

**DEPARTMENT OF THE TREASURY****Fiscal Service****31 CFR Part 202**

RIN 1510-AA42

**Depositories and Financial Agents of the Federal Government**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises regulations which govern the designation of Depositories and Financial Agents of the Federal Government (depositories); their authorization to accept deposits of public money and to perform other specific services; and the securing of public money. The revisions update, clarify, and simplify current requirements, but do not change them. Outdated references to specific acceptable insurers are deleted. Existing language concerning the types and valuation of acceptable collateral securities is clarified. In addition, various references are updated.

**EFFECTIVE DATE:** September 26, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mark R. Matolak, (202) 874-6846 (Financial Program Specialist, Cash Management Policy and Planning Division) or Cynthia L. Johnson, (202) 874-6590 (Director, Cash Management Policy and Planning Division).

**SUPPLEMENTARY INFORMATION:****Background**

Depositories accepting deposits of public money and providing other financial agency services to the United States are required to pledge adequate acceptable securities as collateral, as directed by the Secretary of the Treasury (Secretary). The Secretary previously promulgated regulations, codified at 31 CFR Part 202, setting forth the general requirements for designating depositories and the pledging of collateral.

Under the current rule, certain identified securities are acceptable at face value, unless otherwise specified by the Secretary. Since the current rule was last amended, the Secretary has "otherwise specified" that certain securities, including certain of those expressly referenced in the current rule, are acceptable only at 90% of face value, rather than at 100% of face value. In order to eliminate any possible confusion regarding acceptable types and valuation of collateral security, the revised rule provides that types and

valuation of acceptable collateral securities will be specified in Treasury procedural instructions. In addition, under the current rule, eligible banks insured by the Federal Deposit Insurance Corporation (FDIC) and eligible institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC) are designated as depositories. The revised rule deletes references to the FSLIC, which has been abolished, and provides that eligible financial institutions insured by the FDIC are designated as depositories.

**Public Comments**

The Financial Management Service (FMS) received two comments on its June 21, 1996, Notice of Proposed Rulemaking (NPRM) from the financial community. One commenter noted that section 202.2(a)(2) of the NPRM designates as depositories eligible credit unions insured by the Administrator of the National Credit Union Administration (NCUA). The commenter noted that the NCUA is governed now by a three-member board of directors, rather than an administrator. The NCUA confirmed this fact. The commenter suggested that the final rule be revised to designate as depositories eligible credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF). For reasons of consistency throughout section 202.2, however, section 202.2(a)(2) of the final rule has been revised to designate as depositories eligible credit unions insured by the NCUA, rather than the NCUSIF.

The other commenter noted that Treasury procedural instructions now will specify the types and valuation of acceptable collateral securities. The commenter expressed the desire to continue to have an opportunity to comment on changes to procedural items, including the types and valuation of acceptable collateral securities. Both the current and revised rules provide that the Secretary may specify types and valuation of acceptable collateral. There is no requirement in either to seek comments prior to this specification. The current rule provides valuation for certain listed types of acceptable collateral unless the Secretary otherwise specifies. In practice, the Secretary has utilized Treasury procedural instructions to "otherwise specify" types and valuation of certain acceptable collateral, including some of those specifically listed in the current rule. The revised rule clarifies and eliminates any possible confusion on this issue by providing that Treasury procedural instructions will specify the types and valuation of acceptable

collateral. The revised rule does not reduce the ability of financial institutions to comment on the Secretary's determination of the types and valuation of acceptable collateral. Therefore, the revised rule is not changed as a result of this comment.

**Authorities**

As a result of the enactment of sections 664 and 665 of Title VI of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104-208, subsequent to the publication of the Notice of Proposed Rulemaking, additional authorities are included in the authorities citation for the revised rule.

**Rulemaking Analysis***Executive Order 12866*

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

*Regulatory Flexibility Act*

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small business entities. This revision makes no change to current procedures and only updates, clarifies, and simplifies the current rule. Accordingly, a Regulatory Flexibility Act analysis is not required.

**List of Subjects in 31 CFR Part 202**

Banks, Banking.

For the reasons set out in the preamble, 31 CFR part 202 is amended as follows:

**PART 202—DEPOSITORIES AND FINANCIAL AGENTS OF THE FEDERAL GOVERNMENT**

1. The authority citation for part 202 is revised, and the authority citations at the end of the sections are removed, to read as follows:

**Authority:** 12 U.S.C. 90; 12 U.S.C. 265-266; 12 U.S.C. 391; 12 U.S.C. 1452(d); 12 U.S.C. 1464(k); 12 U.S.C. 1789a; 12 U.S.C. 2013; 12 U.S.C. 2122; 12 U.S.C. 3101-3102; 31 U.S.C. 3303; 31 U.S.C. 3336.

2. Section 202.1 is revised to read as follows:

**§ 202.1 Scope of regulations.**

The regulations in this part govern the designation of Depositories and Financial Agents of the Federal Government (hereinafter referred to as depositories), and their authorization to accept deposits of public money and to perform other services as may be required of them. Public money

includes, but is not limited to, revenue and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its officers, agents, or employees. The designation and authorization of Treasury Tax and Loan depositories for the receipt of deposits representing Federal taxes are governed by the regulations in part 203 of this chapter.

3. Section 202.2 is amended by revising paragraph (a)(1), removing paragraph (a)(2), by redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), and by revising redesignated paragraphs (a)(2) and (a)(3) to read as follows:

**§ 202.2 Designations.**

(a) \* \* \*

(1) Financial institutions insured by the Federal Deposit Insurance Corporation.

(2) Credit unions insured by the National Credit Union Administration.

(3) Banks, savings banks, savings and loan, building and loan, and homestead associations, credit unions created under the laws of any State, the deposits or accounts of which are insured by a State or agency thereof or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts of such financial institutions, United States branches of foreign banking corporations authorized by the State in which they are located to transact commercial banking business, and Federal branches of foreign banking corporations, the establishment of which has been approved by the Comptroller of the Currency.

\* \* \* \* \*

4. Section 202.3 is amended by revising paragraphs (a), (b)(1) introductory text, (b)(2) introductory text, and (b)(2)(i) to read as follows:

**§ 202.3 Authorization.**

(a) *To accept deposits covered by the appropriate Federal or State insurer.* Every depository is authorized to accept a deposit of public money in an official account, other than an account in the name of the United States Treasury, in which the maximum balance does not exceed the "Recognized Insurance Coverage." "Recognized Insurance

Coverage" means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Administration, and by insurance organizations specifically qualified by the Secretary of the Treasury.

(b) *To perform other services.* (1) The Secretary of the Treasury may authorize a depository to perform other services including, but not limited to:

\* \* \* \* \*

(2) To obtain authorization to perform services, a depository must:

(i) File with the Secretary of the Treasury an appropriate agreement and resolution of its board of directors authorizing the agreement (both on forms prescribed by the Financial Management Service and available from Federal Reserve Banks), and

\* \* \* \* \*

5. Section 202.4 is amended by revising the heading, introductory text and paragraphs (c), (d), and (e) to read as follows:

**§ 202.4 Agreement of deposit.**

A depository which accepts a deposit under this part enters into an agreement of deposit with the Treasury Department. The terms of this agreement include:

\* \* \* \* \*

(c) The provisions prescribed in Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Orders 11375 and 12086, and regulations issued thereunder at 41 CFR chapter 60, as amended.

(d) The requirements of section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60-741, requiring Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) The requirements of section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701, and the regulations issued thereunder at 41 CFR parts 60-250 and 61-250, requiring Federal contractors to take affirmative action to employ and advance in employment qualified special disabled and Vietnam Era veterans.

6. Section 202.6 is amended by revising paragraphs (b) and (e)(1) to read as follows:

**§ 202.6 Collateral security.**

\* \* \* \* \*

(b) *Acceptable security.* Types and valuations of acceptable collateral security will be specified by the Secretary of the Treasury in Treasury procedural instructions.

\* \* \* \* \*

(e) *Disposition of principal and interest payments of the pledged securities after a depository is declared insolvent—(1) General.* In the event of the depository's insolvency or closure, or in the event of the appointment of a receiver, conservator, liquidator, or other similar officer to terminate its business, the depository agrees that all principal and interest payments on any security pledged to protect public money due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States, including those not arising out of the depository relationship.

\* \* \* \* \*

7. Section 202.7 is amended by revising paragraph (a) to read as follows:

**§ 202.7 Maintenance of balances within authorizations.**

(a) Federal Government agencies shall contact the Department of the Treasury, Financial Management Service, before making deposits with a financial institution insured by a State or agency thereof or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts. The contact should be directed to the Cash Management Policy and Planning Division, Federal Finance, Financial Management Service, Department of the Treasury, Washington, DC 20227.

\* \* \* \* \*

Dated: August 21, 1997.

**Russell D. Morris,**  
Commissioner.

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