

March 8, 2006

MEMORANDUM TO: The Board of Directors

FROM: Douglas H. Jones
Acting General Counsel

SUBJECT: Interim Rule to Implement Reform
Act Deposit Insurance Coverage Changes

Recommendation

The Federal Deposit Insurance Reform Act of 2005 (“Reform Act”) (Pub. L. No. 109-171) made three substantive changes to the insurance coverage provisions of the Federal Deposit Insurance Act (12 U.S.C. 1813 – 1835a). The purpose of this rulemaking is to implement by regulation the deposit insurance coverage revisions made by the Reform Act and additional technical changes to the insurance statutes made by the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. No.109-173). The Reform Act provides that the insurance coverage changes become effective upon the effective date of the implementing regulations.

The Legal Division recommends that the Board of Directors authorize publication in the Federal Register of the attached interim final rule to implement, as of April 1, 2006, changes to the deposit insurance coverage rules made by the recently enacted deposit insurance reform legislation. The interim rule provides for a 60-day comment period after which the staff would review the comments and recommend to the Board adoption of a permanent final rule.

Discussion

First, the legislation provides for an inflation index to be applied to the current maximum deposit insurance amount of \$100,000, defined in the Reform Act as the “standard maximum deposit insurance amount” (“SMDIA”). Beginning April 1, 2010, and every succeeding five years, subject to approval by the Board of Directors of the FDIC and the National Credit Union Administration Board (“NCUA”), the current SMDIA could be increased by a cost-of-living adjustment. This adjustment is to be calculated according to the Personal Consumption Expenditures Chain-type Index published by the Department of Commerce and rounded down to the nearest \$10,000. The statute requires the FDIC and the NCUA to consider certain factors in determining whether to increase the SMDIA. If the agencies determine that an increase is warranted, the FDIC and the NCUA are required to publish the new SMDIA in the Federal Register and provide a corresponding

report to Congress by April 5, 2010, and every succeeding fifth year. Thereafter, the approved adjustment will automatically occur unless a Congressional act provides otherwise and will take effect on January 1st of the year immediately succeeding the year in which the new amount is calculated.

The interim final rule would make essentially technical changes which define the SMDIA, replace \$100,000 in the existing regulations with SMDIA, and reference the requirements that the SMDIA be reconsidered at 5-year intervals.

Second, the Reform Act increases the deposit insurance limit for certain retirement accounts from \$100,000 to \$250,000, also subject to inflation adjustments. The types of accounts within this category of coverage continue to be comprised of individual retirement accounts, eligible deferred compensation plan accounts and retirement accounts, such as Keogh Plan accounts and Section 401(k) plan accounts, for which plan participants have a right to direct how their funds are invested, including the ability to direct that the funds be deposited at an FDIC-insured institution. The interim rule would implement this increase in deposit insurance coverage effective April 1, 2006.

Third, the Reform Act provides per-participant coverage for employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits. This coverage is referred to as “pass-through” coverage because the insurance *passes through* the employee benefit plan administrator to each of the plan participants. The Reform Act eliminates the former requirement that an insured institution meet prescribed capital requirements before employee benefit plan deposits accepted by that institution would be eligible for pass-through coverage. As a result of the legislation, pass-through coverage for employee benefit deposits is no longer dependent on the capital level of the institution where such deposits are placed. The interim final rule would implement this change effective April 1, 2006.

Reason for Interim Rulemaking

The substantive changes to the deposit insurance rules implemented by this rulemaking will benefit depositors by increasing coverage for retirement accounts and removing a limitation on the availability of pass-through insurance coverage for employee benefit plan accounts. As such, it is desirable to implement these changes as soon as possible. The largely technical change from \$100,000 to the SMDIA will revise the regulations to make them consistent with the revised statute, thereby avoiding unnecessary confusion. Thus, we recommend that the Board conclude that the public notice and participation that ordinarily are required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that

good cause exists for waiving the customary 30-day delayed effective date. We also recommend, however, that, in order to benefit from public comments before adopting a permanent final rule, interested parties be invited to submit comments during a 60-day comment period.

Attachments

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