

Memorandum and resolution re: Notice of Proposed Rulemaking on Definition of Insured Deposit

Summary:

FDIC staff is recommending that the FDIC Board publish for comment a proposal to amend its deposit insurance regulations, with respect to deposits carried on the books and records of foreign branches of U.S. banks, to clarify that deposits in these foreign branches are not FDIC-insured deposits. The purpose of the proposed rule is to protect the DIF against the uncertain liability that it could otherwise face as a deposit insurer for customers of foreign branches of U.S. based insured depository institutions.

Background:

A recent proposal by the United Kingdom's Financial Services Authority related to the effect of national depositor preference laws makes it likely that large U.S. banks will change their deposit agreements to make their U.K. branch deposits payable in both the United Kingdom and the United States ("dually payable"). Absent the proposed rule, such changes to the deposit agreements have the potential to increase significantly the exposure of the Deposit Insurance Fund ("DIF") by extending deposit insurance to these foreign deposits.

Additional Points:

- In 1993, Congress amended the FDI Act to include a depositor preference provision in the federal failed-bank resolution framework. "Depositor preference" generally refers to a distribution model in which the claims of depositors have priority over (i.e., are satisfied before) the claims of general unsecured creditors.
- In 1994, the Riegle Community Development and Regulatory Improvement Act amended the FDI Act to provide a framework under which deposits in foreign branches of U.S. bank could be considered deposits, if they were dually payable in the United States and in the host country of the branch.
- Under the FDI Act, funds deposited into foreign branches of United States bank are not "deposits," unless those banks make the deposits payable at an office of the bank in the United States using contractual terms to that effect.
- The statutory authority under the FDI Act has not generally been utilized by U.S. financial institutions likely in part due to the fact that, prior to the Dodd-Frank Act change to the assessment base for deposit insurance, U.S. banks would have had to pay deposit insurance premiums on dually payable deposits.
- Current foreign branch deposits total approximately \$1 trillion. A significant percentage of these branch deposits are located in the U.K.
- Under the proposed rule, while these deposits would not be insured, they could be treated as deposits for purposes for our national depositor preference laws.
- The FDIC is seeking comment on all aspects of the proposal, including whether there are other viable alternatives that would protect the DIF from potential exposure to expanded international deposit liability arising from dually payable deposits and associated operational complexities.

- The proposed rule would not affect deposits in overseas military banking facilities governed by regulations of the Department of Defense.