

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 328, 330, and 347

RIN [number]

**Deposit Insurance Regulations; Permanent Increase in Standard Coverage Amount;
Advertisement of Membership; International Banking; Foreign Banks**

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final Rule.

SUMMARY: On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank” Act). Section 335 of the Dodd-Frank Act made permanent the standard maximum deposit insurance (“SMDIA”) amount of \$250,000. The FDIC is conforming its regulations to reflect this recent congressional action.

DATES: *Effective Date:* [Insert date of publication in the Federal Register].

Mandatory Compliance Date for Revision to 12 C.F.R. Part 328 (FDIC

Official Sign): January 3, 2011.

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SUPPLEMENTARY INFORMATION:

Overview

In this final rule, the FDIC is making conforming changes to its insurance regulations (12 C.F.R. Part 330), international banking regulations (12 C.F.R. Part 347) and advertising regulations (12 C.F.R. Part 328) to reflect Congress's action making permanent the increase in the SMDIA (from \$100,000 to \$250,000).

I. 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 ("Helping Families Act"), which, among other provisions, extended the temporary increase in the SMDIA from December 31, 2009, to December 31, 2013.³ On September 17, 2009, the FDIC adopted a final rule amending its deposit insurance regulations to reflect this extension and to provide further guidance by updating

¹ Public Law 110-343 (Oct. 3, 2008).

² 73 Fed. Reg. 61658 (Oct. 17, 2008).

³ Public Law 111-22 (May 20, 2009).

its examples of deposit insurance coverage to incorporate the increased SMDIA.⁴ On July 21, 2010, the President signed the Dodd-Frank Act⁵, which, among other provisions, made permanent⁶ the increase in the SMDIA from \$100,000 to \$250,000.⁷

As implemented by part 328 of the FDIC's regulations (12 C.F.R. Part 328), section 18(a) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(a)) requires that insured depository institutions display an official FDIC sign, which informs depositors of their minimum amount of deposit insurance coverage and states that this insurance is backed by the full faith and credit of the United States Government. As a result of the Helping Families Act's extension of the temporary increase in the SMDIA to \$250,000, on May 22, 2009, the FDIC issued a Financial Institution Letter, FIL-22-2009, encouraging institutions to post notices of the temporary increase in the deposit insurance limit through December 31, 2013. At that time, the FDIC provided an optional sign reflecting the temporary increase in deposit insurance coverage.

II. The Final Rule

A. Section 330.1 Definitions

⁴ 74 Fed. Reg. 47711 (Sept. 17, 2009).

⁵ Public Law 111-203 (July 21, 2010).

⁶ The SMDIA is still subject to an inflation adjustment pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(a)(1)(F)). However, this inflation adjustment will not affect the level of the SMDIA in the foreseeable future because it will not take effect until the value of \$100,000, inflation adjusted since 2005, exceeds the current SMDIA.

⁷ The effective date of the Dodd-Frank Act is July 22, 2010, one day after the enactment of the act.

The final rule revises the FDIC's deposit insurance rules (12 C.F.R. Part 330) to define the SMDIA as \$250,000 and to remove provisions indicating that the SMDIA will return to \$100,000. This change is made in response to the Dodd-Frank Act, which, among other provisions, made permanent the increase in the SMDIA from \$100,000 to \$250,000. The Dodd-Frank Act also made the increase in the SMDIA to \$250,000 retroactive to January 1, 2008. This retroactivity provision only applies to a limited number of failed depository institutions, those that closed between January 1, 2008, and October 3, 2008. The FDIC will implement the retroactive application of the \$250,000 SMDIA without rulemaking.

B. Section 347.202 Definitions

The final rule revises the FDIC's international banking rules (12 C.F.R. Part 347) to define the SMDIA as \$250,000 and to remove provisions indicating that the SMDIA will return to \$100,000. This change is made in response to the Dodd-Frank Act, as discussed above.

C. Section 328.1 Official Sign

The final rule revises the official FDIC sign (12 C.F.R. Part 328) to reflect the permanent increase in the SMDIA. The official sign will continue to have the same size, colors, and design. The only change is the replacement of "\$100,000" with "\$250,000," so that the new official sign will read "Each depositor insured to at least \$250,000," instead of "Each

depositor insured to at least \$100,000.” This change is also made in response to the Dodd-Frank Act, as discussed above.

As noted, under the Dodd-Frank Act, the \$250,000 SMDIA became permanent on July 22, 2010. To ensure that depositors are accurately informed of the permanent SMDIA of \$250,000, insured depository institutions should promptly obtain the new official signs and, upon receipt, display them without delay — in any event not later than January 3, 2011, the date for mandatory compliance with the final rule.

The FDIC has made hard copies and an electronic file of the new official sign available free of charge to insured depository institutions. This will facilitate prompt implementation of the new sign by all insured depository institutions, including the limited number of institutions that continue to display the \$100,000 limit, which is potentially misleading to depositors. The FDIC expects that these institutions, in particular, will act expeditiously to obtain and display the new official signs.

II. Administrative Procedure Act

The FDIC believes that good cause exists for issuing the final rule without providing an opportunity for comment, pursuant to section 553(b)(B) of the Administrative Procedure Act (“APA”), because seeking public comment under these circumstances is

“unnecessary,” “impracticable,” and “contrary to the public interest.”⁸ The FDIC also finds good cause for issuing the final rule without a 30-day delayed effective date, pursuant to section 553(d)(3) of the APA.

The Dodd-Frank Act amends section 11(a)(1)(E) of the Federal Deposit Insurance Act⁹ to permanently increase the SMDIA to \$250,000. The final rule makes conforming amendments to the FDIC’s regulations to reflect this statutory change. None of the other regulations affecting the calculation of deposit insurance are affected by the final rule.

The final rule merely conforms the FDIC’s definition of the SMDIA to the language of the revised statute and conforms the official FDIC sign to reflect this permanent increase in deposit insurance coverage. There is no agency discretion that could be informed by the APA’s notice and comment process. Therefore, the FDIC finds that notice and comment procedures are “unnecessary” and that the “good cause” exception to the APA’s notice-and comment requirement applies. *See, e.g., Gray Panthers Advocacy Comm. v. Sullivan*, 936 F.2d 1284, 1290–92 (D.C. Cir. 1991) (regulations that “either restate or paraphrase the detailed requirements” of a self-executing statute do not require notice and comment); *Nat’l Customs Brokers & Forwarders Ass’n v. United States*, 59 F.3d 1219, 1223–24 (Fed. Cir. 1995) (notice and comment unnecessary where Congress directed agency to change regulations and public would benefit from amendments).

⁸ 5 U.S.C. § 553(b)(B).

⁹ 12 U.S.C. § 1821(a)(1)(E).

Additionally, a finding of good cause is warranted because it would be “impracticable” and “contrary to the public interest” to delay printing and distribution of a revised official sign in order to seek public comment on the revision. Because the revision to the SMDIA was effective one day after enactment of the Dodd-Frank Act, it is in the public interest for the Corporation to take immediate steps to make depositors aware of this permanent increase in deposit insurance coverage. A delay in distribution of signs advertising the new deposit insurance limit would be detrimental to this goal, and therefore, complying with formal notice and comment procedures is “impracticable” and “contrary to the public interest.”

Finally, a finding of good cause for waiving the requirement of a 30-day delayed effective date is warranted because of the need for immediate guidance to depositors, which implementation and distribution of the new official sign will provide. Also, a delayed effective date is unnecessary because the only provision of the final rule requiring institutions to take certain actions – *i.e.*, the change in the official sign – would not be enforced until January 3, 2011.

III. 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.

IV. 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.

The final rule implements the permanent increase in the SMDIA by the Dodd-Frank Act; the FDIC has no discretion in setting the SMDIA. Display of the official sign is required by section 18(a) of FDI Act. There would not be any compliance costs with displaying the official sign, because it would be provided by the FDIC free of charge. Insured banks have complied with similar advertising requirements for over seventy years without significant expense. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC Board of Directors certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

V. 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).

VI. 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.

VII. 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.

List of Subjects

12 C.F.R. Part 328

Advertising, Bank deposit insurance, Savings associations, Signs and symbols.

12 C.F.R. Part 330

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

12 C.F.R. 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 parts 328, 330, and 347 of title 12 of the Code of Federal Regulations as follows:

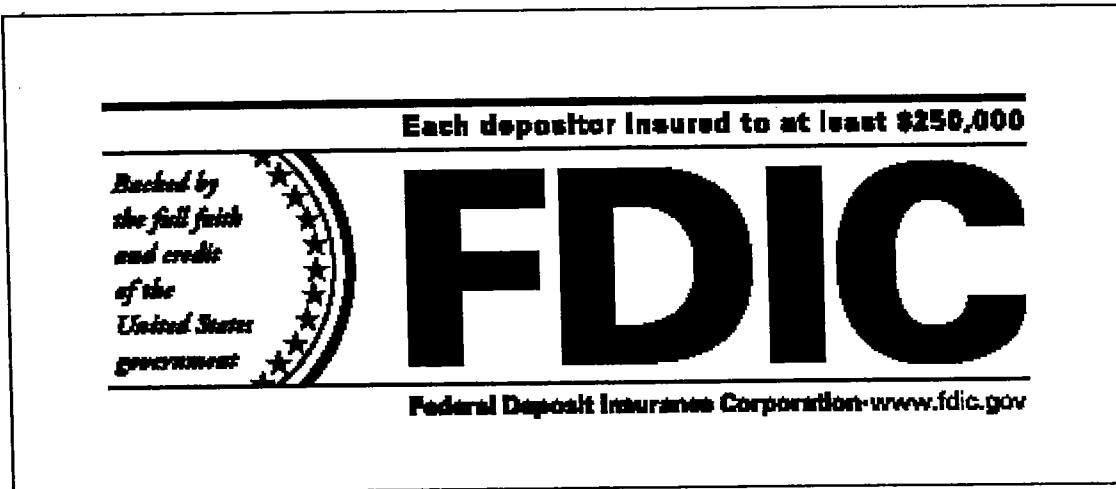
PART 328 – ADVERTISEMENT OF MEMBERSHIP

- 1. The authority citation for part 328 continues to read as follows:

AUTHORITY: 12 U.S.C. 1818(a), 1813(m), 1819 (Tenth), 1828(a).

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- 2. In § 328.1, paragraph (a) is revised by replacing the graphic image of the official sign with the following:



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PART 330 – DEPOSIT INSURANCE COVERAGE

- 3. 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).

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- 4. 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 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)).

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PART 347 – INTERNATIONAL BANKING

- 5. 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.

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■ 6. In § 347.202, paragraph (v) is revised to read as follows:

§ 347.202 Definitions

* * * * *(v) *Standard maximum deposit insurance amount*, referred to as the “SMDIA”
hereafter, means \$250,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of
the FDI Act (12 U.S.C. 1821(a)(1)(F)).

* * * * *

Dated at Washington DC, this 10th day of August 2010.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary