FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064-AF27

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation is amending its regulations governing deposit insurance coverage. The amendments simplify the deposit insurance regulations by establishing a "trust accounts" category that governs coverage of deposits of both revocable trusts and irrevocable trusts using a common calculation, and provide consistent deposit insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender.

DATES: The rule is effective on April 1, 2024.

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SUPPLEMENTARY INFORMATION:

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I. Simplification of Deposit Insurance Coverage Rules for Trusts

A. Policy Objectives

The Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing deposit insurance coverage for deposits held in connection with trusts.[1] The amendments merge the revocable and irrevocable trust categories into one category, "trust accounts." Coverage for deposits in this category will be calculated through a simple calculation. Each grantor's trust deposits will be insured in an amount up to the standard maximum deposit insurance amount (currently $250,000) multiplied by the number of trust beneficiaries, not to exceed five. This, in effect, will limit coverage for a grantor's trust deposits at each IDI to a total of $1,250,000; in other words, maximum coverage of $250,000 per beneficiary for up to five beneficiaries.

The amendments: (1) provide depositors and bankers with a rule for trust account coverage that is easy to understand; and (2) facilitate the prompt payment of deposit insurance in accordance with the Federal Deposit Insurance Act (FDI Act), among other objectives.

Simplifying insurance coverage for trust deposits

The amendments simplify for depositors, bankers, and other interested parties the insurance rules and limits for trust accounts. The deposit insurance rules for trust deposits, set forth in part 330 of the FDIC's regulations, have evolved over time and can be difficult to apply in some circumstances. The amendments reduce the number of rules governing coverage for trust accounts and establish a straightforward calculation to determine coverage. This should

[1] Trusts include informal revocable trusts (commonly referred to as payable-on-death accounts, in-trust-for accounts, or Totten trusts), formal revocable trusts, and irrevocable trusts that do not have an IDI as trustee.

alleviate some of the confusion that depositors and bankers experience with respect to insurance coverage and limits.

Under the current regulations, there are distinct and separate sets of rules applicable to deposits of revocable trusts and irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the FDIC's efforts to simplify the revocable trust rules in 2008,[2] FDIC deposit insurance specialists have responded to approximately 20,000 complex insurance inquiries per year on average over the last 13 years. More than 50 percent of inquiries pertain to deposit insurance coverage for trust accounts (revocable or irrevocable). The amendments further simplify insurance coverage of trust accounts (revocable and irrevocable) by harmonizing the coverage criteria for certain types of trust accounts and establishing a simplified formula for calculating coverage that applies to these deposits. The calculation is the same calculation that the FDIC first adopted in 2008 for revocable trust accounts with five or fewer beneficiaries. This formula is straightforward and is already generally familiar to bankers and depositors.[3]

Prompt payment of deposit insurance

The FDI Act requires the FDIC to pay depositors "as soon as possible" after a bank failure.[4] However, the insurance determination and subsequent payment for many trust deposits must await the depositor's submission of complex trust agreements, followed by FDIC staff's review of that information and application of the rules to determine deposit insurance coverage. The final rule's amendments are expected to facilitate more timely deposit insurance

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[2] *See* 73 FR 56706 (Sep. 30, 2008).

[3] In 2008, the FDIC adopted an insurance calculation for revocable trusts that have five or fewer beneficiaries. Pursuant to the 2008 amendments, each trust grantor is insured up to $250,000 per beneficiary.

[4] 12 U.S.C. 1821(f).

determinations for trust accounts by reducing the amount of time needed for FDIC staff to review trust agreements and determine coverage. These amendments promote the FDIC's ability to pay insurance to depositors promptly following the failure of an insured depository institution (IDI), enabling depositors to meet their financial needs and obligations.

Facilitating resolutions

The changes will also facilitate the resolution of failed IDIs. The FDIC is routinely required to make deposit insurance determinations in connection with IDI failures. In many of these instances, however, deposit insurance coverage for trust deposits is based upon information that is not maintained in the failed IDI's deposit account records. As a result, FDIC staff works with depositors, trustees, and other parties to obtain trust documentation following an IDI's failure in order to complete deposit insurance determinations. The difficulties associated with completing such a determination have been exacerbated by the substantial growth in the use of formal trusts in recent decades. The amendments are expected to reduce the time spent reviewing such information and provide greater flexibility to automate deposit insurance determinations, thereby reducing potential delays in the completion of deposit insurance determinations and payments. Timely payment of deposit insurance also helps to avoid reductions in the franchise value of failed IDIs, expanding resolution options and mitigating losses.

Effects on the Deposit Insurance Fund

The FDIC is also mindful of the effect that changes to the deposit insurance regulations have on deposit insurance coverage and generally on the Deposit Insurance Fund (DIF), which is used to pay deposit insurance in the event of an IDI's failure. The FDIC manages the DIF according to parameters established by Congress and continually evaluates the adequacy of the

DIF to resolve failed banks and protect insured depositors. The FDIC's general intent is that amendments to the trust rules are neutral with respect to the DIF.

B. Background

1. Deposit Insurance and the FDIC's Statutory and Regulatory Authority

The FDIC is an independent agency that maintains stability and public confidence in the nation's financial system by: insuring deposits; examining and supervising IDIs for safety and soundness and compliance with consumer financial protection laws; and resolving IDIs and large and complex financial institutions, and managing receiverships. The FDIC has helped to maintain public confidence in times of financial turmoil, including the period from 2008 to 2013, when the United States experienced a severe financial crisis, and more recently in 2020 during the financial stress associated with the COVID-19 pandemic. During the more than 88 years since the FDIC was established, no depositor has lost a penny of FDIC-insured funds.

The FDI Act establishes the key parameters of deposit insurance coverage, including the standard maximum deposit insurance amount (SMDIA), currently $250,000.[5] In addition to providing deposit insurance coverage up to the SMDIA at each IDI where a depositor maintains deposits, the FDI Act also provides separate insurance coverage for deposits that a depositor maintains in different rights and capacities (also known as insurance categories) at the same IDI.[6] For example, deposits in the single ownership category are separately insured from deposits in the joint ownership category at the same IDI.

[5] *See* 12 U.S.C. 1821(a)(1)(E).

[6] *See* 12 U.S.C. 1821(a)(1)(C) (deposits "maintained by a depositor in the same capacity and the same right" at the same IDI are aggregated for purposes of the deposit insurance limit).

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress.[7] Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category.

Over the years, deposit insurance coverage has evolved to reflect both the FDIC's experience and changes in the banking industry. The FDI Act includes provisions defining the coverage for certain trust deposits,[8] while coverage for other trust deposits has been defined by regulation.[9]

2. Current Rules for Coverage of Trust Deposits

The FDIC currently recognizes three different insurance categories for deposits held in connection with trusts: (1) revocable trusts; (2) irrevocable trusts; and (3) irrevocable trusts with an IDI as trustee.

Revocable Trust Deposits

The revocable trust category applies to deposits for which the depositor has evidenced an intention that the deposit will belong to one or more beneficiaries upon his or her death. This category includes deposits held in connection with formal revocable trusts – that is, revocable trusts established through a written trust agreement. It also includes deposits that are not subject to a formal trust agreement, where the IDI makes payment to the beneficiaries identified in the

[7] 12 U.S.C. 1821(a)(2).

[8] *See* 12 U.S.C. 1817(i), 1821(a).

[9] *See* 12 CFR 330.10, 330.13.

IDI's records upon the depositor's death based on account titling and applicable State law. The FDIC refers to these types of deposits, including Totten trust accounts, payable-on-death accounts, and similar accounts, as "informal revocable trusts." Deposits associated with formal and informal revocable trusts are aggregated for purposes of the deposit insurance rules; thus, deposits that will pass from the same grantor to beneficiaries are aggregated and insured up to the SMDIA, currently $250,000, per beneficiary, regardless of whether the transfer would be accomplished through a written revocable trust or an informal revocable trust.[10]

Under the current revocable trust rules, beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986.[11] If a named beneficiary does not qualify as a beneficiary under the rule, funds held in trust for that beneficiary are treated as single ownership funds of the grantor and aggregated with any other single ownership accounts that the grantor maintains at the same IDI.[12]

Certain requirements also must be satisfied for a deposit to be insured in the revocable trust category. The grantor must intend that the funds will belong to the beneficiaries upon the depositor's death, and this intention must be manifested in the "title" of the account using commonly accepted terms such as "in trust for," "as trustee for," "payable-on-death to," or any acronym for these terms. For purposes of this requirement, "title" includes the IDI's electronic deposit account records. For example, an IDI's electronic deposit account records could identify the account as a revocable trust account through coding or a similar mechanism.[13]

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[10] 12 CFR 330.10(a). In this document, the term "grantor" is used to refer to the party that creates a trust, though trust agreements also may use terms such as "settlor" or "trustor."

[11] 12 CFR 330.10(c).

[12] 12 CFR 330.10(d).

[13] 12 CFR 330.10(b)(1).

In addition, the beneficiaries of informal trusts (i.e., payable-on-death accounts) must be named in the IDI's deposit account records.[14] Since 2004, the requirement to name beneficiaries in the IDI's deposit account records has not applied to formal revocable trusts; the FDIC generally obtains information on beneficiaries of such trusts from depositors following an IDI's failure. Therefore, if a formal revocable trust deposit exceeds $250,000, and the depositor's IDI were to fail, it is likely that a hold would be placed on the deposit until the FDIC can review the trust agreement and verify that coverage criteria are satisfied.

The calculation of deposit insurance coverage for revocable trust deposits depends upon the number of unique beneficiaries named by a depositor. If five or fewer beneficiaries have been named, the depositor is insured in an amount up to the total number of named beneficiaries multiplied by the SMDIA, and the specific allocation of interests among the beneficiaries is not considered.[15] If more than five beneficiaries have been named, the depositor is insured up to the greater of: (1) five times the SMDIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMDIA.[16] For purposes of this calculation, a life estate interest is valued at the SMDIA.[17]

Where a revocable trust deposit is jointly owned by multiple co-owners, the interests of each account owner are separately insured up to the SMDIA per beneficiary.[18] However, if the

[14] 12 CFR 330.10(b)(2).

[15] 12 CFR 330.10(a).

[16] 12 CFR 330.10(e).

[17] 12 CFR 330.10(g). For example, if a revocable trust provides a life estate for the depositor's spouse and remainder interests for six other beneficiaries, the spouse's life estate interest would be valued at $250,000 for purposes of the deposit insurance calculation.

[18] 12 CFR 330.10(f)(1).

co-owners are the only beneficiaries of the trust, the account is instead insured under the FDIC's joint account rule.[19]

The current revocable trust rule also contains a provision that was intended to reduce confusion and the potential for a decrease in deposit insurance coverage in the case of the death of a grantor. Specifically, if a revocable trust becomes irrevocable due to the death of the grantor, the trust's deposit may continue to be insured under the revocable trust rules.[20] Absent this provision, the irrevocable trust rules would apply following the grantor's death, as the revocable trust becomes irrevocable at that time, which could result in a reduction in coverage.[21]

Irrevocable Trust Deposits

Deposits held by an irrevocable trust that has been established either by written agreement or by statute are insured in the irrevocable trust deposit insurance category. Calculating coverage for deposits insured in this category requires a determination of whether beneficiaries' interests in the trust are contingent or non-contingent. Non-contingent interests are interests that may be determined without evaluation of any contingencies, except for those covered by the present worth and life expectancy tables and the rules for their use set forth in the IRS Federal Estate Tax Regulations.[22] Funds held for non-contingent trust interests are insured

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[19] 12 CFR 330.10(f)(2).

[20] 12 CFR 330.10(h).

[21] The revocable trust rules tend to provide greater coverage than the irrevocable trust rules because contingencies are not considered for revocable trusts. In addition, where five or fewer beneficiaries are named by a revocable trust, specific allocations to beneficiaries also are not considered.

[22] 12 CFR 330.1(m). For example, a life estate interest is generally non-contingent, as it may be valued using the life expectancy tables. However, where a trustee has discretion to divert funds from one beneficiary to another (for example, to provide for the second beneficiary's medical needs), the first beneficiary's interest is contingent upon the trustee's discretion.

up to the SMDIA for each such beneficiary.[23] Funds held for contingent trust interests are aggregated and insured up to the SMDIA in total.[24]

The irrevocable trust rules do not apply to deposits held for a grantor's retained interest in an irrevocable trust.[25] Such deposits are aggregated with the grantor's other single ownership deposits for purposes of applying the deposit insurance limit.

Deposits Held by an IDI as Trustee of an Irrevocable Trust

For deposits held by an IDI in its capacity as trustee of an irrevocable trust, deposit insurance coverage is governed by section 7(i) of the FDI Act, a provision rooted in the Banking Act of 1935. Section 7(i) provides that "[t]rust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed the standard maximum deposit insurance amount . . . for each trust estate."[26]

The FDIC's regulations governing coverage for deposits held by an IDI in its capacity as trustee of an irrevocable trust are found in section 330.12. The rule provides that "trust funds" held by an IDI in its capacity as trustee of an irrevocable trust, whether held in the IDI's trust department or another department, or deposited by the fiduciary institution in another IDI, are insured up to the SMDIA for each owner or beneficiary represented.[27] This coverage is separate from the coverage provided for other deposits of the owners or the beneficiaries,[28] and deposits

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[23] 12 CFR 330.13(a).

[24] 12 CFR 330.13(b).

[25] *See* 12 CFR 330.1(r) (definition of "trust interest" does not include any interest retained by the settlor).

[26] 12 U.S.C. 1817(i).

[27] Part 330 defines "trust funds" as "funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement." 12 CFR 330.1(q).

[28] 12 CFR 330.12(a).

held for a grantor's retained interest are *not* aggregated with the grantor's single ownership deposits.

C. Final Rule

In July 2021, the FDIC proposed for comment a number of amendments to the rules governing deposit insurance coverage for trust deposits.[29] Generally, the FDIC proposed to: merge the revocable and irrevocable trust categories into one category; apply a simpler, common calculation method to determine insurance coverage for deposits held by certain revocable and irrevocable trusts; and eliminate certain requirements found in the current rules for revocable and irrevocable trusts.

The FDIC received seven comments in response to the proposed rule. Commenters generally supported the proposed rule, as discussed below. After careful consideration of the comments, the FDIC is adopting the rule generally as proposed, with only technical, non-substantive changes.

Merger of Revocable and Irrevocable Trust Categories

The final rule amends section 330.10 of the FDIC's regulations, which currently applies only to revocable trust deposits, to establish a new "trust accounts" category that would include both revocable and irrevocable trust deposits. The rule defines the types of deposits that would be included in this category: (1) informal revocable trust deposits, such as payable-on-death accounts, in-trust-for accounts, and Totten trust accounts; (2) formal revocable trust deposits, defined to mean deposits held pursuant to a written revocable trust agreement under which a deposit passes to one or more beneficiaries upon the grantor's death; and (3) irrevocable trust

[29] *See* 86 FR 41766 (Aug. 3, 2021).

deposits, meaning deposits held pursuant to an irrevocable trust established by written agreement or by statute. Because these deposits would be considered to be part of the same category for deposit insurance purposes, they would be aggregated when applying the deposit insurance limit.

As amended, section 330.10 does not apply to deposits maintained by an IDI in its capacity as trustee of an irrevocable trust; these deposits are insured separately pursuant to section 7(i) of the FDI Act and section 330.12 of the deposit insurance regulations.

Calculation of Coverage

The FDIC will use one streamlined calculation to determine the amount of deposit insurance coverage for deposits of revocable and irrevocable trusts. This method is already utilized by the FDIC to calculate coverage for revocable trusts that have five or fewer beneficiaries and it is an aspect of the current rules that is generally well-understood by bankers and trust depositors. The rule provides that a grantor's trust deposits will be insured in an amount up to the SMDIA (currently $250,000) multiplied by the number of trust beneficiaries, not to exceed five beneficiaries. This, in effect, will limit coverage for a grantor's trust deposits at each IDI to a total of $1,250,000; in other words, maximum coverage of $250,000 per beneficiary for up to five beneficiaries. The $1,250,000 per-grantor, per-IDI limit is intended to be more straightforward and balance the objectives of simplifying the trust rules, promoting timely payment of deposit insurance, facilitating resolutions, ensuring consistency with the FDI Act, and limiting risk to the DIF.

Eliminating Certain Requirements

Eligible Beneficiaries

The current revocable trust rules provide that beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue

Code of 1986,[30] while the irrevocable trust rules do not establish criteria for beneficiaries. As stated in the proposed rule, the FDIC believes that a single definition should be used to determine whether an entity is an "eligible" beneficiary. The final rule will use the current revocable trust rule's definition.

The final rule also excludes from the calculation of deposit insurance coverage beneficiaries that only would obtain an interest in a trust if one or more beneficiaries are deceased. This codifies existing practice to include only primary, unique beneficiaries in the deposit insurance calculation.[31] Consistent with current treatment, naming a chain of contingent beneficiaries that would obtain trust interests only in event of a beneficiary's death will not increase deposit insurance coverage.

Finally, the FDIC is codifying a longstanding interpretation of the trust rules under which an informal revocable trust designates the depositor's formal trust as its beneficiary. A formal trust generally does not meet the definition of an eligible beneficiary for deposit insurance purposes, but the FDIC has treated such accounts as revocable trust accounts under the trust rules, insuring the account as if it were titled in the name of the formal trust.[32]

Retained Interests and Ineligible Beneficiaries' Interests

[30] 12 CFR 330.10(c).

[31] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 51 ("Sometimes the trust agreement will provide that if a primary beneficiary predeceases the owner, the deceased beneficiary's share will pass to an alternative or contingent beneficiary. Regardless of such language, if the primary beneficiary is alive at the time of an IDI's failure, only the primary beneficiary, and not the alternative or contingent beneficiary, is taken into account in calculating deposit insurance coverage."). Including only unique beneficiaries means that when an owner names the same beneficiary on multiple trust accounts, the beneficiary will only be counted once in calculating trust coverage. For example, if a grantor has two trust deposit accounts and names the same beneficiary in both trust documents, the total deposit insurance coverage associated with that beneficiary is limited to $250,000 in total.

[32] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 71.

The current trust rules provide that in some instances, funds intended for specific beneficiaries are aggregated with a grantor's single ownership deposits at the same IDI for purposes of the deposit insurance calculation. These instances include a grantor's retained interest in an irrevocable trust[33] and interests of ineligible beneficiaries that do not satisfy the definition of a revocable trust "beneficiary."[34] This adds complexity to the deposit insurance calculation, as a detailed review of a trust agreement may be required to value such interests in order to aggregate them with a grantor's single ownership funds. In order to implement the streamlined calculation for trust deposits, the FDIC is eliminating these provisions. Under the final rule, the grantor and other beneficiaries that do not satisfy the definition of "eligible beneficiary" are not included in the deposit insurance calculation.[35] Importantly, this does not in any way limit a grantor's ability to establish such trust interests under State law; these interests simply do not factor into the calculation of deposit insurance coverage.

Future Trusts Named as Beneficiaries

Trusts often contain provisions for the establishment of one or more new trusts upon the grantor's death, and the final rule clarifies deposit insurance coverage in these situations. Specifically, if a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor (or grantors), the future trust (or trusts) will not be treated as beneficiaries for purposes of the calculation under the proposed rule. Rather, the future trust(s) will be considered mechanisms for distributing trust funds, and the natural persons or

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[33] *See* 12 CFR 330.1(r); *see also FDIC Financial Institution Employee's Guide to Deposit Insurance* at 87.

[34] 12 CFR 330.10(d).

[35] In the unlikely event a trust does not name any eligible beneficiaries, the FDIC would treat the trust's deposits as single ownership deposits. Such deposits would be aggregated with any other single ownership deposits that the grantor maintains at the same IDI and insured up to the SMDIA of $250,000.

organizations that receive the trust funds through the future trusts will be considered the beneficiaries for purposes of the deposit insurance calculation. This clarification is consistent with published guidance and does not represent a substantive change in deposit insurance coverage.[36]

Naming of Beneficiaries in Deposit Account Records

Consistent with the current revocable trust rules, the final rule continues to require the beneficiaries of an informal revocable trust to be specifically named in the deposit account records of the IDI.[37]

Presumption of Ownership

Consistent with the current revocable trust rules, the final rule provides that, unless otherwise specified in an IDI's deposit account records, a deposit of a trust established by multiple grantors will be presumed to be owned in equal shares.[38]

Bankruptcy Trustee Deposits

The FDIC will maintain the current treatment of deposits placed at an IDI by a bankruptcy trustee. Under the final rule, if funds of multiple bankruptcy estates are commingled in a single account at the IDI, each estate will be separately insured up to the SMDIA.

Deposits Covered Under Other Rules

The final rule excludes from coverage under section 330.10 certain trust deposits that are covered by other sections of the deposit insurance regulations. For example, employee benefit plan deposits are insured pursuant to section 330.14, and investment company deposits are

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[36] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 74.

[37] *See* 12 CFR 330.10(b)(2).

[38] *See* 12 CFR 330.10(f).

insured as corporate deposits pursuant to section 330.11. Deposits held by an insured depository institution in its capacity as trustee of an irrevocable trust are insured pursuant to section 330.12. In addition, if the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, deposits held in connection with the trust are treated as joint deposits under section 330.9. In each of these cases, the FDIC will not alter the current rules.

Effective Date

The effective date of the final rule is April 1, 2024. This is intended to provide IDIs, depositors, and the FDIC time to prepare for the changes in deposit insurance coverage. IDIs will have an opportunity to review the changes in coverage, train employees, and update publications if necessary. In addition, "covered institutions" under the FDIC's rule entitled "Recordkeeping for timely deposit insurance determination," codified at 12 CFR part 370 will need to prepare to implement changes to recordkeeping and information technology capabilities. Depositors may review insurance coverage for their deposits and adjust their deposit account arrangements and deposit relationships, if desired. In addition, the FDIC must reprogram the information technology infrastructure that it uses to determine deposit insurance coverage and to make payment to insured depositors and update its deposit insurance coverage publications, including publications that provide guidance to covered institutions.

D. Discussion of Comments

The FDIC received seven comments on the proposed rule, including one joint letter from three national trade associations and individual letters from another national trade association, a State banker's association, a deposit solutions provider, and three individuals. Several commenters expressed appreciation for the FDIC's efforts to simplify the trust rules and offered suggestions for modifications to the proposed rule.

Some commenters also offered suggestions that relate primarily to other parts of the FDIC's regulations and thus are outside the scope of the proposed rule. Nonetheless, the FDIC reviewed these suggestions as part of the process of developing the final rule as discussed below.

Institutional Trusts

Three trade associations raised a concern about the coverage that would apply to certain institutional trusts under the proposed rule, including common trust funds, collective investment funds, indenture bonds, and securitization trusts. The commenters explained that these types of irrevocable trusts are sometimes established by entities other than insured depository institutions – such as uninsured limited purpose nationally-chartered banks, limited purpose state-chartered banks, and state-chartered trust companies – to collectively invest funds, issue bonds, or form securitized investments. The commenters asserted that deposits of such trusts potentially fall within the scope of the existing irrevocable trust category and would experience a reduction in coverage under the proposed rule because per-beneficiary coverage would be provided only for up to five eligible beneficiaries. The commenters urged the FDIC to amend the pass-through deposit insurance rules and, in the interim, to clarify through guidance that institutional trusts qualify for pass-through insurance coverage.

Pass-through insurance coverage applies to deposits of specific types of institutional trusts under the current rules, and this coverage would not be affected by the rule. The commenters noted that collective trust funds are established for the purpose of investing assets of retirement, pension, profit sharing, stock bonus or other employee benefit trusts. Deposits of employee benefit plans are insured on a pass-through basis pursuant to statute and regulation.[39] Moreover, section 330.10(f)(2) of the proposed rule stated that deposits of employee benefit

[39] *See* 12 U.S.C. 1821(a)(1)(D); 12 CFR 330.14.

plans would be covered pursuant to the rules for employee benefit plan deposits found in section 330.14, even if such deposits belonged to a trust.

Pass-through insurance coverage generally does not apply to deposits of other types of investment trusts, such as mutual funds or other investment company structures.[40] While some institutional trusts (similarly to some individual trusts) may experience a reduction in deposit insurance coverage under this final rule, the FDIC believes that a simplified insurance calculation for trust deposits has substantial benefits for depositors and IDIs.

Per-grantor Coverage Limit

Two individuals submitted comment letters questioning the elimination of coverage for a grantor's trust deposits exceeding $1,250,000 at a single IDI. The FDIC recognizes that this aspect of the proposed rule may result in a reduction in deposit insurance coverage for a small number of trust depositors that hold deposits exceeding $1,250,000 at a single IDI, and these depositors may wish to restructure their trust deposits. However, the FDIC believes that a simplified insurance calculation for trust deposits has substantial benefits for depositors and IDIs, as discussed above. The $1,250,000 per-grantor, per-IDI limit is intended to be more straightforward and balance the objectives of simplifying the trust rules, promoting timely payment of deposit insurance, facilitating resolutions, ensuring consistency with the FDI Act, and limiting risk to the DIF. In addition, as discussed below, the FDIC intends to update its publications and engage in public outreach to promote awareness of the changes in coverage.

Educational Materials

[40] Under the current deposit insurance rules, deposits maintained by trusts or other business arrangements that are subject to certain securities laws are insured for up to $250,000 in total, regardless of the number of underlying investors. 12 CFR 330.11(a)(2).

A trade association suggested that the FDIC provide template language for bankers to explain trust coverage changes to depositors and publish and regularly update guidance and frequently asked questions on its website to address specific scenarios. The FDIC appreciates this suggestion and recognizes the need for public outreach on a variety of fronts. The FDIC already has many resources for bankers and the public that help explain deposit insurance coverage generally, and several presentations that are specific to trust accounts, including the following:

- Financial Institution Employee's Guide to Deposit Insurance: Describes deposit insurance coverage for various account categories and provides examples of coverage in multiple different scenarios.
- Bankers' seminars: The FDIC holds deposit insurance seminars for bankers multiple times each year, during which FDIC staff discuss the current rules and take questions.
- Electronic Deposit Insurance Estimator (EDIE): A tool on the FDIC's website that can be used to help determine deposit insurance coverage for particular account arrangements.
- Published guidance and materials relating to deposit insurance coverage intended to assist the covered institutions subject to part 370

As part of its implementation of the final rule by the effective date of April 1, 2024, the FDIC intends to review all relevant resources and publications and update or remove those materials, as appropriate. Additionally, the FDIC will ensure that all materials, including brochures and any other documents, are updated and available for distribution. The FDIC will also consider additional ways to inform the public regarding the final rule and ways to assist bankers in explaining any changes to depositors.

Comments Focused on Part 370

Commenters also addressed various aspects of the NPR that have implications for covered institutions. Issues raised by these commenters and the FDIC's responses are discussed below. The commenters also raised issues with part 370 that are outside the scope of this rulemaking effort. While the FDIC acknowledges those comments, it believes those comments are not directly related to the final rule.

Beneficiaries of Future Trusts

Several trade associations argued that the proposed rule's treatment of beneficiaries of future trusts would add considerable burden to compliance with part 370 and urged the FDIC to treat future trusts as another type of eligible beneficiary. The FDIC does not believe that looking through future trusts to identify potential beneficiaries will add any compliance burden for part 370 covered institutions. Under § 370.4(b)(2), a covered institution is not required to maintain the identity of a formal trust's beneficiary(ies) in its deposit account records for the trust's account(s) if it does not otherwise maintain the information that would be needed for its information technology system to meet the requirements set forth in § 370.3. Thus, to the extent a trust's beneficiaries include a future trust, the covered institution would not be required to collect information on the beneficiaries of a future trust in order to comply with part 370. It is important to note, however, that regardless of whether or not an insured depository institution is covered by part 370, if an insured depository institution were to fail, then the depositor may need to provide the identity(ies) of a future trust's beneficiary(ies) in order for the FDIC to make a complete and accurate deposit insurance determination. In addition, the FDIC notes that it is required by statute to aggregate each depositor's deposits within each insurance category when making an insurance determination.[41] Recognizing a future trust as an eligible beneficiary could result in duplicative coverage to the extent the beneficiaries of the existing trust and the future trust overlap.

Multiple Beneficiaries across Multiple Trust Accounts

Three trade associations recommended that any final rulemaking for trust coverage simplification should include a specific example to explain part 370 recordkeeping requirements when there are more than five beneficiaries associated with more than one trust account established by the same grantor. According to the example recommended by commenters, when a grantor has established both an informal trust account (e.g., a payable-on-death (POD) account) and a formal trust that also has accounts at the same covered institution, the covered institution would be required to identify the beneficiary(ies) only for the informal trust account in the deposit account records.

As the commenters note, accounts held in connection with a formal trust that are insured under § 330.10, as amended pursuant to this final rule (or § 330.13 prior to the effective date of this final rule), are eligible for alternative recordkeeping under § 370.4(b)(2). A covered institution is not required to maintain information identifying the beneficiaries of a formal trust in the deposit account records for purposes of part 370 if it does not otherwise maintain the information that would be needed for its information technology system to meet the requirements set forth in § 370.3. Nevertheless, if a covered institution should fail, the depositor (or the trustee for the formal trust) may need to submit to the FDIC information identifying the formal trust's beneficiary(ies).

[41] 12 U.S.C. 1821(a)(1)(C).

Need to Provide Trust Documentation Upon Bank Failure

A deposit solutions provider submitted a comment letter describing its operation of a sweep program and the method by which it allocates trust deposits among several banks. The commenter indicated that if the depositor's originating bank does not provide information on trust beneficiaries, only up to $250,000 of that depositor's funds will be allocated to a single bank in the network. The commenter requested the FDIC recognize that operating the program in this way eliminates the need for the originating bank to provide trust documentation to the FDIC after a bank failure or for the purpose of complying with part 370's recordkeeping requirements.

The deposit solutions provider's methodology for allocating the trust deposits is intended to ensure that the total corpus of trust funds would be eligible for deposit insurance (because the amount placed at each receiving bank would not exceed the SMDIA for each beneficial owner of the deposits). That methodology, however, would not necessarily provide the FDIC with all of the requisite information to complete an accurate deposit insurance determination on a particular depositor's accounts. Several other factors must be considered and evaluated.

Although it may be uncommon for an individual depositor participating in the commenter's program to maintain other deposit accounts at a bank holding the swept trust funds, the FDIC is required by statute to aggregate all of a beneficial owner's funds placed in one bank in the same right and capacity. Consequently, the FDIC would have to obtain any additional depositor or trust account information (or confirm that there is none) in order to aggregate all the depositor's accounts in the trust category. The requisite information would include identification of both the grantor(s) and the beneficiaries of the trust. For example, in the event that a depositor maintained more than one trust account with the same beneficiary, that particular beneficiary would only count once for purposes of deposit insurance eligibility. Additionally, it is possible that an entity listed as a beneficiary would not meet the definition of a "beneficiary" as set forth in section 330.10(c).[42] Finally, if the grantor has multiple trust accounts at the same bank, it is possible that the FDIC would provide deposit insurance for one trust account before receiving the necessary trust account information for another trust account. As stated previously, the FDIC would have to ensure that both trust accounts are aggregated before paying additional deposit insurance for the second trust account. The FDIC would be unable to perform this function without the relevant grantor and beneficiary information.

The part 370 recordkeeping requirements for informal revocable trust accounts closely track the recordkeeping requirements set forth in 12 C.F.R. 330.10, as amended. For example, § 370.4(a)(1)(iii) requires the covered institution to maintain information concerning the beneficiaries of a payable-on-death account in the covered institution's records.[43] Therefore, this information should be immediately available to the FDIC at a covered institution's failure. In contrast, for formal trust accounts, § 370.4(b)(2) permits alternative recordkeeping treatment and requires a covered institution to maintain some, but not all, of the requisite information the FDIC would need to have to complete an accurate deposit insurance determination. Nevertheless, the FDIC would require this information to be available after a covered institution's failure for the reasons discussed above.

Implementation of Part 370 Capabilities

[42] 12 C.F.R. 330.10(c) provides that "[f]or purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended."

[43] See Section 330.10(b)(2) which requires "[f]or informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution."

Three trade associations urged the FDIC to postpone part 370 examinations on the types of deposit accounts impacted. Part 370 requires a covered institution to implement information technology and recordkeeping capabilities to calculate deposit insurance as provided under part 330. The final rule has a delayed effective date and will not go into effect until April 1, 2024.[44] Accordingly, covered institutions will have at least 24 months after the FDIC's adoption of the final rule to prepare the updates or changes to its information technology system or recordkeeping capabilities that will be necessary to satisfy part 370 requirements as of the effective date of the final rule. The FDIC is also publishing a separate notice in the Federal Register to part 370 covered institutions regarding the final rule's implications regarding compliance with part 370.

FDIC Testing of Part 370 Capabilities

Several trade associations suggested that the FDIC delay part 370 compliance tests for three years after a covered institution's part 370 annual certification following the effective date of the final rule. The FDIC will continue to conduct periodic tests pursuant to 12 C.F.R. § 370.10(b) and evaluate the part 370 capabilities under the rules effective at the time of the compliance test. Ongoing compliance testing is necessary because a covered institution could fail at any time, and the FDIC would need to utilize the covered institution's part 370 capabilities to effectively conduct a timely deposit insurance determination. The FDIC relies on compliance testing to provide it with insight regarding how comprehensive a covered institution's part 370 capabilities are. Further, the revisions to deposit insurance coverage made by the final rule are

[44] Although section 370.10(d) provides that "[a] covered institution will not be considered to be in violation of this part as a result of a change in law that alters the availability or calculation of deposit insurance for such period as specified by the FDIC following the effective date of such change[,]" the FDIC is not providing an additional period of time pursuant to section 370.10(d) because the delayed effective date of the final rule provides covered institutions with at least 24 months to prepare the changes that will need to be operational on April 1, 2024.

expected to impact a relatively small volume of a covered institution's deposit balances so should not significantly impact compliance testing, and would nonetheless be useful in assessing a covered institution's part 370 capabilities.

Comments Outside the Scope of this Rulemaking

Finally, commenters recommended certain changes to part 370 requirements. Three trade associations suggested that the FDIC limit the annual certification requirement for testing and attestation to material changes only and waive certain recordkeeping requirements for grantors. The FDIC believes that the recommendations to change part 370 compliance and recordkeeping requirements are outside the scope of the current part 330 rulemaking and would require an amendment to part 370 instead. Currently, covered institutions are required to submit to the FDIC a certification of compliance that must, among other requirements, "confirm that the covered institution has implemented all required capabilities and tested its information technology system during the proceeding twelve months."[45] The purpose of this requirement is to guarantee that a covered institution perform an end-to-end test of its 370 capabilities at least once per year and to confirm that those capabilities function properly. In the event that a covered institution were to fail, the FDIC would rely upon all of the covered institution's part 370 capabilities to complete the deposit insurance calculations. Moreover, the FDIC would not limit its testing to only the capabilities that the covered institution has materially changed during the preceding compliance year. Rather it would test the covered institution's capabilities to calculate deposit insurance should the need arise and understand which capabilities function properly and which do not.

[45] 12 C.F.R. 370.10(a).

Among the comments related solely to part 370, a trade association requested that the FDIC waive certain recordkeeping requirements under § 370.4 that are applicable to formal revocable trust and irrevocable trust accounts with transactional features, namely the requirement that a covered institution maintain a unique identifier for the trust's grantor. In the preamble to the 2019 part 370 final rule, the FDIC stated that having a method to identify the grantor at failure (i.e., a unique identifier) would enable the FDIC to aggregate the deposits of formal revocable trusts established by the same grantor and insure those accounts up to the SMDIA.[46] This could enable payment instructions presented against those accounts to be completed after failure.[47] The same approach would be used for certain irrevocable trust accounts that have a common grantor.[48]

Trade association commenters also recommended that the FDIC allow covered institutions to amend existing exception requests and provide extensions for granted relief to account for changes to part 330. This request is outside the scope of this rulemaking, and the FDIC will consider this outside the scope of this rulemaking.

The FDIC reiterates that recommendations to amend part 370 are beyond the scope of this final rule.

E. Alternatives Considered

The FDIC considered a number of alternatives to the amendments to the trust rules that could meet its objectives, as described in the preamble to the proposed rule.[49] Commenters

[46] 84 Fed. Reg. 37020, 37029 (July 30, 2019).

[47] *Id.* The FDIC explained further that "[t]his capability will facilitate the FDIC's resolution efforts by enabling a successor [insured depository institution] to continue payments processing uninterrupted, and will also mitigate adverse effects of the covered institution's failure on these account holders."

[48] *Id.*, discussing trust deposits insured pursuant to 12 CFR 330.13, which coverage is now combined under revised 12 CFR 330.10.

[49] *See* 86 FR 41766, 41776 (Aug. 3, 2021).

generally did not address these alternatives, and for the reasons stated in the preamble to the proposed rule, the FDIC concludes that the proposed rule was preferable to the alternatives.

II. Amendments to Mortgage Servicing Account Rule

A. Policy Objectives

The FDIC's regulations governing deposit insurance coverage include specific rules on deposits maintained at IDIs by mortgage servicers. These rules are intended to be easy to understand and apply in determining the amount of deposit insurance coverage for a mortgage servicer's deposits. The FDIC also seeks to avoid uncertainty concerning the extent of deposit insurance coverage for such deposits, as deposits in mortgage servicing accounts (MSAs) provide a source of funding for IDIs.

The FDIC is amending its rules governing insurance coverage for deposits maintained at IDIs by mortgage servicers that are comprised of mortgagors' principal and interest payments. The amendments are intended to address an aspect of servicing arrangements that was not previously covered by the mortgage servicing account rule. Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the MSA with principal and interest payments collected directly from mortgagors. This may be required, for example, under certain mortgage securitizations. The FDIC believes that the factors that motivated the FDIC to establish its current rules for mortgage servicing accounts, described below, argue for treating funds advanced by a mortgage servicer in order to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers.[50]

B. Background

The FDIC's rules governing coverage for mortgage servicing accounts were originally adopted in 1990 following the transfer of responsibility for insuring deposits of savings associations from the FSLIC to the FDIC. Under the rules adopted in 1990, deposits comprised of payments of principal and interest were insured on a pass-through basis to lenders, mortgagees, investors, or security holders (lenders). In adopting this rule, the FDIC focused on the fact that principal and interest funds were generally owned by lenders, on whose behalf the servicer, as agent, accepted principal and interest payments. By contrast, payments of taxes and insurance were insured to the mortgagors or borrowers on a pass-through basis because the borrower owns such funds until tax and insurance bills are paid by the servicer.

In 2008, however, the FDIC recognized that securitization methods and vehicles for mortgages had become more complex, exacerbating the difficulty of determining the ownership of deposits comprised of principal and interest payments by mortgagors and extending the time required to make a deposit insurance determination for deposits of a mortgage servicer in the event of an IDI's failure.[51] The FDIC expressed concern that a lengthy insurance determination could lead to continuous withdrawal of deposits of principal and interest payments from IDIs and unnecessarily reduce a funding source for such institutions. The FDIC therefore amended its rules to provide coverage to lenders based on each mortgagor's payments of principal and

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[50] Certain funds collected from mortgagors and held by a bank may not be "deposits" under the FDI Act, and thus fall outside the scope of deposit insurance coverage. For example, funds received by a bank that are immediately applied to reduce the debt owed to that bank are specifically excluded from the statutory definition of "deposit." 12 U.S.C. 1813(*l*)(3).

[51] *See* 73 FR 61658, 61658-59 (Oct. 17, 2008).

interest into the mortgage servicing account, up to the SMDIA (currently $250,000) per mortgagor. The FDIC did not amend the rule for coverage of tax and insurance payments, which continued to be insured to each mortgagor on a pass-through basis and aggregated with any other deposits maintained by each mortgagor at the same IDI in the same right and capacity.

The 2008 amendments to the rules for mortgage servicing accounts did not provide for the fact that servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders. However, this is required of mortgage servicers under some mortgage servicing arrangements. Covered institutions identified challenges to implementing certain recordkeeping requirements with respect to MSA deposit balances as a result of the ways in which servicer advances are administered and accounted.[52]

The current rule provides coverage for principal and interest funds only to the extent "paid into the account by the mortgagors"; it does not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments. As a result, deposits into an MSA by a servicer for the purpose of making an advance are not provided the same level of coverage as other deposits in a mortgage servicing account consisting of principal and interest payments directly from the borrower, which are insured up to the SMDIA for each borrower. Instead, the advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. The FDIC is concerned that this inconsistent treatment of principal and interest amounts could result in financial instability during times of stress, and could further complicate the insurance determination process, a result that is inconsistent with the FDIC's policy objectives.

[52] In order to fulfill their contractual obligations with investors, covered institutions maintain mortgage principal and interest balances at a pool level and remittances, advances, advance reimbursement and excess funds applications that affect pool-level balances are not allocated back to individual borrowers.

C. Final Rule

In July 2021, the FDIC proposed to amend the rules governing coverage for deposits in mortgage servicing accounts to provide consistent deposit insurance treatment for all MSA deposit balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers, or paid into the account by another party (such as the servicer) in order to satisfy a periodic obligation to remit principal and interest due to the lender.[53] Under the rule, accounts maintained by a mortgage servicer in an agency, custodial, or fiduciary capacity, for the purpose of payment of a borrower's principal and interest obligations, would be insured for the cumulative balance paid into the account in order to satisfy principal and interest obligations to the lender, whether paid directly by the borrower or by another party, up to the limit of the SMDIA per mortgagor. Mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers would therefore be insured up to the SMDIA per mortgagor, consistent with the coverage rules for payments of principal and interest collected directly from borrowers.[54]

The FDIC received one joint comment letter responding to the proposed change in coverage for mortgage servicing accounts, discussed below.

Under the final rule, the composition of an MSA attributable to principal and interest payments would also include collections by a servicer, such as foreclosure proceeds, that are used to satisfy a borrower's principal and interest obligations to the lender. These funds will be insured up to the limit of the SMDIA per mortgagor.

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[53] *See* 86 FR 41766 (Aug. 3, 2021).

[54] Servicers' advances may have been insured under the rule that applied to mortgage servicing account deposits prior to 2008. Prior to 2008, mortgage servicing deposits were insured on a pass-through basis. Under the pass-through insurance rules, the identity of the party that pays funds into a deposit account does not generally factor into insurance coverage. In this sense, the proposed rule can be viewed as restoring coverage to the previous level.

The FDIC did not propose changes to the deposit insurance coverage provided for mortgage servicing accounts comprised of payments from mortgagors of taxes and insurance premiums. Such aggregate escrow accounts are held separately from the principal and interest MSAs and the deposits therein are held in trust for the mortgagors until such time as tax and insurance payments are disbursed by the servicer on the borrower's behalf. Such deposits continued to be insured based on the ownership interest of each mortgagor in the account and aggregated with other deposits maintained by the mortgagor at the same IDI in the same capacity and right.

D. Discussion of Comments

The proposed rule provided that balances in mortgage servicing accounts that were paid into the account by either the borrower or another party would be insurable if they were held to satisfy the principal and interest obligations of a mortgagor. The comment was supportive of this change, noting that the allocations provided would allow for more stability in these types of accounts in periods of turmoil. The FDIC is finalizing the rule as proposed.

Three trade associations, through a joint comment letter, specifically requested additional clarity on the coverage that would be provided for three specific types of funds placed into mortgage servicing accounts by the servicer – interest shortfall payments, funds from distressed homeowner programs, and funds used to satisfy buyout or repurchase obligations.

Interest shortfall payments are funded by the servicer when a loan is refinanced or paid off before the end of a month. The associations noted that servicers are generally required to fund the interest that would have accrued during the month, just as if the borrower had continued the payment stream as agreed. Because these payments are traceable at the loan level and held to satisfy the interest obligation of the mortgagor, they are covered under the mortgage servicing account rule. Federal, state, and local governments have created various programs during emergencies that provide funds to borrowers who are having difficulties paying their home mortgages. While the most recent iterations of these programs were spurred by the COVID-19 pandemic, these types of programs can result from other types of emergencies as well (e.g., natural disasters) and can vary in duration. While each program would need to be evaluated on its individual terms, the FDIC expects that funds originating from most government programs designed to help homeowners with mortgage payments would be included in the borrower's insurable balance covered by the mortgage servicing account rule due to the provision of funds to satisfy the borrower's principal and interest obligations.

With respect to servicer-funded buyouts and repurchases of loans, it is common for the servicer to be requested to repurchase or substitute a loan in a securitization if the loan is defective or in a specific delinquency status. Although the amount of unpaid principal balance plus the accrued but unpaid interest on that loan is the price paid to repurchase the loan from the pool, the repurchase of the loan from the investor pool does not satisfy the borrower's principal and interest obligation, and thus, falls outside the scope of the rule.

Alternatively, the associations suggested that the FDIC eliminate the borrower-level allocation, as most mortgage servicers account for the deposits in their account on the portfolio level as opposed to the loan-specific level. The commenters' suggested removal of the borrower allocation would change the insurable amount calculation to insure the lesser of the balance in the mortgage servicing account or the number of borrowers multiplied by the SMDIA. The FDIC believes that the elimination of the borrower-level allocation would significantly expand deposit insurance coverage in some circumstances and declines to adopt the suggested alternative. For example, a balance representing a large commercial mortgage payment could be fully insured if the pooled custodial account contained funds for a large number of other borrowers, even if this large payment significantly exceeded the $250,000 deposit insurance limit.

III. Regulatory Analysis

A. Expected Effects

1. Simplification of Trust Rules

Generally, the simplification of the trust rules is expected to have benefits including clarifying depositors' and bankers' understanding of the insurance rules, promoting the timely payment of deposit insurance following an IDI's failure, facilitating the transfer of deposit relationships to failed bank acquirers (thereby potentially reducing the FDIC's resolution costs), and addressing differences in the treatment of revocable trust deposits and irrevocable trust deposits contained in the current rules. The changes to the current rules would directly affect the level of deposit insurance coverage provided to some depositors with trust deposits. In some cases, which the FDIC expects are rare, the changes could reduce deposit insurance coverage; for the vast majority of depositors, the FDIC expects the coverage level to be unchanged. The FDIC has also considered the impact of any changes in the deposit insurance rules on the DIF and on the covered institutions that are subject to part 370. Finally, the FDIC describes other potential effects of the changes, such as the effects on information technology (IT) service providers to the institutions that could be affected by the final rule. These effects are discussed in greater detail below.

Effects on Deposit Insurance Coverage

The final rule would affect deposit insurance coverage for deposits held in connection with trusts. According to September 30, 2021 Call Report data, the FDIC insures 4,923 depository institutions[55] that report holding approximately 812 million deposit accounts. Additionally, 1,551 IDIs have powers granted by a state or national regulatory authority to administer accounts in a fiduciary capacity (i.e., trust powers) and 1,155 exercise those powers, comprising 31.5 percent and 23.5 percent, respectively, of all IDIs.[56] However, individual depositors may establish a trust account at an IDI even if that IDI does not itself have or exercise trust powers, and in fact, as discussed below, 99 percent of a sample of failed banks had trust accounts. Therefore, the FDIC estimates that the final rule could affect between 1,155 and 4,923 IDIs.

The FDIC does not have detailed data on depositors' trust arrangements that would allow it to precisely estimate the number of trust accounts that are currently held by FDIC-insured institutions. However, the FDIC estimated the number of trust accounts and trust account depositors utilizing data from failed banks. Based on data from 249 failed banks[57] between 2010 and 2020, 335,657 deposit accounts—owned by 250,139 distinct depositors—were trust accounts (revocable or irrevocable), out of a total of 3,013,575 deposit accounts. Thus, about 11.14 percent of the deposit accounts at the 249 failed banks were trust accounts. Of the 249 institutions, 247 (99 percent) reported having trust accounts at time of failure. Of the 247 failed banks that reported trust accounts, 212 reported not having trust powers as of their last Call Report. Assuming the percentage of trust accounts at failed banks is representative of the percentage of trust accounts among all FDIC-insured institutions, the FDIC estimates, for purposes of this analysis, that there are approximately 90.5 million trust accounts in existence at

[55] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[56] FDIC Call Report data, September 30, 2021.

[57] Data on failed banks comes from the FDIC's Claims Administration System, which contains data on depositors' funds from every failed IDI since September 2010.

FDIC-insured institutions.[58] Additionally, based on the observed number of trust account depositors per trust account in the population of 249 failed banks, the FDIC estimates, for purposes of this analysis, that there are approximately 67.4 million trust depositors.[59] These estimates are subject to considerable uncertainty, since the percentage of deposit accounts that are trust accounts and the number of depositors per trust account for all FDIC insured institutions may differ from what was observed at the 249 failed banks. The FDIC does not have information that would shed light on whether or how the numbers of trust accounts and trust depositors at failed banks differs from the corresponding numbers for other FDIC-insured institutions.

The FDIC also does not have detailed data on depositors' trust arrangements that would allow the FDIC to precisely estimate the quantitative effects of the final rule on deposit insurance coverage. Thus, the effects of the changes to the insurance rules are outlined qualitatively below. The FDIC expects that most depositors would experience no change in the coverage for their deposits under the final rule. However, some depositors that maintain trust deposits would experience a change in their insurance coverage under the final rule.

The FDIC anticipates that deposit insurance coverage for some irrevocable trust deposits would increase under the final rule. The FDIC's experience suggests that the provisions of the current irrevocable trust rules that require the identification and aggregation of contingent

[58] There were approximately 812 million deposit accounts reported by FDIC-insured institutions as of September 30, 2021, based on Call Report data. Assuming that 11.14 percent of accounts are trust accounts, then there are an estimated 90.5 million trust accounts as of September 30, 2021.

[59] Using the data from failed banks, 250,139 distinct depositors held 335,657 revocable or irrevocable trust accounts, or there were 0.745 trust account depositors per trust account (250,139 divided by 335,657). The estimated number of trust depositors at FDIC-insured institutions (67.4 million) is obtained by multiplying the estimated number of trust accounts by the number of trust account depositors per trust account (90.5 million multiplied by 0.745).

interests often apply due to the inclusion of contingencies in such trusts.[60] Thus, even where an irrevocable trust names multiple beneficiaries, the current trust rules often provide a total of only $250,000 in deposit insurance coverage. The final rule would not consider such contingencies in the calculation of coverage, and per-beneficiary coverage would apply.

In limited instances, the merger of the revocable trust and irrevocable trust categories may decrease coverage for depositors. Deposits of revocable trusts and deposits of irrevocable trusts are currently insured separately. The final rule would require aggregation for purposes of applying the deposit insurance limit, thereby increasing the likelihood of the combined trust account balances exceeding the insurance limit.[61] However, the FDIC's experience is that irrevocable trust deposits comprise a relatively small share of the average IDI's deposit base,[62] and that it is rare for IDIs to hold deposits in connection with irrevocable and revocable trusts established by the same grantor(s).[63] Individual grantors' trust deposits held for the benefit of up to five different beneficiaries would continue to be separately insured.

With respect to revocable and irrevocable trusts, depositors who have designated more than five beneficiaries and structured their trust accounts in a manner that provides for more than $1,250,000 in coverage per grantor, per IDI under the current rules would experience a reduction in coverage. The FDIC's experience suggests that the $1,250,000 maximum coverage amount

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[60] As discussed above, the provisions relating to contingent interests may not apply when a trust has become irrevocable due to the death of one or more grantors. In such instances, the revocable trust rules continue to apply.

[61] As discussed above, deposits maintained by an IDI as trustee of an irrevocable trust would not be included in this aggregation, and would remain separately insured pursuant to section 7(i) of the FDI Act and 12 CFR 330.12.

[62] Data obtained in connection with IDI failures during the recent financial crisis suggests that irrevocable trust deposits comprise less than one percent of trust deposits. However, as discussed above, the FDIC does not possess sufficient information to enable it to estimate the effects of the final rule on trust account depositors at all IDIs.

[63] In the data obtained in connection with IDI failures during the recent financial crisis, only 51 out of 250,139 depositors with trust accounts had both revocable and irrevocable types. Of these 51 depositors, nine had total trust account balances greater than $250,000, and only one had a total trust balance of more than $1,250,000.

per grantor, per IDI would not affect the vast majority of trust depositors, as most trusts have either five or fewer beneficiaries, less than $1,250,000 per grantor on deposit at the same IDI, or are structured in a manner that results in only $1,250,000 in coverage under the current rules. The FDIC estimates that approximately 26,959 trust account depositors and approximately 36,175 trust accounts could be directly affected by this aspect of the final rule, representing about 0.04 percent of both the estimated number of trust account depositors and the estimated number of trust accounts.[64] The actual number of trust depositors and trust accounts impacted will likely differ, as the estimates rely on data from failed banks, and failed banks may differ from other institutions in their percentages of trust depositors or trust accounts. It is also possible depositors may restructure their deposits in response to changes to the rule, thus mitigating the potential effects on deposit insurance coverage.

Clarification of Insurance Rules

The merger of certain revocable and irrevocable trust categories is intended to simplify deposit insurance coverage for trust accounts. Specifically, the merger of these categories would mostly eliminate the need to distinguish revocable and irrevocable trusts currently required to determine coverage for a particular trust deposit. The benefit of the common set of rules would likely be particularly significant for depositors that have established arrangements involving

[64] To estimate the numbers of trust account depositors and trust accounts affected, the FDIC performed the following calculation. First, based on data from 249 failed banks between 2010 and 2020, the FDIC determined that there were 335,657 trust accounts out of 3,013,575 deposit accounts (trust account share). Second, the FDIC determined the number of trust accounts per trust depositor (335,657 / 250,139). The FDIC then estimated the number of trust accounts by multiplying the trust account share (335,657 / 3,013,575) by the number of deposit accounts across all IDIs (812,414,977) according to September 30, 2021, Call Report data. This step yielded an estimate of 90,488,133 trust accounts. Based on the estimated number of trust accounts per trust depositor from the failed bank data, the FDIC estimated the total number of trust depositors to be 67,433,752. Using failed bank data, 100 out of 250,139 trust depositors had balances in excess of $1,250,000 in their trust accounts. Thus, the FDIC estimated that, of the approximately 67.4 million trust depositors, (100 / 250,139) of them—approximately 26,959—had balances in excess of $1,250,000 in their trust accounts, and therefore could be directly affected by the final rule. These estimated 26,959 trust depositors are associated with an estimated 36,175 trust accounts, based on the observed number of trust accounts per trust depositor from the data from 249 failed banks between 2010 and 2020.

multiple trusts, as they would no longer need to apply two different sets of rules to determine the level of deposit insurance coverage that would apply to their deposits. For example, the final rule would eliminate the need to consider the specific allocation of interests among the beneficiaries of revocable trusts with six or more beneficiaries, as well as contingencies established in irrevocable trusts. The merger of the categories also would eliminate the need for current sections 330.10(h)-(i), which allows for the continued application of the revocable trust rules to the account of a revocable trust that becomes irrevocable due to the death of the trust's owner. As previously discussed, these provisions of the current trust rules have proven confusing as illustrated by the numerous inquiries that are consistently submitted to the FDIC on these topics.

FDIC-insured depository institutions may incur some regulatory costs associated with making necessary changes to internal processes and systems and bank personnel training in order to accommodate the final rule's definition of "trust accounts" and attendant deposit insurance coverage terms. There also may be some initial cost for IDIs to become familiar with the changes to the trust insurance coverage rules in order to be able to explain them to potential trust customers, counterbalanced to some extent by the fact that the rules should be simpler for IDIs to understand and explain going forward.

Prompt Payment of Deposit Insurance

The FDIC also expects that simplification of the trust rules would promote the timely payment of deposit insurance in the event of an IDI's failure. The FDIC's experience has been that the current trust rules often require detailed, time-consuming, and resource-intensive review of trust documentation to obtain the information that is necessary to calculate deposit insurance coverage. This information is often not found in an IDI's records and must be obtained from depositors after the IDI's failure. The final rule would ameliorate the operational challenge of calculating deposit insurance coverage, which could be particularly acute in the case of a failure of a large IDI with a large number of trust accounts. The final rule would streamline the review of trust documents required to make a deposit insurance determination, promoting more prompt payment of deposit insurance. Timely payment of deposit insurance also can help to facilitate the transfer of depositor relationships to a failed bank's acquirer, potentially expand resolution options, potentially reduce the FDIC's resolution costs, and support greater confidence in the banking system.

Deposit Insurance Fund Impact

As discussed above, the final rule is expected to have mixed effects on the level of insurance coverage provided for trust deposits. Coverage for some irrevocable trust deposits would be expected to increase, but in the FDIC's experience, irrevocable trust deposits are not nearly as common as revocable trust deposits. The level of coverage for some trust deposits would be expected to decrease due to the final rule's simplified calculation of coverage and its aggregation of revocable and irrevocable trust deposits. As noted above, the FDIC does not have detailed data on depositors' trust arrangements to allow it to precisely project the quantitative effects of the final rule on deposit insurance coverage.

Indirect Effects

A change in the level of deposit insurance coverage does not necessarily result in a direct economic impact, as deposit insurance is only paid to depositors in the event of an IDI's failure. However, changes in deposit insurance coverage may prompt depositors to take actions with respect to their deposits. In response to changes in the level of coverage under the final rule, trust depositors could maximize coverage relative to the coverage under the current rule by transferring some of their trust deposits to other types of accounts that provide similar or higher amounts of coverage or by amending the terms of their trusts. Parties affected could include IDIs, depositors, and other firms in the financial services marketplace (e.g., deposit brokers). Any costs borne by the depositor in moving a portion of the funds to a different IDI to stay under the insurance limit would be accompanied by benefits, such as more prompt deposit insurance determinations, and quicker access to insured deposits for depositors during the resolution process. The FDIC cannot estimate these effects because it does not have information on the individual costs of each action that confronts each depositor, their ability to amend their trust structure or move funds, and their subjective risk preference with respect to holding insured and uninsured deposits.

Part 370 Covered Institutions

As discussed previously, institutions covered by part 370 must maintain deposit account records and systems capable of applying the deposit insurance rules in an automated manner. The final rule would change certain aspects of how coverage is determined for trust deposits. This could require covered institutions to reprogram certain systems to ensure that those systems continue to be capable of applying the deposit insurance rules as part 370 requires.

The FDIC expects that the final rule would make the deposit insurance status of a trust account generally clearer. Moreover, since part 370 requires covered institutions to develop and maintain the capabilities to calculate deposit insurance for its deposits, the final rule could make compliance with part 370 relatively less burdensome. This is because the underlying rules that would be applied to most trust deposits would be simplified. In particular, the final rule requires the aggregation of revocable and irrevocable trust deposits, categories that are currently separated for purposes of the deposit insurance calculation capabilities required by part 370. The

FDIC does not expect that the final rule would require significant changes with respect to covered institutions' treatment of informal revocable trust deposits. Moreover, many deposits of formal revocable trusts and irrevocable trusts currently fall within the scope of part 370's alternative recordkeeping provisions, meaning that covered institutions are not required to maintain all of the records necessary to calculate the maximum amount of deposit insurance coverage available for these deposits. These factors may diminish the impact of the final rule on the part 370 covered institutions, but the FDIC does not have sufficient information on covered institutions' systems and records to quantify this effect.

Other Potential Effects

Although the FDIC expects that coverage for most trust depositors will be unchanged under the final rule, and that the rule's changes simplify the FDIC's insurance rules for trust accounts, the rule may have other potential effects. For example, the IDIs affected by the rule may rely on third-party IT service providers to perform insurance coverage estimates for their trust depositors. The final rule may lead such IT service providers to revise their systems to account for the final rule's changes.

2. Amendments to Mortgage Servicing Account Rule

The final rule would affect the deposit insurance coverage for certain principal and interest payments within MSA deposits maintained at IDIs by mortgage servicers. According to the September 30, 2021 Call Report data, the FDIC insures 4,923 IDIs.[65] Of the 4,923 IDIs, 1,161 IDIs (23.6 percent) report holding mortgage servicing assets, which indicates that they service mortgage loans and could thus be affected by the rule. In addition, mortgage servicing accounts may be maintained at IDIs that do not themselves service mortgage loans. The FDIC

[65] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

does not know how many IDIs are recipients of mortgage servicing account deposits, but believes that most IDIs are not. Therefore, the FDIC estimates that the number of IDIs potentially affected by the final rule is greater than 1,161 but substantially less than 4,923.

The FDIC does not have detailed data on MSAs that would allow the FDIC to reliably estimate the number of MSAs maintained at IDIs that would be affected by the rule, or any potential change in the total amount of insured deposits. Thus, the potential effects of the amendments regarding governing deposit insurance coverage for MSAs are outlined qualitatively below.

The final rule directly affects the level of deposit insurance coverage provided for some MSAs. Under the rule, the composition of an MSA attributable to mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers and collections such as foreclosure proceeds would be insured up to the SMDIA per mortgagor, consistent with the coverage for payments of principal and interest collected directly from borrowers. Under the current rules, principal and interest funds advanced by a servicer to cover delinquencies, and foreclosure proceeds collected by servicers, are not insured under the rules for MSA deposits, but instead are insured to the servicer as corporate funds up to the SMDIA. Therefore, the final rule expands deposit insurance coverage in instances where an account maintained by a mortgage servicer contains principal and interest funds advanced by the servicer in order to satisfy the obligations of delinquent borrowers to the lender, or foreclosure proceeds collected by the servicers; and where the funds in such instances exceed the mortgage servicer's SMDIA.

The final rule is likely to benefit a servicer compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders when a borrower is delinquent, and therefore the servicer has not received such funds from the borrower. In the event that the IDI hosting the MSA for the servicer fails, the rule reduces the likelihood that the funds advanced by the servicer are uninsured, and thereby facilitates access to, and helps avoids losses of, those funds. As previously discussed, the FDIC does not have detailed data on MSAs held at IDIs, pooling and servicing agreements for outstanding mortgage loans, or servicer payments into MSAs that would allow the FDIC to reliably estimate the number of, and volume of funds within, MSAs maintained at IDIs that would be affected by the final rule.

Further, the final rule is likely to benefit an IDI who is hosting an MSA for a servicer that is compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders on behalf of delinquent borrowers by increasing the volume of insured funds. In the event that the IDI enters into a troubled condition, the rule could marginally increase the stability of MSA deposits from such servicers, thereby increasing the general stability of funding.

Finally, the FDIC believes that the rule poses general benefits to parties that provide or utilize financial services related to mortgage products by amending an inconsistency in the deposit insurance treatment for principal and interest payments made by the borrower and such payments made by the servicer on behalf of the borrower.

Effects on Part 370 Covered Institutions

Part 370 covered institutions may bear some costs in recognizing the expanded coverage for servicer advances and foreclosure proceeds. However, part 370 covered institutions already are responsible for calculating coverage for MSA accounts based on each borrower's payments. Therefore, the FDIC does not believe the impact of the rule on part 370 covered institutions will be significant.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the final rule on small entities.[66] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the Federal Register together with the rule. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to $600 million.[67] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for small entities. The FDIC does not believe that the final rule will have a significant economic effect on a substantial number of small entities. However, some expected effects of the rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included a Regulatory Flexibility Act Analysis in this section.

1. Simplification of Trust Rules

Reasons why this Action is Being Considered

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[66] 5 U.S.C. 601 *et seq*.

[67] The SBA defines a small banking organization as having $600 million or less in assets, where "a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is "small" for the purposes of RFA.

As previously discussed, the rules governing deposit insurance coverage for trust deposits have been amended on several occasions, but still frequently cause confusion for depositors. Under the current regulations, there are distinct and separate sets of rules applicable to deposits of revocable trusts and irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the FDIC's efforts to simplify the revocable trust rules in 2008,[68] over the last 10 years, FDIC deposit insurance specialists have responded to approximately 20,000 complex insurance inquiries per year on average. More than 50 percent pertain to deposit insurance coverage for trust accounts (revocable or irrevocable). The consistently high volume of complex inquiries about trust accounts over an extended period of time suggests continued confusion about insurance limits.

The FDI Act requires the FDIC to pay depositors "as soon as possible" after a bank failure. However, the insurance determination and subsequent payment for many trust deposits can be delayed while FDIC staff reviews complex trust agreements and apply the rules for determining deposit insurance coverage. Moreover, in many of these instances, deposit insurance coverage for trust deposits is based upon information that is not maintained in the failed IDI's deposit account records. This requires FDIC staff to work with depositors, trustees, and other parties to obtain trust documentation following an IDI's failure in order to complete deposit insurance determinations. The difficulties associated with this are exacerbated by the substantial growth in the use of formal trusts in recent decades. For example, following the 2008 failure of IndyMac Federal Bank, FSB (IndyMac), FDIC claims personnel contacted more than 10,500 IndyMac depositors to obtain the trust documentation necessary to complete deposit insurance determinations for their revocable trust and irrevocable trust deposits. As noted

[68] *See* 73 FR 56706 (Sep. 30, 2008).

previously, delays in the payment of deposit insurance could be consequential, as revocable trust deposits in particular can be used by depositors to satisfy their daily financial obligations.

Policy Objectives

As discussed previously, the changes adopted by the final rule are intended to provide depositors and bankers with a rule for trust account coverage that is easy to understand, and also to facilitate the prompt payment of deposit insurance in accordance with the FDI Act. The FDIC believes that accomplishing these objectives also would further the agency's mission in other respects. Specifically, the changes would promote depositor confidence and further the FDIC's mission to maintain stability and promote public confidence in the U.S. financial system by assisting depositors to more readily and accurately determine their insurance limits. The changes will also facilitate the resolution of failed IDIs in a least costly manner. The changes could reduce the FDIC's reliance on trust documentation (which could be difficult to obtain in a timely manner during resolutions of IDI failures) and provide greater flexibility to automate deposit insurance determinations, thereby reducing potential delays in the completion of deposit insurance determinations and payments. Finally, in amending the trust rules, the FDIC's intent is that the changes would generally be neutral with respect to the DIF.

Legal Basis

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress.[69] Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance

[69] 12 U.S.C. 1821(a)(2).

categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category. The FDIC is amending section 330.10 of its regulations, which currently applies only to revocable trust deposits, to establish a new "trust accounts" category that would include both revocable and irrevocable trust deposits. For a more detailed discussion of the rule's legal basis please refer to section I.C entitled "Proposed Rule" and section I.D entitled "Discussion of Comments and Final Rule."

The Final Rule

The FDIC is amending the rules governing deposit insurance coverage for trust deposits. Generally, the amendments would: merge the revocable and irrevocable trust categories into one category; apply a simpler, common calculation method to determine insurance coverage for deposits held by revocable and irrevocable trusts; eliminate certain requirements found in the current rules for revocable and irrevocable trusts; and amend certain recordkeeping requirements for trust accounts. For a more detailed discussion of the final rule please refer to section I.C entitled "Proposed Rule" and section I.D entitled "Discussion of Comments and Final Rule."

Small Entities Affected

Based on the September 30, 2021 Call Report data, the FDIC insures 4,923 depository institutions,[70] of which 3,303 are considered small entities for the purposes of RFA.[71] Of the 3,303 small IDIs, 783 have powers granted by a state or national regulatory authority to administer accounts in a fiduciary capacity and 539 exercise those powers, comprising 23.7 percent and 16.3 percent, respectively, of small IDIs.[72] However, individuals may establish trust accounts at an IDI even if that IDI does not itself have or exercise authority to administer

[70] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[71] FDIC Call Report data, September 30, 2021.

[72] Id.

accounts in a fiduciary capacity, and in fact, as noted earlier, 99 percent of a sample of failed banks had trust accounts. Therefore, the FDIC estimates that the rule could affect between 539 and 3,303 small, FDIC-insured institutions.

As noted above, the FDIC does not have detailed data on depositors' trust arrangements for trust accounts held at small FDIC-insured institutions. Therefore, it is difficult to accurately estimate the number of small IDIs that would be potentially affected by the final rule. However, the FDIC believes that the number of small IDIs that will be directly affected by the rule is likely to be small, given that in the agency's resolution experience only a small number of trust accounts have balances above the adopted coverage limit of $1,250,000 per grantor, per IDI for trust deposits. For example, data obtained from a sample of 249 IDIs that failed between 2010 and 2020 show that only 100 depositors out of 250,139 (or 0.04 percent) had trust account balances greater than $1,250,000; at small IDIs, 18 out of 34,304 depositors (or 0.05 percent) had trust account balances greater than $1,250,000.[73] The data from failed banks suggest small IDIs could be affected by the rule roughly in proportion to the share of trust depositors with account balances greater than $1,250,000 at IDIs of all sizes which failed between 2010 and 2020.

Expected Effects

The simplification of the deposit insurance rules for trust deposits is expected to have a variety of effects. The changes will directly affect the level of deposit insurance coverage provided to some depositors with trust deposits. In addition, simplification of the rules is expected to have benefits in terms of promoting the timely payment of deposit insurance following a small IDI's failure, facilitating the transfer of deposit relationships to failed bank acquirers with consequent potential reductions to the FDIC's resolution costs, and addressing

[73] Whether a failed IDI is considered small is based on data from its four quarterly Call Reports prior to failure.

differences in the treatment of revocable trust deposits and irrevocable trust deposits contained in the current rules. The FDIC has also considered the impact of any changes in the deposit insurance rules on the DIF and other potential effects.[74] These effects are discussed in greater detail in section III.A entitled "Expected Effects."

Overall, due to the fact that the FDIC expects most small IDIs to have only a small number of trust accounts with balances above the adopted coverage limit of $1,250,000 per grantor, per IDI for trust deposits, effects on the deposit insurance coverage of small entities' customers are likely to be small. There also may be some initial cost for small entities to become familiar with the changes to the trust insurance coverage rules in order to be able to explain them to potential trust customers, counterbalanced to some extent by the fact that the rules should be simpler to understand and explain going forward.

Alternatives Considered

The FDIC has considered a number of alternatives to the final rule that could meet its objectives in this rulemaking. However, for reasons previously stated in section I.E "Alternatives Considered," the FDIC considers the final rule to be a more appropriate alternative.

The FDIC also considered the status quo alternative to not amend the existing trust rules. However, for reasons previously stated in section I.E "Alternatives Considered," the FDIC considers the final rule to be a more appropriate alternative.

Other Statutes and Federal Rules

[74] The FDIC has also considered the impact of any changes in the deposit insurance rules on the covered institutions that are subject to Part 370. As described previously, Part 370 affects IDIs with two million or more deposit accounts. Based on Call Report data as of September 30, 2021, the FDIC insures one institution with two million or more deposit accounts that is also considered a small entity.

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this final rule and any other federal rule.

2. Amendments to Mortgage Servicing Account Rule

Reasons why this Action is Being Considered

As previously discussed, the FDIC provides coverage, up to the SMDIA for each borrower, for principal and interest funds in MSAs only to the extent "paid into the account by the mortgagors," and does not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments under the current rules. The advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. Under some servicing arrangements, however, mortgage servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders in certain circumstances. Thus, under the current rules, such advances are not provided the same level of coverage as other deposits in a mortgage servicing account comprised of principal and interest payments directly from the borrower. This could result in delayed access to certain funds in an MSA, or to the extent that aggregated advances insured to the servicer exceed the insurance limit, loss of such funds, in the event of an IDI's failure. The FDIC is therefore amending its rules governing coverage for deposits in mortgage servicing accounts to address this inconsistency.

Policy Objectives

As discussed previously, the FDIC's regulations governing deposit insurance coverage include specific rules on deposits maintained at IDIs by mortgage servicers. With the final rule, the FDIC seeks to address an inconsistency concerning the extent of deposit insurance coverage for such deposits, as in the event of an IDI's failure the current rules could result in delayed access to certain funds in a mortgage servicing account (MSA) that have been aggregated and insured to a mortgage servicer, or to the extent that aggregated funds insured to a servicer exceed the insurance limit, loss of such funds.

The final rule also addresses a servicing arrangement that is not specifically addressed in the current rules. Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the MSA with principal and interest payments collected directly from mortgagors. This may be required, for example, under certain mortgage securitizations. The FDIC believes that the factors that motivated the FDIC to establish its current rules for MSAs, described previously, argue for treating funds advanced by a mortgage servicer in order to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers.

Legal Basis

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress. Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category. The FDIC is amending section 330.7(d) of its regulations, which currently applies only to cumulative balance paid by the mortgagors into an MSA maintained by a mortgage servicer, to include balances paid in to the account to satisfy mortgagors' principal or interest obligations to the lender. For a more detailed discussion of the rule's legal basis please refer to section II.C entitled "Proposed Rule" and section II.D entitled "Discussion of Comments and Final Rule."

The Final Rule

The FDIC is amending the rules governing deposit insurance coverage for deposits maintained at IDIs by mortgage servicers. Generally, the amendments would provide consistent deposit insurance treatment for all MSA deposit balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers, or paid into the account by another party (such as the servicer) in order to satisfy a periodic obligation to remit principal and interest due to the lender. The composition of an MSA attributable to principal and interest payments would include mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers, and collections by a servicer such as foreclosure proceeds. The final rule makes no change to the deposit insurance coverage provided for mortgage servicing accounts comprised of payments from mortgagors of taxes and insurance premiums. For a more detailed discussion of the rule please refer to section II.C entitled "Proposed Rule" and section II.D entitled "Discussion of Comments and Final Rule."

Small Entities Affected

Based on the September 30, 2021 Call Report data, the FDIC insures 4,923 depository institutions, of which 3,303 are considered small entities for the purposes of RFA. Of the 3,303 small IDIs, 473 IDIs (14.3 percent) report holding mortgage servicing assets, which indicates that they service mortgage loans and could thus be affected by the final rule. However, mortgage servicing accounts may be maintained at small IDIs that do not themselves service mortgage loans. The FDIC does not know how many IDIs that are small entities are recipients of mortgage servicing account deposits, but believes that most such entities are not because there are relatively few mortgage servicers.[75] Therefore, the FDIC estimates that the number of small IDIs potentially affected by the proposed rule, if adopted, would be between 473 and 3,303, but believes that the number is close to the lower end of the range.

As noted in section III.A, titled "Expected Effects," the FDIC does not have detailed data on MSAs that would allow the FDIC to reliably estimate the number of MSAs maintained at IDIs that would be affected by the final rule, or any potential change in the total amount of insured deposits. Therefore, it is difficult to accurately estimate the number of small IDIs that would be potentially affected by the final rule.

Expected Effects

The final rule would directly affect the level of deposit insurance coverage for certain funds within MSAs. The rule is likely to benefit a servicer compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders when a borrower is delinquent, and therefore the servicer has not received such funds from the borrower. In the event that the IDI hosting the MSA for the servicer fails, the final rule reduces the likelihood that the funds advanced by the servicer are uninsured, and thereby facilitates access to, and helps avoids losses of, those funds. As previously discussed, the FDIC does not have detailed data on MSAs held at IDIs, pooling and servicing agreements for outstanding mortgage loans, or servicer payments into MSAs that would allow the FDIC to reliably estimate the number of, and volume of funds within, MSAs maintained at IDIs that would be affected by the final rule.

[75] According to the U.S. Census Bureau within the "Other Activities Related to Credit Intermediation" (NAICS 522390) national industry where mortgage servicers are captured there were 3,595 firms in 2018, relative to the 37,627 firms in the Credit Intermediation and Related Activities subsector (NAICS 522).

Further, the final rule is likely to benefit a small IDI who is hosting an MSA for a servicer that is compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders on behalf of delinquent borrowers by increasing the volume of insured funds. In the event that the small IDI enters into a troubled condition, the proposed rule could marginally increase the stability of MSA deposits from such servicers, thereby increasing the general stability of funding.

Based on the preceding information the FDIC believes that the final rule is unlikely to have a significant economic effect on a substantial number of small entities.

Alternatives Considered

The FDIC is adopting revising to the deposit insurance rules for MSAs to advance the objectives discussed above. The FDIC considered the status quo alternative to not revise the existing rules for MSAs and not propose the revisions. However, for reasons previously stated in section II.B, entitled "Background," the FDIC considers the final rule to be a more appropriate alternative. Were the FDIC to not adopt the rule, then in the event of an IDI's failure the current rules could result in delayed access to certain funds in an MSA that have been aggregated and insured to a mortgage servicer, or to the extent that aggregated funds insured to a servicer exceed the insurance limit, loss of such funds.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this rule and any other federal rule.

C. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major" rule. If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The final rule does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

E. Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[76] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[77]

The final rule does not impose additional reporting or disclosure requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. However, it may require part 370 covered institutions to update their reporting or recordkeeping to reflect the revised deposit insurance rules. Accordingly, the FDIC has established the effective date of the final rule as the first day of a calendar quarter, April 1, 2024.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[78] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the Federal Register after January 1, 2000. FDIC staff believes the final rule is presented in a simple and straightforward manner. The FDIC did not receive any comments with respect to the use of plain language.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

[76] 12 U.S.C. 4802(a).

[77] 12 U.S.C. 4802(b).

[78] Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330 – DEPOSIT INSURANCE COVERAGE

1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1820(g), 1821(a), 1821(d), 1822(c).

§ 330.1 [Amended]

2. Amend § 330.1 by removing and reserving paragraphs (m) and (r).
3. Revise § 330.7(d) to read as follows:

§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

* * * * *

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments of principal and interest, shall be insured for the cumulative balance paid into the account by mortgagors, or in order to satisfy mortgagors' principal or interest obligations to the lender, up to the limit of the SMDIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

4. Revise § 330.10 to read as follows:

§ 330.10 Trust accounts.

(a) *Scope and definitions.* This section governs coverage for deposits held in connection with informal revocable trusts, formal revocable trusts, and irrevocable trusts not covered by § 330.12 ("trust accounts"). For purposes of this section:

(1) *Informal revocable trust* means a trust under which a deposit passes directly to one or more beneficiaries upon the depositor's death without a written trust agreement, commonly referred to as a payable-on-death account, in-trust-for account, or Totten trust account.

(2) *Formal revocable trust* means a revocable trust established by a written trust agreement under which a deposit passes to one or more beneficiaries upon the grantor's death.

(3) *Irrevocable trust* means an irrevocable trust established by statute or a written trust agreement, except as described in paragraph (f) of this section.

(b) *Calculation of coverage*–(1) *General calculation.* Trust deposits are insured in an amount up to the SMDIA multiplied by the total number of beneficiaries identified by each grantor, up to a maximum of 5 beneficiaries.

(2) *Aggregation for purposes of insurance limit.* Trust deposits that pass from the same grantor to beneficiaries are aggregated for purposes of determining coverage under this section, regardless of whether those deposits are held in connection with an informal revocable trust, formal revocable trust, or irrevocable trust.

(3) *Separate insurance coverage.* The deposit insurance coverage provided under this section is separate from coverage provided for other deposits at the same insured depository institution.

(4) *Equal allocation presumed.* Unless otherwise specified in the deposit account records of the insured depository institution, a deposit held in connection with a trust established by multiple grantors is presumed to have been owned or funded by the grantors in equal shares.

(c) *Number of beneficiaries*. The total number of beneficiaries for a trust deposit under paragraph (b) of this section will be determined as follows:

(1) *Eligible beneficiaries.* Subject to paragraph (c)(2) of this section, beneficiaries include natural persons, as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986, as amended.

(2) *Ineligible beneficiaries.* Beneficiaries do not include:

(i) the grantor of a trust; or

(ii) a person or entity that would only obtain an interest in the deposit if one or more identified beneficiaries are deceased.

(3) *Future trust(s) named as beneficiaries.* If a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor(s) ("future trusts"), the future trust(s) are not treated as beneficiaries of the trust; rather, the future trust(s) are viewed as mechanisms for distributing trust funds, and the beneficiaries are the natural persons or organizations that shall receive the trust funds through the future trusts.

(4) *Informal trust account payable to depositor's formal trust.* If an informal revocable trust designates the depositor's formal trust as its beneficiary, the informal revocable trust account will be treated as if titled in the name of the formal trust.

(d) *Deposit account records–*

(1) *Informal revocable trusts.* The beneficiaries of an informal revocable trust must be specifically named in the deposit account records of the insured depository institution.

(2) *Formal revocable trusts.* The title of a formal trust account must include terminology sufficient to identify the account as a trust account, such as "family trust" or "living trust," or must otherwise be identified as a testamentary trust in the account records of the insured depository institution. If eligible beneficiaries of such formal revocable trust are specifically named in the deposit account records of the insured depository institution, the FDIC shall presume the continued validity of the named beneficiary's interest in the trust consistent with § 330.5(a).

(e) *Commingled deposits of bankruptcy trustees.* If a bankruptcy trustee appointed under title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each title 11 bankruptcy estate will be added together and insured up to the SMDIA, separately from the funds of any other such estate.

(f) *Deposits excluded from coverage under this section*–(1) *Revocable trust co-owners that are sole beneficiaries of a trust.* If the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, deposits held in connection with the trust are treated as joint ownership deposits under § 330.9.

(2) *Employee benefit plan deposits.* Deposits of employee benefit plans, even if held in connection with a trust, are treated as employee benefit plan deposits under § 330.14.

(3) *Investment company deposits.* This section shall not apply to deposits of trust funds belonging to a trust classified as a corporation under § 330.11(a)(2).

(4) *Insured depository institution as trustee of an irrevocable trust.* Deposits held by an insured depository institution in its capacity as trustee of an irrevocable trust are insured as provided in § 330.12.

§330.13 [Removed and Reserved]

5. Remove and reserve § 330.13.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, D.C., this [XX] day of [January], 2022.

James P. Sheesley, Assistant Executive Secretary.

BILLING CODE 6714-01-P