



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

Financial Institution Letter
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PROCESSING OF DEPOSIT ACCOUNTS IN THE EVENT OF AN INSURED DEPOSITORY INSTITUTION FAILURE

Final Rule

Summary: The attached rule finalizes the interim rule issued in July 2008, which established the FDIC's practices for determining deposit and other liability account balances at a failed insured depository institution. The final rule also requires institutions to prominently disclose to sweep account customers whether the swept funds are deposits and the status of the swept funds if the institution were to fail. The final rule will take effect on March 4, 2009; however, the effective date of the sweep account disclosure requirements is July 1, 2009.

Distribution:

All Insured Depository Institutions

Suggested Routing:

Chief Executive Officer
Chief Operating Officer
Regulatory Compliance Officer

Related Topics:

Deposit Insurance Coverage
12 C.F.R. Part 330

Attachment:

Final Rule

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Note:

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Highlights:

- Upon the failure of an FDIC-insured depository institution, the FDIC must determine the total insured amount for each depositor. The final rule defines a deposit account balance on the day of failure as the end-of-day ledger balance. With certain exceptions, the FDIC will use the cutoff times applied by the failed insured depository institution in establishing the end-of-day ledger balance for deposit insurance determination purposes.
- All checks deposited into and posted to a deposit account by the applicable cutoff time and reflected as part of the end-of-the-day ledger balance will be treated as a deposit for insurance purposes, regardless of whether these funds have been collected.
- Any automated sweep transaction transferring funds internal to the depository institution's operations from one deposit account at the failed institution to a sweep investment vehicle at the failed institution will be completed on the day of failure.
- Sweep account customers must be notified annually whether the swept funds are deposits and the status of the swept funds in the event of failure.
- The FDIC originally solicited comments on this rule on July 17, 2008.

PROCESSING OF DEPOSIT ACCOUNTS IN THE EVENT OF AN INSURED DEPOSITORY INSTITUTION FAILURE

Final Rule

The Federal Deposit Insurance Corporation (FDIC) has issued the attached final rule regarding the determination of account balances in the event of a depository institution's failure. Under the final rule, the FDIC will use the following principles for determining the value and nature of claims against a failed insured depository institution in the event of failure:

- In making deposit insurance determinations and in determining the value and nature of claims against the receivership on the institution's date of failure, the FDIC – as insurer and receiver – will treat deposits and other liabilities of the failed institution according to the ownership and nature of the underlying obligations based on end-of-day ledger balances for each account using the depository institution's normal posting procedures.
- Upon taking control of the failed institution, the receiver will use its best efforts to take all steps necessary to stop the generation of new deposit or other transactions that might result in creating new liabilities or extinguishing existing liabilities for the depository institution or its customers.
- End-of-day ledger balances are subject to corrections for posted transactions that are inconsistent with the above principles.

The final rule defines a deposit account balance on the day of failure as the end-of-day ledger balance. With certain exceptions, the FDIC will use the cutoff times previously applied by the failed insured depository institution in establishing the end-of-day ledger balance for deposit insurance determination purposes. The use of end-of-day ledger balances and the institution's normal cutoff times for insurance determination purposes continues long-standing FDIC procedures in processing such balances at a failed depository institution. All checks deposited into and posted to a deposit account by the applicable cutoff time will be deemed as part of the end-of-the-day ledger balance for insurance purposes.

Under the final rule, any automated sweep transaction transferring funds internal to the depository institution's operations from one deposit account at the failed institution to a sweep investment vehicle at the failed institution will be completed on the day of failure. Thus, for example, the sweeping of funds from a customer's demand deposit account to a deposit account located in a foreign branch office would be completed for that day by the receiver on the day of failure and the account holders, who hold end-of-day ledger foreign deposit accounts after the sweep, would be deemed to be general creditors of the receivership, rather than insured depositors, under the deposit preference statute. In the case

of a sweep transferring funds outside the failed institution, the funds will be treated consistent with how they are reflected in the end-of-day ledger balances, which may mean the funds are not an obligation of the depository institution.

Many sweeps arrangements transfer deposit funds from insured deposit accounts to non-deposit investment vehicles or accounts. In those cases, the swept funds will not be treated by the FDIC as deposit obligations of the failed institution, meaning that the swept funds will not be eligible for deposit insurance coverage and will not be afforded status as a deposit under the depositor preference statute. In order to ensure that sweep account customers are aware that their funds will not be treated as deposits if the insured institution fails, however, the FDIC will require institutions to prominently disclose to customers whether the swept funds are deposits and the status of the swept funds if the institution failed. Excluded from the requirement are sweep arrangements where funds are moved between deposit accounts and the deposit insurance available to the customer is unchanged. The effective date of the final rule's disclosure requirements is July 1, 2009.

The FDIC is concerned about the structure of certain sweep arrangements involving repurchase agreements (repos). In a properly executed repo sweep arrangement, as of the depository institution's normal end of day, the sweep customer either becomes the legal owner of identified assets (typically government securities) subject to a repurchase agreement or obtains a perfected security interest in those assets. In such cases, the FDIC will recognize the customer's ownership or security interest in the securities. The FDIC has observed that some institutions' sweep repo arrangements are not properly executed. In those situations, the sweep customer obtains neither an ownership interest nor a perfected security interest in the applicable securities. In this case, upon an institution failure, under the final rule the FDIC will treat the swept funds as if they had not left the deposit account from which they originated. The FDIC notes that, in cases where repo sweeps are improperly executed, institutions should report the swept funds as deposits in their Call or Thrift Financial Reports for assessment and other purposes.

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