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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064-AB73

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is seeking comment on whether the deposit insurance rules (insurance regulations) should be simplified and, if so, how. If the Board finds simplification to be warranted, it will propose specific amendments on which public comment will then be invited. The purpose of this notice is to solicit comments to help guide the possible preparation of a proposed rule. This notice presents only a general description of the insurance simplification options being considered and includes no regulatory text.

DATES: Written comments must be received by the FDIC on or before August 20, 1996.

ADDRESSES: Written comments are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F-402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898-3838; Internet address: comments@FDIC.gov). Comments will be available for inspection in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Acting Senior Counsel, Legal Division, (202) 898-7349; Adrienne George, Attorney, Legal Division, (202) 898-3859; Federal

Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

One of the FDIC's corporate operating projects under its Strategic Plan is to simplify the deposit insurance rules. The purpose is to promote public understanding of deposit insurance and to increase financial institution and consumer understanding of deposit insurance. This Advance Notice of Proposed Rulemaking (Notice) is one of the steps in realizing the project's goals.

This effort to simplify the FDIC's insurance regulations, found in 12 CFR part 330 (part 330), also is intended to satisfy the provisions in section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), to reduce regulatory burden and improve efficiency.

The FDIC revised its insurance regulations twice in the recent past. The first time, in 1990, was necessitated by the termination of the Federal Savings and Loan Insurance Corporation (FSLIC). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101-73, 103 Stat. 183 (1989)) required the FDIC to issue uniform insurance regulations for deposits in all insured depository institutions, including those previously insured by the FSLIC. The second set of recent changes in the FDIC insurance rules were made pursuant to provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242 (1991)). A provision in FDICIA, in essence, limited the insurance coverage of employee benefit and retirement plans. Also, in February 1995, the FDIC issued disclosure requirements in connection with the limited availability of insurance for employee benefit plan accounts, 60 FR 7701 (Feb. 9, 1995).

The amendments made to the insurance rules in 1990 not only reconciled differences between the FSLIC insurance regulations and the then-existing FDIC regulations, they also revised the insurance regulations to, among other things, better organize and define terms used in the regulations, convert long-standing interpretive opinions into regulations, resolve outstanding issues and clarify ambiguous provisions.

Although the insurance rules were revised relatively recently, the Corporation believes, preliminarily, that at least some additional modification to and simplification of the insurance rules would be helpful. The need for these changes has been brought to the FDIC's attention in several ways, especially through the steady receipt of letters and phone calls on insurance questions. Experience with bank and thrift failures also has enabled the staff to identify procedural aspects of the regulations which, when applied in accordance with the regulations, may prove unfair to certain depositors in some situations.

The FDIC must be mindful of the applicable statutory parameters in considering whether and to what extent to modify the insurance regulations. The general statutory basis for and guidance on deposit insurance is found in section 11(a) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a), which provides, in relevant part, that deposits are insured up to \$100,000 based on the "right" and "capacity" in which the deposits are maintained. The FDIC interprets the "right-and-capacity" criterion as essentially meaning ownership. Thus, the rules provide "separate" insurance coverage for different types of accounts which are owned in different ways. For example, accounts owned by an individual are not added to joint accounts in which that same individual has an ownership interest. "Separate" insurance means that each category of account in which a person has an ownership interest is covered for up to \$100,000 separately insured from the funds in other categories of accounts.

Possible Areas of Simplification

Preliminarily, the Board believes that certain technical and moderate substantive revisions to the deposit insurance rules may be warranted. Technical revisions would entail rewriting ambiguous provisions of the rules and generally making the rules easier to understand. Moderate substantive revisions would entail making some substantive changes to the rules (and statute) but the FDIC intends to retain the principles that insurance is based on deposit ownership and that separate insurance coverage within the same institution depends upon the different "rights and capacities" in which deposits can be held.

The FDIC has identified the following possible revisions to the insurance regulations and laws:

1. *Rewrite certain parts of the rules to make them clearer and easier to understand.* Ambiguous and potentially ambiguous provisions of the rules would be rewritten and part 330 might be reordered and reorganized.

2. *Eliminate step one of the two steps involved in determining insurance coverage for joint accounts.* Joint ownership is one of the account categories that qualifies for separate insurance coverage. 12 CFR 330.7. Thus, an individual who has an individual deposit and interests in joint accounts at the same insured bank or thrift would be insured for up to \$100,000 per category of account. Currently deposit insurance for joint accounts is determined by a two-step process: first, all joint accounts that are identically owned (i.e., held by the same combination of individuals) are added together and the combined total is insurable up to the \$100,000 maximum; second, each person's interests in joint accounts involving different combinations of individuals are combined and the total is insured up to the \$100,000 maximum.

One option to simplify the current joint account rules is to eliminate the first step of the two-step process. Under this alternative, all funds held in joint accounts would be allocated among the owners and each owner's interests in all joint accounts (held at the same depository institution) would be added and insured up to \$100,000 in the aggregate.

3. *Revise the recordkeeping rules allowing the FDIC more flexibility (for the benefit of depositors) in determining the ownership of deposits held in a custodial or fiduciary capacity.* The insurance regulations impose specific recordkeeping requirements as a precondition for insuring parties other than those whose names appear on the depository institution's deposit account records. 12 CFR 330.4. For example, if A is acting as an agent for B, C, and D and places funds belonging to them in an insured bank or thrift, the institution's deposit account records must show that A is holding the account as an agent in order for the FDIC to recognize the ownership interests of B, C and D. The FDIC will then insure the account as if it were held directly by B, C, and D (the owners of the account) as long as the institution's deposit account records or the agent's records (maintained in "good faith and in the regular course of business") evidence B, C and D's ownership interests in the account. In this context, we say that the

insurance "passes-through" the agent to the owner(s) of the account.

The recordkeeping requirements intentionally limit the FDIC's ability to consider evidence outside the deposit account records of an insured institution in determining the ownership of deposits. They establish a presumption that deposited funds are actually owned in the manner indicated on the account records. Those records are binding on the depositor if they are "clear and unambiguous". The FDIC has the discretion, however, to decide whether records are clear and unambiguous. If the FDIC determines that the records are unclear or ambiguous, then it may consider evidence other than the deposit account records. The question is whether this discretion provides the FDIC with sufficient flexibility to recognize beneficial and/or multiple ownership of accounts when such ownership is not reflected on the bank or thrift's deposit account records.

The objective in amending the recordkeeping requirements would be to allow the FDIC staff more flexibility to consider the actual ownership interests in deposit accounts and thereby prevent possible hardships. The proper balance must be struck, however, to avoid fraud in post-failure situations and to enable the FDIC to reasonably and expeditiously calculate the insured deposits at failing institutions. One option would be to amend the rules to allow the FDIC to look beyond the deposit accounts records of the depository institution where account titles are indicative of a fiduciary relationship. Two examples would be accounts held by attorneys and those held by entities such as title companies, who commonly hold funds for others.

4. *Consider changing the rules on "payable upon death" accounts.* The insurance rules provide for separate coverage for funds owned by an individual and deposited into any account commonly referred to as a "payable-on-death" account, tentative or "Totten" trust account, revocable trust account, or similar account (POD accounts). 12 CFR 330.8. The account must evidence an intention that upon the death of the owner the funds shall belong to certain qualifying beneficiaries. The qualifying beneficiaries are limited to the owner's spouse, children and grandchildren. The owner is insured up to \$100,000 as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. Thus, if the individual names his spouse, three children and two grandchildren as beneficiaries, the

account would be insured up to \$600,000.

The FDI Act does not expressly require that POD accounts receive separate insurance coverage. The purpose of the POD separate insurance rule is to track state laws that allow for the so-called "poor-man's will" in which deposit account balances can be transmitted upon the death of the account owner to beneficiaries named in the account without an underlying trust document or will. It is support for this will-substitute that underlies the separate insurance for POD accounts. The FDIC limits the qualifying beneficiaries to the spouse, children and grandchildren of the account owner because it believes that such limitation strikes a reasonable balance between providing separate coverage to those most likely to be named as beneficiaries of a POD account while not overly expanding this category of deposit insurance coverage.

In the context of simplifying the insurance regulations, the question arises whether the FDIC should consider revising the POD rules on qualifying degrees of kinship. The FDIC, therefore, requests comments on whether and, if so, how the POD insurance rules should be revised.

5. *Consider modifying the way the FDIC insures certain types of accounts upon the death of the owner(s) of the accounts.* The ownership interest of a deposit account often changes upon the death of the owner of the account. If the beneficiaries/executor of the decedent do not act immediately after the decedent's death to change the nature of the account, insurance coverage may be decreased, sometimes significantly. For example, if a husband and wife hold a joint account, a payable-upon-death account and two individual accounts in their respective names, the death of one spouse would result in the surviving spouse becoming the sole owner of the joint account and the payable-upon-death account. Thus, the accounts would be aggregated with the surviving spouse's individual account, possibly resulting in a substantial reduction in insurance coverage.

The former FSLIC, as a matter of policy, allowed a grace period of six months following the death of a depositor for the decedent's deposits to be restructured. If an insured thrift failed during the grace period and additional insurance would be available if the decedent had not died, the FSLIC insured the account(s) based on the account ownership shown on the institution's records as if the decedent were still living. The reason for the FSLIC policy was to "lessen the

hardship" that might be caused otherwise. In the course of revising the FDIC insurance regulations in 1990 (in conjunction with FSLIC's termination) the FDIC decided against adopting the FSLIC's grace-period policy because of the questionable underlying legal basis. The argument is that insurance coverage is based on the ownership of the deposits. If under the applicable state law the ownership of an account changes immediately upon the account owner's death, then the FDIC should recognize that change immediately.

The FDIC has limited flexibility to amend its regulations on the insurance of accounts upon an owner's death. That is because, as indicated above, deposit insurance is statutorily based on deposit ownership. If the ownership of a particular deposit changes automatically under the applicable state law upon the owner's death, then the insurance coverage may change also. That is the FDIC's long-standing position on the issue. Although the FDIC has concerns about whether a sound legal basis exists for providing a "grace period" (for insurance purposes) on accounts owned by a person who dies, the FDIC welcomes comments on this issue.

6. *Recommend that the FDI Act be amended to change the way employee benefit plans are insured.* Under an amendment to the FDI Act made by FDICIA, pass-through insurance coverage is not available to employee benefit plan deposits that are accepted by an insured bank or thrift when the institution does not meet prescribed capital requirements. 12 U.S.C. 1821(a)(1)(D). If an institution accepts employee benefit plan deposits at a time when it is not sufficiently capitalized, such deposits are insured only up to \$100,000 per plan (as opposed to \$100,000 per participant or beneficiary). The FDICIA-originated provision is the only one in the FDI Act and regulations to base insurance coverage on the capital sufficiency of the insured institution where the deposits are placed. The statute is complex and very difficult for the industry and the public to understand. Moreover, if deposits are made with an insured bank or thrift that does not meet the prescribed capital requirements, there is no disadvantage to the institution. The depositor is the disadvantaged party.

The FDIC believes Congress should replace the employee benefit plan provision with a general prohibition against insured institutions accepting employee benefit plan deposits when they are not sufficiently capitalized. This would be consistent with the statute pertaining to brokered deposits and, thus, would prevent the

disadvantage to depositors if an insured institution provides incorrect information about its capital condition. Comments are requested on whether the FDIC should recommend this statutory amendment to the Congress.

7. *Consider revising the rules on living trust accounts.* A "living trust" is a formal trust in which the owner retains control of the trust assets during his or her lifetime and designates the beneficiaries of the assets upon his or her death. The owner may revoke or change the terms of the trust during his or her lifetime. In 1993 the FDIC Legal Division prepared guidelines on the insurance of revocable accounts, with an emphasis on living trusts. The guidelines are very detailed and somewhat complex. At the same time the Legal Division prepared the guidelines on living trusts, the FDIC also adopted an informal policy not to review complex living trust documents to determine POD coverage but, instead, to recommend that persons inquiring about such coverage consult with the lawyer who drafted the living trust. Despite the availability of the FDIC guidelines on living trusts and the existence of the FDIC's current policy not to review trust documents, the FDIC still receives numerous questions about the insurance of POD accounts held in connection with living trusts.

One possibility in simplifying the insurance rules on living trusts is to limit the scope of the POD regulation to accounts which name qualifying beneficiaries without reference to any underlying trust documents. The rule would apply only to the traditional POD account intended as a free-standing will substitute and would not apply to any other type of revocable trust extraneous to the POD account itself. This interpretation of the POD provision would be consistent with the original rationale for extending separate insurance coverage for this category of account and revise the coverage rules for the formal type of revocable account which has added unintended complexity and caused expansion to this category of coverage.

Request for Comment

The Board of Directors of the FDIC is seeking comment on all of the above-mentioned possible means of simplifying the deposit insurance rules, including the likely effect of such changes on consumers and the banking industry. The Board also is seeking suggestions on any other ways that the rules might be streamlined, simplified and clarified.

By order of the Board of Directors.

Dated at Washington, D.C., this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-158-AD]

RIN 2120-AA64

Airworthiness Directives; de Havilland Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC-7 series airplanes. This proposal would require certain structural inspections, and repair, if necessary. This proposal is prompted by a structural re-evaluation, which identified certain significant structural items to inspect for fatigue cracking as these airplanes approach and exceed the manufacturer's original design life. The actions specified by the proposed AD are intended to prevent fatigue cracking in these areas which, if not detected and corrected in a timely manner, could reduce the structural integrity of these airplanes.

DATES: Comments must be received by July 1, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-158-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA,