



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-7-2013
March 1, 2013

Notice of Proposed Rulemaking: Definition of Insured Deposit

Summary: The FDIC has published in the *Federal Register* a Notice of Proposed Rulemaking (NPR) to clarify that deposits in foreign branches of U.S. banks are not eligible for deposit insurance, although they may qualify as deposits for the purpose of national depositor preference. Comments on the proposed rule are due no later than April 22, 2013.

Statement of Applicability to Institutions Under \$1 Billion in Total Assets: This Financial Institution Letter would affect all insured depository institutions with foreign branches, including those with less than \$1 billion in total assets.

Distribution:

FDIC-Insured Institutions

Suggested Routing:

Chief Executive Officer
Chief Financial Officer
Head of Deposit and Branch Operations
Chief Compliance Officer
Training Officer

Related Topics:

Deposit Insurance Regulations
12 CFR Part 330

Attachment:

[Notice of Proposed Rulemaking](#)

Contacts:

Matthew Green, Associate Director, Division of Insurance and Research, (202) 898-3670

F. Angus Tarpley III, Supervisory Counsel, Legal Division, (202) 898-6646

Catherine Ribnick, Counsel, Legal Division, (202) 898-6803

Note:

FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2013/index.html.

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Paper copies may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (877-275-3342 or 703-562-2200).

Highlights:

- Under the Federal Deposit Insurance (FDI) Act, deposits carried on the books and records of foreign branches of U.S. banks are not considered deposits unless the funds are payable both in the foreign branch and at an office of the bank in the United States (that is, are dually payable).
- A recent proposal by the U.K.'s Financial Services Authority (FSA) makes it likely that large U.S. banks will change their deposit agreements to make their U.K. branch deposits dually payable in both the United Kingdom and the United States.
- The FDIC is issuing an NPR to clarify the limits of deposit insurance, as expansion of this "dual payability" threatens to expose the Deposit Insurance Fund (DIF) to increased liability.
- The NPR would amend the Deposit Insurance Regulations, 12 CFR Part 330, to specify that deposits carried on the books and records of a foreign branch of a U.S. bank are not insured deposits even if they are made payable both at that branch and at an office of the bank in any state of the United States. Additionally, the proposed rule would provide an exception for Overseas Military Banking Facilities operated under Department of Defense regulations, or similar facilities authorized under federal statute.
- The FDIC is seeking comment on all aspects of the proposal, including whether other viable alternatives would protect the DIF from an expansion of exposure to liability arising from making deposits dually payable, as well as from practical obstacles to the prompt administration of a deposit insurance determination.
- Comments are due by April 22, 2013.

Notice of Proposed Rulemaking: Definition of Insured Deposit

Under the Federal Deposit Insurance (FDI) Act, deposits carried on the books and records of foreign branches of U.S. banks are not considered deposits under the FDI Act unless the funds are payable both in the foreign branch and at an office of the bank in the United States (sometimes referred to as “dual payability”). A recent proposal by the U. K.’s Financial Services Authority (FSA), relating to the effect of national depositor preference laws on United Kingdom depositors, 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. The expansion of this “dual payability” threatens to expose the Deposit Insurance Fund (DIF) to increased liability unless the extraterritorial limits of deposit insurance are clarified.

Therefore, the FDIC has issued a Notice of Proposed Rulemaking (NPR) that would amend the Deposit Insurance Regulations, 12 CFR Part 330, to specify that deposits carried on the books and records of a foreign branch of a U.S. bank are not insured deposits even if they are made payable both at that branch and at an office of the bank in any state of the United States. Additionally, the proposed rule would provide an exception for Overseas Military Banking Facilities operated under Department of Defense regulations, or similar facilities authorized under federal statute.

The proposed amendments are intended to provide important guidance on the scope of deposit insurance, as it relates to deposits carried on the books and records of foreign branches of U.S. banks. This is particularly important at a time when changes in global banking could expose the DIF to risks that are inconsistent with its role of promoting depositor confidence and providing stability to the U.S. economy.

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.
- Under the FDI Act, funds deposited into foreign branches of U.S. banks 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.
- To date, the statutory authority under the FDI Act has not generally been used by U.S. financial institutions.
- Current foreign branch deposits total approximately \$1 trillion. A significant percentage of these branch deposits are located in the United Kingdom.
- Under the proposed rule, while these deposits would not be insured, they could be treated as deposits for purposes of national depositor preference laws.
- The FDIC is seeking comment on all aspects of the proposal, including whether other viable alternatives would protect the DIF from an expansion of exposure to liability arising from making deposits dually payable as well as from practical obstacles to the prompt administration of a deposit insurance determination.
- Comments on the NPR are due by April 22, 2013.