

gather information to verify that a licensee is meeting the objective of ensuring adequate protection of worker health and safety from exposure to radiation from radioactive material during routine operation.

In addition to performing these inspection procedures, NRC resident inspectors regularly tour the plant, including areas containing radioactive waste management systems. If a degraded condition is identified by the licensee or reported to the licensee by the NRC, the condition is evaluated and corrective action taken as appropriate in accordance with the plant's corrective action program. In addition, condition reports are trended by licensees. Further evaluation is done and appropriate corrective actions are taken if an adverse trend is identified. Periodic inspections of the corrective action program are conducted in accordance with NRC Inspection Procedure 71152, "Identification and Resolution of Problems," to verify that licensees are identifying and correcting plant problems. The regulatory oversight process increases public confidence and complements the performance-based regulations that establish exposure limits and design objectives to not only meet those limits but to keep radiological dose levels ALARA.

In summary, the NRC has regulatory requirements and licensees implement programs and practices that provide reasonable assurance that exposures to radiation will remain within permissible levels consistent with Appendix I to 10 CFR part 50 design objectives for public exposures and within 10 CFR part 20 limits and ALARA for occupational exposures, irrespective of the cause. The Commission has determined that maintaining doses within these design objectives and dose limits represent "small" environmental consequences. The petitioner did not raise any information that would challenge the conclusions of the GEIS that the impacts of radiation doses to the public and occupational exposures will be "small" for the license renewal term.

### Conclusion

The NRC staff finds that the information presented in the petition does not support rulemaking to revise 10 CFR parts 51 and 54 to include aging management of the liquid and gaseous radioactive waste management systems during the license renewal term. If new information in the future provides a basis that aging degradation of the liquid and gaseous radioactive waste management systems needs aging management consideration under 10

CFR parts 51 and 54, then the NRC may revisit the need for rulemaking.

For the reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 5th day of December, 2001.

For the Nuclear Regulatory Commission.  
**William D. Travers,**  
*Executive Director for Operations.*  
 [FR Doc. 01-30927 Filed 12-17-01; 8:45 am]  
**BILLING CODE 7590-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 360

RIN 3064-AB92

### Payment of Post-insolvency Interest in Receiverships With Surplus Funds

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Deposit Insurance Corporation is publishing for notice and comment a proposed rule regarding the payment of post-insolvency interest in insured depository institution receiverships with surplus funds. The purpose of the rule is to establish a single uniform interest rate, calculation method, and payment priority for post-insolvency interest. The proposed rule provides that where funds remain after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act; paid at the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter; adjusted each quarter after the receivership is established; and based on a simple interest method of calculation.

**DATES:** Comments must be received by February 19, 2002.

**ADDRESSES:** Send written comments to Robert E. Feldman, Executive Secretary, Attention: comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station located at the rear of the 17th Street building on F Street on business days between 7 a.m. and 5 p.m. Comments may also be faxed or emailed (FAX number (202) 898-3838; Internet address: [comments@FDIC.gov](mailto:comments@FDIC.gov)). Comments may be posted on the FDIC internet site at <http://www.fdic.gov/>

[regulations/laws/Federal/propose.html](http://regulations/laws/Federal/propose.html) and may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Thomas Bolt, (202) 736-0168; or Rodney Ray, (202) 898-3556.

### SUPPLEMENTARY INFORMATION:

#### I. Background

For receiverships established after August 10, 1993, payment of receivership claims is governed by section 11(d)(11)(A) of the Federal Deposit Insurance Act, which section is also known as the national depositor preference statute. Because the national depositor preference statute does not specifically mention post-insolvency interest, and in the absence of a regulation regarding its payment, the FDIC's practice in receiverships subject to the national depositor preference statute that have surplus funds has been to follow the common law rule. The common law rule is that post-insolvency interest should be paid pro rata to all creditors regardless of priority. The exception to this approach is the case of an institution subject to a state law that specifically provides for a different distribution priority. (Several states' statutes provide that after the principal amounts of all claims within the same class have been satisfied, interest is to be paid at the same priority as the claim on which it accrues.) With respect to the interest rate for post-insolvency interest, the FDIC, in receiverships subject to the national depositor preference statute, has used the federal judgment rate for federal or "federalized" institutions (state-chartered institutions where the FDIC has exercised its self-appointment authority under section 11(c) of the FDI Act). For state institutions, the FDIC used the applicable rate provided for by state law. Consequently, different distribution priorities and interest rates have been used depending on the type of institution involved and the applicable law.

In December 2000, Congress granted the FDIC express rulemaking authority regarding the payment of post-insolvency interest in receiverships with surplus funds. The American Homeownership and Economic Opportunity Act of 2000 added new subparagraph (C) to section 11(d)(10) of the FDI Act, which reads as follows:

**(C) Rulemaking Authority of Corporation.** The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform

interest rate for or to make payment of post-insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

By virtue of this rulemaking authority, the proposed rule regarding post-insolvency interest would preempt any inconsistent state law by providing a single uniform interest rate and priority of distribution for post-insolvency interest in receiverships established after the rule becomes effective. *See City of New York v. FCC*, 486 U.S. 57, 63 (1988) (regulation promulgated by federal agency acting within the scope of its congressionally delegated authority may preempt state law). The proposed rule will apply to receiverships established after the effective date of the rule. Historically, relatively few receiverships have generated sufficient recoveries to enable post-insolvency interest to be paid. Consequently, the proposed rule will probably apply to only a small number of receiverships in the future.

## II. The Proposed Rule

New section 11(d)(10)(C) of the FDI Act provides that post-insolvency interest will be paid after satisfaction of the principal amount of all creditor claims. The proposed rule provides that after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A), the national depositor preference statute. This differs from the FDIC's existing practice of following the common law rule that post-insolvency interest should be paid pro rata to all creditors regardless of priority, except in the case of an institution subject to a state law that specifically provides for a different distribution priority. Nevertheless, the approach in the proposed rule appears to be more consistent with Congress's objective, as expressed in the national depositor preference statute, that the deposit liabilities be preferred over other liabilities in the liquidation of an insured depository institution.<sup>1</sup>

<sup>1</sup> According to the legislative history, Congress enacted depositor preference primarily to reduce the FDIC's cost of resolving failed institutions by increasing its recoveries as subrogee of insured deposit claims, thereby benefiting the deposit insurance funds. "Under depositor preference, the FDIC and RTC will have a first claim on the assets of all failed banks and thrifts, thereby increasing the savings to the Federal deposit insurance funds." 139 Con. Rec. H6150 (daily ed. Aug. 5, 1993) (statement of Rep. Gonzalez). Furthermore, Congress was aware that depositor preference would result in diminished recoveries for general

The alternative approach would be to follow the common law rule and pay post-insolvency interest on a pro rata basis to all creditors, without regard to the priority of payment of the principal amount of a creditor's claim under section 11(d)(11)(A). Depending on the amount of assets available in a receivership to pay post-insolvency interest, either approach could affect the recoveries of certain classes of creditors.<sup>2</sup>

If post-insolvency interest was paid to receivership creditors based on the priority accorded the principal amount of a creditor's claim under section 11(d)(11)(A), creditors holding deposit claims (including the FDIC's subrogated deposit claim against the receivership) would receive all of their post-insolvency interest payments, before the receivership creditors holding claims in the lower priority classes received any post-insolvency interest payments. This approach, therefore, would result in post-insolvency interest payments being made to the depositors of the failed institution, but it may also result in little or no post-insolvency interest payments being made to creditors holding claims in the lower priority classes. Also, if federal income tax claims have been allowed against the receivership estate, this approach, combined with federal tax laws and tax regulations, may result in the federal income tax claims being paid pro rata with post-insolvency interest payments to the general creditors of the receivership estate.<sup>3</sup>

Alternatively, if post-insolvency interest was paid to all receivership creditors holding allowed claims on a pro rata basis, regardless of the priority accorded the principal amount of the underlying claim under section 11(d)(11)(A), all of the receivership's creditors (except the Internal Revenue Service) would receive a pro rata share of the assets available for post-insolvency interest payments. Again, a

creditors. *See* H.R. Rep. No. 111, 103d Cong., 1st Sess. 1993, U.S.C.C.A.N. 378.

<sup>2</sup> The following discussion is provided to illustrate the potential impact that selecting one distribution method over the other could have on different classes of receivership creditors. The FDIC believes, however, that the actual impact of either approach will depend significantly on the particular facts and circumstances surrounding future receiverships, therefore, the following discussion is based on generalized observations of how receivership distributions in future FDIC-administered receiverships might be affected and is not an attempt to describe definitively how any particular class of creditors will be affected by either approach.

<sup>3</sup> The proposed rule would not affect the calculation or accrual of interest on any federal income tax liability pursuant to sections 6601 and 6621 of the Internal Revenue Code.

combination of this approach with federal tax laws and tax regulations, however, may result in the federal income tax claims against the receivership being paid only after all of the other receivership creditors (including subordinated debt holders) had received post-insolvency interest payments, but before any distributions were made to the equityholders of the failed institution.

Another component of the proposed rule involves the interest rate to be applied for purposes of calculating post-insolvency interest payments. The FDIC believes a publicly available, market-based rate would be preferable to a single numerical interest rate because the market-based rate should be more reflective of the interest rate environment in existence during the life of future receiverships. In addition, as indicated earlier, the FDIC has utilized the federal judgment rate in receiverships of federally chartered institutions and in federalized receiverships of state institutions to calculate post-insolvency interest payments. In the proposed rule, however, the post-insolvency interest rate for all FDIC-administered receiverships would be based on the coupon equivalent yield of the average discount rate set on the three-month Treasury bill, rather than the federal judgment rate. This rate was selected, instead of the federal judgment rate, because the three-month Treasury bill is considered to be widely recognized as a cash management investment performance benchmark and its yield has historically tracked, to some degree, changes in the rate of inflation.

Whether the interest rate should be fixed or "float" is also an issue addressed in the proposed rule. Presently, when a new receivership is established, if assets ultimately become available for post-insolvency interest payments, the rate that exists on the date the receivership is established is fixed for purposes of calculating post-insolvency interest. This approach is consistent with the way the federal judgment rate is applied to judgments entered by the federal courts because the allowance of a claim against a receivership estate has been viewed as the general equivalent of a judgment being entered against the receivership estate. This approach may not be reflective, however, of the economic conditions and interest rate environment in existence during the life of the receivership. Therefore, the proposed rule provides that the post-insolvency interest rate would be adjusted quarterly. This is being proposed to mitigate interest rate risk

due to changes in economic conditions during the life of the receivership.

Finally, the proposed rule provides that post-insolvency interest distributions would be calculated using a simple interest method, rather than a compound interest method. The simple interest method is proposed because it appears to provide a reasonable amount of interest to compensate receivership creditors for the time value of money owed from the time the receivership is established until dividend payments are received.

### III. Request for Public Comment

The FDIC hereby solicits comments on all aspects of the proposed rule, and specifically whether post-insolvency interest should be paid according to the order of priority described in the national depositor preference statute or alternatively pro rata to all creditors regardless of priority.

### IV. Paperwork Reduction Act

The proposed rule will not involve any collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

### V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule will only apply to FDIC-administered receiverships established after the effective date of the rule, and it does not impose new reporting, recordkeeping or other compliance requirements on receivership creditors. The proposed rule continues the FDIC's existing practice of making post-insolvency interest distributions to creditors holding proven claims in surplus receiverships prior to making distributions to equityholders, based on their equity interests, in a failed insured depository institution. In addition, the proposed rule will provide interested parties, including small entities, with greater certainty in future FDIC-administered receiverships by establishing a single uniform interest rate and method for making post-insolvency interest distributions. Accordingly, the Act's requirements relating to an initial regulatory flexibility analysis are not applicable.

## VI. The 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 (Public Law 105-277, 112 Stat. 2681).

### List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations. For the reasons set forth in the preamble, the FDIC Board of Directors proposes to amend 12 CFR part 360 as follows:

### PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority for part 360 is revised to read as follows:

**Authority:** 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101-73, 103 Stat. 357.

2. Section 360.7 is added to part 360 to read as follows:

#### § 360.7 Post-insolvency interest.

(a) *Purpose and scope.* This section establishes rules governing the calculation and distribution of post-insolvency interest to creditors with proven claims in all FDIC-administered receiverships established after [effective date of final rule].

(b) *Definitions*—(1) *Equityholder.* The owner of an equity interest in a failed depository institution, whether such ownership is represented by stock, membership in a mutual association, or otherwise.

(2) *Post-insolvency interest.* Interest calculated from the date the receivership is established on proven creditor claims in receiverships with surplus funds.

(3) *Post-insolvency interest rate.* For any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter, and adjusted each quarter thereafter.

(4) *Principal amount.* The proven claim amount and any interest accrued thereon as of the date the receivership is established.

(5) *Proven claim.* A claim that is allowed by a receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a

receivership by a court with jurisdiction to adjudicate the claim.

(c) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction by the receiver of the principal amount of all creditor claims.

(2) The receiver shall distribute post-insolvency interest at the post-insolvency interest rate prior to making any distribution to equityholders. Post-insolvency interest distributions shall be made in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A).

(3) Post-insolvency interest distributions shall be made at such time as the receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be distributed on the outstanding balance of a proven claim, as reduced from time to time by any interim dividend distributions, from the date the receivership is established until such time as the principal amount of a proven claim has been distributed but not thereafter.

(4) Post-insolvency interest shall be determined using a simple interest method of calculation.

By order of the Board of Directors.

Dated at Washington, DC this 10th day of December, 2001.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 01-31162 Filed 12-17-01; 8:45 am]

BILLING CODE 6714-01-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1750

RIN 2550-AA23

#### Risk-Based Capital

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Proposed regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing to amend Appendix A to Subpart B of 12 CFR Part 1750 Risk-Based Capital. The effect of these amendments would be to modify provisions relating to counterparty haircuts, multifamily loans, and refunding and to make several technical