

August 29, 2006

MEMORANDUM TO: The Board of Directors

FROM: Douglas H. Jones
Acting General Counsel

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

Recommendation

In March 2006 the FDIC issued an interim rule to implement the deposit insurance coverage revisions made by the Federal Deposit Insurance Reform Act of 2005 (Pub. L. No. 109-171) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. No.109-173) (collectively referred to as the “Reform Act”).

The Legal Division recommends that the Board of Directors authorize publication in the Federal Register of the attached proposed final rule to permanently implement the changes to deposit insurance coverage made by the Reform Act.

Background

The Reform Act made three substantive changes to the insurance coverage provisions of the Federal Deposit Insurance Act (12 U.S.C. 1813-1835a). First, it provided 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, the current SMDIA could be increased by a cost-of-living adjustment. Second, the Reform Act increased the deposit insurance limit for “certain retirement accounts” from \$100,000 to \$250,000, also subject to the inflation adjustment. And, third, the Reform Act provided per-participant coverage to employee benefit plan accounts, eliminating the requirement that an insured depository institution meet prescribed capital requirements before employee benefit plan deposits accepted by that institution would be eligible for per-participant coverage.

We received three written comments on the interim rule. Each of the comments was from a national banking industry trade association. The first trade association simply stated its support for the interim rule. The second association stated its support for the interim rule and commended the FDIC for issuing the interim regulations and making them effective within two months of the passage of the Reform Act. The comment endorsed the FDIC’s

approach in amending its regulations to implement the deposit insurance revisions to the FDI Act.

The third banking industry trade group also expressed support for the interim rule and commended the FDIC for moving quickly to put the provisions into effect. In addition, this trade group suggested that the FDIC clarify through the use of examples the types of deposit accounts that are and are not eligible for the increased insurance coverage. The association also suggested that the FDIC provide a more detailed explanation of the term “self-directed” in connection with the eligibility of certain Keogh plan accounts and defined contribution plan accounts for the increased coverage of \$250,000.

The Final Rule

The final rule would make no substantive changes to the interim rule.¹ In response to the comment noted above, however, the preamble to the final rule would more clearly indicate the types of retirement accounts eligible and ineligible for the increased deposit insurance coverage. Also in response to the public comments, the preamble would clarify the meaning of the term “self-directed.” Staff intends to include this clarifying information in FDIC educational materials for bankers and the public on deposit insurance coverage.

As detailed in the draft final rule, the types of retirement accounts eligible for the increased coverage limit of \$250,000 are as follows:

- *Traditional individual retirement accounts (“IRAs”)* (into which individuals may make tax-deductible contributions on which the earnings are tax-deferred)
- *Roth IRAs* (into which individuals may make contributions on which the earnings are tax-free)
- *Simplified Employee Pension (“SEP”) IRAs* (into which employers may make contributions to traditional IRAs established by employees)

¹ There are technical revisions to the regulatory text. Also, during the pendency of the interim rule a Puerto Rico resident asked whether IRAs issued by FDIC-insured banks in Puerto Rico would be eligible for the \$250,000 maximum insurance coverage provided under the Reform Act. The person expressed concern that such IRAs might not meet the definition of IRAs in the applicable provision of the FDI Act, 12 U.S.C. 1821(a)(3) (“Section 11(a)(3)”). Section 11(a)(3) encompasses IRAs “described in section 408(a) of [the Internal Revenue Code]” (“Section 408(a)”). In answer to the person’s inquiry, the FDIC deems IRAs issued by banks in Puerto Rico to qualify as IRAs described in Section 408(a) because the IRA provisions of the Puerto Rico tax code are sufficiently similar to the provisions of Section 408(a). 13 L.P.R.A. 8569 (2005). This treatment of IRAs at FDIC-insured institutions in Puerto Rico is the same as the treatment of IRAs at credit unions in Puerto Rico insured by the National Credit Union Share Insurance Fund. 12 C.F.R. 745.9-2.

- *Savings Incentive Match Plans for Employees IRAs* (into which employers of eligible small companies are required to make either matching contributions to the plan or non-elective contributions paid to eligible employees regardless of whether the employee makes salary-reduction contributions to the plan)
- *Section 457 plans accounts* (deferred compensation plans provided by state and local governments, as well as not-for-profit organizations)
- *Self-directed defined contribution plan accounts*, the most common of which is the section 401(k) plan, including self-directed Section 401(k) Savings Incentive Match Plans for Employees (known as “SIMPLE 401(k)s”)
- *Self-directed Keogh plan accounts* (designed for self-employed individuals)

Accounts not eligible for the increased coverage provided for in the Reform Act include:

- *Coverdell Education Savings Accounts*
- *Health Savings Accounts*
- *Medical Savings Accounts*
- *Section 403(b) accounts* (annuity contracts for certain employees of public schools, tax-exempt organizations and ministers)
- *Defined-benefit plan accounts* (in which benefits are predetermined by an employee’s compensation, years of service and age)
- *Keogh plan accounts that are not self-directed*
- *Defined contribution plan accounts that are not self-directed*

In clarifying the meaning of “self-directed,” the preamble to the final rule notes that the term continues to mean that plan participants have the right to direct that their funds be deposited into a specific FDIC-insured institution. The preamble also refers to an FDIC advisory opinion on “self-directed” retirement accounts.

Attachments

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