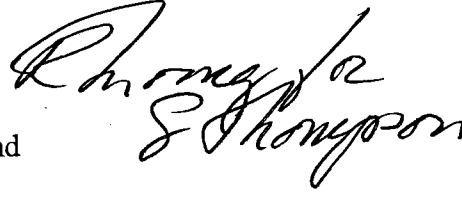


July 27, 2010

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson
Director
Division of Supervision and
Consumer Protection



Michael Bradfield
General Counsel



SUBJECT: Final Rule to Conform Deposit Insurance and
Advertising (Logo) Regulations to Permanent SMDIA of \$250,000

RECOMMENDATION:

We recommend that the Board of Directors authorize the Executive Secretary to publish in the *Federal Register* a final rule that would: (1) amend the FDIC's deposit insurance regulations and international banking regulations to reflect Congress's action making permanent the increase in the SMDIA from \$100,000 to \$250,000; and (2) amend the FDIC's advertisement regulations to update the official FDIC sign to reflect this increased deposit insurance coverage.

DISCUSSION:

1. Background.

The Emergency Economic Stabilization Act of 2008 temporarily increased the Standard Maximum Deposit Insurance Amount ("SMDIA") from \$100,000 to \$250,000, effective October 3, 2008, through December 31, 2009,¹ and the Helping Families Save Their Homes Act of 2009 further extended this temporary increase in the SMDIA from December 31, 2009, to December 31, 2013.² The Corporation adopted an interim rule and a final rule, on October 17, 2008,³ and September 17, 2009,⁴ respectively, amending its deposit insurance regulations to reflect these temporary increases in deposit insurance coverage.

Insured depository institutions are statutorily required to display a sign relating to the insurance of deposits, and the FDIC is charged with promulgating regulations that implement this requirement.⁵ In order to inform depositors of the temporary increase in deposit insurance coverage and to comply with its statutory duty, the FDIC issued a Financial Institution Letter, FIL-22-2009, on May 22, 2009, encouraging institutions to post notices of the temporary

¹ Public Law 110-343 (Oct. 3, 2008).

² Public Law 111-22 (May 20, 2009).

³ 73 Fed. Reg. 61658 (Oct. 17, 2008).

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

⁵ 12 U.S.C. § 1828(a)(1)(A); 12 C.F.R. Part 328.

increase in the deposit insurance limit through December 31, 2013. At this time the FDIC provided institutions with an optional sign that explained the temporary increase in deposit insurance coverage.

On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank” Act), which, among other provisions, made permanent the increase in the SMDIA from \$100,000 to \$250,000.

2. *The Final Rule.*

Staff recommends that the Board authorize publication in the *Federal Register* of the attached final rule, which would update the Corporation’s regulations to reflect the permanent increase in deposit insurance coverage:

A. Amendment to the Definition of SMDIA.

The final rule would revise both the FDIC’s deposit insurance rules⁶ and the FDIC’s international banking rules⁷ to define the SMDIA as \$250,000 and to remove provisions indicating that the SMDIA will return to \$100,000. This change would conform the Corporation’s regulations with certain provisions of the Dodd-Frank Act, which revise the definition of SMDIA in the Federal Deposit Insurance Act from \$100,000 to \$250,000. These amendments to the Corporation’s regulations would be effective immediately upon publication in the *Federal Register*. The applicable provisions of the Dodd-Frank Act became effective on July 22, 2010, one day after enactment.

B. Change to Official FDIC Sign.

The final rule would revise the official FDIC sign to reflect the permanent increase in deposit insurance to \$250,000. The official sign would be updated to state “Each depositor insured to at least \$250,000,” instead of “Each depositor insured to at least \$100,000.”

The revision to the official sign would be effective immediately upon publication in the *Federal Register*, but the final rule would provide for a delayed mandatory compliance date of January 3, 2011. Staff believes that this should be sufficient time to allow insured depository institutions to obtain and display the new official sign. The Corporation made the new official sign available for order, free of charge to insured depository institutions on July 22, 2010.

The preamble to the final rule would emphasize that, 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 already has made the new official signs available. 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

⁶ 12 C.F.R. Part 330

⁷ 12 C.F.R. Part 347

preamble would underscore that the FDIC expects these institutions, in particular, to act expeditiously to obtain and display the new official signs.

3. *Good Cause to Forgo Notice and Comment Rulemaking*

Staff recommends that the Board make a finding of “good cause” to forgo the formal Administrative Procedure Act (“APA”) requirements of notice and comment rulemaking and a 30-day delayed effective date.⁸ Staff believes that a finding of good cause is warranted because seeking public comment is “unnecessary,” “impracticable,” and “contrary to the public interest” under these circumstances.⁹

The APA provides that federal agencies may find good cause when notice and public comment would be “impracticable, unnecessary, or contrary to the public interest.”¹⁰ Formal notice and comment procedures can be “unnecessary” when the agency is promulgating regulations that merely restate the language of a self-executing statute.¹¹ Pursuant to the Federal Deposit Insurance Act, the Corporation issues regulations concerning how the SMDIA is to be applied to various types of accounts and holdings at insured depository institutions,¹² but the SMDIA itself is defined by statute and not by the Corporation.¹³ Therefore, the provisions of the Dodd-Frank Act that amend the Federal Deposit Insurance Act to permanently increase the SMDIA from \$100,000 to \$250,000 are self-executing, and it is “unnecessary” to provide notice and seek public comment on rules that merely conform the language of the Corporation’s regulations to this revised definition.

Additionally, staff believes that 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 revised signs advertising the new deposit insurance limit would be detrimental to this goal, and therefore, complying with formal notice and comment procedures would be “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 would 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.

⁸ 5 U.S.C. § 553.

⁹ 5 U.S.C. § 553.

¹⁰ 5 U.S.C. § 553(b)(B).

¹¹ 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).

¹² 12 U.S.C. § 1821(a); 12 C.F.R. Part 330.

¹³ 12 U.S.C. § 1821(a)(1)(E).

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