

appellant and each known interested party by certified or registered mail, return receipt requested. These receipts will become a permanent part of the record.

(e) If the Assistant Secretary—Indian Affairs or the Commissioner of Indian Affairs does not make a decision within 60 days after all time for pleadings (including all extensions granted) has expired, any party may move the Board of Indian Appeals to assume jurisdiction subject to 43 CFR 4.337(b). A motion for Board decision under this section will invest the Board with jurisdiction as of the date the motion is received by the Board.

(f) When the Board of Indian Appeals, in accordance with 43 CFR 4.337(b), refers an appeal containing one or more discretionary issues to the Assistant Secretary—Indian Affairs for further consideration, the Assistant Secretary—Indian Affairs will take action on the appeal consistent with the procedures in this section.

(g) The Assistant Secretary—Indian Affairs will render a written decision in an appeal from a decision of the Director, Office of Indian Education Programs within 60 days after all time for pleadings (including extensions granted) has expired. A copy of the decision must be sent to the appellant and each known interested party by certified or registered mail, return receipt requested. These receipts will become a permanent part of the record. The decision will be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision.

#### **§ 2.21 What information may the reviewing official consider?**

(a) When a decision has been appealed, any information available to the reviewing official may be used in reaching a decision whether part of the record or not.

(b) When the official deciding an appeal believes it appropriate to consider documents or information not contained in the record on appeal, the official must notify all interested parties of the information and give them not less than 10 days to comment on the information before the appeal is decided. The deciding official will include in the record copies of documents or a description of the information used in arriving at the decision. Except where disclosure of the actual documents used may be prohibited by law, copies of the information will be made available to the parties upon request and at their expense.

Dated: May 31, 1996.  
Ada E Deer,  
*Assistant Secretary—Indian Affairs.*  
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## **DEPARTMENT OF THE TREASURY**

### **Fiscal Service**

#### **31 CFR Part 202**

**RIN 1510-AA42**

#### **Depositories and Financial Agents of the Federal Government**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This proposes to revise regulations which govern the designation of Depositories and Financial Agents of the Federal Government (depositories); their authorization to accept deposits of public money and to perform other specific services; and the securing of public money. The proposed revisions update, clarify, and simplify current requirements, but do not change them. Outdated references to specific acceptable insurers are deleted. Existing language concerning the types and valuation of acceptable collateral securities and the authorization for depositories to perform services other than acceptance of insured deposits is clarified. In addition, various references are updated.

**DATES:** Comments must be submitted on or before August 5, 1996.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to the Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, S.W., Room 420, Washington, DC 20227, Attn. Donald E. Clark.

**FOR FURTHER INFORMATION CONTACT:** Donald E. Clark, (202) 874-7106 (Financial Program Specialist, Cash Management Policy and Planning Division) or Cynthia L. Johnson, (202) 874-6590 (Director, Cash Management Policy and Planning Division).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Depositories accepting deposits of public money and providing other financial agency services to the United States are required to pledge adequate acceptable securities as collateral, as directed by the Secretary of the Treasury (Secretary). The Secretary previously promulgated regulations, codified at 31

CFR part 202, setting forth the general requirements for designating depositories and the pledging of collateral to secure public money held by depositories.

Since these regulations were last amended, the Secretary has revised the types and valuations of acceptable collateral for securing public money referenced in this part. In addition, these regulations reference the Federal Savings and Loan Insurance Corporation (FSLIC) as an acceptable insurer of deposits. FSLIC has been abolished.

#### **Summary of Changes**

##### *1. Types and Valuation of Acceptable Collateral Securities*

The current rule provides that certain identified securities are acceptable as collateral at face value, unless otherwise specified by the Secretary. The Secretary has recognized that the use of face value for managing the level of pledged collateral is problematic because the true value of a security is rarely the face value, except on the day of redemption. A common practice of the Federal Reserve bank and United States Department of the Treasury when valuing collateral is to apply market discounts, i.e., subtractions, to the value of the collateral to account for market volatility due to interest rate fluctuations, the quality of the security pledged, or the financial instability of the pledging institution. Therefore, since this Part was last amended, the Secretary has "otherwise specified" that certain securities, including certain of those expressly referenced in the current rule, are acceptable only at 90% of face value, rather than at 100% of face value.

Because the Secretary has otherwise specified the types and valuations of acceptable collateral securities, revision of this part will eliminate any possible confusion regarding acceptable collateral security types and valuation under this part. The proposed rule provides that types and valuation of acceptable collateral securities will be specified in Treasury procedural instructions. Treasury issued these procedural instructions to Federal Reserve banks, which disseminated them to financial institutions pledging collateral under this Part.

##### *2. Financial Institution Insurers*

The current rule provides that eligible banks insured by the Federal Deposit Insurance Corporation (FDIC) and eligible institutions insured by FSLIC are designated as depositories. The proposed rule deletes references to FSLIC, which has been abolished, and

provides that eligible financial institutions insured by the FDIC are designated as depositories.

### 3. *Authorities*

The current rule includes as authorities 12 U.S.C. 1709(a) and 12 U.S.C. 1725(d). The proposed rule corrects a typographical error, replacing 12 U.S.C. 1709(a) with 12 U.S.C. 1789a, and removes citations to 12 U.S.C. 1725(d), as that statute has been repealed. In addition, the proposed rule lists 12 U.S.C. 90 and 12 U.S.C. 391 as additional applicable authorities. These authorities pertain to national banking associations and Federal Reserve banks, respectively, as depositories when so designated by the Secretary.

### 4. *Depository Authorization to Perform Services Other than Acceptance of Insured Deposits*

The current rule provides that upon the request of a Federal agency, the Secretary may authorize a depository to perform services (other than the acceptance of Federal or state insured deposits) specifically requested by the agency, "including" various listed services. The proposed rule deletes references to "upon the request of" and "specifically requested by," a Government agency, and revises the term "including" to read "including, but not limited to" in order to clarify Treasury's longstanding interpretation of these provisions.

### 5. *Disposition of Principal and Interest Payments on Pledged Collateral after a Depository is Declared Insolvent*

The current rule provides that in the event of a depository's insolvency or closure, or in the event of the appointment of certain officers to terminate its business, the depository agrees that all principal and interest payments on any security pledged to protect public monies due on or after the date of insolvency or closure shall be held separate and apart from any other assets and be available to satisfy any claim of the United States. The proposed rule clarifies Treasury's longstanding interpretation that the term "any claim of the United States" includes claims not arising out of the depository relationship for which the collateral was pledged.

### 6. *Additional Administrative Revisions*

The proposed rule makes certain administrative revisions necessary to update existing regulatory language. These administrative revisions include (1) notification that financial institutions may obtain forms from Federal Reserve banks; (2) removal of

the word "every" from certain listed classes of financial institutions designated as depositories, for consistency reasons; (3) removal of references to Treasury Tax and Loan depositories governed by 31 CFR part 203 receiving deposits representing payments for certain United States obligations, as such depositories are no longer authorized to perform these functions; (4) revision of references to a depository's entering into a "contract of deposit" with Treasury to read "agreement of deposit," in order to reaffirm Treasury's longstanding interpretation that such agreements are not procurements; (5) updating the address for Treasury's Financial Management Service; and (6) updating citations to applicable equal employment opportunity statutes and regulations.

### Rulemaking Analysis

#### *Executive Order 12866*

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

#### Regulatory Flexibility Act

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small business entities. This revision makes no change to current procedures and only updates, clarifies, and simplifies the current rule. Accordingly, a Regulatory Flexibility Act analysis is not required.

#### Notice and Comment

Public comment is solicited on all aspects of this proposed regulation. Treasury will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

#### List of Subjects in 31 CFR Part 202

Banks, Banking.

For the reasons set out in the preamble, 31 CFR part 202 is proposed to be amended as follows.

## **PART 202—DEPOSITARIES AND FINANCIAL AGENTS OF THE FEDERAL GOVERNMENT**

1. The authority citation for part 202 is revised, and the authority citations at the end of the sections are removed, to read as follows:

Authority: 12 U.S.C. 90; 12 U.S.C. 265–266; 12 U.S.C. 391; 12 U.S.C. 1464(k); 12 U.S.C. 1789a; 12 U.S.C. 3101–3102.

2. Section 202.1 is revised to read as follows:

### **§ 202.1 Scope of regulations.**

The regulations in this part govern the designation of Depositories and Financial Agents of the Federal Government (hereinafter referred to as depositories), and their authorization to accept deposits of public money and to perform other services as may be required of them. Public money includes, but is not limited to, revenue and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its officers, agents, or employees. The designation and authorization of Treasury Tax and Loan depositories for the receipt of deposits representing Federal taxes are governed by the regulations in part 203 of this chapter.

3. Section 202.2 is amended by revising paragraph (a)(1), removing paragraph (a)(2), by redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), and by revising redesignated paragraphs (a)(2) and (a)(3) to read as follows:

### **§ 202.2 Designations.**

(a) \* \* \*

(1) Financial institutions insured by the Federal Deposit Insurance Corporation.

(2) Credit unions insured by the Administrator of the National Credit Union Administration.

(3) Banks, savings banks, savings and loan, building and loan, and homestead associations, credit unions created under the laws of any State, the deposits or accounts of which are insured by a State or agency thereof or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts of such financial institutions, United States branches of foreign banking corporations authorized by the State in which they are located to transact commercial banking business, and Federal branches of foreign banking corporations, the establishment of which has been approved by the Comptroller of the Currency.

(b) \* \* \*

4. Section 202.3 is amended by revising paragraphs (a), (b)(1) introductory text, (b)(2), introductory text, and (b)(2)(i) to read as follows:

### **§ 202.3 Authorization.**

(a) *To accept deposits covered by the appropriate Federal or State insurer.* Every depository is authorized to accept a deposit of public money in an official account, other than an account in the name of the United States Treasury, in

which the maximum balance does not exceed the "Recognized Insurance Coverage." "Recognized Insurance Coverage" means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, and by insurance organizations specifically qualified by the Secretary of the Treasury.

(b) *To perform other services.* (1) The Secretary of the Treasury may authorize a depository to perform other services including, but not limited to: \* \* \*

(2) To obtain authorization to perform services, a depository must:

(i) File with the Secretary of the Treasury an appropriate agreement and resolution of its board of directors authorizing the agreement (both on forms prescribed by the Financial Management Service and available from Federal Reserve banks), and

\* \* \* \* \*

5. Section 202.4 is amended by revising introductory text and paragraphs (c), (d), and (e) to read as follows:

**§ 202.4 Agreement of deposit.**

A depository which accepts a deposit under this part enters into an agreement of deposit with the Treasury Department. The terms of this agreement include:

\* \* \* \* \*

(c) The provisions prescribed in Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Orders 11375 and 12086, and regulations issued thereunder at 41 CFR Chapter 60, as amended.

(d) The requirements of section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60-741, requiring Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) The requirements of section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701, and the regulations issued thereunder at 41 CFR parts 60-250 and 61-250, requiring Federal contractors to take affirmative action to employ and advance in employment qualified special disabled and Vietnam Era veterans.

6. Section 202.6 is amended by revising paragraphs (b) and (e)(1) to read as follows:

**§ 202.6 Collateral security.**

\* \* \* \* \*

(b) *Acceptable security.* Types and valuations of acceptable collateral

security will be specified by the Secretary of the Treasury in Treasury procedural instructions.

\* \* \* \* \*

(e) *Disposition of principal and interest payments of the pledged securities after a depository is declared insolvent—*(1) *General.* In the event of the depository's insolvency or closure, or in the event of the appointment of a receiver, conservator, liquidator, or other similar officer to terminate its business, the depository agrees that all principal and interest payments on any security pledged to protect public monies due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States, including those not arising out of the depository relationship.

\* \* \* \* \*

7. Section 202.7 is amended by revising paragraph (a) to read as follows:

**§ 202.7 Maintenance of balances within authorizations.**

(a) Government agencies shall contact the Department of the Treasury, Financial Management Service, before making deposits with a financial institution insured by a State or agency thereof or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts. The contact should be directed to the Cash Management Policy and Planning Division, Federal Finance, Financial Management Service, Department of the Treasury, Washington, DC 20227.

\* \* \* \* \*

Dated: June 14, 1996.

Russell D. Morris,

Commissioner.

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

[CGD01-95-171]

RIN 2115-AE47

**Drawbridge Operation Regulations; Passaic River, NJ**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing a change to the regulations governing the Routes 1 & 9 (Lincoln Highway)

Bridge, mile 1.8, the Point-No-Point Railroad Bridge, mile 2.6, both in Newark, New Jersey, and the Route 7 (Rutgers Street) Bridge, mile 8.9, in Belleville, New Jersey which cross the Passaic River. The proposal would provide openings on signal if at least four hours notice is given. This change was requested by the Consolidated Rail Corporation (CONRAIL) and New Jersey Department of Transportation (NJDOT) because of the limited openings of these bridges. This action should relieve the bridge owners of the burden of having personnel constantly available to open the bridges and should provide for the reasonable needs of navigation. Other changes are proposed that would remove redundant requirements that are included in Part 117, general operating regulations, provide maximum allowable time delays for specific railroad bridge openings, remove unnecessary language, and reorder the paragraphs for clarity and consistency.

**DATES:** Comments must be received on or before August 20, 1996.

**ADDRESSES:** Comments may be mailed to Commander (obr), First Coast Guard District, Building 135A, Governors Island, New York, 10004-5073, or may be hand-delivered to the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (212) 668-7170. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gary Kassof, Bridge Program Manager, First Coast Guard District, (212) 668-7069.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01-95-171), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no longer than 8½" by 11", suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment