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Rules and Regulations

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 330 and 347

RIN 3064–AD36

Deposit Insurance Regulations; Temporary Increase in Standard Coverage Amount; Mortgage Servicing Accounts; Revocable Trust Accounts; International Banking; Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending its deposit insurance regulations to: Reflect Congress's extension, until December 31, 2013, of the temporary increase in the standard maximum deposit insurance amount (''SMDIA'') from $100,000 to $250,000; finalize the interim rule, with minor modifications, on revocable trust accounts; and finalize the interim rule on mortgage servicing accounts. The FDIC is also adopting technical, conforming amendments to its international banking regulations to substitute several existing references to ''$100,000'' with references to the SMDIA.

DATES: *Effective Date:* The final rule is effective October 19, 2009.

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SUPPLEMENTARY INFORMATION:

Overview

In the last quarter of 2008, the FDIC issued interim rules on three deposit-insurance related matters: (1) The temporary increase in the SMDIA from $100,000 to $250,000; (2) revisions to the rules on revocable trust accounts; and (3) revisions to the rules on mortgage servicing accounts. In this final rule, the FDIC is amending its insurance regulations to reflect Congress's extension of the temporary increase in the SMDIA (from $100,000 to $250,000) through December 31, 2013, and finalizing the interim rules on revocable trust accounts and mortgage servicing accounts. The four-year extension of the increase in the SMDIA, which necessitates revisions to the deposit insurance regulations and examples therein, also affords the FDIC with the opportunity to now make technical amendments to the FDIC's international banking regulations (12 CFR Part 347) to replace several references therein to a ''$100,000'' benchmark with references to the SMDIA, consistent with the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. 109–173).

I. Extension of Temporary Increase in the SMDIA

Background

The Emergency Economic Stabilization Act of 2008 temporarily increased the SMDIA from $100,000 to $250,000, effective October 3, 2008, through December 31, 2009.[1] On October 17, 2008, the FDIC adopted an interim rule amending its deposit insurance regulations to reflect this temporary increase in the SMDIA.[2] Subsequent to the issuance of this interim rule, on May 20, 2009, the President signed the Helping Families Save Their Homes Act of 2009, which, among other provisions, extended the temporary increase in the SMDIA from December 31, 2009 to December 31, 2013.[3] After December 31, 2013, the SMDIA will, by law, return to $100,000.

The Final Rule

The final rule amends the FDIC's deposit insurance rules (12 CFR Part 330) to indicate that the increase in the SMDIA from $100,000 to $250,000 is effective through December 31, 2013. In light of this long-term extension of the SMDIA, the FDIC also has updated the deposit insurance coverage examples provided in the insurance rules to reflect $250,000 as the SMDIA. The FDIC believes this will help to avoid any confusion that might result among depositors and financial institution employees if the examples continue to employ the $100,000 SMDIA and related numerical values.

II. Deposit Insurance Coverage of Revocable Trust Accounts

The Interim Revocable Trust Account Rule

In September 2008, the FDIC issued an interim rule designed to make the coverage rules for revocable trust accounts easier to understand and apply.[4] In particular, the interim rule eliminated the concept of ''qualifying beneficiaries.'' The elimination of the ''qualifying beneficiary'' concept was intended to achieve greater fairness by broadening the scope of eligible beneficiaries and facilitate deposit insurance determinations on revocable trust accounts.

Also, the interim rule provided a two-part deposit insurance coverage calculation method for revocable trust accounts. Under the rule, where a trust account owner has five times the SMDIA ($1,250,000) or less in revocable trust accounts at one FDIC-insured institution, the owner is insured up to the SMDIA ($250,000) per beneficiary—without regard to the exact beneficial interest of each beneficiary in the trust. For a revocable trust account owner with *both* more than $1,250,000 and more than five different beneficiaries named in the trust(s), the interim rule insures the owner for the greater of either: $1,250,000, or the aggregate total of all the beneficiaries' actual interests in the trust(s) limited to $250,000 for each beneficiary.

In addition, the interim rule sought to simplify the application of the deposit insurance rules to both life-estate interests and to irrevocable trusts springing from a revocable trust. The interim rule simplified the deposit insurance coverage rules to deem the value of each life estate interest to be the SMDIA amount. Thus, for example,

[1] Public Law 110–343 (Oct. 3, 2008).

[2] 73 FR 61658 (Oct. 17, 2008).

[3] Public Law 111–22 (May 20, 2009).

[4] 73 FR 56706 (Sept. 30, 2008).

where the owner creates a living trust account and provides a life estate interest for the owner's spouse, in addition to specific bequests to named beneficiaries, the spousal interest is deemed to be the SMDIA.

Another complication is presented when an irrevocable living trust springs from a revocable trust upon the owner's death. Under the prior rules, the coverage of the trust account often would decrease because the FDIC's rules governing irrevocable trust accounts were stricter than the rules governing revocable trust accounts.[5] To prevent this decrease in coverage, the interim rule provided that irrevocable trust accounts would be governed by the same rules as revocable trust accounts when the irrevocable trust is created through the death of the owner (grantor) of a revocable living trust.

Finally, the interim rule solicited specific comment on the effect that the revocable trust simplifications enunciated in the interim rule might have on the Deposit Insurance Fund (''DIF'') reserve ratio.[6]

The FDIC solicited comment on all aspects of the interim rule, and explicitly solicited comment on: (1) Whether the $1,250,000 threshold is a proper benchmark for distinguishing coverage for revocable trust owners based on the beneficial interests of the trust beneficiaries; (2) whether the FDIC's irrevocable trust accounts rules should be revised in order that all trusts are covered by similar rules; and (3) what effect the interim rule will have on the level of insured deposits.

Comments Received on the Interim Revocable Trust Rule

The FDIC received eighteen comments on the interim rule for revocable trust accounts. These comments included one from a large bank trade association representing all types of banks, one from a bank trade association representing community banks, and one from a smaller trade association representing community and regional banks, and thrifts, operating in one particular State. The FDIC also received fourteen comments from private citizens and one comment from some members of a national trade association for lawyers. Overall, these comments were highly favorable.

Eight commenters addressed the interim rule's overall goal of, and success at achieving, simplification, and applauded the FDIC's efforts to clarify the deposit insurance rules. One commenter advocated greater clarity in the application of the revocable trust rule's coverage of trust accounts with balances exceeding $1,250,000 and naming more than five beneficiaries, and another generally asserted that the rule contained ambiguities.

With regard to specific issues within the interim rule, ten commenters expressed strong support for the interim rule's deletion of the former rule's ''qualifying beneficiary'' concept. One commenter advocated that the effective date of this change be made retroactive to an earlier point in time in order to provide favorable treatment to depositors who had uninsured deposits in bank failures occurring in early 2008. In response to the FDIC's specific solicitation of comment on the interim rule's use of a $500,000 benchmark (presently $1,250,000) for delineating separate deposit insurance treatment for higher-dollar revocable trust interests, five commenters deemed this to be a reasonable benchmark, although one advocated that the amount be raised significantly. One commenter observed that because most owners of a revocable trust account at an insured depository institution will commonly fall below the benchmark, the interim rule's lower-dollar coverage approach—that fails to distinguish unequal beneficial interests—will simplify coverage.

In response to the interim rule's specific solicitation of comment regarding the Deposit Insurance Fund, one commenter suggested that it is likely difficult to clearly determine whether the interim rule will result in a net increase in the level of insured deposits. In short, the commenter postulated that, while the increase in deposit insurance limits and other changes made in the interim rule may permit more deposits to be deemed ''insured,'' it may also be the case that the rule's effect will be to simply permit depositors to leave higher account sums at one insured depository institution instead of having to spread such revocable trust deposits over multiple institutions.

Four commenters expressly requested that the FDIC clarify the rules regarding the proper manner of ''titling'' a payable-on-death (''POD'') account in order to ensure that the revocable trust account funds are fully insured. Specifically, one citizen commenter relayed that she had received conflicting advice from numerous local banks as to whether or not the title of her revocable trust POD account had to expressly include the acronym ''POD,'' the phrase ''in trust for'' (''ITF''), or whether it had to include the name of a beneficiary in the title, either along with, or without, such acronyms. The commenter was unsure whether current FDIC rules deem it sufficient that the other account records at the depository institution contain this information. This commenter advocated that the burden should not fall on the public to learn and clarify the titling rules. Another commenter advocated eliminating the requirement that the POD account title contain the POD/ITF designation, and asserted that it should be sufficient that the owner's account records at the bank reflect the beneficiaries. A third commenter expressed the view that banks appear to take different approaches to titling these accounts and recommended uniform rules to address this titling issue. Two of these commenters suggested that some banks' software does not easily permit the addition of ''POD'' or ''ITF'' to account titles. One bank trade association observed that the purpose of the account titling requirement is to facilitate FDIC staff's ability, at resolution, to quickly determine deposit insurance eligibility, and asked whether a bank's utilization of a computer code in the title to denote account ownership could be deemed sufficient to meet the revocable trust account titling requirements. On a separate titling issue, one commenter asked that the FDIC clarify that an owner may, in naming a POD account, name a revocable trust as a beneficiary.

The FDIC expressly solicited comment on whether the FDIC's irrevocable trust account rules should be revised so that all trusts are covered by substantially the same rules. Four comments addressed the interim rule's continuing application of the revocable trust rules to a living trust after the death of the owner (and notwithstanding the fact that such trust converts to an irrevocable trust upon such event), and all commented favorably. These commenters also urged that the deposit insurance rules for

[5] For example, assume that account owner ''A'' establishes a living trust that names three children as beneficiaries. Assume also that the trust agreement specifies that the revocable trust shall become an irrevocable trust upon the owner's (grantor's) death. In this example, during the life of the owner, the insurance coverage of an account in the name of the trust would be determined by multiplying the number of beneficiaries (3) by the SMDIA ($250,000). Thus, the account would be insured up to $750,000. Following the death of the owner, however, the coverage would change because the trust itself would change from a revocable trust to an irrevocable trust. Under the prior rules, the coverage of an irrevocable trust account would depend upon whether the interests of the beneficiaries were contingent (for example, contingent upon graduating from college or contingent upon the discretion of the trustee). Assuming that all beneficial interests were contingent, the coverage of the account would be $250,000. Thus, in this example, the coverage would decrease from $750,000 to $250,000 following the death of the owner (and following the expiration of the FDIC's six-month grace period).

[6] The reserve ratio is determined by dividing the DIF fund balance by the estimated insured deposits by the industry, 12 U.S.C. 1817(1).

irrevocable and revocable trusts should be the same.

One commenter also expressly advocated that the FDIC clarify that when a ''sole proprietor'' is a named beneficiary, then the sole proprietor is covered by the rule in his or her individual capacity. Lastly, one commenter recommended that the definition of ''non-contingent trust interest'' be expanded to include the interest of a discretionary beneficiary and presumptive remainderman of a discretionary trust.

The Final Revocable Trust Rule

The final rule closely follows the interim rule, with minor revisions. Notably, in light of the statutory extension of the temporary increase in the SMDIA, the final rule reflects the new $250,000 SMDIA, the new $1,250,000 benchmark for revocable trust account coverage following this change, and revised examples employing both of these dollar values and revised values for the hypothetical sums within the examples to enhance their illustrative utility. We also have provided additional examples illustrating how the revised rules would apply. Pursuant to statute, December 31, 2013 is the ending date for the $250,000 SMDIA, and after this date the SMDIA will revert to $100,000. At that time the FDIC will revisit the need to revise these limits and examples.

In response to several specific questions raised by commenters about the titling requirements for revocable trust accounts, clarifying language has been incorporated into the final rule to address titling of revocable trust accounts. Simply, the rule provides that, for revocable trust accounts, ''title'' includes an insured depository institution's electronic deposit account records. In addressing this issue, the FDIC is retaining the requirement that the title of a revocable trust account identify the account as such in order to qualify for coverage under the revocable trust account rules; however, the final rule clarifies that the FDIC will consider information in an insured depository institution's electronic deposit account records to determine if the titling requirement is satisfied. For example, the FDIC would recognize an account as a revocable trust account even if the account signature card does not designate the account as a revocable trust account as long as the institution's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.

The final rule, like the interim rule, eliminates the concept of ''qualifying beneficiaries,'' and requires only that a revocable trust beneficiary be a natural person, or a charity or other non-profit organization. This change was universally applauded by commenters to the interim rule. The final rule also incorporates the interim rule's two-part calculation method for deposit insurance coverage of revocable trust accounts. While, as a result of the temporary increase in the SMDIA, the benchmark between the lower-dollar and higher-dollar revocable trust deposit insurance treatments has increased to $1,250,000 (from $500,000 as set forth in the originally-issued interim rule), it is anticipated that the lower-balance treatment for revocable trust ownership interests falling below $1,250,000 at one institution will likely capture most revocable trust accounts, and this should advance the FDIC's goals of simplifying the treatment of unequal beneficial interests and quickening deposit insurance coverage determinations. The deposit insurance coverage calculation method for revocable trust ownership interests that are both above this $1,250,000 benchmark and involve more than five beneficiaries, consistent with the interim rule, will ensure that reasonable limits remain on the maximum coverage available to revocable trust account owners and avoid the potential of unlimited coverage being afforded to such accounts through contrived trust structures. Moreover, consistent with the interim rule, where a POD account owner names his or her living trust as a beneficiary of the POD account, for insurance purposes, the FDIC will consider the beneficiaries of the trust to be the beneficiaries of the POD account.

III. Mortgage Servicing Accounts

Background

The FDIC's deposit insurance regulations include specific rules addressing the deposit insurance coverage of payments collected by mortgage servicers and deposited in accounts at insured depository institutions (''mortgage servicing accounts''). 12 CFR 330.7(d). Accounts maintained by mortgage servicers in a custodial or other fiduciary capacity may include funds paid by mortgagors (borrowers) for principal and interest, and may also include funds mortgagors advance as amounts held for the payment of taxes and insurance premiums.

Historically, under section 330.7(d), funds representing principal and interest payments in a mortgage servicing account were insured for the interest of each *owner* (mortgagee, investor or security holder) in those accounts. On the other hand, funds maintained by a servicer in a custodial or fiduciary capacity representing payments by mortgagors of taxes and insurance premiums are added together and insured for the ownership interest of each *mortgagor* in those accounts. Thus, funds representing payments of principal and interest were insurable on a pass-through basis to each mortgagee, investor, or security holder, while funds representing payments of taxes and insurance have been insurable on a pass-through basis to each mortgagor or borrower. This treatment was consistent with the FDIC's longstanding view, dating from the adoption of the rules, that principal and interest funds are owned by the owners (or mortgagee, investor or security holder) on whose behalf the servicer, as agent, accepts the principal and interest payments, and are not funds owned by the borrowers. Taxes and insurance funds, on the other hand, are insured to the mortgagors or borrowers under the view that the latter funds are still owned by the borrower until the servicer actually pays the tax and insurance bills.

In October of last year, the FDIC issued an interim rule addressing the insurance coverage of mortgage servicing accounts.[7] In the interim rule, the FDIC acknowledged that securitization methods for mortgages have become increasingly complex, with multi-layer securitization structures possible, and indicated that as a consequence it has become both more difficult and time-consuming for a servicer to identify and determine the share of any investor in a securitization and in the principal and interest funds on deposit at an insured depository institution. Prior to the issuance of the interim rule, the FDIC had become increasingly concerned that, in the event of a failure of an FDIC-insured depository institution, a servicer holding a deposit account in the institution would have a difficult and time-consuming task to identify every security holder in the securitization and determine his or her share. Further, the FDIC believed that application of the prior deposit insurance rule could result in delays in the servicer receiving the insured amounts, and result in losses for amounts that, due to the complexity of the securitization agreements, could not be attributed to the particular investors to whom the funds belong. Ultimately, because the FDIC concluded that application of the previous rule could potentially result in increased losses to otherwise insured depositors, lead to withdrawal of deposits for principal and

[7] 73 FR 61658 (Oct. 17, 2008).

interest payments from depository institutions, and unnecessarily reduce liquidity for such institutions, the FDIC issued the interim rule.

In issuing the interim rule, the FDIC sought to make the deposit insurance coverage rules for mortgage servicing accounts easy to understand and apply. Moreover, because the considerable sum of principal and interest funds on deposit at insured depository institutions serve as a significant source of liquidity for the institutions and a source of credit to the institutions' respective communities, the FDIC sought to prevent the application of the insurance rules from prompting any inadvertent, adverse consequences. To address these aims, as well as the practical issues presented by increasingly complex securitization methods, the interim rule determined deposit insurance coverage on principal and interest payments in a mortgage servicing account on a per-mortgagor (or per-borrower) basis—and not on a pass-through basis to each mortgagee, investor, or security holder—due to the fact that servicers are able to identify mortgagors more quickly than investors. This approach enables the FDIC to pay deposit insurance more quickly. Specifically, the interim rule provided deposit insurance coverage to a mortgage servicing account based on each mortgagor's payments of principal and interest into the account up to the standard maximum deposit insurance amount of $250,000 per mortgagor.

Coverage is thus provided to the mortgagees/investors as a collective group, based on the cumulative amount of the mortgagors' payments of principal and interest into the account. This deposit insurance coverage of payments of principal and interest per mortgagor is not aggregated with, nor otherwise affects, the coverage provided to each such mortgagor in other accounts the mortgagor might maintain at the same depository institution. This is to be distinguished from the deposit insurance coverage afforded to payments of taxes and insurance premiums. Consistent with their treatment historically under the deposit insurance rules, amounts in a mortgage servicing account that represent payments for taxes and insurance are insured on a pass-through basis as the funds of each respective mortgagor, but unlike a mortgagor's principal and interest payments in the mortgage servicing account, the payments for taxes and insurance *are* added to other individually owned funds of each mortgagor at the same institution and insured up to the applicable limit.

Comments on the Interim Rule's Mortgage Servicing Provisions

The FDIC received five comments on the interim rule addressing the deposit insurance coverage of mortgage servicing accounts. All five comments favored the interim rule's handling of deposit insurance coverage on payments of principal and interest in a mortgage servicing account on a per-mortgagor (or per-borrower) basis. These views included comments from a large bank trade association, a loan servicer, a large government sponsored enterprise, a loan securitization professional, along with one comment submitted by a national bank. Although all five commenters supported the FDIC's interim rule, several raised specific issues.

One commenter advocated that the regulations clarify that payments of taxes and insurance in mortgage servicing accounts and ''any similar accounts'' held by a servicer or paying agent should not be aggregated with personal accounts of a mortgagor, and noted that the interim rule was ''not clear'' in this regard. Two commenters urged the FDIC to apply the interim rule's treatment of principal and interest payments comprising mortgage servicing accounts to other types of servicing accounts that similarly consist of principal and interest payments but for non-mortgage loans, such as motor vehicle loans. In short, they suggested that the FDIC extend the interim rule's treatment of principal and interest cash flows to other types of loan securitizations and not simply mortgages, and suggested that these sums may raise liquidity concerns similar to those raised by mortgage loan servicing account funds.

Another commenter supported the interim rule but expressed concern that several types of mortgage servicing deposits might not be adequately insured. For example, this commenter advocated that the rules provide pass-through deposit insurance coverage, on a per-borrower basis, to other types of mortgage servicing funds, such as ''repair escrows, replacement reserve escrows, bond related escrow accounts, rental achievement escrows, and debt service escrows.'' This commenter urged the FDIC to separately insure such accounts, as well as escrows for taxes and insurance, up to the SMDIA.

The Final Rule on Mortgage Servicing Accounts

The final rule is essentially unchanged from the interim rule. Although one commenter urged that the FDIC clarify in the rules that payments of taxes and insurance in mortgage servicing accounts and any ''similar'' accounts held by a servicer should not be aggregated with personal accounts of a mortgagor, and asserted that the interim rule was ''not clear'' in this regard, the FDIC concludes that any additional clarification is unneeded. The interim rule expressly addressed this issue with respect to tax and insurance payments in servicing accounts, and specifically contrasted the deposit insurance treatment of payments of taxes and insurance with the insurance treatment afforded payments of principal and interest in servicing accounts. The interim rule provided that the FDIC's historical treatment of taxes and insurance payments had not changed. Drawing a clear distinction with principal and interest payments, the interim rule provided that taxes and insurance funds are instead ''insured to the mortgagors or borrowers on the theory that the borrower still owns the funds until the tax and insurance bills are actually paid by the servicer.''

The preamble to the interim rule indicated that, although the *principal and interest* payments in mortgage servicing accounts are *not* aggregated for insurance purposes with other accounts the mortgagor might maintain at the same insured depository institution, ''[a]s under the current insurance rules, under the interim rule amounts in a mortgage servicing account constituting payments of *taxes and insurance* premiums will be insured on a pass-through basis as the funds of each respective mortgagor,'' and such funds ''*will be added* to other individually owned funds held by each such mortgagor at the same insured institution.'' This was also made clear in the FDIC's Financial Institution Letter, FIL–111–2008, issued October 8, 2008. In short, the interim rule did not alter the FDIC's historical treatment of payments by mortgagors of tax and insurance premiums in mortgage servicing accounts.

It was also suggested that the FDIC extend the interim rule's deposit insurance treatment of principal and interest cash flows to servicing accounts for other types of loan securitizations—and not simply mortgages—such as motor vehicle loans. The FDIC declines to do so. As noted in the interim rule, the FDIC sought to address the increasing complexity of mortgage securitizations and the resulting impact these complexities have upon depositor certainty as to the application of deposit insurance rules, and have upon the timely resolution of deposit insurance determinations.

The FDIC also declines the commenter suggestion that separate insurance, on a pass-through, per-borrower basis be afforded to other types of mortgage servicing funds such as ''repair escrows, replacement reserve escrows, bond related escrow accounts, rental achievement escrows, and debt service escrows.'' As the FDIC noted in the interim rule, consistent with its previous deposit insurance rules, amounts in a mortgage servicing account constituting payments of taxes and insurance premiums are insured on a pass-through basis as the funds of each respective mortgagor and are added to other individually owned funds held by each such mortgagor at the same insured institution. The FDIC's interim rule sought to make the deposit insurance coverage rules for mortgage servicing accounts easy to understand and apply. Additionally, because principal and interest funds on deposit at insured depository institutions serve as both a significant source of liquidity for the institutions and a significant source of credit to the institution's community, the FDIC sought to ensure that no inadvertent adverse consequences resulted from the application of the deposit insurance rules. It is not clear that the suggested revisions would be consistent with either of these aims. Although commenter[s] suggested that other types of ''escrow'' funds should garner similar treatment under the insurance rules as do deposits representing tax and insurance payments, the comment does not clearly identify in what specific manner the legal rights and obligations attendant to these various types of bond-related, debt service, and rental achievement escrows are similar to the rights and obligations of mortgagors in their tax and insurance payments. Nor is it clear whether, and to what extent, such payments represent a significant liquidity source for depository institutions such that the need for more specific clarity as to deposit insurance is needed in order to avert any inadvertent consequences or losses to borrowers or investors.

IV. Technical Amendments to FDIC International Banking Regulations

The FDIC is also amending its Part 347 International Banking regulations to make technical, conforming amendments relating to the SMDIA. The FDI Reform Act introduced the term ''SMDIA'' and instituted several substantive changes to the deposit insurance coverage provisions in the FDI Act. Additionally, the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Reform Conforming Act''), Public Law 109–173, amended the International Banking Act of 1978, 12 U.S.C. 3104, necessitating the need for technical conforming amendments to substitute the term ''SMDIA'' in place of ''$100,000'' in the FDIC's International Banking regulations. 12 CFR Part 347.[8] The four-year extension in the increase in the SMDIA, which provides the FDIC with the necessity to make revisions to the deposit insurance regulations and examples therein, also affords the FDIC with the opportunity to now make technical amendments to the FDIC's international banking regulations to replace several distinct references to a ''$100,000'' benchmark with references to the SMDIA, consistent with the Reform Conforming Act.

V. Paperwork Reduction Act

The final rule will revise the FDIC's deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the final rule will not have a significant impact on a substantial number of small entities. The final rule implements the temporary increase in the SMDIA, simplifies the coverage rules for mortgage servicing accounts, and simplifies the deposit insurance rules for revocable trust accounts held at FDIC-insured depository institutions.

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

The FDIC has determined that the final 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 (Pub. L. 105–277, 112 Stat. 2681). The final rule should have a positive effect on families by clarifying the coverage rules for mortgage servicing accounts, which contain, for a period of time, the mortgage payments from borrowers, and the rules for revocable trust accounts, a popular type of consumer bank account.

[8] Per statute, the Reform Conforming Act substitution of the SMDIA in the international banking provisions was effective on April 1, 2006. Reform Conforming Act § 2; 71 FR 14629 (March 23, 2006).

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (''SBREFA'') (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

IX. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner, and has made revisions to the previous interim rule in response to commenter concerns seeking clarification of the application of the deposit insurance rules.

List of Subjects

12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

12 CFR Part 347

Bank deposit insurance, Banks, Banking, International banking; Foreign banks.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part*s* 330 and 347 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(1), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. In § 330.1, paragraph (n) is revised to read as follows:

§ 330.1 Definitions.

* * * * *

(n) *Standard maximum deposit insurance amount,* referred to as the ''SMDIA'' hereafter, means $250,000 from October 3, 2008, until December 31, 2013. Effective January 1, 2014, the SMDIA means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)). All examples in this part use $250,000 as the SMDIA.

* * * * *

■ 3. In § 330.7, paragraph (d) is revised to read as follows:

§ 330.7 Account 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 by mortgagors of principal and interest, shall be insured for the cumulative balance paid into the account by the mortgagors, 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. This provision is effective as of October 10, 2008, for all existing and future mortgage servicing accounts.

* * * * *

■ 4. In § 330.9, paragraph (b) is revised to read as follows:

§ 330.9 Joint ownership accounts.

* * * * *

(b) *Determination of insurance coverage.* The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMDIA. (Example: ''A&B'' have a qualifying joint account with a balance of $150,000; ''A&C'' have a qualifying joint account with a balance of $200,000; and ''A&B&C'' have a qualifying joint account with a balance of $375,000. A's combined ownership interest in all qualifying joint accounts would be $300,000 ($75,000 plus $100,000 plus $125,000); therefore, A's interest would be insured in the amount of $250,000 and uninsured in the amount of $50,000. B's combined ownership interest in all qualifying joint accounts would be $200,000 ($75,000 plus $125,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be $225,000 ($100,000 plus $125,000); therefore, C's interest would be fully insured.

* * * * *

■ 5. Section 330.10 is revised to read as follows:

§ 330.10 Revocable trust accounts.

(a) *General rule.* Except as provided in paragraph (e) of this section, the funds owned by an individual and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured (from other types of accounts the owner has at the same insured depository institution) in an amount equal to the total number of different beneficiaries named in the account(s) multiplied by the SMDIA. This section applies to all accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as payable-on-death accounts, in-trust-for accounts or Totten Trust accounts, and such formal trusts are commonly referred to as living trusts or family trusts. (*Example 1:* Account Owner ''A'' has a living trust account with four different beneficiaries named in the trust. A has no other revocable trust accounts at the same FDIC-insured institution. The maximum insurance coverage would be $1,000,000, determined by multiplying 4 times $250,000 (the number of beneficiaries times the SMDIA). (*Example 2:* Account Owner ''A'' has a payable-on-death account naming his niece and cousin as beneficiaries, and A also has, at the same FDIC-insured institution, another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be $750,000. This is because the account owner has named only three *different* beneficiaries in the revocable trust accounts—his niece and cousin in the first, and the same niece and a friend in the second. The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount.) (*Example 3:* Account Owner ''A'' establishes a living trust account, with a balance of $300,000, naming his two children ''B'' and ''C'' as beneficiaries. A also establishes, at the same FDIC-insured institution, a payable-on-death account, with a balance of $300,000, also naming his children B and C as beneficiaries. The maximum coverage available to A is $500,000, determined by multiplying 2 times $250,000 (the number of different beneficiaries times the SMDIA). A is uninsured in the amount of $100,000. This is because 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 and insured to the applicable coverage limits.)

(b) *Required intention and naming of beneficiaries.* (1) The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more beneficiaries must be manifested in the ''title'' of the account using commonly accepted terms such as, but not limited to, ''in trust for,'' ''as trustee for,'' ''payable-on-death to,'' or any acronym therefor. For purposes of this requirement, ''title'' includes the electronic deposit account records of the institution. (For example, the FDIC would recognize an account as a revocable trust account even if the title of the account signature card does not designate the account as a revocable trust account as long as the institution's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.) The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(2) For informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution.

(c) *Definition of beneficiary.* For purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended.

(d) *Interests of beneficiaries outside the definition of beneficiary in this section.* If a beneficiary named in a trust covered by this section does not meet the definition of beneficiary in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMDIA per owner. (*Example:* Account Owner ''A'' establishes a payable-on-death account naming a pet as beneficiary with a balance of $100,000. A also has an individual account at the same FDIC-insured institution with a balance of

$175,000. Because the pet is not a ''beneficiary,'' the two accounts are aggregated and treated as a single ownership account. As a result, A is insured in the amount of $250,000, but is uninsured for the remaining $25,000.)

(e) *Revocable trust accounts with aggregate balances exceeding five times the SMDIA and naming more than five different beneficiaries.* Notwithstanding the general coverage provisions in paragraph (a) of this section, for funds owned by an individual in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMDIA, the maximum revocable trust account coverage for the account owner shall be the greater of either: five times the SMDIA or the aggregate amount of the interests of each different beneficiary named in the trusts, to a limit of the SMDIA per different beneficiary. (*Example 1:* Account Owner ''A'' has a living trust with a balance of $1 million and names two friends, ''B'' and ''C'' as beneficiaries. At the same FDIC-insured institution, A establishes a payable-on-death account, with a balance of $1 million naming his two cousins, ''D'' and ''E'' as beneficiaries. Coverage is determined under the general coverage provisions in paragraph (a) of this section, and not this paragraph (e). This is because all funds that A holds in both living trust accounts and payable-on-death accounts, at the same FDIC-insured institution, are aggregated for insurance purposes. Although A's aggregated balance of $2 million is more than five times the SMDIA, A names only four different beneficiaries, and coverage under this paragraph (e) applies only if there are more than five different beneficiaries. A is insured in the amount of $1 million (4 beneficiaries times the SMDIA), and uninsured for the remaining $1 million.) (*Example 2:* Account Owner ''A'' has a living trust account with a balance of $1,500,000. Under the terms of the trust, upon A's death, A's three children are each entitled to $125,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's spouse. In this case, because the balance of the account exceeds $1,250,000 (5 times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust for purposes of determining coverage are: $125,000 for each of the children (totaling $375,000), $15,000 for the friend, $175,000 for the charity, and $250,000 for the spouse (because the spouse's $935,000 is subject to the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $815,000. Thus, the maximum coverage afforded to the account owner would be $1,250,000, the greater of $1,250,000 or $815,000.)

(f) *Co-owned revocable trust accounts.* (1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMDIA, subject to the limitation imposed in paragraph (e) of this section. (*Example 1:* A and B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage afforded to A and B would be $1,500,000, determined by multiplying the number of owners (2) times the SMDIA ($250,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of $750,000 and B would be entitled to revocable trust coverage of $750,000.) (*Example 2:* A and B, two individuals, establish a payable-on-death account naming their two children, two cousins, and a charity as beneficiaries. The balance in the account is $1,750,000. Neither A nor B has any other revocable trust accounts at the same FDIC-insured institution. The maximum coverage would be determined (under paragraph (a) of this section) by multiplying the number of account owners (2) times the number of different beneficiaries (5) times $250,000, totaling $2,500,000. Because the account balance ($1,750,000) is less than the maximum coverage amount ($2,500,000), the account would be fully insured.) (*Example 3:* A and B, two individuals, establish a living trust account with a balance of $3.75 million. Under the terms of the trust, upon the death of both A and B, each of their three children is entitled to $600,000, B's cousin is entitled to $380,000, A's friend is entitled to $70,000, and the remaining amount ($1,500,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each co-owned account owner, would be the greater of $1,250,000 or the aggregate amount (as to each co-owner) of the interest of each different beneficiary named in the trust, to a limit of $250,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner *A* are: $750,000 for the children (each child's interest attributable to A, $300,000, is subject to the $250,000-per-beneficiary limitation), $190,000 for the cousin, $35,000 for the friend, and $250,000 for the charity (the charity's interest attributable to A, $750,000, is subject to the $250,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage totals $1,225,000. Thus, the maximum coverage afforded to account co-owner A would be $1,250,000, which is the greater of $1,250,000 or the aggregate of all the beneficial interests attributable to A (limited to $250,000 per beneficiary), which totaled slightly less at $1,225,000. Because B has equal ownership interest in the trust, the same analysis and coverage determination also would apply to B. Thus, of the total account balance of $3.75 million, $2.5 million would be insured and $1.25 million would be uninsured.)

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a co-owned revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under § 330.9 and shall not be insured under the provisions of this section. (*Example:* If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement (under paragraph (a) of this section) that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.)

(g) For deposit accounts held in connection with a living trust that provides for a life-estate interest for designated beneficiaries, the FDIC shall value each such life estate interest as the SMDIA for purposes of determining the insurance coverage available to the account owner under paragraph (e) of this section. (*Example:* Account Owner ''A'' has a living trust account with a balance of $1,500,000. Under the terms of the trust, A provides a life estate interest for his spouse. Moreover, A's three children are each entitled to $275,000, A's friend is entitled to $15,000, and a designated charity is entitled to $175,000. The trust also provides that the remainder of the trust assets shall belong to A's granddaughter. In this case, because the balance of the account exceeds $1,250,000 ((5) five times the SMDIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: $1,250,000 or the aggregate of each different beneficiary's interest to a limit of $250,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: $250,000 for the spouse's life estate, $750,000 for the children (because each child's $275,000 is subject to the $250,000 per-beneficiary limitation), $15,000 for the friend, $175,000 for the charity, and $250,000 for the granddaughter (because the granddaughter's $310,000 remainder is limited by the $250,000 per-beneficiary limitation). The aggregate beneficial interests total $1,440,000. Thus, the maximum coverage afforded to the account owner would be $1,440,000, the greater of $1,250,000 or $1,440,000.)

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 330.13 on the insurance coverage of irrevocable trust accounts, if a revocable trust account converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners, the trust account shall continue to be insured under the provisions of this section. (*Example:* Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.)

(i) This section shall apply to all existing and future revocable trust accounts and all existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

PART 347—INTERNATIONAL BANKING

■ 6. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Title IX, Pub. L. 98–181, 97 Stat. 1153.

■ 7. In § 347.202:

■ A. Paragraph (e) is revised.

■ B. Paragraphs (v), (w) and (x) are redesignated as (w), (x) and (y), respectively, and a new paragraph (v) is added.

The revision and addition read as follows:

§ 347.202 Definitions.

* * * * *

(e) *Domestic retail deposit activity* means the acceptance by a Federal or State branch of any initial deposit of less than an amount equal to the standard maximum deposit insurance amount (''SMDIA'').

* * * * *

(v) *Standard maximum deposit insurance amount,* referred to as the ''SMDIA'' hereafter, means $250,000 from October 3, 2008, until December 31, 2013. Effective January 1, 2014, the SMDIA means $100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)).

* * * * *

■ 8. In § 347.206, paragraph (c) is revised to read as follows:

§ 347.206 Domestic retail deposit activity requiring deposit insurance by U.S. branch of a foreign bank.

* * * * *

(c) *Grandfathered insured branches.* Domestic retail accounts with balances of less than an amount equal to the SMDIA that require deposit insurance protection may be accepted or maintained in an insured branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

* * * * *

■ 9. In § 347.213, paragraph (a)(1) is revised to read as follows:

§ 347.213 Establishment or operation of noninsured foreign branch.

(a) * * *

(1) The branch only accepts initial deposits in an amount equal to the SMDIA or greater; or

* * * * *

■ 10. In § 347.215:

■ A. Paragraph (a) introductory text is revised.

■ B. Paragraph (b)(1) is revised.

The revisions read as follows:

§ 347.215 Exemptions from deposit insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be considered to be engaged in domestic retail deposit activity that requires the foreign bank parent to establish an insured U.S. bank subsidiary if the State branch accepts initial deposits only in an amount of less than an amount equal to the SMDIA that are derived solely from the following:

* * * * *

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a State branch initial deposits of less than an amount equal to the SMDIA and such deposits are not otherwise exempted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

* * * * *

Dated at Washington, DC, this 9th day of September 2009.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–22406 Filed 9–16–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2009–0770; Airspace Docket No. 09–ASW–20]

RIN 2120–AA66

Amendment to Restricted Areas R–5103A, R–5103B, and R–5103C; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends the airspace description of Restricted Areas R–5103A, R–5103B, and R–5103C; McGregor, NM. In a final rule published in the **Federal Register** on November 3, 1994, (59 FR 55030), an error was made in the airspace description to the time of designation for Restricted Areas R–5103A, R–5103B, R–5103C and R–5103D (R–5130D was subsequently revoked on January 20, 2005 (69 FR 72113)). Specifically, the time of designation stated ''0700–2000 local time, Monday–Friday, other times by NOTAM'' instead of ''0700–2000 local time Monday–Friday; other times by NOTAM''. This action corrects that error.