule is intended to address a servicing arrangement that is not specifically addressed in the current rules. Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the MSA with principal and interest payments collected directly from mortgagors. This may be required, for example, under certain mortgage securitizations. The FDIC believes that the factors that motivated the FDIC to establish its current rules for MSAs, described previously, argue for treating funds advanced by a mortgage servicer in order to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers.

Legal Basis

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress. Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category. The FDIC proposes to amend § 330.7(d) of its regulations, which currently applies only to cumulative balance paid by the mortgagors into an MSA maintained by a mortgage servicer, to include balances paid in to the account to satisfy mortgagors' principal or interest obligations to the lender. For a more detailed discussion of the

[85] Whether a failed IDI is considered small is based on data from its four quarterly Call Reports prior to failure.

[86] The FDIC has also considered the impact of any changes in the deposit insurance rules on the covered institutions that are subject to part 370. As described previously, part 370 affects IDIs with two million or more deposit accounts. Based on Call Report data as of March 31, 2021, the FDIC does not insure any institutions with two million or more deposit accounts that are also considered small entities.

proposal's legal basis please refer to Section II.C, entitled ''Proposed Rule.''

The Proposed Rule

The FDIC is proposing to amend the rules governing deposit insurance coverage for deposits maintained at IDIs by mortgage servicers. Generally, the proposed amendment would provide consistent deposit insurance treatment for all MSA deposit balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers, or paid into the account by another party (such as the servicer) in order to satisfy a periodic obligation to remit principal and interest due to the lender. The composition of an MSA attributable to principal and interest payments would include mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers, and collections by a servicer such as foreclosure proceeds. The proposed rule would make no change to the deposit insurance coverage provided for mortgage servicing accounts comprised of payments from mortgagors of taxes and insurance premiums. For a more detailed discussion of the proposed rule please refer to Section II.C, entitled ''Proposed Rule.''

Small Entities Affected

Based on the March 31, 2021 Call Report data, the FDIC insures 4,987 depository institutions, of which 3,431 are considered small entities for the purposes of RFA. Of the 3,431 small IDIs, 491 IDIs (14.3 percent) report holding mortgage servicing assets, which indicates that they service mortgage loans and could thus be affected by the proposed rule. However, mortgage servicing accounts may be maintained at small IDIs that do not themselves service mortgage loans. The FDIC does not know how many IDIs that are small entities are recipients of mortgage servicing account deposits, but believes that most such entities are not because there are relatively few mortgage servicers.[87] Therefore, the FDIC estimates that the number of small IDIs potentially affected by the proposed rule, if adopted, would be between 491 and 3,431, but believes that the number is close to the lower end of the range.

As noted in Section III.A, titled ''Expected Effects,'' the FDIC does not have detailed data on MSAs that would allow the FDIC to reliably estimate the number of MSAs maintained at IDIs that would be affected by the proposed rule, or any potential change in the total amount of insured deposits. Therefore, it is difficult to accurately estimate the number of small IDIs that would be potentially affected by the proposed rule.

Expected Effects

The proposed rule would directly affect the level of deposit insurance coverage for certain funds within MSAs. If enacted, the proposed rule is likely to benefit a servicer compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders when a borrower is delinquent, and therefore the servicer has not received such funds from the borrower. In the event that the IDI hosting the MSA for the servicer fails, the proposal reduces the likelihood that the funds advanced by the servicer are uninsured, and thereby facilitates access to, and helps avoids losses of, those funds. As previously discussed, the FDIC does not have detailed data on MSAs held at IDIs, pooling and servicing agreements for outstanding mortgage loans, or servicer payments into MSAs that would allow the FDIC to reliably estimate the number of, and volume of funds within, MSAs maintained at IDIs that would be affected by the proposed rule.

Further, the proposed rule is likely to benefit a small IDI who is hosting an MSA for a servicer that is compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders on behalf of delinquent borrowers by increasing the volume of insured funds. In the event that the small IDI enters into a troubled condition, the proposed rule could marginally increase the stability of MSA deposits from such servicers, thereby increasing the general stability of funding.

Based on the preceding information the FDIC believes that the proposed rule, if enacted, is unlikely to have a significant economic effect on a substantial number of small entities.

Alternatives Considered

The FDIC is proposing revisions to the deposit insurance rules for MSAs to advance the objectives discussed above. The FDIC considered the status quo alternative to not revise the existing rules for MSAs and not propose the revisions. However, for reasons previously stated in Section II.B, entitled ''Background and Need for Rulemaking,'' the FDIC considers the proposed rule to be a more appropriate alternative. Were the FDIC to not propose the revisions, then in the event of an IDI's failure the current rules could result in delayed access to certain funds in an MSA that have been aggregated and insured to a mortgage servicer, or to the extent that aggregated funds insured to a servicer exceed the insurance limit, loss of such funds.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposal and any other federal rule.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would the proposal have any significant effects on small entities that the FDIC has not identified?

*C. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has determined that this proposed rule does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act (PRA). Consequently, no information collection request will be submitted to the OMB for review. The FDIC invites comment on its PRA determination.

*D. Riegle Community Development and Regulatory Improvement Act*

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[88] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall

[87] According to the U.S. Census Bureau within the ''Other Activities Related to Credit Intermediation'' (NAICS 522390) national industry where mortgage servicers are captured there were 3,595 firms in 2018, relative to the 37,627 firms in the Credit Intermediation and Related Activities subsector (NAICS 522).

[88] 12 U.S.C. 4802(a).

take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[89]

The proposed rule would not impose additional reporting or disclosure requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, section 302 of RCDRIA does not apply. Nevertheless, the requirements of RCDRIA will be considered as part of the overall rulemaking process, and the FDIC invites comments that will further inform its consideration of RCDRIA.

*E. Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999.[90]

*F. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act[91] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

**List of Subjects in 12 CFR Part 330**

Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

**Authority and Issuance**

For the reasons stated above, the Federal Deposit Insurance Corporation proposes to amend part 330 of title 12 of the Code of Federal Regulations as follows:

## PART 330—DEPOSIT INSURANCE COVERAGE

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

**Authority:** 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(a)(Tenth), 1820(f), 1820(g), 1821(a), 1821(d), 1822(c).

**§ 330.1 [Amended]**

■ 2. Amend § 330.1 by removing and reserving paragraphs (m) and (r).

■ 3. Revise § 330.7(d) to read as follows:

**§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.**

* * * * *

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments of principal and interest, shall be insured for the cumulative balance paid into the account by mortgagors, or in order to satisfy mortgagors' principal or interest obligations to the lender, up to the limit of the SMDIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

* * * * *

■ 4. Revise § 330.10 to read as follows:

**§ 330.10 Trust accounts.**

(a) *Scope and definitions.* This section governs coverage for deposits held in connection with informal revocable trusts, formal revocable trusts, and irrevocable trusts not covered by § 330.12 (''trust accounts''). For purposes of this section:

(1) *Informal revocable trust* means a trust under which a deposit passes directly to one or more beneficiaries upon the depositor's death without a written trust agreement, commonly referred to as a payable-on-death account, in-trust-for account, or Totten trust account.

(2) *Formal revocable trust* means a revocable trust established by a written trust agreement under which a deposit passes to one or more beneficiaries upon the grantor's death.

(3) *Irrevocable trust* means an irrevocable trust established by statute or a written trust agreement and not otherwise insured as described in § 330.12.

(b) *Calculation of coverage*—(1) *General calculation.* Each grantor's trust deposits are insured in an amount up to the SMDIA multiplied by the total number of beneficiaries identified by the grantor, up to a maximum of 5 beneficiaries.

(2) *Aggregation for purposes of insurance limit.* Trust deposits that pass from the same grantor to beneficiaries are aggregated for purposes of determining coverage under this section, regardless of whether those deposits are held in connection with an informal revocable trust, formal revocable trust, or irrevocable trust.

(3) *Separate insurance coverage.* The deposit insurance coverage provided under this section is separate from coverage provided for other deposits at the same insured depository institution.

(4) *Equal allocation presumed.* Unless otherwise specified in the deposit account records of the insured depository institution, a deposit held in connection with a trust established by multiple grantors is presumed to have been owned or funded by the grantors in equal shares.

(c) *Number of beneficiaries.* For purposes only of determining the total number of beneficiaries for a trust deposit under paragraph (b) of this section:

(1) *Eligible beneficiaries.* Subject to paragraph (c)(2) of this section, beneficiaries include natural persons, as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986, as amended.

(2) *Ineligible beneficiaries.* Beneficiaries do not include:

(i) The grantor of a trust; or

(ii) A person or entity that would only obtain an interest in the deposit if one or more named beneficiaries are deceased.

(3) *Future trust(s) named as beneficiaries.* If a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor(s), the future trust(s) are not treated as beneficiaries of the trust; rather, the future trust(s) are viewed as mechanisms for distributing trust funds, and the beneficiaries are the natural persons or organizations that shall receive the trust funds through the future trusts.

(4) *Informal trust account payable to depositor's formal trust.* If an informal revocable trust designates the depositor's formal trust as its beneficiary, the informal revocable trust account will be treated as if titled in the name of the formal trust.

[89] 12 U.S.C. 4802(b).

[90] Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[91] Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999).

(d) *Deposit account records*—(1) *Informal revocable trusts.* The beneficiaries of an informal revocable trust must be specifically named in the deposit account records of the insured depository institution.

(2) *Formal revocable trusts.* The title of a formal trust account must include terminology sufficient to identify the account as a trust account, such as ''family trust'' or ''living trust,'' or must otherwise be identified as a testamentary trust in the account records of the insured depository institution. If eligible beneficiaries of such formal revocable trust are specifically named in the deposit account records of the insured depository institution, the FDIC shall presume the continued validity of the named beneficiary's interest in the trust consistent with § 330.5(a).

(e) *Commingled deposits of bankruptcy trustees.* If a bankruptcy trustee appointed under title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each title 11 bankruptcy estate will be added together and insured up to the SMDIA, separately from the funds of any other such estate.

(f) *Deposits excluded from coverage under this section*—(1) *Revocable trust co-owners that are sole beneficiaries of a trust.* If the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, deposits held in connection with the trust are treated as joint ownership deposits under § 330.9.

(2) *Employee benefit plan deposits.* Deposits of employee benefit plans, even if held in connection with a trust, are treated as employee benefit plan deposits under § 330.14.

(3) *Investment company deposits.* This section shall not apply to deposits of trust funds belonging to a trust classified as a corporation under § 330.11(a)(2).

(4) *Insured depository institution as trustee of an irrevocable trust.* Deposits held by an insured depository institution in its capacity as trustee of an irrevocable trust are insured as provided in § 330.12.

**§ 330.13 [Removed and Reserved]**

■ 5. Remove and reserve § 330.13.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 20, 2021.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2021–15732 Filed 8–2–21; 8:45 am]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2021–0602; Project Identifier 2019–CE–022–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Diamond Aircraft Industries GmbH Models DA 42, DA 42 NG, and DA 42 M–NG airplanes. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the nose landing gear (NLG) actuator attachment lever and detachment from the NLG leg. This proposed AD would require repetitively inspecting the NLG actuator attachment lever for cracks and damage and taking any necessary corrective actions. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this NPRM by September 17, 2021.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria; phone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* website: *https://www.diamondaircraft.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust St, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0602; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E. 68th Avenue, Denver, CO 80249; phone: (303) 342–1094; email: *penelope.trease@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0602; Project Identifier 2019–CE–022–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI