

## Chapter 7 – Termination of Deposit Insurance

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## Termination of Federal Deposit Insurance

Termination of federal deposit insurance may be accomplished either involuntarily (through action initiated by the FDIC) or voluntarily (through request or stipulation by the IDI). General instructions for initiating and processing termination actions appear in the following pages.

### Involuntary Insurance Termination under Section 8(a)(2)

Involuntary termination of federal deposit insurance is a drastic remedy seldom applied by the FDIC since the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991 and the implementation of PCA. Because deposit insurance coverage is required for all national banks and most state banks, termination of insured status will likely result in the chartering authority closing the IDI. Involuntary insurance termination proceedings can take a significant amount of time to complete from the initial stages to actual termination of insurance. As an alternative mechanism to protect the DIF, the FDIC has authority under Section 11(c) of the FDI Act to appoint itself as receiver or conservator of an IDI in certain circumstances (refer to Chapter 5 – Prompt Corrective Action).

#### Grounds

Section 8(a)(2) of the FDI Act allows the FDIC BOD to involuntarily terminate an IDI's deposit insurance when any of the following conditions are found:

- The IDI or its BOD or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of the IDI;
- The IDI is in an unsafe or unsound condition; or
- The IDI or its directors or trustees have violated a law, rule, regulation, order, condition imposed by the FDIC in connection with the approval of an application or other request by the IDI, or written agreement with the FDIC.

#### When Insurance Should Be Terminated

The FDIC generally terminates deposit insurance under Section 8(a)(2) when other administrative remedies have proved ineffective.

Insurance termination should not replace court enforcement of other administrative remedies. Consideration should be given to Section 38 (PCA) when determining whether insurance termination should be pursued (refer to Chapter 5 – Prompt Corrective Action). When recommending insurance termination based on noncompliance with outstanding actions, RMS staff should explain in detail why this action is being recommended.

#### When Insurance Should Not Be Terminated

Generally, involuntary termination of deposit insurance under Section 8(a)(2) of the FDI Act should not occur in any of the following situations:

- An IDI's chartering authority determines that closure is imminent (within approximately 90 days); or

- An IDI is actively attempting resolution of its situation through an unassisted merger or the issuance of additional stock, and these efforts have a reasonable chance of success.

### **Notice to Primary Regulator**

Before initiating formal proceedings to terminate an IDI's deposit insurance, the FDIC must provide 30 days' written notice to the IDI's primary federal regulator or the state authority. This notice is accomplished by issuing an NPR. Issuing the NPR gives the primary federal regulator or state authority an opportunity to secure correction of the problems cited in the NPR. As a courtesy, the IDI is also sent a copy of the NPR. Issuing the NPR should occur only if other administrative actions were ineffective.

### **Notice of Intent**

The FDIC BOD may formally institute Section 8(a)(2) insurance termination proceedings if the unsafe or unsound practices, unsafe or unsound condition, or violation specified in the NPR still requires the termination of insured status. This typically occurs when the primary federal regulator or state authority fails to present evidence of correction or improvement at the end of the time period specified in the NPR. Formal proceedings are initiated by issuing a NOI to terminate insured status, findings, and order setting hearing.

### **Insurance Termination Procedures and Notice to Depositors**

The FDIC initiates insurance termination proceedings against an IDI by issuing a NPR. If the primary federal regulator or state authority fails to secure correction of the problems cited in the notice, the FDIC issues a NOI providing the institution with a formal notice of the action. If the FDIC prevails and issues an order of termination of insurance, insurance continues for a period of six months to two years as set forth in Section 8(a)(7). The IDI must also notify its depositors about the termination.

### **Terminating Section 8(a)(2) Actions**

An IDI may remediate the underlying unsafe or unsound practices, unsafe or unsound condition, or violation; merge with another IDI or close before the FDIC issues a formal order of termination of insurance; or show other good cause why the action should be terminated. When this occurs, RMS staff may terminate (or withdraw if not yet issued) a NPR or NOI issued under Section 8(a)(2) of the FDI Act.

## **Involuntary Insurance Termination under Section 8(w)**

Section 8(w) of the FDI Act requires the US Attorney General to provide written notification to the FDIC when an insured state depository institution is convicted of violating any of the following sections of the U.S.C.:

- 18 U.S.C. § 1956 (Money Laundering),
- 18 U.S.C. § 1957 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity), or
- 31 U.S.C. §§ 5322 (Violating Certain Provisions of 31 U.S.C. subch. II) or 5324 (Structuring Transactions to Evade Reporting Requirements).

Section 8(w) requires that the FDIC BOD issue a NOI to terminate deposit insurance and schedule a hearing when the Attorney General notifies the FDIC that a state institution has been convicted of violating 18 U.S.C. §§ 1956 or 1957.

In addition, Section 8(w) authorizes (but does not require) the FDIC BOD to issue a NOI to terminate deposit insurance and schedule a hearing when the Attorney General notifies the FDIC that a state institution has been convicted of violating 31 U.S.C. §§ 5322 or 5324.

**Note:** The FDIC simultaneously forwards a copy of the NOI to the appropriate state authority. However, the FDIC does not issue NPRs as described in Section 8(a)(2) when processing Section 8(w) actions based on convictions involving 18 U.S.C. §§ 1956 or 1957. The FDIC may issue NPRs when processing Section 8(w) actions against institutions convicted of violating 31 U.S.C. §§ 5322 or 5324.

### Required Notification from Attorney General

If an insured state depository institution is convicted of any criminal offense under 18 U.S.C. §§ 1956 or 1957 or 31 U.S.C. §§ 5322 or 5324, the Attorney General must notify the FDIC. The following table lists the notification required for each type of conviction.

<b>Convictions Involving 18 U.S.C. §§ 1956 or 1957</b>	<b>Convictions Involving 31 U.S.C. §§ 5322 or 5324</b>
Written notification and certified copy of order of conviction.	Written notification only.

### Factors to Be Considered

In determining whether to terminate insurance under Section 8(w), the FDIC BOD takes into account the following factors:

- The extent to which directors or senior executive officers of the IDI knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty;
- The extent to which the offense occurred despite the existence of policies and procedures within the IDI that were designed to prevent the occurrence of any such offense;
- The extent to which the IDI has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty;
- The extent to which the IDI has implemented additional internal controls (since the commission of the offense of which the IDI was found guilty) to prevent the occurrence of any other money laundering offense; and
- The extent to which the interests of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

## Notice to the State Supervisor, the Public, and Depositors

When an order of termination of insurance under Section 8(w) is final, the FDIC must:

- Notify the state authority at least ten days prior to the effective date of the order of termination of insurance of the state depository institution or savings association (including state branches of foreign banks).
- Publish notice of termination of the IDI's insured status in the Federal Register.

Following issuance of an order of termination of insurance, insurance continues for a period of six months to two years as set forth in Section 8(a)(7). The FDIC should also ensure that depositors receive advance notice of the termination.

## Successor Liability

Section 8(w) does not apply to a successor to the interests of, or a person who acquires, an IDI that violated the previously listed laws if the successor succeeds to the interests of the violator, or the acquisition is made in good faith and not for purposes of evading Section 8(w) or regulations prescribed under that section.

## Processing Section 8(w) Actions

Actions under Section 8(w) are **uncommon**. RO staff who obtains information indicating the potential for Section 8(w) action should immediately contact the WO.

## Voluntary Insurance Termination

Under certain conditions, an IDI may seek to voluntarily terminate federal deposit insurance. Voluntary termination of deposit insurance is authorized by three subsections of the FDI Act: 8(a)(1), 8(p), and 8(q). Detailed descriptions of each action appear in the following pages.

### Types of Voluntary Termination

The table below lists the three types of voluntary termination actions authorized by the FDI Act and the circumstances when they are used.

Type	Used When
Section 8(a)(1)	IDI is in process of self-liquidation, or in other instances of voluntary termination (except Section 8(p) and 8(q) actions).
Section 8(p)	IDI is no longer in business of receiving deposits (other than trust funds) or institution's deposits are assumed by an insured credit union.
Section 8(q)	IDI's deposits are assumed by another IDI.

### Section 8(a)(1) Terminations

Voluntary terminations under Section 8(a)(1) of the FDI Act are relatively uncommon and are generally used by institutions in the process of self-liquidation. Institutions initiating Section

8(a)(1) proceedings are required to provide the FDIC with written notice of their intent to terminate deposit insurance at least 90 days before the effective date of the termination.

The following institutions cannot voluntarily terminate deposit insurance under Section 8(a)(1) of the FDI Act:

- National banks,
- State member banks,
- Federal branches,
- Federal savings associations, or
- Any branches required to be insured under Section 6(a) or 6(b) of the International Banking Act of 1978.

Following issuance of an order of termination of insurance, insurance continues for a period of six months to two years as set forth in Section 8(a)(7).

### **Section 8(p) and 8(q) Terminations**

Section 8(p) is used to terminate deposit insurance when an IDI is no longer in the business of receiving deposits (other than trust funds). Section 8(p) is also used to terminate deposit insurance when an insured credit union assumes an IDI's deposits because Section 8(q) is only available when an IDI assumes another IDI's deposits. Although Section 8(p) actions are usually voluntary, with the institution stipulating to the termination of insurance action, they may also be effected involuntarily. Insured status terminates on the last day of the first full quarterly assessment period following issuance of an order of termination of insurance.

Section 8(q) is used to terminate deposit insurance when an IDI's deposits are assumed by another IDI. If the IDI's charter is cancelled, revoked, rescinded, or otherwise terminated within five days of the assumption, then termination takes effect by operation of law, and no order of termination of insurance is required. Otherwise, the FDIC must issue an order of termination of insurance. Termination by operation of law is not available when an IDI's charter is converted to a different charter class.

Insured status terminates on the date the FDIC receives satisfactory evidence of assumption of the deposits. However, separate insurance of deposits continues for six months from the date the assumption takes effect, or until the earliest maturity date after the six-month period for time deposits.

### **Notice to Depositors**

Before voluntarily terminating deposit insurance under Section 8(a), 8(p) or 8(q), an IDI provides advance notice to its depositors.