

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR PART 304

Reporting Requirements on Deposits
Placed by Deposit Brokers and Financial Institutions

AGENCY: Federal Deposit Insurance Corporation

ACTION: Interim Final Rule

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") has adopted an interim final regulation requiring each FDIC-insured bank with combined brokered deposits and fully insured deposits of financial institutions in excess of either the bank's total capital and reserves or five percent of the bank's total deposits to report holdings of such deposits to the FDIC for every month in which such excess exists. The purpose of this regulation is to provide the FDIC with more frequent information on each FDIC-insured bank's involvement with brokered deposits and fully insured deposits of financial institutions.

The FDIC has issued this regulation without the normal comment period because it deems the misuse of such deposits by the depository institutions industry to be of significant danger to the federal deposit insurance system to warrant immediate action. In order to obtain public comment on the matters addressed in this regulation, however, the FDIC has issued this rule on a temporary basis with an expiration date of January 15, 1985. The FDIC has asked that comments be provided to the FDIC within sixty days after the publication date of the interim final rule. It is anticipated that before January 15, 1985, the FDIC will issue a final rule on this topic which will be reflective of the public comments received during the comment period.

EFFECTIVE DATE: [Thirty days after publication in the Federal Register], with the first required filing, if applicable, within ten days after July 31, 1984. Comments must be received by the [sixtieth day after the publication date in the Federal Register].

ADDRESS: Comments should be directed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be delivered to Room 6108 on weekdays between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Examination Specialist, or Jesse G. Snyder, Assistant Director, Federal Deposit Insurance Corporation, Division of Bank Supervision, (202) 389-4761 or 389-4141, 550-17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1984, the FDIC issued a joint regulation with the Federal Home Loan Bank Board limiting the insurance coverage of funds placed with an insured depository institution either by or through a deposit broker. 49 Fed.

Reg. 13,003 (1984). The regulation was to take effect on October 1, 1984. The FDIC promulgated the brokered deposits regulation because it deems deposit brokerage to be a misuse of the federal deposit insurance system and a significant threat to the federal deposit insurance fund. The Federal Register publication on the brokered deposits regulation explains in detail the FDIC's concerns about deposit brokerage and provides ample data to show that the use of brokered deposits has been extremely costly to the FDIC in handling recent bank failures and poses a growing threat in troubled institutions. Id.

On the same day the FDIC issued the brokered deposits regulation, court action was brought to nullify the regulation. On June 20, 1984, the Federal District Court for the District of Columbia ruled that the regulation was illegal, concluding that the FDIC (and the Federal Home Loan Bank Board) had exceeded statutory boundaries in imposing insurance limitations on brokered deposits. The FDIC intends to pursue an appeal of the Court's decision. In the meantime, deposit brokerage continues to present a clear and present danger to the insurance system as deposit brokers continue to exploit and abuse federal deposit insurance coverage. Moreover, many financial institutions, such as credit unions, place fully insured funds directly with banks based solely on the rate of interest paid without regard to the financial condition of the institutions. This, too, presents a serious threat to the deposit insurance system.

For these reasons, it is necessary that the FDIC accumulate more frequent information from insured banks on brokered deposits and fully insured deposits placed directly by financial institutions. At present the FDIC obtains limited information on brokered deposits from quarterly Reports of Condition from insured banks, but the speed with which large dollar amounts of brokered funds are transmitted requires increased monitoring of such activity. No information is presently collected on fully insured deposits placed by financial institutions. With this monthly information the FDIC hopes to mitigate somewhat the harms caused by such deposits by determining on a regular basis what banks are using such funds and to what use those funds are being put. This increased monitoring effort, however, will not solve the problems posed; it will merely assist the FDIC in identifying institutions which may be developing or experiencing financial difficulties. A permanent solution to the problems caused by deposit brokerage and by the direct placement of fully insured funds by financial institutions is yet to be put in place.

Once the FDIC obtains information required to be reported by this section it will review the financial soundness of the banks filing such reports. For banks exhibiting problems of safety or soundness, the FDIC will take the appropriate regulatory actions under section 8 of the Federal Deposit Insurance Act. 12 U.S.C. 1818. If special examinations are necessary to determine whether safety or soundness problems exist, the FDIC will perform such examinations pursuant to the authority found in section 10(b) of the Federal Deposit Insurance Act. 12 U.S.C. 1820(b). Banks which fail to comply with this regulation will be subject to fines prescribed by the Federal Deposit Insurance Act.

EXPLANATION OF THE REGULATION

The regulation is in the form of an addition to Part 304 of the FDIC's regulations, "Forms, Instructions, and Reports." 12 C.F.R. Part 304. It requires that all insured banks report to the FDIC regional director in the FDIC region where the bank is located the amount of brokered deposits and fully insured deposits placed directly by financial institutions held by the bank at the end of each month. The report is required, however, only if the sum of such deposits at the end of a given month is in excess of either the bank's total capital and reserves or five percent of the bank's total deposits. No report is necessary when the total of a bank's brokered deposits and fully insured deposits placed by financial institutions at the end of a month is not greater than either of the specified dollar amounts. When such reports are required they must be filed within ten days after the end of the month in which the amount of such deposits exceeds either the bank's total capital and surplus or five percent of total deposits. The definitions of the key terms in the regulation are the same as those found in the Instructions for Consolidated Reports of Condition and Income.

The regulation becomes effective [thirty days after publication of this rule in the Federal Register] with the first required filing, if applicable, within ten days after July 31, 1984.

Procedural Requirements

The FDIC deems it essential that this regulation be implemented as soon as possible. This is so because deposit brokerage and the direct placement of fully insured deposits by financial institutions have resulted in significantly increased costs to the FDIC in handling failed and failing insured banks. It is feared that the use of brokered deposits by marginal institutions will escalate as a result of the United States District Court's ruling that the deposit brokerage regulation is unlawful. Monthly reporting by insured banks using a significant amount of brokered deposits and fully insured deposits of financial institutions will assist the FDIC in identifying banks which may be experiencing or developing safety and soundness difficulties. For these reasons, the FDIC finds good cause for not publishing this regulation as a proposed rule with the opportunity for public comment. Hence, the FDIC Board of Directors has determined that adherence to the public notice and participation requirements of section 553(b) of title 5 of the United States Code would be impracticable and contrary to the public interest. 5 U.S.C. 553(b). In order to obtain public comment on the subject matter of this rule, however, the FDIC has issued this regulation on a temporary basis with an expiration date of January 15, 1985. The FDIC hereby solicits comments on the substance of this interim regulation for sixty days after the publication of the rule in the Federal Register. Comments are specifically requested on the adequacy of monthly reports, the scope of the information to be reported, the means of reporting the information and steps to be taken once the reported information is assimilated.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Board of Directors hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule only establishes a monthly reporting requirement on all FDIC-insured banks with brokered deposits and deposits placed directly by financial institutions that exceed specified levels and does not affect or limit a bank's operations.

Inasmuch as the data required by this reporting regulation are currently collected by banks for quarterly reports, the additional burden placed upon most institutions by this requirement is not significant. Also, because the total of such categories of deposits does not yet constitute a significant portion of total deposits of most insured institutions, the rule's reporting requirement is not expected to affect a significant number of banks. The monthly reporting requirement contained in this rule was submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

The FDIC is promulgating this regulation under its authority granted in sections 7, 9 and 10(b) of the Federal Deposit Insurance Act. 12 U.S.C. 1817, 1819 and 1820(b).

LISTS OF SUBJECTS

Administrative practice and procedure; Bank deposit insurance; Banks, banking; Federal Deposit Insurance Corporation; Foreign banks, banking; Reporting and recordkeeping.

Accordingly, the FDIC hereby amends Part 304 of the CFR as set forth below.

Part 304 - Forms, Instructions and Reports.

1. The authority citation for Part 304 is amended to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1819, 1820.

2. Section 304.4 is added as follows:

§ 304.4 Report of brokered deposits and deposits placed by financial institutions.

(a) Filing: Within ten days after the end of each month, each insured bank shall report to the appropriate FDIC regional director the bank's total amount of brokered deposits and fully insured deposits placed directly by financial institutions as of the end of that month, if the sum of such deposits was in excess of either the bank's total capital and reserves or five percent of the bank's total deposits on such date. If such report is required by this section, it must be in letter form, signed by an executive officer of the bank, and must include data on the bank's total assets, total loans, total deposits, total capital and reserves and the range of rates paid on brokered deposits and deposits placed directly by financial institutions during the reporting month. Figures may be rounded to the nearest thousand.

(b) Definitions. For purposes of this section:

(1) the terms "appropriate FDIC regional director" means the FDIC regional director in the FDIC region in which the insured bank is located;

(2) the terms "brokered deposits," "total deposits," "total assets," and "total loans" shall have the same meanings as those found in the Instructions for Consolidated Reports of Condition and Income.

(3) the term "total capital and reserves" means: (i) for banks other than savings banks, the sum of "total equity capital" and the "allowance for loan and lease losses," as those terms are defined in the Instructions for Consolidated Reports of Condition and Income, and (ii) for savings banks (mutual and stock), the sum of "total capital accounts" and the "allowance for possible loan losses" on real estate loans and all other loans, as those terms are defined in the Savings Banks Report of Condition (Form 8040/18), which is described in section 304.3(n) of this Part.

(4) the term "fully insured deposits placed directly by financial institutions" means the time and savings deposits up to \$100,000 (other than deposits placed by or through a deposit broker) deposited directly by any state or federally insured depository institution. This definition does not include situations where an insured depository institution has uninsured funds (excluding accrued and unpaid interest) placed with the bank.

(c) Effective and Termination Dates. The first report required under this section shall be filed within ten days after July 31, 1984. This section shall be effective until January 15, 1985.

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By Order of the Board of Directors, July 2, 1984.

FEDERAL DEPOSIT INSURANCE CORPORATION

(Signed) Hoyle L. Robinson

Hoyle L. Robinson
Executive Secretary

(SEAL)