SMALL ENTITY COMPLIANCE GUIDE

Simplification of Deposit Insurance Rules
12 CFR Part 330

Introduction

This guide[1] is intended to help insured depository institutions (IDIs), including community banking organizations, and other interested parties understand the FDIC's recently published rule entitled "Simplification of Deposit Insurance Rules," which prospectively amends the deposit insurance rules governing certain types of trust accounts and mortgage servicing accounts. This guide addresses the trust account and mortgage servicing account rules as they will be implemented beginning on April 1, 2024. This guide does not have the effect of law or regulation. In addition to this guide, IDIs and other interested parties should review the FDIC's rule, published in the Federal Register on January 28, 2022, at 87 FR 4455, with the effective date of April 1, 2024.

Applicable Statutes

The FDI Act establishes the parameters of deposit insurance coverage, and provides coverage up to the standard maximum deposit insurance amount, currently $250,000, for each deposit "maintained by a depositor in the same capacity and the same right." 12 U.S.C. § 1821(a)(1)(C) and (E); 12 C.F.R. §330.3(a). Part 330 of the Code of Federal Regulations implements the FDI Act's deposit insurance provisions by defining the terms necessary to afford coverage under the FDI Act and providing rules for the recognition of deposit ownership in various circumstances. These rights and capacities are commonly known as insurance categories and have been defined through statutes and regulations. 12 C.F.R. §330.3(a). The final rule affects the coverage rules for the revocable trust, irrevocable trust, and mortgage servicing account categories currently found in 12 C.F.R. §§ 330.10, 330.13, and 330.7(d), respectively. The changes to the trust rules are inapplicable to trusts that have an IDI as trustee. 12 C.F.R. § 330.12.

Overview of Changes for Certain Types of Trust Deposits

The FDIC is simplifying its regulations governing deposit insurance coverage for certain types of deposits held in connection with trusts to make the regulations easier for depositors and bankers to understand, and to promote more timely deposit insurance determinations in the event of an IDI's failure. The final rule amends the deposit insurance regulations by merging the revocable trust and irrevocable trust categories, currently found in § 330.10 and § 330.13, respectively, into one category, "trust accounts," which will be codified under § 330.10. Under the final rule, coverage for deposits in the trust accounts category is determined using a simple calculation. The calculation is the same calculation that the FDIC first adopted in 2008 for revocable trust accounts with five or fewer beneficiaries. In particular, the final rule provides that certain types of trust deposits will be aggregated by grantor and insured in an amount up to the standard maximum

[1] This small entity compliance guide is issued in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857, reprinted in 5 U.S.C. §601 note.

deposit insurance amount (currently $250,000) multiplied by the number of the trust's eligible beneficiaries, not to exceed five. This, in effect, limits coverage for a grantor's trust deposits at each IDI to a total of $1,250,000 in this coverage category; in other words, maximum coverage of $250,000 per beneficiary for up to five beneficiaries. Under the final rule, coverage does not depend upon the allocation of funds among beneficiaries or contingencies in a trust agreement.

In addition to the calculation method described above, the final rule retains two other features previously used in the revocable trust deposit insurance calculation under § 330.10: (1) eligible beneficiaries and (2) future trusts. First, the definition of eligible beneficiary includes natural persons, charitable organizations, and non-profit entities recognized as such under the IRS Code of 1986. This definition was previously used in the revocable trust category, but not in the irrevocable trust category; it is being retained unaltered in the combined category. Second, future trusts are not eligible beneficiaries, but rather are viewed by the FDIC as a mechanism for disbursement of the funds. Thus, if a future trust is a beneficiary of a trust under the new rule, the FDIC will look through that entity to its beneficiaries to determine if those beneficiaries are eligible and determine how many exist. If the beneficiaries of the existing and future trusts overlap, each will be counted as a single eligible beneficiary.

Overview of Changes for Mortgage Servicing Accounts

The deposit insurance regulations include a specific rule for deposits maintained by mortgage servicers.

The final rule amends the regulation to expand the current per-borrower coverage of up to $250,000 to include any funds paid into the account to satisfy the principal and interest obligation of the mortgagors to the lender, regardless of the origin of the funds. This extends per-borrower coverage to funds paid into the account by parties other than the borrower, including servicers, as long as the funds are used to satisfy mortgagors' principal and interest obligations to the lender. The changes made by the final rule will provide consistent treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender and will address an aspect of servicing arrangements that was not previously covered by the mortgage servicing rule.

Effect on Small Entities

The forthcoming changes in coverage for revocable trust deposits currently insured under § 330.10, irrevocable trust deposits currently insured under § 330.13, and mortgage servicing accounts do not require any action on the part of IDIs or depositors. Some depositors, namely those with in excess of $1.25 million in trust deposits at a particular IDI, may want to review their coverage and make changes to either their trust agreements or trust accounts given the new coverage limits that take effect on April 1, 2024.

One comment to the proposed rule suggested that banks would conduct outreach to affected depositors prior to the effective date of the final rule. While affected depositor outreach is not required, IDIs that choose to conduct outreach may wish to utilize the following methodology: (1) aggregate trust accounts that would be insured in this new combined category of insurance, both revocable (formal or informal, including payable-on-death accounts) and irrevocable, by grantor,

(2) review the aggregate account balances held in those aggregated accounts, and (3) determine the number of unique, eligible beneficiaries allocable to each of those accounts. If the aggregate account balance exceeds $250,000 multiplied by the number of unique, eligible beneficiaries, or $1,250,000 total for accounts with five or more beneficiaries, those depositors may wish to review their accounts or agreements and make adjustments, based on the new rule. Further, any depositor education materials that an IDI maintains will need to be updated to reflect the changes in coverage made by the final rule. In addition, the FDIC is planning to update its publications and other materials to help educate the industry and depositors on the changes.

Effective Date

The final rule takes effect on April 1, 2024.

Resources

"Simplification of Deposit Insurance Rules" 87 Fed. Reg. 4455 (January 28, 2022).

FDIC's Final Rule to simplify deposit insurance, 87 Fed. Reg. 4455 (January 28, 2022), available at https://www.fdic.gov/news/press-releases/2022/pr22004.html

FIL – 07-2022 Final Rulemaking on Simplification of Deposit Insurance Rules for Trust and Mortgage Servicing Accounts (January 21, 2022) available at https://www.fdic.gov/news/financial-institution-letters/2022/fil22007.html