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Washington, DC 20416
(202) 205-6148 or (202) 205-6213

III. United States Postal Service

United States Postal Service

The United States Postal Service will cooperate with process servers in the service of process regarding private civil or criminal matters only when service is attempted in person on the subject employee at the employee's place of employment, in accordance with the provisions of 39 CFR 243.2(g). Service of summonses and complaints, in private matters, by mail to either the agent or employees at their workstations is not permitted. The Postal Service agent will attempt to facilitate and assist personnel of child support enforcement agencies within the limitations imposed by the Privacy Act, 5 U.S.C. 552a and relevant Postal regulations. The requester must furnish the name and social security number of the person who is the subject of the inquiry.

Manager
Payroll Processing Branch
1 Federal Drive
Ft. Snelling, MN 55111-9650
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IV. Executive Office of the President

Executive Office of the President

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Office of Administration
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Washington, DC 20503
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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064-AB25

Receivership Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The final rule interprets a provision of an amendment, enacted on August 10, 1993, to section 11(d)(11) of the Federal Deposit Insurance Act (FDI Act) providing for a national depositor preference for amounts realized from the liquidation or other resolution of any depository institution insured by the Federal Deposit Insurance Corporation (FDIC). The regulation describes the expenses that are includable under the priority in the new statutory amendment for administrative expenses of the receiver. The intended effect of the final rule is to clarify that post-closing and certain pre-closing expenses may be paid as administrative

expenses of the receiver in connection with the liquidation or other resolution of FDIC-insured institutions. The final rule replaces an interim rule that has been in effect since August 13, 1993, and is essentially unchanged from the interim provisions.

EFFECTIVE DATE: The final rule is effective July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen N. Graham, Associate Director, Division of Depositor and Asset Services (202/898-7377), Rodney D. Ray, Senior Counsel, Legal Division (202/736-0348), Joseph A. DiNuzzo, Acting Senior Counsel, Legal Division (202/898-7349), Federal Deposit Insurance Corporation, Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (Id. at 603 & 604) are not applicable here.

Background

A. National Depositor Preference Legislation

On August 10, 1993, the President signed into law a bill that amended section 11(d)(11) of the FDI Act (12 U.S.C. 1821(d)(11)) to provide for a national depositor preference for amounts realized from the liquidation or other resolution of FDIC-insured depository institutions. Pub. L. 103-66, 107 Stat. 312 (1993).

Generally, the amendment provides that distributions shall be made from all future receivership estates in the following order:

1. Administrative expenses of the receiver;
2. Deposit liability claims;
3. Other general or senior liabilities of the institution, other than subordinated obligations or shareholder claims;
4. Subordinated obligations; and

5. Shareholder claims.

The legislation applies to all receiverships of insured institutions established after its enactment date and supersedes any inconsistent state or other federal distribution provisions. As noted, the first priority encompasses "administrative expenses of the receiver". The language of the statute explicitly covers post-appointment obligations incurred by a receiver as part of the liquidation of an institution. The FDIC Board of Directors (Board of Directors) has determined that this priority also covers certain expenses incurred prior to the appointment of the receiver. Such expenses include obligations which may have been incurred prior to the closing of the institution but which the receiver determines should be paid by the receiver to facilitate the smooth and orderly transfer of banking operations to a purchasing institution or to obtain an accounting and orderly disposition of the assets of the institution. These expenses may include, but are not limited to, for example, the payment of the institution's last payroll, guard services, data processing services, utilities and expenses related to leased facilities. Generally, they do not include expenses such as severance pay claims, golden parachute claims and claims arising from contract repudiations. The final rule limits the inclusion of expenses within the scope of "administrative expenses" to those that the receiver determines are necessary and appropriate for the orderly liquidation or resolution of the institution. This general language is necessitated by the variety of such expenses ordinarily incurred by a receiver for a particular failed depository institution.

The legislative history of the statute is explicit on the coverage of certain pre-receivership obligations within the scope of the "administrative expenses" priority of the receivership. The House/Senate Conference Report on the legislation notes that: "it is the conferees' intent that the FDIC interpret the depositor preference provision for the payment of administrative expenses of the receiver as including ordinary and necessary expenses of the institution that are unpaid at the time of failure, but only those that the receiver determines are necessary to maintain services and facilities to effect an orderly resolution of the institution". H.R. Rep. No. 213, § 3001, Omnibus Budget Reconciliation Act of 1993, 103rd Cong., 1st Sess. (1993). The conferees noted that such coverage of expenses is the FDIC's current practice (in its role as receiver of failed insured