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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064 – AE33

Recordkeeping for Timely Deposit Insurance Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is seeking comment on a proposed rule that would facilitate prompt payment of FDIC-insured deposits when large insured depository institutions fail. The proposal would require insured depository institutions that have two million or more deposit accounts to maintain complete and accurate data on each depositor's ownership interest by right and capacity for all of the institution's deposit accounts, and to develop the capability to calculate the insured and uninsured amounts for each deposit owner by ownership right and capacity for all deposit accounts, which would be used by the FDIC to make deposit insurance determinations in the event of the insured depository institution's failure.

DATES: Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments on the notice of proposed rulemaking using any of the following methods:

- Agency Web Site: https://www.fdic.gov/regulations/laws/federal. Follow the instructions for submitting comments on the agency website.

- E-mail: comments@fdic.gov. Include RIN 3064 – AE33 on the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- Public Inspection: All comments received, including any personal information provided, will be posted generally without change to https://www.fdic.gov/regulations/laws/federal.

FOR FURTHER INFORMATION CONTACT: Marc Steckel, Deputy Director, Division of Resolutions and Receiverships, 571-858-8224; Teresa J. Franks, Associate Director, Division of Resolutions and Receiverships, 571-858-8226; Shane Kiernan, Counsel, Legal Division, 703-562-2632; Karen L. Main, Counsel, Legal Division, 703-562-2079.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The FDIC is proposing new requirements for certain large and complex insured depository institutions ("IDIs"), as measured by number of deposit accounts, to ensure that depositors have prompt access to insured funds in the event of a failure. When a bank fails, the FDIC must provide depositors insured funds "as soon as possible" after failure while also resolving the failed bank in the least costly manner.

The FDIC makes deposit insurance determinations after calculating the net amount due to depositors of a failed institution based upon the laws and regulations governing deposit insurance. While the general coverage limit of $250,000 is widely understood and may appear to be easily applied, the laws and regulations governing deposit insurance limits are more detailed, which necessitates more complex processing. The process begins by aggregating the amounts of all deposits in the failed institution by depositor according to the rights and capacities associated with each account type. This process becomes more complicated, for example, when there are a large number of deposit accounts, when the failed institution has multiple deposit systems, when identifying information for the same depositor in separate accounts is incorrect or inconsistent, when beneficial owners of pass-through accounts have not been identified, or when beneficiaries of trust accounts and their relative interests have not been identified.

The proposed rule would reduce the difficulties the FDIC faces when making prompt deposit insurance determinations at the largest IDIs. It would require IDIs with two million or more deposit accounts to maintain complete and accurate depositor information and to develop the capability to calculate deposit insurance coverage for all deposit accounts using their own information technology system ("IT system"). The proposed rule would ensure that customers of both large and small failed banks receive the same prompt access to their funds, reducing disparities that might undermine market discipline or create unintended competitive advantages in the market for large deposits.

The size and complexity of the IDIs affected by this rule justify imposing more specific data requirements on those IDIs than on smaller IDIs to ensure that the FDIC can make prompt deposit insurance determinations. Institutions covered by the proposed rule often use multiple deposit systems, which may complicate the FDIC's deposit insurance determination as described in *IV. Need for Further Rulemaking*. While challenges resulting from incomplete information are present when any bank fails, obtaining the necessary information could significantly delay the availability of funds when information is incomplete for millions of accounts. Additionally, larger IDIs generally rely on credit-sensitive funding more than smaller IDIs do, which makes them more likely to suffer a liquidity-induced failure. This dynamic increases the risk that the FDIC would have less lead time to prepare for administering deposit claims as part of a resolution. Further, to establish a bridge depository institution, which is a likely resolution strategy for large complex institutions, the FDIC must generally have the ability to rapidly determine the amount of insured and uninsured deposits held by the predecessor failed bank. Having the option to establish a bridge depository institution enhances the FDIC's ability to resolve a failed IDI by transferring parts to smaller institutions rather than arranging the purchase and assumption of the entire bank by another large bank. This option greatly enhances the FDIC's ability to market the failed IDI and preserve its franchise value.

Ensuring the swift availability of funds for millions of depositors at a large IDI would contribute to financial stability. Confidence that the FDIC can promptly determine insured amounts will reinforce the understanding that any size bank can fail without systemic disruptions. That understanding would, in turn, reduce the moral hazard that might otherwise induce the largest banks to take excessive risks.

II. Legal Authority

The FDIC is authorized to prescribe rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act ("FDI Act").[1] Under the FDI Act, the FDIC is responsible for paying deposit insurance "as soon as possible" following the failure of an IDI.[2] To pay deposit insurance, the FDIC uses a failed IDI's records to aggregate the amounts of all deposits that are maintained by a depositor in the same right and capacity and then

[1] 12 U.S.C. 1819(a)(Tenth); 1820(g); 1821(d)(4)(B)(iv).
[2] 12 U.S.C. 1821(f)(1).

applies the standard maximum deposit insurance amount ("SMDIA") of $250,000.[3] As authorized by law, the FDIC must rely on the failed institution's deposit account records to identify deposit owners and the right and capacity in which deposits are owned.[4] In addition, the FDIC operates under a mandate to implement the resolution of a failed IDI at the least possible cost to the Deposit Insurance Fund.[5] Requiring institutions with two million or more deposit accounts to maintain complete and accurate data regarding deposit ownership and to have IT systems that can be used by the FDIC to calculate deposit insurance coverage in the event of failure will enable the prompt payment of deposit insurance and preserve the FDIC's ability to implement the least costly resolution of such an institution.

III. Current Regulatory Approach

Although the statutory requirement that the FDIC pay insurance "as soon as possible" does not require the FDIC to pay insurance within a specific time period, the FDIC strives to pay insurance promptly. Indeed, the FDIC strives to make most insured deposits available to depositors by the next business day after a bank fails. The FDIC believes that prompt payment of deposit insurance is essential for several reasons. First, prompt payment of deposit insurance maintains public confidence in the deposit insurance system as well as in the banking system. Second, depositors must have prompt access to their insured funds in order to meet their financial needs and obligations. Third, a delay in the payment of deposit insurance – especially in the case of the failure of one of the largest insured depository institutions – could have systemic consequences. Fourth, a delay could reduce the franchise value of the failed bank and thus increase the cost to the Deposit Insurance Fund. Fifth, prompt payment would reduce the

[3] 12 U.S.C. 1821(a)(1)(C), 12 U.S.C. 1821(a)(1)(E).
[4] 12 U.S.C. 1822(c); 12 CFR 330.5.
[5] 12 U.S.C. 1823(c)(4).

likelihood that disruptions in the check clearing cycle or to direct debit arrangements would occur during the resolution process.

The FDIC took an initial step toward ensuring that prompt deposit insurance determinations could be made at large insured depository institutions through the issuance in July 2008 of § 360.9 of the FDIC's regulations.[6] Section 360.9 applies to IDIs with at least $2 billion in domestic deposits and at least 250,000 deposit accounts or $20 billion in total assets.[7] Section 360.9 requires these institutions to be able to provide the FDIC with standard deposit account information that can be used in the event of the institution's failure. The appendices to part 360 prescribe the structure for the data files that those institutions must provide to the FDIC. However, they are permitted to populate the data fields by using only preexisting data elements. If the institution does not maintain the information to complete a particular data field, then a null value can be used in that field. As a result of this discretionary approach, these institutions' standard data files are frequently incomplete. Section 360.9 also requires these institutions to maintain the technological capability to automatically place and release holds on deposit accounts if an insurance determination could not be made by the FDIC by the next business day after failure. While § 360.9 would assist the FDIC in fulfilling its legal mandates regarding the resolution of failed institutions subject to that rule, the FDIC believes that if a large institution were to fail with little prior warning, additional measures would be needed to ensure the prompt and accurate payment of deposit insurance to all depositors.

IV. Need for Further Rulemaking

While the FDIC is authorized to rely upon the account records of a failed IDI to identify owners and ownership rights and capacities, in the FDIC's experience it is not unusual for a

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[6] 12 CFR 360.9. *See* 73 FR 41180 (July 17, 2008).
[7] 12 CFR 360.9(b)(1).

failed bank's records to be ambiguous or incomplete. For example, the FDIC might discover multiple accounts under one name but at different addresses or under different names but at the same address. The problem of accurately identifying the owners of deposits is exacerbated when an account at a failed bank has been opened through a deposit broker or other agent or custodian and neither the name nor the address of the owner appears in the failed bank's records. Often in such cases, the only party identified in the records is the agent or custodian. (In the case of accounts held by agents or custodians, the FDIC provides "pass-through" insurance coverage, meaning that the coverage "passes through" the agent or custodian to each of the actual owners.[8]) Trust accounts may also present challenges to an accurate determination of deposit insurance coverage, even when the owner of a particular account is clearly disclosed in the failed bank's account records. The identities of the beneficiaries might not be contained in the bank's records or electronically stored in a structured way using standardized formatting. A further complication is that bank records on trust accounts are often in paper form or electronically scanned images that require a time-consuming manual review.

Under each of these circumstances, in order to ensure the accurate payment of deposit insurance, the FDIC may need to delay the payment of insured amounts to depositors while it manually reviews files and obtains additional information as to the actual owners or beneficiaries and their respective interests. Such delays in the insurance determination process could increase the likelihood of disruptions to an assuming institution's or an FDIC-managed bridge bank's back office functions, such as the check clearing cycle and direct debit arrangements.

While these challenges to accurately determining and promptly paying deposit insurance may be present at any size of failed institution, they become increasingly formidable as the size and complexity of the institution increases. Larger institutions are generally more complex, have

[8] *See* 12 CFR 330.7.

more deposit accounts, greater geographic dispersion, multiple deposit systems, and more issues with data accuracy and completeness. These factors, which all contribute to the difficulty of making a prompt deposit insurance determination, have become more pronounced over time and can be attributed largely to consolidation in the banking industry. From 2004 to 2014, the largest number of deposit accounts held at a single IDI increased 119 percent, and the deposit accounts at the ten banks having the most deposit accounts increased 106 percent. As a result of this concentration, the largest banks have become even more complex than before, with greater potential for significant IT systems disparities, as well as data accuracy and completeness problems. The largest IDIs which grew through acquisition have inherited the legacy deposit account systems of the acquired banks. Those systems might have missing and inaccurate deposit account information; the acquired records might not be automated or compatible with the acquired institution's deposit systems – resulting in multiple deposit platforms.

Although the largest institutions are still able to conduct their banking operations without expending the resources necessary to integrate these inherited systems or update the acquired deposit account files, the state of their deposit systems would complicate and prolong the deposit insurance determination process in the event of failure. Because delays in deposit insurance determinations could lead to bank runs or other systemic problems, the FDIC believes that improved strategies must be implemented to ensure prompt deposit insurance determinations upon the failure of a bank with a large number of deposit accounts.

The FDIC's experience in the financial crisis, which peaked in the months following the promulgation of § 360.9, indicated that failures can often happen with very little notice and time for the FDIC to prepare. Since 2009, the FDIC was called upon to resolve 47 institutions within 30 days from the commencement of the resolution process to the ultimate closing of the bank. In addition to these rapid failures, the financial condition of two banks with a large number of deposit accounts – Washington Mutual Bank and Wachovia[9] – deteriorated very quickly, leaving the FDIC little time to prepare. If a large bank were to fail due to liquidity problems, the FDIC's opportunity to prepare for the bank's closing would be limited, thus further exacerbating the challenge to making prompt deposit insurance determinations.

The FDIC has worked with institutions covered by § 360.9 for several years to confirm their ability to comply with the rule's requirements. This implementation process has led the FDIC to conclude that the standard data sets and other requirements of § 360.9 are not sufficient to mitigate the complexities of the largest institution failures. Based on its experience reviewing the covered institutions' deposit data (and often finding inaccurate or incomplete data), deposit recordkeeping systems, and capabilities for imposing provisional holds, the FDIC believes that § 360.9 has not been as effective as had been hoped in enhancing the capacity of the FDIC to make prompt deposit insurance determinations. Specifically, the continued growth following the promulgation of § 360.9 in the number of deposit accounts at larger IDIs and the number and complexity of deposit systems or platforms in many of these institutions would exacerbate the difficulty of making prompt deposit insurance determinations. A failed IDI that has multiple deposit systems would further complicate the aggregation of deposits owned by a particular depositor in a particular right and capacity, causing additional delay.

Using the FDIC's IT system to make deposit insurance determinations at a failed institution with a large number of deposit accounts would require the transmission of massive amounts of deposit data from the IDI's IT system to the FDIC's IT system. The time required for transmitting and processing such a large amount of data would present a significant impediment

[9] In their final Call Reports (2Q-08) Washington Mutual reported 42 million deposit accounts and Wachovia reported 29 million deposit accounts.

to making an insurance determination in the timely manner that the public has come to expect. The 36 institutions projected to be covered by the proposed rule each hold between 2 million and 85 million deposit accounts. Requiring the covered institutions to enhance their deposit account data and upgrade their IT systems so that the FDIC can perform the deposit insurance determination on all of their deposit accounts without a data transfer would address many of these issues.

On April 28, 2015, the FDIC published in the *Federal Register* an Advance Notice of Proposed Rulemaking ("ANPR") seeking comment on whether certain insured depository institutions such as those that have two million or more deposit accounts should be required to take steps to ensure that depositors would have access to their FDIC-insured funds in a timely manner (usually within one business day of failure) if one of these institutions were to fail.[10] Specifically, the FDIC sought comment on whether these IDIs should be required to enhance their recordkeeping to maintain and be able to provide substantially more accurate and complete data on each depositor's ownership interest by right and capacity for all or a large subset of the institution's deposit accounts. The FDIC also sought comment on whether these IDIs' IT systems should have the capability to calculate the insured and uninsured amounts for each depositor by deposit insurance capacity for all or a substantial subset of deposit accounts at the end of any business day. The comment period ended on July 27, 2015. The FDIC received 10 comment letters. The FDIC also had six meetings or conference calls with banks, trade groups, and software providers.

V. Discussion of Comments

The FDIC has carefully considered all of the comments. The commenters generally acknowledged the FDIC's objectives regarding the need for the covered institutions to maintain

[10] 80 FR 23478 (April 28, 2015).

more complete and accurate depositor information and to develop the capability to calculate the deposit insurance coverage for all deposit accounts using their IT systems. The commenters recognized the FDIC’s obligation to fulfill its statutory mandates. One commenter that would not be covered expressed its full support for the proposals set forth in the ANPR. This commenter agreed that because delays in the FDIC’s determination of deposit insurance coverage could lead to bank runs or other systemic problems, more needs to be done to ensure that the FDIC can continue to make prompt deposit insurance determinations for accounts at even the largest and most complex insured depository institutions, specifically those with a large number of deposit accounts. In addition, another commenter noted a number of possible benefits to the implementation of these proposals by the covered institutions; this commenter believed that the greatest benefit would be the preservation of the public’s confidence in the FDIC and in the banking industry in general. Other benefits identified included: greater efficiencies in the wind-down process, less time and human capital spent in the wind-down process, and better compliance with anti-money laundering and Bank Secrecy Act requirements because of the necessity to identify the underlying beneficial owners of various types of accounts.

Nevertheless, a number of commenters expressed concerns with various aspects of the proposals as set forth in the ANPR. The following discussion organizes their comments to present the most common positions discussed in their letters and communications which, inter alia, include: the FDIC would be transferring its statutory responsibility to make the deposit insurance determinations to the covered institutions; community banks should not be covered by the proposals; and the implementation of enhanced deposit account recordkeeping and IT system capabilities by covered institutions would be a multi-year effort involving significant bank resources.

A. FDIC's statutory responsibility for deposit insurance determination

Several commenters voiced the opinion that the proposal to require certain large IDIs to develop the capability to perform the deposit insurance calculation on all or a significant subset of their deposit accounts effectively would be transferring the FDIC's statutory responsibility to make deposit insurance determinations to the covered institutions. This is not the case. The FDIC recognizes the importance of distinguishing between the covered institutions' responsibility to maintain complete and accurate records and to enhance their IT systems from the FDIC's responsibility to make deposit insurance determinations and pay deposit insurance.

In order to pay insured deposits to the failed bank's depositors as soon as possible, as directed in section 11(f)(1) of the FDI Act,[11] the FDIC is authorized by section 12(c) of the FDI Act to rely upon the failed bank's records to determine the owners of deposits at the failed bank.[12] The large number of deposit accounts at covered institutions makes it necessary for the FDIC to require these institutions to obtain and maintain the necessary depositor information in their records in order to facilitate the identification of the owners of the deposits and the amounts thereof. Deposit account recordkeeping is the covered institutions' responsibility.

In order to fulfill its statutory responsibilities with respect to the depositors of the largest and most complex IDIs, the FDIC must be able to rely on the covered institutions having the requisite deposit account information readily available and having an IT system capable of performing the deposit insurance calculations at the FDIC's direction. Therefore, the proposed rule would require the covered institutions to improve their deposit account recordkeeping and the capability of their IT systems so that in the event of failure, deposit records would be

[11] 12 U.S.C. 1821(f)(1).
[12] 12 U.S.C. 1822(c).

immediately available to the FDIC for the purpose of quickly and accurately determining the appropriate deposit insurance coverage for each deposit account. Upon a covered institution's failure, the FDIC would employ the covered institution's IT system to make the deposit insurance determination. Requiring the covered institutions to develop these capabilities would enable the FDIC to satisfy its statutory mandate to pay insured deposits as soon as possible. The FDIC would use these capabilities to make deposit insurance determinations only after the failure of a covered institution. Consequently, it would not be delegating its statutory responsibility to the covered institution.

B. Requiring banks to maintain the necessary depositor information on the beneficial owners of pass-through deposit accounts

The FDIC sought comment regarding two options proposed to address the issue of determining the deposit insurance coverage for pass-through deposit accounts promptly. The first option would require the FDIC to identify the covered institutions' pass-through accounts (upon failure) and place temporary holds on the entire balance in each account. Current FDIC regulation allows the information which would identify the beneficial owners of the pass-through deposit accounts to be maintained off-site in the deposit broker's or other agent's records. Therefore, the financial intermediaries (banks, brokers, agents, and custodians) would submit the required depositor information to the FDIC in a standard format within a certain time frame. The FDIC's claims agents would then review the depositor information provided by the agents and make a deposit insurance determination. This process is labor-intensive and generally requires depositors' access to these funds to be temporarily restricted.

Two commenters focused their discussion on deposit products and accounts provided by brokers to their customers and the preferred procedure for providing the depositors' information to the FDIC at bank failure. Both commenters supported the continued use of the procedures described in Option 1 which would, in effect, maintain the status quo.

As discussed more fully in *I. Policy Objectives* and *IV. Need for Further Rulemaking*, the FDIC does not believe that relying on the status quo is a viable approach with respect to the possible failure of a covered institution. For example, the volume of pass-through accounts for which beneficial ownership information would be unavailable in the covered institution's records at failure could far exceed the number of accounts handled in any of the FDIC's previous resolutions. Moreover, some of these pass-through accounts could be transactional in nature. Depositors may require immediate access to deposit accounts insured on a pass-through basis such as brokered money market demand account ("MMDA") funds, transaction accounts (including both negotiable order of withdrawal ("NOW") accounts and demand deposit accounts offered by a financial intermediary) and certain types of prepaid cards. If funds in these transactional accounts are not available when the bridge bank or another assuming institution opens on the next business day, then outstanding items could be returned unpaid and affected depositors might not have immediate access to their funds. This proposal does not aim to directly address this challenge, but instead would cause covered institutions to identify and report such accounts so that they can be further considered.

In order to address the increased volume of pass-through accounts at covered institutions, as well as the need of the beneficial owners to have immediate access to the funds in their transactional accounts on the next business day, the FDIC presented a second option to require the covered institutions to maintain up-to-date information on the principal or underlying depositor at the covered institutions. This proposed change in deposit account recordkeeping would allow the FDIC to make immediate or prompt deposit insurance determinations either for all pass-through deposit accounts or at least those accounts where depositors would expect and require immediate access to their funds on the next business day.

Both of the commenters who discussed pass-through deposit account issues voiced opposition to the FDIC's pass-through proposal for a number of reasons. One commenter challenged the FDIC's statutory authority to require the covered banks to maintain depositor information on the beneficial owners of brokered deposits in the covered institutions' own records. This commenter correctly noted that the concept of pass-through deposit insurance coverage is grounded in the FDIC's enabling statute, the FDI Act. Section 11(a)(1)(C) states that "[f]or the purpose of determining the net amount due to any depositor … the [FDIC] shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person." The FDIC is not attempting to alter the statutory basis for pass-through insurance coverage, however.

Section 12(c) of the FDI Act provides the FDIC with the legal basis for determining deposit insurance coverage. The FDIC is not required to recognize and pay deposit insurance to any person whose "name or interest as such owner is not disclosed on the records" of the failed financial institution "if such recognition would increase the aggregate amount of the insured deposits" in such failed IDI. The only exception to this standard is the proviso: "Except as otherwise prescribed by the Board of Directors." In 1990 and again in 1998, the FDIC adopted amendments to the deposit insurance regulations which involved recordkeeping requirements for fiduciary relationships (which include deposit brokers and their beneficial owners). For example, the multi-tiered fiduciary relationship provisions permit deposit insurance coverage for the principal or underlying depositor if the banks either: (1) maintain the beneficial ownership information regarding the deposits placed by brokers (for each tier of ownership) at the bank; or (2) indicate on the bank's records that the beneficial ownership information will be maintained by parties (in the normal course of business) at each level of the fiduciary relationships. Additionally, this deposit insurance regulation allows a depositor to prove, in effect, the existence of pass-through coverage for a deposit account even though the bank's records do not explicitly or clearly indicate such a relationship exists. The FDIC's regulations recognizing multi-tiered fiduciary relationships and allowing records of beneficial ownership to be maintained off-site represent the action and approval of the FDIC.

This commenter stated that the FDIC's amendments to its recordkeeping requirements for fiduciary or pass-through accounts "provide[d] the FDIC with greater flexibility in granting pass-through coverage when the existence of an agency or other relationship necessary for pass-through insurance is not clear from the bank's records." If the commenter has interpreted the flexibility afforded to the banks regarding the fiduciary relationship recordkeeping requirements as creating additional FDIC pass-through deposit insurance coverage for deposits placed by multi-tiered fiduciaries or deposit brokers, then that interpretation would be inconsistent with the position the FDIC is taking in the proposed rule. Allowing the covered institutions to rely on the deposit brokers or other agents to maintain the necessary documentation represents a liberalization of the recordkeeping requirement set forth in section 12(c) of the FDI Act. As such, the FDIC's deposit insurance regulations allow the FDIC to recognize the pass-through nature of certain deposit accounts and pay deposit insurance to the underlying deposit owners even when the records are not maintained at the failed bank. The FDIC does not view the relaxing of the statutory recordkeeping requirement as "granting" pass-through insurance coverage, but rather merely facilitating recordkeeping arrangements between the covered institutions and their deposit brokers and other agents. Conversely, requiring the covered institutions to maintain beneficial ownership information on-site would not adversely impact the availability of pass-through insurance coverage provided that the necessary documentation is present in the covered institution's records.

In summary, the FDI Act provides for pass-through deposit insurance for the principal depositor or the beneficial owner of a deposit placed by an agent on its behalf. The FDIC recognizes these depositors and pays deposit insurance when their ownership is appropriately documented. In that regard, the FDIC must also adhere to the legal standard set forth in section 12(c) of the FDI Act to identify deposit owners and pay insured deposits. The FDIC has the authority pursuant to section 12(c) of the FDI Act to require the covered institutions to maintain the necessary records on-site. If the FDIC determines that the current recordkeeping flexibility is no longer appropriate or feasible for the covered institutions, then the FDIC Board is within its statutory authority to adopt different recordkeeping requirements through the issuance of a new regulation. To deny the FDIC's authority to require the covered institutions to maintain the necessary information on the beneficial owners of the brokered deposits in their own records in order to make accurate and timely deposit insurance determinations would, in effect, ignore section 12(c) of the FDI Act.

C. Arguments against adoption of Option 2

The other commenter presented four arguments to demonstrate why Option 2 would not be an acceptable alternative to the status quo. First, the ANPR did not demonstrate the existence of a problem with pass-through accounts that would justify the imposition of a new regulatory burden as described in the FDIC's pass-through proposal. Second, requiring covered institutions also to maintain beneficial ownership information that presently resides with financial intermediaries such as deposit brokers would needlessly increase the exposure of depositor information to cyber-attack and identity theft. Third, community banks would be forced to provide information on their best customers to large banks, potentially giving the covered institutions an unfair competitive advantage. Finally, the application of different depositor recordkeeping rules to different banks could create depositor confusion and reduce public confidence in the FDIC.

In response to the first argument, the FDIC briefly addressed in the ANPR the problems of pass-through accounts in making a deposit insurance determination.[13] Moreover, the challenges the FDIC faces in making timely deposit insurance determinations for pass-through deposit accounts are also discussed in *IV. Need for Further Rulemaking*, above. Second, IDIs already maintain significant amounts of sensitive data such as PII that could be a target for cyber-attack or identity theft. However, they have cybersecurity defenses in place and are continuously enhancing those defenses. The FDIC believes that the benefits of conducting the deposit insurance determination using the covered institutions' own IT systems would outweigh the risk of the beneficial ownership information being exposed to cyber-attack or identity theft. With respect to the commenter's third argument, it would be the duty of the covered institution receiving the deposit to obtain and maintain the beneficial ownership information. Nevertheless, the commenter expressed concern that community banks would be forced to share proprietary information regarding their best customers with the large covered institutions thereby putting them at a competitive disadvantage. A community bank could refuse to provide information on

[13] "The problem identifying the owners of deposits is exacerbated when an account at a failed bank has been opened through a deposit broker or other agent or custodian. In this scenario, neither the name nor the address of the owner may appear in the failed bank's records." 81 FR 23478 (April 28, 2015). "The need to obtain information from the agents or custodians delays the calculation of deposit insurance by the FDIC, which may result in delayed payments of insured amounts or erroneous overpayment of insurance. At certain banks with a large number of deposit accounts and large numbers of pass-through accounts, potential delays or erroneous overpayments could be substantial." Id. at 23482.

its best customers if it so chooses. As discussed more fully in *VI. Description of the Proposed Rule*, the recipient covered institution would then be able to apply to the FDIC for an exception to the proposed rule's requirements for that particular account. The argument that the FDIC would be creating different deposit insurance coverage rules if the proposed rule is finalized is discussed below.

The proposed rule would not create different deposit insurance coverage for the covered institutions' depositors. The purpose of this proposed rulemaking is to modify the deposit account *recordkeeping requirements* for the largest and most complex IDIs. For example, § 330.5(b)(2) and (3) of the FDIC's regulations allows IDIs to have the beneficial ownership information concerning deposit accounts opened by agents and other financial intermediaries to be maintained by a financial intermediary rather than on-site at the IDI. In other words, the requisite deposit ownership information to determine pass-through insurance coverage will not be found in the IDI's records. The FDIC's proposal to require the covered institutions to obtain and maintain beneficial ownership information on pass-through accounts in-house should not be characterized as a limitation or restriction on deposit insurance coverage for pass-through accounts.

While it is true that the FDIC is not required to pay deposit insurance to any depositor "whose name or other interest as such owner is not disclosed on the record" of the failed bank, this is not the FDIC's intention in the current rulemaking process. The pass-through proposal, as described in the ANPR, does not attempt to restrict or limit pass-through deposit insurance coverage. Covered institutions would have heightened recordkeeping and IT system capability requirements to enable the FDIC to fulfill its statutory responsibility to pay insured deposits as soon as possible regardless of the size of the IDI. These proposed requirements would not, however, change the deposit insurance coverage standards for any covered institution's depositors.

The FDIC also recognizes that requiring the covered institutions to obtain and maintain information on the beneficiaries of certain types of trust accounts at the covered institutions is a new approach. The FDIC's intent, however, is not to create different insurance coverage rules for accounts at different banks as characterized by one commenter. The FDIC does not view this enhanced recordkeeping requirement for the largest and most complex institutions as effectively bifurcating the deposit insurance coverage rules. Rather, the FDIC is proposing to impose a higher recordkeeping standard on the covered institutions so that the depositors at those institutions can be confident that the FDIC will pay their insured deposits within the same time frame that currently applies to the FDIC's resolution of smaller insured depository institutions. Even though the deposit account recordkeeping requirements for the covered institutions would be increased, the underlying deposit insurance coverage for the covered institutions' depositors would remain unchanged.

This proposed approach stands in contrast, however, to the procedure adopted by the Canada Deposit Insurance Corporation ("CDIC") in the context of deposits held in trust at its member institutions. The CDIC requires its member institutions *on an annual basis* to contact the trustees of deposit accounts and to request that the trustees update the institutions' records regarding the number of beneficiaries, their names and addresses, and their proportional ownership of the deposits held at the Canadian banks.[14] If the requisite information is not updated and provided to the member institutions by the applicable deadline, then in the event of a Canadian institution's failure, the deposit account would be characterized as a single ownership

[14] Canada Deposit Insurance Corporation, Annual disclosure by trustees, available at http://www.cdic.ca/en/about-di/how-it-works/trusts/disclosure-rules/Pages/annual-disclosure.aspx. (Accessed on January 13, 2016.)

account in the name of the trustee. The CDIC would aggregate all eligible deposits within a trust and insure them for up to $100,000, regardless of the number of beneficiaries. Inaccurate or incomplete ownership records for Canadian trust accounts result in a diminution of deposit insurance coverage for the beneficiaries. This is a reasonable result given that the information the CDIC must rely upon to make its deposit insurance determination is incomplete and/or inaccurate. The FDIC has the legal authority to adopt a similar approach because it is authorized by section 12(c) of the FDI Act to rely upon the failed bank's records to determine the ownership of the failed bank's deposit accounts. Therefore, the FDIC would be justified in limiting the availability of pass-through insurance coverage as provided by the FDI Act if the covered institutions do not implement the proposed recordkeeping requirements. Nevertheless, the FDIC does not intend to penalize the covered institutions' depositors for the possible inadequacies of the covered institutions' records or IT systems. The lack of accurate or complete ownership information could, however, delay the FDIC's determination of deposit insurance coverage in the event of a covered institution's failure. If the covered institution is not able to collect and maintain the requisite deposit ownership information on-site and seeks an exception, the proposed rule would require the covered institution to notify the underlying owners of pass-through or trust accounts that payment of deposit insurance could be delayed in the event of failure.

D. Access to liquid deposit accounts

Many commenters advanced the argument that obtaining and maintaining the information on the beneficial owners of many types of pass-through deposit accounts would not be possible. The commenters offered a number of reasons, among them: ownership of certificates of deposit can change on a nightly basis, the volume of underlying beneficial owners is too large, the costs involved to develop the IT system to store such information would be prohibitively expensive, and concerns regarding maintenance of confidentiality. The FDIC is aware of these factors and recognizes that situations will exist which would prevent a covered institution from being able to comply with the general requirements of the proposed rule. As more fully discussed in *VI. Description of the Proposed Rule*, the proposed rule provides covered institutions with a procedure to apply to the FDIC for an exception from compliance with some or all of the recordkeeping requirements for certain types or categories of deposit accounts. Nevertheless, the FDIC expects that every effort would be made to collect and maintain the requisite depositor information to allow the beneficial owners of brokered transactional accounts to have access to their insured deposits just as they would have to a traditional checking and other transactional account. Without access to their funds on the next business day after failure, outstanding items could be returned unpaid, causing these depositors financial hardship or inconvenience.

One commenter did seek confirmation that the FDIC would continue a practice discussed in connection with the implementation of § 360.9, which allows a financial intermediary acting as a fiduciary to make withdrawals from MMDAs transferred to a bridge bank or an assuming institution to satisfy the withdrawal requests of its customers. Nevertheless, as the FDIC stated in the preamble to the § 360.9 final rule, "Responsibility for [any] shortfall will rest with the broker or agent in whose name the account is titled, and not the FDIC as insurer."[15] The FDIC will consider the efficacy of permitting this practice in the context of this proposed rule. It is important to note, however, that the FDIC would authorize a financial intermediary's access to the funds held in its custodial or omnibus account on the next business day after a covered institution's failure on a case-by-case basis and only when to do so would be consistent with the least cost test. It is unclear to the FDIC how deposit brokers would be able to quickly identify the

[15] 73 FR 41180, 41189 (July 17, 2008).

appropriate deposit insurance coverage for their customers so that the brokers would not expose themselves to the liability associated with the overpayment of funds to their underlying customers. If the deposit brokers have the capacity or capability to track those relationships, the FDIC questions how difficult it would be to provide that information on a more frequent basis to the covered institutions.

E. Signature card requirement

Three commenters raised a different issue regarding “qualifying joint accounts” as defined in the FDIC’s regulations at 12 CFR 330.9(c). They expressed their concern specifically with the signature card requirement included as one factor (of three) in establishing a qualifying joint account. These commenters offered reasons why it is difficult for covered institutions to ensure that the joint account holders’ signature card complies with the FDIC’s regulation. Another commenter noted that the framework for certain types of deposit accounts, such as joint accounts and payable-on-death (“POD”) accounts, is found in state law. Therefore, covered institutions which have a multi-state presence must structure those account categories to satisfy different states’ laws. Some of these commenters suggested possible solutions to the perceived problem of maintaining signed and accurate signature cards for joint accounts: first, the regulatory requirement could be deleted in the context of a bank failure or second, the regulation could be amended so that all banks would be allowed to conclusively presume that a joint account is a “qualifying joint account” based solely on the titling of the account on their systems.

For several reasons, the FDIC has decided not to use the proposed rule as a vehicle for eliminating the signature card requirement for joint accounts. First, the FDIC believes that its signature card requirement simply reflects what an insured depository institution should be doing as a matter of safe and sound banking practice regardless of the FDIC’s deposit insurance coverage requirements. The signature card represents the contractual relationship between the depositor (or depositors) and the covered institution, and signature cards are a reliable indicator of deposit ownership. Second, the purpose of the proposed rule is simply to ensure that the FDIC's deposit insurance rules at 12 CFR part 330 can be applied in a timely manner in the event of failure of a covered institution. Finally, elimination of the signature card requirement for joint accounts might enable some depositors to disguise single accounts (owned entirely by one person) as joint accounts (opened in the names of two persons). Simplification of the rules or requirements prescribed by Part 330 could produce unintended consequences. In short, the FDIC is not proposing to amend the insurance coverage rules in 12 CFR Part 330. Assuming that the FDIC does decide to amend part 330, it would do so through a separate rulemaking so that all consequences of doing so could be thoughtfully considered.

F. No effect on community banks

Two commenters voiced strong opposition to the possibility that the proposals described in the ANPR might be applied to community banks. One expressed concern that, in the future, the FDIC might extend the proposal's requirements to the covered institutions currently subject to § 360.9. Another stated that the proposal could force community banks to disclose the identity of their best customers (and information about the deposit relationship) if the proposal would require large banks receiving brokered deposits to obtain and maintain information about beneficial owners. This could give the large banks an unfair competitive advantage.

Currently, 12 CFR 360.9 applies to approximately 150 insured depository institutions. As the ANPR explained, the most recent financial crisis has resulted in continued consolidation of the banking industry and even greater complexity of banks' deposit systems. The FDIC's concerns are focused on the very largest and most complex institutions and not on insured depository institutions that would be identified as community banks. The proposals set forth in this notice of proposed rulemaking ("NPR") would apply to only a subset of the covered institutions under § 360.9; i.e., approximately the largest 36 banks in the country as measured by number of deposit accounts. The proposed threshold for becoming subject to the requirements of the proposed rule is two million or more deposit accounts. The FDIC solicited comment on this proposed standard in the ANPR but received no comments recommending that the threshold should be raised to a greater number of accounts. On the other hand, one commenter suggested that IDIs with $10 billion in assets and 100,000 accounts should be required to comply with the ANPR's proposals if ultimately adopted.[16] The FDIC will again solicit comments regarding the appropriate size institution to be subject to these proposed requirements, and what criteria, if any, should be considered in addition to the number of deposit accounts. Finally, the proposed regulation provides for an exemption from the requirements set forth therein; i.e., the covered institution would not have any deposit accounts and does not intend to have any deposit accounts (when aggregated) which would exceed the standard maximum deposit insurance amount, which is currently$250,000. Therefore, if a relatively small covered institution with two million or more accounts could satisfy that condition, it would be able to seek an exemption from complying with the proposed regulation. Ultimately, as stated in the ANPR, the FDIC "does not contemplate imposing these requirements on community banks" as this is aimed at institutions with more than two million deposit accounts.[17]

[16] 80 FR 23478, 23481 (April 28, 2015).
[17] Id. at p. 23478.

G. Accounts subject to immediate deposit insurance determination ("closing night deposits")

Commenters who addressed the scope of closing night deposits generally agreed that individual, joint, and business accounts should be designated as closing night deposits. Some commenters asserted that these three categories represent a substantial subset of deposit accounts. One commented that it should also include retirement accounts. Another suggested that closing night deposits be limited to transaction, savings, and money market accounts where clients are accustomed to immediate liquidity. This commenter would also include brokered MMDAs, prepaid cards such as payroll cards and General Purpose Reloadable ("GPR") cards, and POD accounts. Still another commenter advocated for coverage of transactional and MMDA accounts at a minimum to meet depositors' immediate liquidity needs, as well as savings accounts and, on a voluntary basis, certificates of deposit.

Several commenters asserted that the covered institutions have significantly varying projections of the percentages of their deposit balances for which they anticipate their IT systems having the capability to make insurance determinations because the data and systems capabilities vary among covered institutions and the definition of "closing night deposits" is not yet known. Another commenter estimated that its suggested definition would represent approximately 90 – 92 percent of its deposits. It noted, however, that the other 8 – 10 percent of its deposit base would be very difficult to treat as closing night deposits. And another commenter estimated that its definition would represent 70 percent of its accounts and 55 percent of balances from its core deposit systems. One commenter, on the other hand, took the position that banks covered by the proposal should be able to handle all the pass-through deposit accounts as well as the prepaid cards as closing night deposits, stating that they should maintain up-to-date records for all of their pass-through accounts sufficient to allow immediate or prompt insurance determinations.

The FDIC recognizes that the concept of "closing night deposits" served as a proxy for those deposit accounts and deposit insurance rights and capacities for which depositors would expect immediate access to their funds on the next business day. Therefore, the deposit insurance determination would have to be performed by the FDIC on "closing night" to ensure next business day availability. It is apparent to the FDIC from the comments that, for most covered institutions, the deposit accounts or deposit insurance rights and capacities that the commenters would prefer be identified as closing night deposits were those for which the requisite deposit ownership information was readily available.

However, as noted by the commenters, there is currently no uniformity or consistency among institutions regarding which deposit insurance categories could be handled as closing night deposits. At the moment, certain institutions would be able to include more types and a greater volume of deposit accounts for immediate insurance determination processing than other covered institutions. The FDIC does not intend to restrict the covered institutions to a pre-determined set of deposit insurance categories. Consequently, the FDIC has adjusted its approach for identifying the deposit accounts for which a covered institution should have complete and accurate ownership information that would be needed by the FDIC to make deposit insurance determinations at the time of the covered institution's failure. The ultimate goal would be for a covered institution's IT system to be able to calculate deposit insurance on all deposit accounts promptly upon the covered institution's failure. Rather than rely on the notion of "closing night deposits," the proposed rule generally requires covered institutions to obtain and maintain the deposit account information for *all* deposit accounts.

Nevertheless, the FDIC recognizes that it may prove difficult, and in some cases, impossible, for covered institutions to obtain the requisite depositor information for certain deposit insurance categories and/or types of deposit accounts. To address that possibility, the proposed rule provides a procedure for a covered institution to request an extension to comply with the proposed rule's requirements, an exception from compliance with respect to certain deposit accounts which meet certain criteria, and in one specific situation, an exemption from compliance with the regulation as ultimately adopted. The accounts that would not fit within the scope of closing night deposits are those for which the covered institutions would be unable to obtain the necessary deposit ownership information and are, therefore, the type which would be eligible for exception. The FDIC would consider the particular facts and circumstances presented in a covered institution's application when determining whether to grant an exception for certain types of accounts or deposit insurance categories.

H. Accounts not subject to immediate deposit insurance determination ("post-closing deposits")

The majority of the commenters expressed the opinion that certain types of accounts, such as formal trust accounts, brokered deposits, time deposits, foreign deposits, prepaid cards and other omnibus accounts entitled to pass-through deposit insurance coverage should not be closing night deposits. (Omnibus accounts are described by one commenter as business accounts or operating cash accounts in which cash is temporarily deposited while awaiting investment or distribution.) According to the commenters, acquiring complete records of beneficial owners of pass-through accounts presents significant challenges. Moreover, the commenters maintained that these accountholders do not need immediate or near-immediate access to funds after failure. Such accounts should therefore be post-closing deposits. A number of commenters stated that the

FDIC already has established procedures for determining deposit insurance for brokered deposits placed at a failed institution. Furthermore, these commenters recommended that there be no material change in the FDIC's procedures in this regard, and therefore, brokered deposits should continue to be handled as post-closing deposits.

Several commenters also stated that covered institutions should not be required to maintain information on beneficiaries of trust deposit accounts, beneficial owners of pass-through accounts, or other parties for whom covered institutions do not currently collect such information. Their comment letter set forth four legal or practical barriers to a covered institution's ability and/or authority to obtain depositor information on various types of trust accounts. First, a trustee has a fiduciary duty to keep the affairs of the trust confidential. Second, the Uniform Trust Code and certain state statutes provide that a trustee may use a Certification of Trust to protect the privacy of a trust instrument by discouraging requests for complete copies of the instrument. Third, banks serving as trustees pursuant to a bond indenture, for example, do not know who the beneficiaries are. Fourth, the status of various beneficiaries (e.g., birth, death, non-contingent) changes periodically as conditions for contingent beneficiaries are satisfied. One of these commenters asserted that it is entirely infeasible for covered institutions to meet a requirement to have beneficiary information on an ongoing basis. These commenters, in effect, concluded that all trust accounts and pass-through accounts should be handled as post-closing deposits.

Additionally, several commenters requested that foreign deposits be excluded entirely from the scope of any proposed or final rule. These commenters reasoned that these types of deposits are not eligible for deposit insurance, and therefore, should not be evaluated for insurance coverage at the depositor level.

As discussed above, the FDIC is not utilizing the concepts of closing night deposits and post-closing deposits in the proposed rule to differentiate between the types of deposit accounts for which deposit insurance should be calculated immediately upon a covered institution's failure. As several commenters noted, determining which depositors should have immediate access to their funds following a bank failure is a public policy issue that should be determined by Congress and the FDIC. The FDIC believes that it is not realistic or accurate to assume that all transaction accounts will be found in the individual, joint, and business account categories. In fact, several of the commenters recognized that, with technological advances and the evolution of financial products, many other types of accounts can be structured as transactional accounts. For example, one commenter recognized that its clients would likely need immediate or near-immediate access to brokered MMDA funds after failure. Another commenter believed that transaction accounts, MMDA, and savings accounts would include the funds that may be most needed by consumers. Moreover, this same commenter suggested that access to CDs is not critical and therefore should be included only on a voluntary basis. Still another commenter acknowledged that certain types of prepaid cards such as "payroll cards and General Purpose Reloadable prepaid cards can be used as alternatives or substitutes, to DDA accounts." A different commenter recognized that cardholders will "likely need immediate access to the funds in the custodial account [which holds the pass-through funds] to meet their basic financial needs and obligations." Finally, a commenter stated that access to POD accounts is often needed immediately because a POD account can be used as a depositor's primary banking account.

There appears to be no consensus within the banking industry regarding which categories or types of deposit accounts must be made immediately available to the depositors of a failed bank. The FDIC believes, however, that only providing immediate access to the deposit accounts associated with the individual, joint and business categories may no longer be adequate because consumers now have access to many additional types of deposit accounts and financial products outside of these categories which effectively serve as transactional accounts. Therefore, the FDIC has developed the proposed rule to require covered institutions to obtain and maintain the necessary information regarding all deposit accounts so that the FDIC can make deposit insurance determinations and pay insured deposits as soon as possible after a covered institution's failure as required by section 11(f)(1) of the FDI Act.[18] For example, there are certain types of accounts, such as POD accounts, for which a covered institution should already have the requisite account information available in the IDI as it is required by the FDIC's deposit insurance regulations. Section 330.10(b)(2) of the FDIC's regulations states "[f]or informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution."[19] Moreover, the FDIC believes that the same advances in technology that allow financial institutions to offer new types of transactional accounts and other financial products as substitutes for checking accounts may facilitate and support the covered institutions' efforts to obtain and maintain deposit account information for additional deposit insurance categories and types of accounts. One commenter described characteristics of its banking software, specifically, its customer information file ("CIF") which is "organized by customer name and tax ID number … to help uniquely identify each customer. … the system also maintains placeholders for related party or non-customer CIFs such that detailed information can be maintained on cosigners, guarantors, beneficiaries, and other similar types of entities." Finally, according to this commenter, the related party CIF feature "has the capacity to track the beneficial owners included in a brokered deposit" or in the case of a trust

[18] 12 USC 1821(f)(1).
[19] 12 CFR 330.10(b)(2). As discussed, above, the covered institutions should also have the requisite information to verify joint accounts in their records as well. See, 12 CFR 330.9(c).

account, the system can track beneficiaries to the extent that they are known. The FDIC believes that it is reasonable to expect that institutions that would be covered by the proposed rule would be able to make substantial progress toward complying with the recordkeeping requirements of the proposal.

With respect to foreign deposits, the FDIC believes that covered institutions should maintain the relevant depositor information concerning foreign deposits in their deposit account systems. While it is true, as several commenters pointed out, that the FDIC does not need the information about foreign deposits to complete its initial deposit insurance determinations on a failed bank, the FDIC will need such information post-closing to determine whether certain depositors who hold dually payable accounts in foreign branches of domestic covered institutions should receive advance dividends on their foreign deposits. In October 2013, the FDIC amended its deposit insurance regulations to clarify that deposits placed in a foreign branch of a domestic bank that are dually payable would be recognized as "uninsured deposits" rather than as a general unsecured claim against the failed bank's receivership estate.[20] Therefore, under the "depositor preference" provisions of the FDI Act, depositors with deposits that are dually payable would receive payments on their uninsured deposit amounts before general unsecured creditors.[21] For that reason, information regarding foreign deposits is relevant and necessary for the resolution of a failed covered institution. The FDIC believes that retaining this recordkeeping requirement should not impose any additional burden because the potentially covered institutions are all subject to § 360.9 currently. Section 360.9(d) requires the institutions covered by that rule to be able to provide the FDIC with standard data sets "with required depositor and customer

[20] 78 FR 56583 (September 13, 2013). See 12 CFR 330.1 and 330.3(e).
[21] 12 USC 1821(d)(11)(A).

data for all deposit accounts held in domestic and foreign offices."[22] Appendix C to part 360, entitled "Deposit File Structure," contains a data field which requires the covered institution to provide a "deposit type indicator"; i.e., whether the deposit is domestic or foreign.[23] Finally, insured depository institutions that have foreign offices provide information regarding their foreign deposits in their Call Reports.

I. Prepaid cards

Four commenters shared their views regarding the applicable treatment of prepaid cards as "closing night" versus "post-closing night" deposits as described in the ANPR. Several commenters relied on the guidance and practices adopted in the implementation of § 360.9 to conclude that deposits represented by prepaid cards would still have to be handled as post-closing night deposits. These commenters stated that the FDIC, in working with the covered institutions to implement § 360.9, "identified classes of deposits for which full depositor identification could not reasonably or practically be obtained and the data download requirements would not apply;" they cited to the FDIC's website and the guidance that was originally posted on March 18, 2009.[24] Moreover, their comment letter enumerated several of the attributes of these types of deposits as described in the FDIC's guidance: "credit card, prepaid card, payroll card, gift card, and other similar accounts … due to the small balances and inaccessibility to owner information; balances representing government benefits payable, such as food stamps, child support, and similar programs." These commenters reiterated their position by emphasizing that "[w]here account attributes mean that these data are *unavailable* or *cannot feasibly be collected*, these accounts should be identified as 'post-closing deposits.'" (Emphasis supplied.)

[22] 12 CFR 360.9(d)(1).
[23] 12 CFR part 360, Appendix C, field 12.
[24] Available at https://www.fdic.gov/regulations/resources/largebankdim/modernization.html.

One commenter took the position that prepaid card accounts should be divided into two categories; i.e., closing night and post-closing night deposits. Various types of prepaid cards such as payroll cards and general purpose reloadable ("GPR") prepaid cards can be used as alternatives, or substitutes, to demand deposit accounts ("DDA") accounts. This commenter believed that holders of these types of prepaid cards would require uninterrupted access to the funds loaded on their cards to meet their daily living expenses. In effect, they should receive the same treatment as other core retail DDA transaction accounts. Nevertheless, there are other types of prepaid cards, such as gift cards, that would not need to be recognized as closing night deposits. (In fact, some of these types of cards may not be eligible for deposit insurance coverage.) This commenter identified two problems with treating prepaid cards as closing night deposits. In order to calculate deposit insurance coverage, a covered institution would have to be able to aggregate all of an individual's single accounts – which could include prepaid cards. Some card programs allow employers to load an employee's wages directly to a payroll card; these cards are currently associated with employee name, address, and a unique identifier. A problem would arise, however, if the employee is a foreign national in which case the prepaid cardholder's unique identifier might be a passport ID. In such cases, the necessary aggregation step would not be possible until a covered institution made additional system development efforts because aggregation could not be executed via Social Security Number match. Finally, this commenter believed that irrespective of the particular problem described above, the investment required to maintain the current ownership interests of holders of its prepaid cards "may be significant." One commenter believed that balances on prepaid cards should be easy to track; conversely, identification of prepaid card owners would present significant challenges. This commenter concluded that there should be a hybrid approach for handling the beneficial owner information for various types of pass-through accounts. Covered institutions should be required to obtain and maintain beneficial owner information in their own records for some types of pass-through accounts, but the requisite information on beneficiaries or beneficial owners of other types of accounts would be provided to the FDIC by a specified time after the covered institution's failure.

One commenter highlighted several issues that it believed would impair the FDIC's ability to make prompt deposit insurance determinations at the largest institutions, e.g., numerous legacy software systems inherited through acquisitions and mergers and the significant expansion in accounts with pass-through insurance coverage – in particular, prepaid card programs. To address the pass-through insurance coverage and prepaid card issues, this commenter recommended that the covered institutions be required to "maintain up-to-date records sufficient to allow immediate or prompt insurance determinations for all pass-through accounts." Moreover, with respect to prepaid cards, the commenter took the position that covered institutions should be required to maintain current records on each prepaid cardholder's ownership interest. The commenter argued that these IDIs should not be allowed to rely on the agent's or custodian's records any longer. The information concerning the prepaid cardholders should be available at the covered institution so that examiners can check them periodically for accuracy.

The FDIC recognizes two major types of prepaid cards: "closed-loop cards" and "open-loop cards." Generally, in the case of a "closed-loop" card, the card is sold to a member of the public in the same manner that a gift certificate might be sold to a member of the public. The card enables the cardholder to obtain goods or services from a specific merchant or group of merchants. Examples of "closed-loop" merchant cards include prepaid telephone cards and gift cards sold by bookstores, coffee shops and other retailers. The funds paid to a merchant in exchange for a merchant card are not insured on a pass-through basis by the FDIC because the funds are not placed into a custodial deposit account at an insured depository institution. Indeed, the funds might not be placed into any type of deposit account at an insured depository institution. Rather, the funds might be used by the merchant in the operation of its business. For purposes of the proposed rule, the FDIC is concerned with "open-loop" cards and similar products that provide access to stored funds placed on deposit (by the cardholder or another party) at an insured depository institution. Examples of such cards include GPR cards, payroll cards and government benefits cards. In some cases, the access mechanism is not a plastic card but some other device such as a code used through a computer or mobile telephone. In any event, after the placement of the funds into an account at an insured depository institution, the funds are transferred or withdrawn by the holders of the access mechanisms.

In many cases, the prepaid card or other mechanism is "reloadable," meaning that additional funds may be placed at the insured depository institution for the cardholder's use. The card could be reloaded in many ways, including direct deposit, transfer of funds from another bank account, placement of funds at the insured depository institution through an ATM, or delivery of funds to a clerk at a retail store for subsequent transfer of the funds to the insured depository institution. Moreover, some types of prepaid cards are subject to certain federal consumer protection laws. Specifically, Regulation E, Electronic Funds Transfers, 12 CFR part 1005, applies to payroll cards, which are established directly or indirectly through an employer, and government benefit cards, which are issued by government agencies.[25] In addition, a 2010 Department of Treasury regulation requires deposit insurance for government benefits cards.[26]

Working from the premise that, with respect to prepaid cards, the FDIC's focus is with making prompt deposit insurance determinations on "open-loop" prepaid cards, the FDIC recognizes the concerns voiced by the commenters who addressed this issue. For example, it may be much easier to track the balances on certain types of prepaid cards than it would be to identify the actual owners/depositors of those cards. As noted by several commenters, ownership information for some types of prepaid cards might be unavailable or could not feasibly be collected. Nevertheless, the FDIC believes that the financial and technological landscape which existed when it issued its guidance in connection with § 360.9 over six years ago has changed. Therefore, covered institutions should consider their current capabilities before asserting that ownership information for certain types of prepaid cards is not available or could not reasonably be collected. Advances in information technology should keep pace with the development of financial products offered to the public. The same innovation which is responsible for creating the myriad of payment/debit cards should be applied to develop the covered institutions' capability to identify and track the ownership and balances on open-loop cards issued and/or sponsored by these institutions.

Ultimately, the FDIC would consider a hybrid approach as suggested by two of the commenters. A prepaid card is a type of pass-through deposit account which, in many cases, the customer uses regularly for transactions. Therefore, consumers would need to have immediate access to those funds after a covered institution's failure. The FDIC proposes that covered institutions obtain and maintain ownership information regarding GPR cards, employers' payroll

[25] 12 CFR 1005.15(a); 12 CFR 1005.18.
[26] Management of Federal Agency Disbursements, 75 FR 80315 (December 22, 2010). (Codified at 31 CFR part 208.)

cards and government benefit cards, at a minimum. As discussed more fully in the *Description of the Proposed Rule,* a covered institution would be able to request an extension or an exception from certain provisions of the proposed rule for those accounts, including various types of prepaid cards, for which depositor information would truly be unavailable or infeasible to collect and maintain.

J. Time frame for calculating deposit insurance coverage upon a covered institution's failure

Several commenters predicted the deposit insurance calculation would take at least 24 hours following bank failure provided that it is limited to single, joint and business accounts. First, daily closing balances would be established by the FDIC after the failed covered institutions normal daily processing runs to completion, usually not before the early morning hours of the following day. Then, the augmented system developed pursuant to the proposed rule would calculate deposit insurance coverage, taking at least 12 hours based on the time required for normal daily processing. After that, insured balances would be posted to the deposit accounts for which a determination has been made by the FDIC, which could take at least another 12 hours. A commenter predicted that, under the same assumptions for closing night deposits, the deposit insurance determination process could be completed by the FDIC "by noon the calendar day following bank failure." This commenter explained that this "timeline is predicated on the nightly batch cycle and posting, which would need to complete before data could be gathered to begin the insurance determination process." Another commenter indicated that if a covered institution failed on a Friday, for example, there would usually be no batch processing to the applications until the following Monday. Moreover, a bank deposit servicer would normally require 24 hours' notice to run batch processing.

The FDIC has considered these comments and recognizes that various institutions' systems require different amounts of time to compute their end-of-day ledger balances. Nevertheless, the FDIC believes that, given the overriding concerns for financial system stability in a time of crisis, it should establish a uniform time frame within which the FDIC can employ the covered institution's IT system to facilitate the deposit insurance determination process measured from the time of the covered institution's failure and the FDIC's appointment and take-over of the failed institution. The FDIC proposes, therefore, that all covered institutions would develop their IT systems to ensure that the FDIC could complete the deposit insurance determination process within 24 hours after appointment as the receiver. This 24 hour standard would ensure uniformity and consistency across all covered institutions and would allow the FDIC to guarantee prompt payment of insured deposits regardless of the particular failed institution and its deposit systems.

K. Disclosure of insured and uninsured amounts to depositors

Several commenters are opposed to requiring the covered institutions to disclose to their depositors the insured and uninsured amounts of their deposits. They provided several arguments in favor of their position. Providing up-to-date information regarding the deposit insurance status of depositors' accounts would not be feasible because by the time the covered institutions run their daily processes (and then calculate the insured balances), additional transactions would have taken place which would render the information out-of-date. The stale information combined with the complexity of the deposit insurance rules could lead to unnecessary customer concern and inquiry. Moreover, although the ANPR raised the question of requiring covered institutions to be able to calculate deposit insurance coverage at the close of any business day, the commenters noted that there is no requirement that covered institutions actually perform this operation on a daily basis. The complexity involved to run this operation and present the information in a customer friendly format would far exceed even the complexity of a system to support the FDIC's deposit insurance determination at an IDI's failure. The commenters opined that the costs of this requirement would far outweigh any questionable benefit.

One commenter recommended that the FDIC's Electronic Deposit Insurance Estimator continue to serve as "the appropriate communication tool for depositors inquiring on insurance coverage." This commenter also stated that, if only the covered institutions are required to provide this information to their depositors, then this disparity in the treatment of depositors at community banks could be viewed as a competitive disadvantage to the smaller banks.

Another commenter stated that "developing the system functionality to calculate the deposit insurance for each account and customer by closing night (or any given night) could be particularly onerous, especially if there are various deposit systems to consider." This commenter opined that it would most likely not be worth the cost of development and implementation. The commenter suggested that a covered institution could provide such information, if requested by a depositor, but it should not be required to do so proactively. The FDIC has considered the commenters' views regarding this matter and is not pursuing this initiative as part of this rulemaking process.

L. Compliance testing

Two commenters mentioned the issue of the FDIC's need to conduct testing to ensure the covered institutions' compliance with the requirements presented in the ANPR. The commenters recommended that the FDIC be flexible in its approach. These commenters expressed the need for the FDIC to provide clear direction on the timing, requirements, parameters, and expectations of testing and reporting as detailed standards would help covered institutions prepare to meet

FDIC expectations. They specifically requested that the testing protocols be developed through the public rulemaking process. “The frequency of testing is a major concern that escalates with the complexity of tests and location (on-site vs. remote).” These commenters supported their assertion regarding testing by noting that “even basic testing would take a minimum of 12 hours and many staff to run the system before any follow-up trials or reporting” could begin. Consequently, they recommended off-site testing and reporting with attestation of results; on-site examinations, if required, should be scheduled well in advance to allow the covered institutions to plan workflows. A commenter recognized the importance of compliance testing to the FDIC and acknowledged that testing would be an important component of this proposed process from its perspective as well. This commenter emphasized that it would be looking to the FDIC for additional guidance regarding the FDIC’s testing expectations in order to better organize its efforts and allocate its resources appropriately. The commenter also expressed its willingness to work with FDIC personnel to conduct on-site testing.

The FDIC recognizes that imposing testing requirements on the covered institutions would create additional demands on their human resources and IT systems as well as impose certain additional financial costs. The FDIC has endeavored to develop a testing protocol that would minimize burden on a covered institution but still provide the FDIC with the information necessary to confirm that each covered institution’s IT system would be capable of calculating deposit insurance coverage within the prescribed time frame. In many respects, the proposed testing procedures would be similar to those which currently apply to the institutions covered by § 360.9. The FDIC would expect to conduct one initial on-site testing visit. Once the initial test is completed successfully, the FDIC would schedule additional on-site testing visits to occur no more frequently than annually. More frequent testing might be necessary for covered institutions that make major acquisitions, experience financial distress (even if the distress would be unlikely to result in failure), or undertake major IT system conversions. To reduce the frequency of on-site testing by the FDIC and to ensure on-going compliance, the FDIC would require the covered institutions to conduct their own in-house tests on an annual basis (as is currently required under § 360.9). The covered institutions would be required to provide the FDIC with verification that the test was conducted, a summary of the test results, and its certification that the functionality could be successfully implemented. The FDIC is proposing that no testing would be conducted during the proposed two-year implementation period.

M. Time frame for implementation of recordkeeping and IT system capabilities

According to some commenters, the covered institutions have advised that "they would need at least four years with potential extensions for implementation after any final rule is issued." These commenters noted that the covered institutions are currently in the process of incorporating systems enhancements to comply with a number of other regulatory requirements. They urged the FDIC to recognize that any requirements imposed by the ANPR proposals would have to be queued with these other regulatory requirements. Finally, these commenters requested the FDIC to provide "means to alleviate the burden of individual, customized programming" of the covered institutions' systems and that the FDIC be prepared to work closely with the individual covered institutions to address the systems development which would "necessarily involve details that are unique to each covered bank."

One commenter discussed implementation time frames in three different contexts in its comment letter. First, the commenter predicted that based upon its definition of closing night deposits, which would include transaction, savings and MMDAs for individual, joint and business account categories, "it would take a minimum of 18 months to implement the enhancements for this portion of the bank's deposit base." Second, with respect to deposit accounts that this commenter characterized as post-closing deposits (which include trust accounts, retirement accounts, etc.), the commenter estimated that it would take a "minimum of two years to implement enhancements to the deposit system for this portion of its deposit base." Finally, the commenter suggested that any final rule should include a phased-in approach to implementation.

Another commenter recommended a two-year phase-in period for these covered banks to modify their software systems and implement the new regulatory requirements. On the other hand, another commenter stated that the software systems it offers have the requisite capabilities to capture the necessary data already; however, identifying beneficiaries on many trust accounts could be quite labor intensive and would require a significant amount of customer interaction. This commenter also found regulatory efficiency in the sense that the system enhancements would support FinCEN's goals with forthcoming anti-money laundering regulations.

One commenter argued that there is no need for the FDIC to rush to impose new deposit account recordkeeping requirements on financial institutions. This commenter believed that § 360.9 has not been in effect long enough to determine its effectiveness and, moreover, that the IDIs that would be subject to the proposal are not in danger of failing.

The commenters' predictions regarding the appropriate time frame(s) to implement the proposals described in the ANPR ranged from 18 months to four or more years. The FDIC recognizes that many factors must be considered, and numerous variations in the covered institutions' IT systems will cause significant differences in the speed with which the covered institutions would be able to collect the required depositor information and adapt or develop the necessary IT capabilities to comply with the proposed rule's requirements. The FDIC believes that, for purposes of this proposed rule, two years is a reasonable time frame within which a covered institution should collect information from depositors and develop the IT system capability to calculate deposit insurance coverage. To the extent that two years is insufficient for a specific covered institution, the proposed rule would allow the covered institution to apply either for an extension of time to achieve compliance or for an exception from the requirements of certain provisions of the rule as currently proposed. These applications for extensions or exceptions should be submitted to the FDIC during the first two years after the effective date of a final rule.

The FDIC has several observations in response to commenters' assertions that there is no need for the FDIC to hasten new recordkeeping requirements on covered institutions or that § 360.9 has not been in effect for a sufficiently long period of time to determine its effectiveness. As more fully discussed in the ANPR, the process of developing § 360.9 began more than 10 years ago.[27] Section 360.9 was adopted on August 18, 2008.[28] The FDIC has worked with the institutions covered by § 360.9 for the last seven years to implement its recordkeeping and provisional hold requirements. As a result of compliance visits conducted during this implementation period, the FDIC now recognizes some of § 360.9's limitations; for example, the standard data files of most institutions are not required to obtain and maintain depositor information that they do not already collect for their own purposes. As set forth in this ANPR, "[b]ased on its experience reviewing banks' deposit data, deposit systems and mechanisms for imposing provisional holds, staff has concluded that § 360.9 has not been as effective as had been hoped in enhancing the capacity to make prompt deposit insurance determinations."[29] Therefore, seven years after the effective date of the first rulemaking effort to improve large

[27] 70 FR 73652 (December 13, 2005).
[28] 73 FR 41180 (July 17, 2008).
[29] 80 FR 23478, 23480 (April 28, 2015).

IDIs' recordkeeping and IT systems' capabilities to support the FDIC's statutory mandate to pay insured deposits as soon as possible, the FDIC is undertaking an initiative to find a better way to achieve the goals it sought to achieve with the promulgation of § 360.9. The FDIC began the rulemaking process through the publication of an ANPR – a preliminary step in the informal rulemaking process. The FDIC believes that it is proceeding deliberately, but not prematurely, by taking this step to issue the proposed rule.

Finally, two commenters maintained that none of the covered institutions are in danger of failing, and therefore, no additional rulemaking is necessary at this time. During the course of the § 360.9 rulemaking process, the FDIC received many comments reflecting that same sentiment. In fact, the preamble to the § 360.9 final rule states that several commenters noted that, "the expected benefits to the FDIC are not likely to outweigh the costs, especially given the perceived *extremely low likelihood of failure* of any particular large bank."[30] Yet, IndyMac Bank failed six days before the publication of the § 360.9 final rule and Washington Mutual Bank failed only months later. During the financial crisis that began in 2008, 511 insured depository institutions failed, comprising a total asset value of approximately $696 billion. These failed banks range in asset value from a few million to over $300 billion.[31] Further disruptions were mitigated by the U.S. government providing unprecedented assistance to the financial sector. Therefore, the FDIC believes it is prudent and appropriate to address this deposit insurance determination project now, while the banking industry is not under stress and before another financial crisis develops.

N. Burden imposed by the ANPR

Several commenters stated that "[c]overed banks advise that it will not be possible for them to estimate costs until key issues are resolved, including the scope of deposits to be

[30] 73 FR 41180, 41185 (July 17, 2008) (Emphasis supplied).
[31] 80 FR 23478, 23480 (April 28, 2015).

included in 'closing night deposits.'" Moreover, these commenters requested that the FDIC provide a clear statement of the deposit accounts/systems to be covered, the business rule that the covered institutions would need to follow in order to design their systems in a manner in which they can be employed by the FDIC to determine deposit insurance and adjust account balances accordingly, as well as guidance regarding systems expectations.

A commenter made several observations regarding the perceived costs versus benefits of adopting the ANPR proposals. First, while this commenter acknowledged that the FDIC may need this information to fulfill its statutory duties, it did not consider any of the required recordkeeping enhancements or the capability to calculate deposit insurance coverage as providing any intrinsic benefits to a covered institution itself. Moreover, it asserted that most of the covered institutions "are operating as going-concerns without financial difficulty." It also made the point that the implementation of the ANPR's proposals would require an unsuitable use of resources to make substantial changes to existing legacy platforms. Another commenter pointed out that the burden is based more on the need for manual information collection than it is on increasing IT system capabilities.

Regarding cost/benefit, two commenters argued that the costly operational and information technology-related requirements would not generally enhance current processes or ongoing operations. Further, one of those commenters maintained that institutions are consolidating to cope with compliance costs and the additional costs imposed by the proposed rule would be passed through to consumers in the form of higher costs for banking services and products. Two commenters acknowledged that the benefit would be worth the cost, however. One reasoned that because delays in insurance determinations could undermine public confidence, more needs to be done to ensure prompt deposit insurance determinations when IDIs with a large number of deposit accounts fail. Another found benefits in improved consumer confidence in the FDIC and the banking system and greater efficiencies in the wind-down process which would translate to less time and human capital spent and thus less cost associated with the process.

The FDIC recognizes that the ANPR presented various options and general concepts regarding how a covered institution might develop its IT system and improve its depositor information collection and recordkeeping capabilities to comply with the FDIC's proposals. The ANPR represented the FDIC's effort to solicit the opinions and recommendations of the financial services industry as well as other interested parties at a very early stage in the development of its proposal. For this reason, no specific regulatory text was offered for consideration.

The FDIC's proposed rule provides specific requirements that the FDIC believes would be necessary to achieve its objectives as well as the details that the commenters are seeking, e.g., the types of deposit accounts and/or categories to be included within the scope of the proposed rule as well as guidance regarding systems expectations. In addition, materials available on the FDIC's website which describe deposit insurance coverage as well as the periodic deposit insurance coverage seminars offered by the FDIC should assist the covered institutions to develop their systems and to assess the cost to comply with the proposed rule's requirements. Finally, the FDIC, in addressing the requirements of the Paperwork Reduction Act, has provided its own estimates of the potential costs and burden to the covered institutions.[32] The FDIC invites all interested parties, including covered institutions to comment on the FDIC's estimates as well as provide their own. See, *X. Regulatory Process*, *A. Paperwork Reduction Act*, below.

[32] 44 USC 3501 et seq.

VI. The Proposed Rule

A. Summary

The proposed rule would apply to all insured depository institutions that have two million or more deposit accounts, defined as "covered institutions." Each covered institution would be required to (i) collect the information needed to allow the FDIC to determine promptly the deposit insurance coverage for each owner of funds on deposit at the covered institution, and (ii) ensure that its IT system is capable of calculating the deposit insurance available to each owner of funds on deposit in accordance with the FDIC's deposit insurance rules set forth in 12 CFR part 330. Moreover, the covered institutions' IT systems would need to facilitate the FDIC's deposit insurance determination by calculating deposit insurance coverage for each deposit account and adjusting account balances within 24 hours after the appointment of the FDIC as receiver should the covered institution fail. Developing these capabilities would improve the FDIC's deposit insurance determination and payment process by avoiding the need to transfer increasingly large amounts of data from a covered institution's IT system to the FDIC's IT system (including the need to rectify that data) in the event of a covered institution's failure. A covered institution could apply for: an extension of the implementation deadlines; an exception from the information collection requirements for certain deposit accounts under specified circumstances; an exemption from the proposed rule's requirements if all the deposits it takes are fully insured; or a release from all requirements when it no longer meets the definition of a covered institution. Covered institutions would be required to certify compliance annually and a failure to meet the requirements of the proposed rule would result in enforcement action pursuant to section 8 of the FDI Act.

B. *Scope*

The FDIC has identified two million accounts as the threshold for coverage under this proposed rule. This encompasses one half of one percent of all FDIC insured institutions, but includes the institutions where a prompt deposit insurance determination poses the greatest challenges. The proposed threshold of two million accounts is based on the FDIC's recent experience resolving failed institutions and preparing for the resolution of near-failures. We conclude that, although the total number of deposit accounts is only one dimension of the problem in making timely deposit insurance determinations, it is the most readily measured dimension of this problem. Moreover, the number of deposit accounts is highly correlated with the other attributes, such as the complexity of account relationships and multiple deposit systems that also contribute to this problem. The choice of two million deposit accounts as a threshold for coverage follows directly from the notion that the largest institutions pose a much greater challenge in terms of making a deposit insurance determination, and will also incur a lower cost of implementation per deposit account. That is, it is much more likely that the public benefits of meeting these requirements will exceed implementation costs at these very large institutions. To preclude the possibility that these requirements will be needlessly imposed on institutions that do not hold uninsured deposits, the proposal allows those institutions to apply for an exemption.

The FDIC's experience shows that making a deposit insurance determination can still pose operational challenges even at institutions with less than two million deposit accounts, particularly where there are serious inadequacies in the data and complex deposit account relationships. The FDIC is improving its existing systems and processes to address the challenges presented by banks below the two million account threshold. However, the volume of accounts and complexity of deposit recordkeeping systems at institutions with two million or more deposit accounts require that those institutions organize and correct deposit records in advance of failure. This approach would balance the costs of regulation with the benefits of making timely and accurate deposit insurance payments for U.S. financial stability and public confidence in the banking industry.

Most comments submitted in response to the ANPR did not explicitly address the proposed threshold for coverage. Two commenters, however, suggested that the proposed rule should not apply to community banks, but they did not identify a threshold number of accounts for coverage. One commenter shared its view that IDIs with $10 billion in assets and 100,000 accounts should be required to comply with the requirements described in the ANPR. The FDIC continues to seek comment regarding the appropriate scope of coverage for the proposed rule.

C. Definitions

An insured depository institution would be a “covered institution” if, as of the effective date of a final rule, it had two million or more deposit accounts for the two consecutive quarters immediately preceding the effective date, as determined by reference to Schedule RC-O, “Other Data for Deposit Insurance and FICO Assessments,” in its Report of Condition and Income. An IDI that is not a covered institution as of the effective date of a final rule would become a covered institution when it has two million or more deposit accounts for any two consecutive quarters following the effective date. If the total number of deposit accounts at a covered institution were to fall below two million for three consecutive quarters after becoming a covered institution, then it could apply to the FDIC for release from the requirements set forth in the proposed rule.

The proposed rule incorporates by reference several of the concepts used for determining deposit insurance coverage. The term "deposit" is as defined in section 3(*l*) of the FDI Act.[33] The "standard maximum deposit insurance amount," or "SMDIA," is defined in section 11(a)(1)(F) of the FDI Act, as well as in the FDIC's regulations, and is currently $250,000.[34] The SMDIA represents the amount of deposit insurance coverage available to the owner of funds on deposit at an insured depository institution per each "ownership right and capacity" in which the deposits are owned. The "ownership rights and capacities" for which deposit insurance coverage is available are described in great detail in 12 CFR part 330, so that description is incorporated by reference in the proposed rule. A covered institution would need to understand what each of these defined terms means and how the terms operate in order to identify the depositor information and develop the IT system capabilities needed to meet the requirements of the proposed rule.

The FDIC is proposing to use the term "unique identifier" to mean a number associated with an individual or entity that can be used by a covered institution to monitor its deposit relationship with only that individual or entity. The FDIC anticipates that the social security number, taxpayer identification number, or other government-issued identification number of an individual or entity (such as a passport number, or a visa number assigned to a foreign individual) could be used so long as a covered institution consistently and continuously uses only that number as the unique identifier for each individual or entity involved in the deposit relationship.

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[33] 12 U.S.C. 1813(*l*)
[34] 12 U.S.C. 1821(a)(1)(F); 12 CFR 330.1(o).

D. Requirements

The requirements of the proposed rule are set forth in § 370.3. In order for the FDIC to accurately and completely determine the deposit insurance coverage associated with each account for each owner of deposits as soon as possible after a covered institution's failure, certain information must be readily available. The proposed rule's general mandate is that each covered institution must obtain from each of its account holders the information needed to calculate the amount of deposit insurance available for each owner of deposits.

To determine the amount of deposit insurance coverage, the FDIC must presume that deposits are actually owned in the manner indicated on the deposit account records of an IDI.[35] If the deposit account records of an insured depository institution disclose the existence of a relationship that provides a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the IDI or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.[36] The proposed rule would require a covered institution to obtain from each account holder the information needed to determine deposit insurance coverage "notwithstanding 12 CFR 330.5(b)(2) and (3)." This means that, although 12 CFR 330.5(b)(2) and (3) permit deposit ownership information to be maintained by some entity other than a covered institution, the covered institution would be required to obtain the requisite deposit ownership information and maintain it on-site. Nevertheless, deposit insurance would not be withheld if the details of a fiduciary relationship and the interests of other parties in an account are not in the deposit account records of covered institution. This proposed rule would not

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[35] 12 CFR 330.5(a)(1).
[36] 12 CFR 330.5(b)(2).

change the standards for deposit insurance coverage set forth in 12 CFR part 330, and a covered institution's inability to obtain the necessary information or, alternatively, an exception from the proposed rule's requirements approved by the FDIC would not reduce pass-through deposit insurance coverage. It could impede the FDIC's ability to pay deposit insurance to those depositors promptly upon the covered institution's failure, however. The FDIC would still expect a covered institution to obtain sufficient information from depositors, or to obtain an exception, in order to be in compliance with the proposed rule, and a failure to do so could result in sanctions against the covered institution pursuant to section 8 of the FDI Act.

A covered institution would need to designate a point of contact for communication with the FDIC regarding implementation of the proposed rule's requirements. It would need to notify the FDIC of the designation within ten business days after the effective date of a final rule, or within ten business days after becoming a covered institution if it was not a covered institution on the effective date. The FDIC's staff would provide guidance and feedback to a covered institution through the designated point of contact in order to facilitate the covered institution's efforts to comply with the proposed new requirements. The FDIC believes that the ten business day time frame for designating a point of contact is appropriate because the FDIC intends to begin outreach efforts immediately after a final rule is adopted. Moreover, the three business day time frame for designating a point of contact under 12 CFR part 371, the FDIC's regulation concerning recordkeeping requirements for qualified financial contracts, has not presented any challenge for insured depository institutions that are subject to that rule, so ten days for a similar action under the proposed rule should not be unduly burdensome.

In order to be able to calculate the deposit insurance available to a depositor for each of its accounts, a covered institution would need to be able to identify certain individuals and entities from which information is needed. Those individuals and entities, and the type of information needed from them, would vary depending on the right and capacity in which a deposit is owned. Under the proposed rule, these individuals and entities would need to be assigned a unique identifier in a covered institution's IT system so that the system can reference each as needed to calculate deposit insurance coverage in the correct amounts across the applicable ownership rights and capacities. A covered institution would be required to assign a unique identifier to: each account holder; each owner of funds on deposit, if the owner is not the account holder; and, in connection with deposit funds that are held in trust, each beneficiary of the trust who could have an interest in the funds on deposit. Covered institutions already use unique identifiers associated with insured deposit accounts for tax reporting purposes so, to the extent the same unique identifiers are used for purposes of the proposed rule, the additional burden should be minimal. Assigning unique identifiers to beneficial owners of deposits held in the name of an agent and to trust account beneficiaries would be a new requirement, however. Unique identifiers would need to be assigned within two years after the effective date of a final rule, or within two years after becoming a covered institution. The FDIC believes that two years would be an appropriate time frame within which to meet this requirement based on the comments it received. The FDIC is seeking further comment regarding this two-year time frame and the challenges that could prevent a covered institution from meeting the requirements of the proposed rule within two years.

A covered institution's IT system would need to be capable of grouping accounts by the appropriate ownership right and capacity because deposit insurance is available up to the SMDIA per each ownership right and capacity in which deposits are held. The proposed rule would require a covered institution to assign an account ownership right and capacity code to each deposit account within two years after the effective date of a final rule, or within two years after becoming a covered institution if it was not a covered institution on the effective date. Appendix A to the proposed rule lists the account ownership right and capacity codes with a corresponding description of each. Based on discussions with industry representatives, the FDIC believes that a substantial number of deposit accounts held at a covered institution can readily be assigned an account ownership right and capacity code because the covered institution already has all of the information needed to make the designation. Nevertheless, the FDIC is proposing a two-year implementation time frame for this requirement because a covered institution might not, on the effective date of a final rule, have sufficient information to assign an account ownership right and capacity code to certain types of deposit accounts. In such cases, the covered institution would need to obtain the missing information and, if it cannot, apply to the FDIC for an extension or exception if permitted pursuant to section 370.4 of the proposed rule.

A covered institution would need to make its IT system capable of accurately calculating the deposit insurance coverage available for each deposit account. The IT system would need to be able to generate a record that reflects the calculation and would contain, at a minimum, the name and unique identifier of the owner of a deposit, the balance of each of an owner's deposit accounts within the applicable ownership right and capacity, the aggregated balance of the owner's deposits within each ownership right and capacity, the amount of the aggregated balance within each ownership right and capacity that is insured, and the amount of the aggregated balance within each ownership right and capacity that is uninsured. Appendix B to the proposed rule specifies the data format for the records that the covered institution's IT system would need to produce. The proposed rule would require that this expansion of a covered institution's IT system's capabilities would need to be completed within two years after the effective date of a final rule, or within two years after becoming a covered institution. The FDIC believes that two years would be an appropriate time frame within which to meet this requirement based on its experiences monitoring development and implementation of IT system changes by insured depository institutions. The FDIC welcomes comment regarding this two-year time frame and the challenges that could prevent a covered institution from meeting the requirements of the proposed rule within two years.

If a covered institution were to fail, its depositors' access to their funds would need to be restricted while the FDIC makes deposit insurance determinations in order to avoid overpayment. Under the proposed rule, a covered institution's IT system would need to be capable of placing an effective restriction, or hold, on access to all funds in a deposit account until the FDIC has determined the deposit insurance coverage for that account. Using the covered institution's IT system, the FDIC expects that deposit insurance determinations would be made within 24 hours after failure and holds on those accounts would be removed. Holds would remain in place on deposit accounts for which a deposit insurance determination has not been made within that time frame and would be removed after the determination has been made. The deposit accounts for which a deposit insurance determination is not made within the first 24 hours after a covered institution's failure would have been the subject of an FDIC-approved application for exception from the proposed rule's requirements. Under the proposed rule, covered institutions would be required, as a condition for the exception, to notify such account holders that payment of deposit insurance may be delayed until all of the information required to make a deposit insurance determination has been provided to the FDIC.

A covered institution's IT system would need to be capable of adjusting the balance in each of an owner's accounts, if necessary, after the deposit insurance determination has been completed by the FDIC. Specifically, if any of an owner's deposits within a particular ownership right and capacity were not insured, the covered institution's IT system would need to debit the owner's deposit accounts for the uninsured amount associated with each account held in the relevant ownership right and capacity. Any uninsured amount would be payable to the depositor as a receivership claim against the failed covered institution. The FDIC's regulations and resources concerning deposit insurance that are available to the public on the FDIC's website are useful tools that covered institutions can use to develop the capabilities of their IT systems to meet the proposed rule's requirements.[37] The FDIC also intends to offer guidance and outreach to facilitate covered institutions' efforts to meet this requirement.

A covered institution's IT system would need to be capable of calculating deposit insurance coverage and debiting uninsured amounts, if any, within 24 hours after the FDIC's appointment as receiver should the covered institution fail. As discussed above, the FDIC believes that a uniform time frame within which it should be able to complete the deposit insurance determination process using a covered institution's IT system should be measured from the time of the covered institution's failure and the FDIC's appointment. The ability to accomplish the deposit insurance determination within 24 hours after failure is essential to preserving continuity of operations for depositors. The inability to access deposits for day-to-day transactions could have an adverse impact on the financial stability of the banking system if enough depositors were to be denied access to their funds for more than a minimal period of time. Additionally, the FDIC's ability to determine deposit insurance coverage quickly should help preserve a failed covered institution's franchise value, which would lead to greater recovery for the Deposit Insurance Fund and, in turn, lessen the negative impact on industry deposit insurance assessments.

[37] See 12 CFR part 330 and material on the FDIC's website at https://www.fdic.gov/deposit.

E. Limitations on the applicability of the proposed rule

Covered institutions may face challenges in their efforts to obtain the information needed to meet the requirements of the proposed rule. Recognizing that these challenges may be difficult to overcome in some cases, the FDIC is proposing several bases for limitation of the proposed rule's requirements. A covered institution would need to apply to the FDIC for relief from certain of the proposed rule's requirements and, if the application is granted, the covered institution would need to take certain other actions.

The FDIC is proposing a narrow basis for exemption from the requirements set forth in the proposed rule. A covered institution could apply to be exempted from the proposed rule if it could demonstrate that it does not, and will not in the future, take deposits that would exceed a deposit owner's SMDIA regardless of ownership right and capacity. In other words, if each owner of deposits were to have an amount equal to or less than the SMDIA (currently $250,000) on deposit at a covered institution, then each owner would be fully insured. Additionally, there would be no need to analyze any other information, such as beneficiary identities and interests, to determine the extent of deposit insurance coverage because the aggregate amount that the owner has on deposit across all ownership rights and capacities would be equal to or below the SMDIA. The FDIC's deposit insurance determination would be simple for deposit accounts at covered institutions that meet this condition and, therefore, the FDIC does not believe that requiring such covered institutions to develop the capability to calculate deposit insurance coverage is necessary.

A covered institution would be able to apply for an extension of the deadlines set forth in § 370.3 of the proposed rule if it could not meet them based on a well-justified exigency. It could apply for an extension of the two-year deadlines for obtaining the information needed to determine deposit insurance coverage, assigning account ownership right and capacity codes, and developing IT system capabilities. The application would need to explain in detail why the deadline needs to be extended and would need to describe the type of accounts that would be affected, the number of accounts affected, and the total dollar amount on deposit in those accounts as of the date of the covered institution's application. Furthermore, the application would need to specify the amount of time the covered institution expects would be needed to meet the requirement for which it seeks an extension and provide any other information needed to substantiate the request.

The proposed rule would allow a covered institution to apply for an exception from the requirements set forth in § 370.3 of the proposed rule if it can satisfy one of the following three conditions. First, a covered institution would be able to apply for exception if it does not have the information needed to calculate deposit insurance coverage for an account or for all accounts of a specific type, that it has requested such information from the account holder, and the account holder has not been responsive to the covered institution's request. Second, a covered institution would be able to apply for exception if it can provide a reasoned legal opinion that the information needed from an account holder to calculate deposit insurance coverage is protected from disclosure by law. Third, a covered institution would be able to apply for exception if it can provide an explanation of how the information needed to calculate deposit insurance coverage changes so frequently that updating the information on a continual basis would be neither cost effective nor technologically practicable. The FDIC would consider the nature of the deposit relationship to determine how frequently the information would need to change in order for a covered institution to be granted an exception, but anticipates that the rate would need to be on a daily or near daily basis. A covered institution's application for exception would need to describe the accounts that would be affected, state the number of accounts affected and the total dollar amount on deposit in those accounts as of the date of the covered institution's application, and provide any other information needed to substantiate the request.

The FDIC anticipates that a covered institution would seek release from the proposed rule's requirements if the covered institution were to no longer meet the two million account threshold for coverage. Under the proposed rule, a covered institution could apply for release from the proposed rule's requirements when it has fewer than two million deposit accounts, as determined by reference to Schedule RC-O in its Report of Condition and Income, for three consecutive quarters. It would, like any other IDI, become a covered institution again if it were to have two million or more deposit accounts for two consecutive quarters.

The objectives of the proposed rule overlap to an extent with the objectives of § 360.9. The FDIC recognizes that a covered institution's compliance with the proposed rule's requirements may alleviate the need for the covered institution to continue to take certain of the actions prescribed by § 360.9. Therefore, the proposed rule would allow a covered institution to apply for a release from the provisional hold and standard data format requirements set forth in 12 CFR 360.9, if it could demonstrate to the FDIC's satisfaction that it would comply with the proposed rule's requirements.

The FDIC would review a covered institution's application for exemption, extension, exception, or release, and determine, in its sole discretion, whether to approve the application. The FDIC's approval could be conditional or time-limited, depending on the facts and circumstances set forth in the application. If a covered institution's application for an extension or exception were to be granted by the FDIC, then the covered institution would need to ensure that its IT system can, in the event of its failure, do three things. First, it would need to be capable of imposing a hold on access to all funds in every deposit account that the application concerns for so long as it cannot calculate the deposit insurance available to those accounts. Second, it would need to be capable of generating a record in the format specified in appendix B listing those accounts so that the FDIC could obtain the information needed from the account holder to determine the amount of deposit insurance coverage relevant to those accounts after the covered institution's failure. And third, it would need to be capable of accepting additional information post-failure and performing successive iterations of the deposit insurance coverage calculation process described in § 370.3 of the proposed rule until the amount of deposit insurance available on every account has been determined. In addition to these IT system capabilities, a covered institution would also need to disclose to each account holder for whom its IT system cannot be used by the FDIC to facilitate the FDIC's deposit insurance determination that, in the event that the covered institution were to fail, access to funds in one or more accounts might be delayed. The FDIC would be unable to pay deposit insurance on those deposit accounts until after it received the information needed to make a complete deposit insurance determination. The purpose of this disclosure would be to moderate any expectation by an account holder or deposit owner that insured deposits would be immediately accessible after a covered institution's failure and to put them on notice that draw requests might not be honored until the deposit insurance coverage determination has been completed by the FDIC.

F. Accelerated implementation

The proposed rule provides for accelerated implementation of the rule's requirements, on a case-by-case basis and with notice from the FDIC to a covered institution, in three scenarios. The first would be when a covered institution has received a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System (CAMELS rating) in its most recently completed Report of Examination. The second scenario would be when a covered institution has become undercapitalized, as defined in the prompt corrective action provisions of 12 CFR part 325. The third would be when the appropriate federal banking agency or the FDIC, in consultation with the appropriate federal banking agency, has determined that a covered institution is experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the covered institution by its appropriate federal banking agency in its most recent Report of Examination. The FDIC is sensitive to concerns about the imposition of an accelerated implementation time frame during episodes of severe economic distress. Understandably, a covered institution's attention would be devoted to solving other critical problems that threaten the covered institution's financial health. However, providing depositors with immediate access to funds and preserving systemic stability is equally critical, and the ability to do that must be balanced against any hardship an accelerated implementation time frame might impose on a covered institution. Before accelerating the implementation time frame, the FDIC would consult with the covered institution's appropriate federal banking agency. The FDIC would evaluate the complexity of the covered institution's deposit systems and operations, the extent of the covered institution's asset quality difficulties, the volatility of the covered institution's funding sources, the expected near-term changes in the covered institution's capital levels, and other relevant factors appropriate for the FDIC's consideration as deposit insurer.

G. Compliance testing

The proposed rule sets forth a two-part approach for compliance testing. First, beginning two years after the effective date of a final rule, a covered institution would need to certify compliance with the rule on an annual basis by submitting an attestation letter signed by its board of directors along with a summary deposit insurance coverage report to the FDIC by the end of the first quarter of each calendar year. The attestation letter would confirm that the covered institution's IT system would be capable of calculating deposit insurance coverage and that the covered institution had successfully tested that capability. It would also describe the impact of the exceptions or extensions that the covered institution had been granted on the IT system's ability to calculate deposit insurance coverage available to depositors. The summary deposit insurance coverage report accompanying the attestation letter would list key metrics for deposit insurance risk to the FDIC and coverage available to a covered institution's depositors. Those metrics would be: the number of depositors, the number of deposit accounts, and the dollar amount of deposits by ownership right and capacity; the total number of fully-insured deposit accounts and the dollar amount of deposits in those accounts; the total number of deposit accounts with uninsured amounts and the total dollar amount of insured and uninsured amounts in those accounts; the total number of deposit accounts and the dollar amount of deposits in accounts subject to an approved or pending application for exception or extension; and a description of any substantive change to the covered institution's IT system or deposit taking operations since the prior annual certification.

Second, the FDIC would conduct an on-site inspection and test of a covered institution's IT system's capability to calculate deposit insurance coverage. The FDIC would provide data integrity and IT system testing instructions to covered institutions through the issuance of procedures or guidelines prior to initiating its compliance testing program, and would provide outreach to covered institutions to facilitate their implementation efforts. Testing by the FDIC would begin no earlier than two years after the effective date of a final rule in order to give covered institutions time to collect information from account holders and make changes to their

IT systems by the deadlines prescribed in the proposed rule. On-site testing would be conducted by the FDIC no more frequently than annually, unless there is a material change to the covered institution's IT system, deposit-taking operations, or financial condition. A covered institution would be required to provide assistance to the FDIC to resolve any issues that arise upon the FDIC's on-site inspection and testing of the IT system's capabilities. The FDIC anticipates that after a covered institution's IT system accurately demonstrates the capability to calculate deposit insurance coverage for a substantial number of the covered institution's deposit accounts, on-site inspection and testing would be needed only infrequently or when there had been a material change to the covered institution's IT system or deposit-taking operations.

H. Enforcement

Under the proposed rule, a violation of the requirements set forth therein would be grounds for enforcement action pursuant to section 8 of the FDI Act.[38] A covered institution's appropriate federal banking agency would have authority to compel compliance by initiating enforcement action. Such action could include, but not be limited to, a cease-and-desist order or an order for a civil money penalty. If the FDIC were to decide that enforcement action would be necessary to compel compliance with the proposed rule's requirements and the appropriate federal banking agency were to elect not to take action, the FDIC could use its backup authority under subsection 8(t) of the FDI Act if it is not the appropriate federal banking agency.[39]

A covered institution might not be able to comply with the proposed rule's requirements during the pendency of a covered institution's application for extension, exception, extension or release. It may not have information sufficient to calculate deposit insurance coverage for some or all of a certain type of account, or it may have difficulties implementing changes to its IT

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[38] 12 U.S.C. 1818.
[39] 12 U.S.C. 1818(t).

system. Given those contingencies, the FDIC is proposing a safe harbor from enforcement action for noncompliance while a covered institution's application is pending. Enforcement action against a covered institution for noncompliance during that time would not promote the covered institution's level of compliance or improve the FDIC's preparedness for the covered institution's failure.

The FDIC is optimistic that covered institutions will recognize the benefits to be provided by this proposed rule and acknowledge that these improvements to the FDIC's ability to quickly and accurately determine deposit insurance will minimize costs to the Deposit Insurance Fund and increase confidence among depositors that they will have immediate access to their deposits in the event of a covered institution's failure. Enhanced public confidence in the deposit insurance payment process will, in turn, strengthen the banking system. The FDIC anticipates regular and continuous involvement with covered institutions during the implementation period and does not anticipate that an enforcement action would be taken unless a covered institution were to demonstrate persistent disregard for the proposed rule's requirements.

VII. Expected Effects

The purpose of this proposed rule would be to strengthen the FDIC's ability to administer orderly and least-costly resolutions for the nation's largest and most complex financial institutions. As proposed, the rulemaking applies to 36 institutions, each with two million or more deposit accounts, which together comprise only one half of one percent of all FDIC insured institutions. In light of the large size of these institutions and the millions of account holders who would require immediate access to their funds in the event of failure, the estimated implementation costs are relatively modest. Prompt and efficient deposit insurance determination by the FDIC ensures the liquidity of deposit funds, enables the FDIC to more readily resolve a failed IDI, promotes stability in the banking system, reduces moral hazard, and preserves access to credit for the economy.

While the FDIC's analysis estimates the expected costs of the proposed rule to covered institutions, the benefits of financial regulation are primarily shared by the public as a whole. Because there is no market in which the value of these public benefits can be determined, it is not possible to monetize these benefits. Therefore, the FDIC presents an analytical framework that describes the qualitative effects of the proposed rule and the quantitative effects where possible.

A. Expected Costs

The FDIC anticipates that the relatively few large institutions that are subject to this proposed rule will incur significant costs in upgrading their information systems and internal processes in order to comply with its provisions. However, these costs are small relative to covered institutions' size, other expenses, and earnings.

In order to estimate the expected costs of complying with this proposed rule, the FDIC engaged an independent consulting firm and provided that firm with information about 36 larger institutions that were likely to be subject to the proposed rule.[40] Together, these institutions hold more than $10 trillion in total assets and manage over 400 million deposit accounts.

Based on this information and its own extensive experience with IT systems at financial institutions, the consultant developed cost estimates around the following activities:

- Implementing the deposit insurance calculation
- Legacy data clean-up
- Data extraction

[40] As of the end of the fourth quarter of 2015, 36 institutions would be "covered institutions" under the proposed rule.

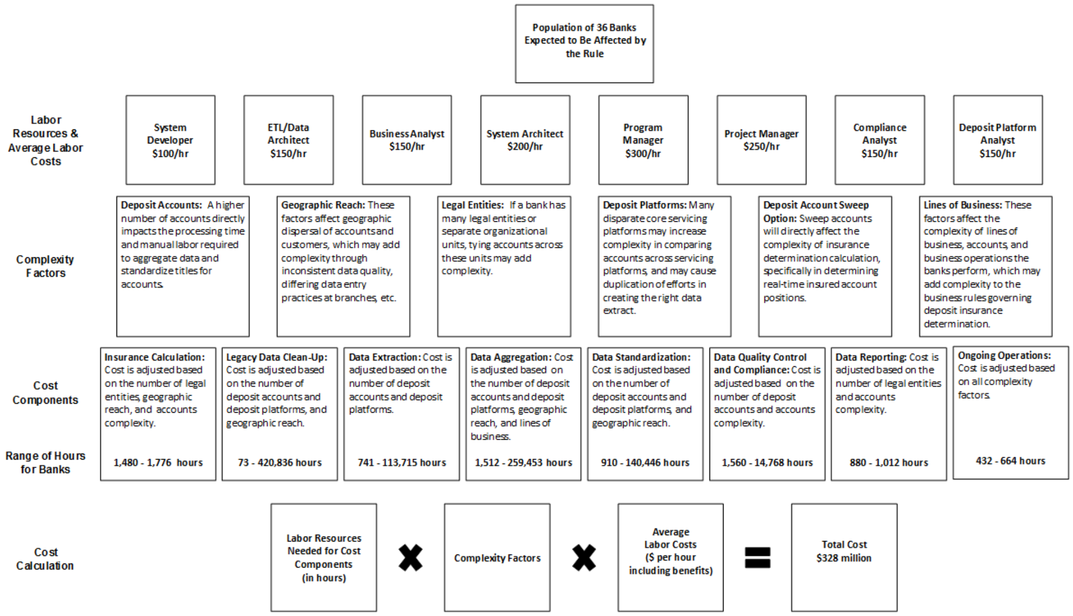
- Data aggregation
- Data standardization
- Data quality control and compliance
- Data reporting
- Ongoing operations

Cost estimates for these activities were derived from estimates of the types of workers needed for each task, the labor hours devoted to each cost component, the industry average labor cost (including benefits) for each worker needed, and worker productivity. The analysis assumed that manual data clean-up would affect five percent of deposit accounts, resolve ten accounts per hour, and use internal labor for 60 percent of the clean-up. This analysis also attributed higher costs to individual institutions based on factors that make timely and accurate deposit insurance determinations more complex. These complexity factors include:

- Higher number of deposit accounts
- Higher number of distinct core servicing platforms
- Higher number of depository legal entities or separate organizational units
- Broader geographic dispersal of accounts and customers
- Use of sweep accounts
- Greater degree of complexity in the bank's business lines, accounts, and operations

Based on this analysis, the total projected cost for needed improvements at these institutions under the proposed rule amounts to just under $328 million (see Illustration 1, below, for a graphic portrayal of the cost model).

ILLUSTRATION 1—COST ESTIMATE MODEL FOR PROPOSED RULE



Assumptions for Legacy Data Clean-Up

% of Erroneous Accounts	5%
# of Accounts Fixed per Hour	10
Internal Labor	$65.00
External Labor	$85.00
% of Labor Done Internally	60%

More than half of this cost estimate is attributable solely to legacy data quality improvement. However, some of the putative covered institutions are already undertaking efforts to improve their data quality to address their own operational concerns or other regulatory compliance efforts (e.g., efforts to comply with the Bank Secrecy Act). Therefore this cost estimate may be overstated.

This estimate of the projected cost, while thorough in its treatment, may not perfectly account for the individual cost structures of the covered institutions. Consequently, the total estimated costs could be somewhat higher or lower than $328 million. The FDIC invites interested parties to comment on all expected costs or benefits of the proposed rule.

At the same time, it is instructive to place this cost estimate in context with the size of these institutions and the annual income and expense amounts they regularly report. Table 1, below, compares the $328 million cost estimate to 2014 annual expense totals for these institutions.

TABLE 1—COST ESTIMATE COMPARISON

Expense Item	2014 Expenses for Banks in the Study (000's)	Expected Compliance Cost as a Percent of Annual Expense Item
Noninterest Expense	$268,778,648	0.12%
Personnel Expense	$119,579,601	0.27%
Tax Expense	$48,353,250	0.68%
Premises Expense	28,293,572	1.16%
Interest Expense	$27,223,308	1.20%

As indicated in Table 1, if compliance costs for these institutions total $328 million, they would equal just over one tenth of one percent of the total noninterest expenses incurred by these institutions in 2014. Given that these same institutions earned total pre-tax net income of just under $150 billion for the year, estimated compliance costs would be 0.22 percent of that amount.

Expressed as an average cost per deposit account, the $328 million cost would be equal to 80 cents for each account managed by these banks. This low average compliance cost per account reflects the fact that most of the more than 400 million accounts managed by these banks do not involve complex structures or incomplete data, and will not require extensive clean-up of existing data records.

It is worth noting that even if actual compliance costs turned out to be $650 million, twice the amount estimated in the consulting firm's analysis, these costs would still be relatively small in the context of the size, annual income, and expenses of these institutions. If costs were to be as high as $650 million, they would be equal to 0.24 percent of 2014 noninterest expenses, 0.43 percent of pre-tax net income, or $1.60 per deposit account managed by these institutions.

Clearly, not every institution would incur the same compliance costs in dollar terms or in relation to their annual income or expenses. Banks with more serious deficiencies in their current systems or with greater complexity in their business lines, accounts, and operations would be expected to incur above-average compliance costs. For example, some institutions that grew through acquisition have retained the legacy IT systems of the acquired banks. Multiple deposit platforms, missing and inaccurate depositor information, and the incompatibility of the IT systems would all contribute to higher costs. Banks with simpler operations and better systems would incur lower costs.

Covered institutions could pass at least some of the costs of the proposed rule to their stakeholders (customers, creditors, shareholders). The proposed rule is crafted in a manner that affects only large banks, and the FDIC neither intends nor anticipates negative consequences for small banks.

B. Expected Benefits

The FDIC expects that the benefits of the proposed rule would accrue broadly to the public at large, to bank customers, to banks not covered by the rule, and to the covered banks themselves. The primary benefits of the proposed rule are to ensure the liquidity of deposit funds in the event of the failure of one or more large banks, and to facilitate their orderly resolution. This outcome in turn would promote stability in the banking system, trust and confidence in deposit insurance, and access to credit for the economy.

The recent financial crisis has demonstrated that large financial institutions can fail very rapidly, and that their failures can have outsized effects on the macroeconomy. In addition to the direct economic impact of a large institution's failure, such a failure can also have contagion effects on other financial institutions. Consequently, post-crisis reforms are aimed at preventing or mitigating such effects. This proposed rule bolsters the FDIC's ability to allow depositors timely access to their insured funds in the event of a covered institution's failure without the need for extraordinary government assistance.

The failure of a covered institution would necessarily involve millions of deposit insurance claims. The inability to promptly settle these claims could lead to financial disruptions that could have effects on the macroeconomy as a whole. One recent study reported that government support for the financial sector in the 2008 financial crisis totaled more than $12 trillion, and the resulting loss of domestic output is estimated at $6 trillion to $14 trillion.[41]

The public at large will be the primary beneficiaries of the proposed rule. An effective failed bank resolution maintains liquidity by providing timely access to insured funds, promotes financial stability by ensuring an orderly, least costly resolution, and reduces moral hazard by recognizing deposit insurance limits. Broadly, it facilitates the use of resolution transaction structures that would otherwise be unavailable. Making accurate and fair deposit insurance determinations for all insured institutions is a key component in carrying out the FDIC's mission of ensuring confidence in the banking system.

Bank customers will also benefit from the proposed rule. Timely deposit insurance determinations supported by the proposed rule would delineate insured and uninsured amounts for bank customers, granting them access to insured amounts to meet their transaction needs and financial obligations. The proposed rule improves upon current resolution practices by providing a mechanism for timely access to funds for depositors at even the largest IDIs.

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[41] Luttrell, Atkinson and Rosenblum, "Assessing the Costs and Consequences of the 2007-09 Financial Crisis and Its Aftermath," *Economic Letter*, Federal Reserve Bank of Dallas, v. 8, n. 7, Sep. 2013.

Banks not covered by the proposed rule will benefit because the prompt payment of deposit insurance at the largest IDIs should promote public confidence in the banking system as a whole.

The enhancements to data accuracy and completeness supported by the proposed rule should benefit covered institutions as well. Improvements to data on depositors and information systems as a result of adopting the proposed rule may lead to efficiencies in managing customer data. The processing of daily bank transactions may be less prone to data errors. Moreover, opportunities for cross-marketing of bank products may result from maintaining more accurate data on deposit account relationships.

VIII. Alternatives Considered

A number of alternatives were considered in developing the proposed rule. The major alternatives include: (i) Thresholds above and below the proposed two million accounts; (ii) the FDIC's current approach to deposit insurance determinations (status quo); (iii) the FDIC's development of an internal IT system and transfer processes capable of subsuming the deposit system of any large covered IDI in order to perform deposit insurance determinations; and (iv) simplifying deposit insurance coverage rules. The proposed rule is considered by the FDIC to be the most effective approach relative to the alternative approaches in terms of cost to the industry, the speed and accuracy of deposit insurance determinations, access to funds, and reduction of systemic and information security risks. Development of the proposed rule was based on a careful evaluation of expected effects and expertise of staff on the challenges of resolving a large failed IDI.

In deciding which institutions would be subject to the proposed rule, the FDIC considered thresholds above and below two million deposit accounts. Raising the threshold would decrease the costs of the rule on the industry because fewer institutions would be covered, but would also increase the risk of the FDIC being unable to make timely and accurate deposit insurance determinations for very large institutions. As described in *VI. The Proposed Rule*, above, the selection of two million deposit accounts as the threshold for this rule was based on this being a readily observable metric and on the large anticipated benefits relative to implementation costs for institutions over this threshold.

Making a correct and timely deposit insurance determination always requires that the FDIC have access to accurate data on deposit account relationships. The FDIC has learned from prior experience that it is possible to rectify data quality problems at small institutions without delaying the deposit insurance determination. However, the ability of the FDIC to promptly remedy data quality problems at large institutions declines rapidly with the number and complexity of deposit accounts. Therefore, resolving data quality problems at institutions with the largest number of accounts and most complex deposit account systems prior to failure, as required by this proposed rule, would substantially lower the risk of delay in making determinations.

As described above in *VII. Expected Effects*, the FDIC estimates that the costs associated with the proposed threshold for these large IDIs are relatively modest compared to their net income and other usual costs of doing business. Decreasing the deposit account threshold below two million accounts would impose higher costs on the industry as a whole, and the marginal benefits of the rule would decline since smaller institutions present less risk to prompt deposit insurance determinations.

The alternative of maintaining the status quo is defined by the existing deposit insurance determination process for large banks established in § 360.9 of the FDIC regulations, which became effective in August 2008. Section 360.9 requires covered institutions to maintain processes that provide the FDIC with standard deposit account information promptly in the event of failure. In addition, § 360.9 requires covered institutions to maintain the technological capability to automatically place and release holds on deposit accounts. Section 360.9 applies to insured depository institutions with at least $2 billion in domestic deposits and either 250,000 or more deposit accounts or $20 billion in total assets.

Adoption of § 360.9 was an important step toward resolving a large depository institution in an efficient and orderly manner. However, that rule does not adequately address two important problems that arise in the resolution of the largest and most complex institutions. First, it does not currently require institutions to maintain deposit account data that are accurate and complete for deposit insurance purposes. Addressing these data quality problems at the time of failure can introduce significant delays in making accurate deposit insurance determinations. Second, deposit insurance determination under 360.9 necessitates a secure bulk download of depositor data that introduces additional delays in making that determination. The FDIC's experience in resolving large institutions shows that the amount of time for a data download can vary widely based on the file size, complexity of the data, and the number of deposit systems among other things. Given the limited time available to the FDIC to make determinations these delays pose the risk of creating hardships on depositors and disruptions to financial markets.

Another alternative considered was establishing a system to rapidly transfer all deposit data from the failed IDI's IT system to the FDIC for processing in order to calculate and make deposit insurance determinations. Although this alternative could leverage efficiencies in computing power, the challenge of absorbing the deposit system or systems of a large, complex IDI in a time period short enough to produce prompt insurance determinations is practically infeasible. The process of moving the data in a quick and organized fashion would require a great deal of skilled labor and pose information security concerns. FDIC staff, working with staff from each large IDI, would have to develop individualized data transfer solutions for each institution tailored to their IT systems and third party applications. Extensive initial and ongoing testing would be required to establish the viability of the data transfer process and the validity of the data. Transferring large volumes of personal identifiable information would pose some information security risk to bank customers. Finally, any major changes in the large IDI's deposit system would necessitate further testing and validation. The large development, testing, and recertification costs borne by the FDIC under this alternative would likely be passed onto insured depository institutions as ongoing insurance assessments.

Simplifying the deposit insurance coverage rules was another alternative considered. Currently, deposit insurance can be obtained under different ownership rights and capacities, some of which have coverage levels that are set according to complex formulas. Reducing the number of rights and capacities or simplifying the coverage rules would reduce the costs associated with covered institutions' development of the capability to calculate deposit insurance coverage. However, most efforts to simplify the deposit insurance coverage rules would effectively reduce coverage to depositors at all FDIC insured institutions, an approach that would impose a cost on a wider range of institutions and bank customers. Further, these complex account types only present problems when the FDIC must analyze a significant number of those deposit accounts at the same time. The FDIC's established methods for dealing with these more complex accounts in smaller and mid-sized resolutions include manual processing, a process that could take too long in a larger resolution involving a significant number of these accounts. Consequently, the FDIC is not pursuing simplification of the deposit insurance coverage rules.

IX. Request for Comments

The FDIC invites comments on all aspects of the proposed rule and requests feedback on the specific questions set out below.

A. Scope of coverage

The proposed rule, if adopted, would impose requirements on insured depository institutions that have two million or more deposit accounts. The FDIC has proposed this threshold based on its recent experience with actual failures and near-failures. This work indicates that the FDIC should first focus on improving its existing systems and processes to address the challenges presented by banks below the two million account threshold, and then pursue other approaches only if, and to the extent that, these efforts prove insufficient. The FDIC's experience indicates that a fundamentally different approach is needed to resolve large complex institutions. The volume of accounts held by such banks, coupled with the complexity typically found in these banks' deposit IT systems, necessitates that deposit records be organized in advance of failure in a way that facilitates rapid insurance determinations.

- Is the number of deposit accounts the appropriate metric for identifying insured depository institutions to be covered by the proposed rule's requirements? If not, what should the appropriate criteria be?
- Should the deposit account threshold be tiered based on the types of accounts offered by an insured depository institution?
- Should other factors or a combination of factors be used to determine which insured depository institutions would be subject to the requirements?

B. Requirements

Covered institutions would be required to uniquely identify each account holder, each owner of funds on deposit if the accountholder is not the owner, and each beneficiary of a trust that has an interest in the deposits owned by the trust. The FDIC requests comments on all aspects of this proposed requirement. In particular:

- To what extent can covered institutions uniquely identify depositors using current systems, procedures, and identifying information (such as social security numbers or tax identification numbers)?
- What would be the best methods(s) to use for depositor identification? Should the FDIC specify the format to be used for depositor identification or should this be left to the covered institutions to determine?
- How expensive would it be for covered institutions to supply a unique identifier for each deposit owner? Is this something that covered institutions are considering for internal business purposes? If not, how do covered institutions determine common ownership for relationship management, cross-selling, risk management or other purposes? How long would it take to implement a unique depositor identification process? To what extent is the answer to the previous question a function of having to run deposit accounts on more than one platform?
- To what extent are covered institutions able to identify account owners (as opposed to trustees, managers, beneficiaries, etc.) from source files being supplied to the FDIC for insurance determination purposes? Does this differ by types of accounts; for example, checking accounts versus (brokered) CDs?

- Could covered institutions uniquely identify depositors within a single legacy data system? Is there an accompanying Customer Information File available for each legacy data system? Could the covered institutions provide instructions or rules to assist the FDIC to integrate depositor records across these legacy data sources?

Authorities in foreign jurisdictions have implemented similar initiatives since the financial crisis in 2008. Some covered institutions have branches in those countries.

- If covered institutions are already required to assign a unique identifier to each deposit owner in foreign jurisdictions, how would covered institutions integrate their efforts to meet those requirements with their efforts to meet the proposed rule's requirements?
- Could some of the systems development work, such as software programming, logic, data warehouse capabilities, be leveraged with the proposed U.S. implementation?
- Are there any best practices that should be considered in the U.S. proposal related to implementation, testing, or time frames?

Under the proposed rule, covered institutions would be required to identify and separate foreign deposits from domestic deposits. Foreign deposits are not insured, but the FDIC, as receiver, would need to determine claims of foreign depositors. The proposed rule would require foreign and dually-payable deposits to be identified separately from the rights and capacities set forth in Appendix A.

- How difficult would it be to do this?
- How many foreign deposit accounts do covered institutions have as compared to domestic accounts?
- What is the relative dollar amount of foreign deposits versus domestic deposits?
- How long would it take to identify and code foreign deposits that are dually payable?

- If a covered institution failed today, approximately how long would it take to identify the dually payable foreign deposits in the covered institutions' IT systems?
- How would the costs of developing an IT system for all deposits be significantly impacted by the inclusion of deposits held in branches outside of the United States?
- How would the inclusion of foreign deposits in the requirements of the proposed rule impact the covered institution's ability to provide timely information on the covered institution's insured deposits?

C. Implementation

The FDIC recognizes that substantial time may be needed to implement the requirements described in this NPR and has proposed a two-year implementation timetable.

- Are there particular requirements that would take less time to implement?
- Are there particular requirements that would take more time to implement? If so, which requirements would pose these delays? Why?
- Is a two-year time frame reasonable for obtaining the information needed to calculate deposit insurance available on all accounts? Is a graduated approach, such as 90 percent of all accounts within two years, preferable?
- Would the proposed availability of extensions to accommodate aspects of compliance that are expected to take longer than two years provide sufficient implementation flexibility? If not, why?

The FDIC recognizes that covered institutions may need substantial guidance from the FDIC regarding deposit insurance coverage rules and application of those rules in various scenarios.

- The FDIC's regulations and resources concerning deposit insurance are available to the public on the FDIC's website. These are useful tools that covered institutions can use in their efforts to meet the proposed rule's requirements.[42] Are these resources sufficient for that purpose?
- Should the FDIC staff be available to assist with the initial implementation? If so, what would be the best approach?
- Should a one year check-in be mandatory or optional in order for covered institutions to obtain feedback before finalizing system enhancements?
- Are the standard FDIC deposit insurance coverage seminars and materials available at on the FDIC's website sufficient for covered institutions to accurately assign all of its deposit accounts with an account ownership right and capacity code? If not, how might the FDIC assist? Form letters? FDIC Declaration forms? Targeted outreach to certain constituencies?

D. Exceptions

The proposed rule provides an exception from the requirements for certain types of deposit accounts.

- What types of deposit accounts do not fit within the proposed rule's parameters for exception as presently described, but should? Why?
- To what extent do depositors rely for day-to-day funding on accounts for which a covered institution could be granted an exception from the proposed rule's requirements?
- Could an institution experience a significant cost savings if it were able to obtain an exception from the requirements of the proposed regulation on the basis that deposit

[42] See 12 CFR part 330 and material on the FDIC's website at https://www.fdic.gov/deposit.

insurance coverage would not be calculated for those accounts – such as CDs or IRAs – for several business days after the institution's failure?

In the case of accounts held by agents or custodians, the FDIC provides pass-through insurance coverage.[43] This coverage is not available, however, unless certain conditions are satisfied. One of these conditions is that information about the actual owners must be held by either the insured depository institution or by the agent, custodian or other party.[44] In most cases, the agent or custodian holds the necessary information and the insured depository institution does not, thus making it impossible to determine deposit insurance coverage before that information is obtained. The need to obtain information from the agents or custodians delays the determination of deposit insurance by the FDIC, which may result in delayed payments of insurance or overpayment of insurance. At a bank with a large number of pass-through accounts, delays could be substantial. The FDIC is proposing that covered institutions may apply for and be granted an exception from the basic requirement to collect the information needed to determine deposit insurance coverage for deposit accounts entitled to pass-through coverage if certain conditions are met, namely that the account holder will not provide the information, the information is protected from disclosure by law, or the information changes so frequently that collecting it is neither cost effective nor technologically practicable.

- In addition to brokered deposits that are reported on the Call Report, how many accounts with pass-through coverage do covered institutions have (number of accounts and aggregate dollar value)?
- What types of brokered, agent or custodial deposit accounts would deposit owners likely need immediate or near-immediate access to after failure?

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[43] *See* 12 CFR 330.7.
[44] *See* 12 CFR 330.5.

- How difficult would it be for covered institutions to maintain current records on beneficial owners of pass-through deposit accounts? Are there certain types of pass-through deposit accounts where maintaining current records might be relatively easy or relatively difficult?
- How difficult would it be for banks to maintain current records on beneficial owners of pass-through accounts where the broker is an affiliate of the bank?
- What would the challenges and costs be for covered institutions to obtain information from agents and custodians regarding each principal's or beneficial owner's interest and to update that information whenever it changes?
- Could a covered institution or a broker enter into account agreements where the institution or broker would be able to assure payment on an account on the business day following the failure of the institution through the availability of overdraft protection or otherwise? If so, would this be a reasonable basis to provide an exception for such an account?
- The FDIC's rules for pass-through insurance coverage also apply to deposit accounts held by prepaid card companies or similar companies. Cardholders might use these cards (and the funds in the custodial account) as a substitute for a checking account. In the event of the failure of the insured depository institution, the cardholders will likely need immediate access to the funds in the custodial account to meet their basic financial needs and obligations. Under the proposed rule, covered institutions could apply for an exception from the obligation to collect the information needed to determine deposit insurance coverage for prepaid card accounts as described above. How difficult would it

be for covered institutions to regularly collect current information from prepaid card issuers regarding each cardholder's ownership interest?

- Would it be feasible to obtain and maintain the necessary depositor information on a significant subset of prepaid card accounts such as payroll cards or accounts through which federal benefits are paid?

In the case of revocable and irrevocable trust accounts, the FDIC provides "per beneficiary" insurance coverage subject to certain conditions and limitations.[45] Informal revocable trust accounts (payable-on-death accounts), covered institutions will have information about beneficiaries. With respect to formal revocable trust accounts, however, information needed to calculate "per beneficiary" coverage may not be available before obtaining a copy of the trust agreement (with information about the number of beneficiaries and the respective interests of the beneficiaries) from the depositor. The need to obtain and review the trust agreement delays the FDIC's determination of insurance. Under the proposed rule, covered institutions could apply for an exception from the requirement to collect the information needed to determine deposit insurance coverage for trust accounts if certain conditions are met, namely that the account holder will not provide the information, the information is protected from disclosure by law, or the information changes so frequently that collecting it is neither cost effective nor technologically practicable.

- How many trust accounts do covered institutions have (number and dollar amounts)?
- How many trust accounts are transaction accounts that depositors will likely need access on the next business day after failure? Is the proposed handling of this problem (through the exception request process) reasonable?

[45] *See* 12 CFR 330.10; 12 CFR 330.13.

- If a covered institution is granted an exception from the proposed rule's requirements as to trust accounts, deposit insurance would not be paid until all necessary information has been provided to the FDIC. How disruptive would denying access to trust accounts after failure be?
- How difficult would it be for covered institutions to maintain current records on each beneficiary's ownership interest? How much information do banks already collect and retain on beneficiaries?
- How difficult would it be for trustees to supply the information to banks and keep it current?
- What legal authority do trustees have to withhold information from a covered institution about the number of beneficiaries and the respective interests of the beneficiaries?
- Are there other reasons trustees would not provide such information to a covered institution?
- Would covered institutions or account holders be receptive to using the FDIC Declarations for trust accounts?[46]

Special statutory rules apply to the insurance coverage of certain types of accounts, including retirement accounts,[47] employee benefit plan accounts[48] and government accounts.[49] In some cases, the FDIC cannot apply these special statutory rules without obtaining information from the depositor, which delays the calculation and payment of deposit insurance. Under the proposed rule, covered institutions would be required to obtain the information needed by the

[46] Available at https://www.fdic.gov/regulations/laws/FORMS/claims.html.
[47] *See* 12 U.S.C. 1821(a)(3).
[48] *See* 12 U.S.C. 1821(a)(1)(D).
[49] *See* 12 U.S.C. 1821(a)(2).

FDIC to make a deposit insurance determination for these types of accounts unless the conditions for exception can be met.

- Would any of these types of deposit accounts fit within the parameters for exception? How? Are there any that would not, but should?
- These accounts often have characteristics similar to accounts with pass-through coverage. The proposed rule would require covered institutions to identify deposit accounts by right and capacity. Can covered institutions reliably distinguish these special statutory accounts from accounts with pass-through insurance coverage that belong in other ownership rights and capacities?
- How difficult would it be for banks with a large number of deposit accounts to maintain full and up-to-date information on the owners of these accounts? How difficult would it be for depositors to supply the information and keep it current? For which types of accounts would it be relatively easy, or relatively difficult, to maintain current information for the purpose of determining deposit insurance coverage?

E. Compliance and Testing

The proposed rule sets forth a framework for covered institutions to demonstrate compliance with the proposed rule's requirements.

- Do the agents have preferences for participating in the annual testing by the covered institutions or during the FDIC onsite compliance visit? Would masking the beneficiary information alleviate concerns about privacy or proprietary information? Could the agents estimate the time to submit the files?
- The FDIC staff would consider pulling a sample data set to check for completeness and accuracy against the covered institution's books and records during the onsite compliance

review. Covered institutions would receive at least three months advance notice with detailed instructions. Would a minimum of three months be sufficient for preparation? However, some review could be conducted offsite.

F. Benefits and Costs

The proposed rule would impose costs on covered institutions, but would also provide benefits to depositors, covered institutions and the banking system.

- To what extent would the proposed rule change insured depository institutions' deposit operations and IT systems?
- What would the costs associated with these changes be? Specifically, what would be the incremental cost of—
  - Obtaining and maintaining the information needed for the FDIC to make a deposit insurance determination that a covered institution does not already have?
  - Adapting its IT system to calculate the insured and uninsured amounts for all deposit accounts, other than accounts for which the covered institution would be granted an exception, within 24 hours after failure?
- In what ways could the implementation and maintenance costs be mitigated while still meeting the FDIC's objective of timely deposit insurance determinations?
- How could covered institutions' IT capabilities best be used to minimize the cost of the requirements?
- Banks have operational schedules for synchronizing systems for reporting at month-end, quarter-end and year-end. How disruptive or expensive would off-period reporting be? How long would it take to develop the ability for off-period reporting?

X. Regulatory Process

A. *Paperwork Reduction Act*

The FDIC has determined that this proposed rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the "PRA") (44 U.S.C. 3501 *et seq.*). In accordance with the PRA, the FDIC may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The FDIC will request approval from the OMB for this proposed information collection. OMB will assign an OMB control number.

OMB Number: 3064 – AE33.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions having at least two million deposit accounts.

Implementation Burden:

Estimated number of respondents: 36.

Estimated time per response: 10,300 to 747,700 hours per respondent.

Estimated total implementation burden: 3.2 million hours.

Ongoing Burden:

Estimated number of respondents: 36.

Estimated time per response: 1,300 to 1,700 hours per respondent.

Estimated total ongoing annual burden: 53,500 hours.

Background/General Description of Collection

The proposed rule would require insured depository institutions that have two million or more deposit accounts (1) to maintain complete and accurate data on each depositor's ownership interest by right and capacity for all of the bank's deposit accounts, and (2) to develop and maintain the capability to calculate the insured and uninsured amounts for each deposit owner by owner right and capacity for all deposit accounts to be used by the FDIC to determine deposit insurance coverage in the event of failure. These requirements also must be supported by policies and procedures, as well as notification of individuals responsible for the systems. Further, the requirements will involve ongoing costs for testing and general maintenance and upkeep of the functionality. Estimates of both initial implementation and ongoing costs are provided.

Compliance with this proposed rule would involve certain reporting requirements.

- Not later than ten business days after the effective date of the final rule or after becoming a covered institution, a covered institution shall designate a point of contact responsible for implementing the requirements of this rulemaking.
- Covered institutions would be required to certify annually that their IT systems can calculate deposit insurance coverage accurately and completely within the time frame set forth in the proposed rule. This certification shall include all agent account files, but may be masked for testing purposes to maintain confidential or proprietary information. A covered institution shall provide the appropriate assistance to the FDIC when testing the IT system.
- Also on an annual basis, covered institutions shall complete a deposit insurance coverage summary report (as detailed in *VI. The Proposed Rule*) and file an attestation letter signed by the covered institution's Board of Directors. The letter shall confirm that the covered institution has implemented and successfully tested its IT system for compliance.
- If a covered institution experiences a significant change in its deposit taking operations, it may be required to demonstrate that its IT system can calculate deposit insurance coverage accurately and completely more frequently than annually.

Estimated Costs

Comments on the ANPR provided little indication of implementation and ongoing costs for covered institutions. However, the FDIC conducted an analysis to estimate the various costs for covered institutions in the event that the requirements are adopted as proposed. The total projected cost of the proposed rule for covered institutions amounts to just under $328 million or approximately 3.2 million total labor hours over two years. The cost components of the estimate include: (1) implementing the deposit insurance calculation; (2) legacy data cleanup; (3) data extraction; (4) data aggregation; (5) data standardization; (6) data quality control and compliance; (7) data reporting; and (8) ongoing operations. Estimates of total costs and labor hours for each component are calculated by assuming a standard mix of skilled labor tasks, industry standard hourly compensation estimates, and labor productivity. It is assumed that a combination of in-house and external services is used for legacy data clean up in proportions of 40 and 60 percent respectively. Finally, the estimated costs for each institution are adjusted according to the complexity of their operations and systems.

Implementation Costs

Implementation costs are expected to vary widely among the covered institutions. There are considerable differences in the complexity and scope of the deposit operations across covered institutions. Some covered institutions only slightly exceed the two million deposit account threshold while others greatly exceed that number. In addition, some covered institutions— most notably the largest—have proprietary deposit systems likely requiring an in-house, custom solution for the proposed requirements while others may purchase deposit software from a vendor or use a servicer for deposit processing. Deposit software vendors and servicers are expected to incorporate the proposed requirements into their products or services to be available for their clients.

The implementation costs for covered institutions are estimated to total just over $319 million and require approximately 3.1 million labor hours. The implementation costs cover: (1) making the deposit insurance calculation; (2) legacy data cleanup; (3) data extraction; (4) data aggregation; (5) data standardization; and (6) data quality control and compliance. Costs for each covered institution are estimated to range from $1.5 million to $100 million and require 10,300 to 747,700 labor hours.

Ongoing Reporting Costs

Ongoing costs for reporting, testing, maintenance and other periodic items are estimated to range between $213,000 and $270,000 annually for covered institutions. Approximately, 1,300 to 1,700 hours are estimated to be required for covered institutions to meet these requirements.

Comments

In addition to the questions raised elsewhere in this NPR, comment is solicited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information will have practical utility; (2) the accuracy of the FDIC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Addresses

Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to "Recordkeeping for Timely Deposit Insurance Determination, 3064 – AE33." Comments may be submitted by any of the following methods:

- Agency Web Site: https://www.fdic.gov/regulations/laws/federal. Follow instructions for submitting comments on the Agency Web Site.
- E-mail: comments@FDIC.gov. Include "Recordkeeping for Timely Deposit Insurance Determination, 3064 – AE33" in the subject line of the message.
- Mail: Executive Secretary, Attention: Comments, FDIC, 550 17th St., NW., Room F–1066, Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).
- Public Inspection: All PRA-related comments received will be posted without change, including any personal information provided, to https://www.fdic.gov/regulations/laws/federal.
- A copy of the PRA-related comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 through 612, requires an agency to provide an initial regulatory flexibility analysis with a proposed rule, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small business entities. 5 U.S.C. 603 through 605. The FDIC hereby certifies that the Proposed Rule would not have a significant economic impact on a substantial number of small business entities, as that term applies to insured depository institutions.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106 – 102, 113 Stat. 12338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner.

Text of the Proposed Rule

Federal Deposit Insurance Corporation

12 CFR Chapter III

List of Subjects in 12 CFR Part 370

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and Loan associations.

Authority and Issuance

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to add part 370 to title 12 of the Code of Federal Regulations to read as follows:

PART 370—RECORDKEEPING FOR TIMELY DEPOSIT INSURANCE DETERMINATION

Sec.

Authority: 12 U.S.C. 1819 (Tenth), 1821(f)(1), 1822(c), 1823(c)(4).

§ 370.1 Purpose and scope.

This part requires the information technology system of a “covered institution” (defined in § 370.2(a)) to be capable of calculating the amount of deposit insurance coverage available for each deposit account in the event of the covered institution’s failure. The purpose of this part is to improve the FDIC's ability to fulfill its legal mandates to pay deposit insurance as soon as possible after failure and to resolve a covered institution at the least cost to the Deposit Insurance Fund.

§ 370.2 Definitions.

(a) A *covered institution* is an insured depository institution which, based on its Reports of Condition and Income filed with the appropriate federal banking agency, has 2 million or more deposit accounts during the two consecutive quarters preceding the effective date of this part or thereafter.

(b) *Deposit* has the same meaning as provided under section 3(*l*) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)).

(c) *Ownership rights and capacities* are set forth in 12 CFR part 330.

(d) *Standard maximum deposit insurance amount* (or "SMDIA") has the same meaning as provided pursuant to section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) and 12 CFR 330.1(o).

(e) *Unique identifier* means a number associated with an individual or entity that is used by a covered institution to monitor its relationship with only that individual or entity. A unique identifier could be the social security number, taxpayer identification number, or other government-issued identification number of an individual or entity so long as a covered institution consistently and continuously uses only that number as the unique identifier.

§ 370.3 Requirements.

(a) Notwithstanding 12 CFR 330.5(b)(2) and (3), a covered institution must obtain from each account holder and maintain in its records the information necessary to comply with this section unless otherwise permitted in accordance with § 370.4.

(b) *Point of contact.* Not later than ten business days after either [EFFECTIVE DATE OF THE FINAL RULE] or becoming a covered institution, a covered institution shall designate a point of contact responsible for implementing the requirements of this part. The identity of that designee shall be sent, in writing, to the Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429-0002.

(c) *Unique identifier*. Within two years after either the effective date of this part or becoming a covered institution, whichever is later, the covered institution must assign a unique identifier to each:

(1) Account holder;

(2) Owner, if the owner of the funds on deposit is not the accountholder; and

(3) Beneficiary, if the funds on deposit are held in trust.

(d) *Assignment of account ownership right and capacity code.* Within two years after either the [EFFECTIVE DATE OF THE FINAL RULE] or becoming a covered institution, whichever is later, the covered institution must assign one of the account ownership right and capacity codes listed and described in appendix A to part 370 to each of its deposit accounts.

(e) *Deposit insurance coverage calculation*. Within two years after either the effective date of this part or becoming a covered institution, whichever is later, the covered institution's information technology system shall be capable of accurately calculating the deposit insurance coverage available for each owner and generating a record reflecting this deposit insurance coverage calculation upon request by the FDIC. Each record shall be in the data format and layout specified in appendix B to part 370 and must include:

(1) The account holder's name or, if the owner of the funds on deposit is not the accountholder, the owner's name;

(2) The account holder's unique identifier or, if the owner of the funds on deposit is not the account holder, the owner's unique identifier;

(3) The balance of each of the account holder's deposit accounts within the applicable ownership right and capacity or, if the owner of the funds on deposit is not the accountholder, the balance of the owner's share of deposit accounts within the applicable ownership right and capacity;

(4) The aggregated balance of the account holder's deposits within the applicable ownership right and capacity or, if the owner of the funds on deposit is not the accountholder, the aggregated balance of each owner's deposits within the applicable ownership right and capacity;

(5) The amount of the aggregated balance in paragraph (e)(4) of this section that is insured; and

(6) The amount of the aggregated balance in paragraph (e)(4) of this section that is uninsured.

(f) *Holds pending FDIC's determination.* The covered institution's information technology system shall, in the event of the covered institution's failure, be capable of placing an effective restriction on access to all of the funds in a deposit account until the FDIC, using the covered institution's IT system to calculate deposit insurance coverage, has made the deposit insurance coverage determination for that account.

(g) *Process uninsured*. The covered institution's information technology system must be capable of debiting from an owner's deposit accounts the amount of the aggregated balance of the owner's deposits within the applicable ownership right and capacity that is uninsured as calculated pursuant to paragraph (d) of this section.

(h) *Deposit insurance calculation time frame.* The covered institution's information technology system shall be capable of completing the deposit insurance coverage calculation set forth in paragraphs (d) through (f) of this section within 24 hours after the FDIC's appointment as receiver for the covered institution.

§ 370.4 Limitations.

A covered institution may apply for relief from the requirements of § 370.3(a) as described in this section. The FDIC will consider all applications on a case-by-case basis in light of the objectives of this part. Applications should be submitted in writing to: Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429-0002.

(a) *Exemptions.* A covered institution may apply to the FDIC for an exemption from this part if it demonstrates that it has not and will not take deposits from any account holder which, when aggregated, would exceed the SMDIA for any owner of the funds on deposit.

(b) *Extensions*. (1) A covered institution may apply to the FDIC for an extension of the time frames set forth in § 370.3 if the covered institution will require additional time to:

(i) Complete the development of additional capabilities in its information technology system to complete the requirements set forth in § 370.3; or

(ii) Obtain the information necessary to comply with § 370.3 from the account holder.

(2) The application shall provide a summarized description of the accounts affected including, at a minimum, the number of accounts affected, the amounts on deposit in affected accounts, the amount of additional time needed, and other information needed to justify the request.

(c) *Exceptions.* (1) A covered institution may apply to the FDIC for an exception from the requirements of § 370.3(a) if the covered institution:

(i) Does not maintain the information needed to complete the requirements set forth in § 370.3(a), has requested such information from the account holder and certifies that the account holder has refused to provide such information or has not responded to the covered institution's request for information;

(ii) Provides a reasoned legal opinion that the information needed to complete the requirements set forth in § 370.3(a) for accounts of a certain type is protected from disclosure by law; or

(iii) Provides an explanation of how the information needed to complete the requirements set forth in § 370.3(a) changes frequently and updating the information on a continual basis is neither cost effective nor technologically practicable.

(2) The covered institution's application shall provide a copy of the information request letter sent to the account holder(s) and a summarized description of the accounts

affected that includes, at a minimum, the number of accounts affected, the amounts on deposit in affected accounts, and any other information needed to justify the request.

(d) The FDIC's grant of a covered institution's application may be conditional or time-limited.

(e) Notwithstanding § 370.7, a covered institution will not be in violation of this part during the pendency of an application for an extension, exception or exemption submitted pursuant to this section.

(f) If a covered institution's application for an exception or extension is granted by the FDIC, the covered institution shall:

(1) Ensure that its information technology system is, in the event of the covered institution's failure, capable of placing an effective restriction on access to all funds in deposit accounts identified in the request for exception or extension;

(2) Ensure that its information technology system is capable of creating files in the format and layout specified in Appendix B listing all accounts for which it is granted an exception or an extension under this section;

(3) Ensure that its information technology system is, in the event of the covered institution's failure, capable of receiving additional information collected by the FDIC after failure and repeatedly performing the requirements set forth in § 370.3; and

(4) In the case of an exception, disclose to the account holder reported with the application that in the event of the covered institution's failure, payment of deposit insurance may be delayed and items may be returned unpaid until all of the

information required to make a deposit insurance determination has been provided to the FDIC.

(g) *Release from this part.* A covered institution may apply to the FDIC for a release from this part if, based on its Reports of Condition and Income filed with the appropriate federal banking agency, it has less than two million deposit accounts during any three consecutive quarters after becoming a covered institution.

(h) *Release from § 360.9 of this chapter.* A covered institution may apply to the FDIC for a release from the provisional hold and standard data format requirements of § 360.9 of this chapter. The FDIC’s grant of such a release will be based upon the covered institution’s particular facts and circumstances as well as its ability to demonstrate compliance with the requirements set forth in § 370.3.

§ 370.5 Accelerated implementation.

(a) On a case-by-case basis, the FDIC may accelerate, upon notice, the implementation time frame for all or part of the requirements of this part for a covered institution that:

(1) Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System (*CAMELS* rating), or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is undercapitalized, as defined under the prompt corrective action provisions of 12 CFR part 325; or

(3) Is determined by the appropriate federal banking agency or the FDIC in consultation with the appropriate federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress,

notwithstanding the composite rating of the covered institution by its appropriate federal banking agency in its most recent report of examination.

(b) In implementing this section, the FDIC must consult with the covered institution's appropriate federal banking agency and consider the: complexity of the covered institution's deposit system and operations, extent of the covered institution's asset quality difficulties, volatility of the institution's funding sources, expected near-term changes in the covered institution's capital levels, and other relevant factors appropriate for the FDIC to consider in its roles as insurer of the covered institution.

§ 370.6 Compliance.

(a) *Annual certification.* (1) Beginning on March 31 two years after [EFFECTIVE DATE OF THE FINAL RULE] and annually thereafter, a covered institution shall complete a deposit insurance coverage summary report and file an attestation letter signed by the covered institution's Board of Directors. The covered institution's annual certification shall pertain to the preceding calendar year. The letter shall confirm that the covered institution has implemented and successfully tested its information technology system for compliance with this part. The letter shall describe the effects of all approved or pending applications for exception or extension on the ability to determine deposit insurance coverage using the covered institution's information technology system.

(2) The deposit insurance coverage summary report shall include:

(i) The number of depositors, number of deposit accounts and dollar amount of deposits by ownership right and capacity;

(ii) The total number of fully-insured deposit accounts and the dollar amount of deposits in those accounts;

(iii) The total number of deposit accounts containing uninsured amounts and the total dollar amount of insured and uninsured amounts in those accounts;

(iv) The total number of deposit accounts and the dollar amount of deposits in accounts subject to an approved or pending application for exception or extension under § 370.4; and

(v) A description of any substantive change to the covered institution's information technology system or deposit taking operations since the prior annual certification.

(3) If a covered institution experiences a significant change in its deposit taking operations, the FDIC may require it to demonstrate that its information technology system can determine deposit insurance coverage accurately and completely more frequently than annually.

(b) *FDIC testing.* (1) The FDIC will conduct periodic tests of covered institutions' compliance with this part. These tests will begin on or after March 31 two years after [EFFECTIVE DATE OF THE FINAL RULE] and will occur on an annual or less frequent basis, unless there is a material change to the covered institution's IT system, deposit-taking operations or financial condition.

(2) A covered institution shall provide the appropriate assistance to the FDIC as the FDIC tests the information technology system's capability to meet the requirements set forth in this part.

(3) The FDIC will provide system and data integrity testing instructions to covered institutions through the issuance of subsequent procedures or guidelines.

§ 370.7 Enforcement.

Violating the terms or requirements set forth in this part constitutes a violation of a regulation and subjects the covered institution to enforcement actions under section 8 of the FDI Act (12 U.S.C. 1818).

Appendix A to Part 370—Account Ownership Right and Capacity Codes

A covered institution must use the codes defined below when assigning account ownership right and capacity codes.

CODE	DEFINITION
1. SGL	Single Account (12 CFR 330.6): An account owned by one person with no testamentary or "payable-on-death" beneficiaries. It includes individual accounts, sole proprietorship accounts, single-name accounts containing community property funds, and accounts of a decedent and accounts held by executors or administrators of a decedent's estate.
2. JNT	Joint Account (12 CFR 330.9): An account owned by two or more persons with no testamentary or "payable-on-death" beneficiaries (other than surviving co-owners). An account does not qualify as a joint account unless: (1) all co-owners are living persons; (2) each co-owner has personally signed a deposit account signature card (except that the signature requirement does not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained on behalf of the co-

owners by an agent or custodian); and (3) each co-owner possesses withdrawal rights on the same basis.

3. REV — Revocable Trust Account (12 CFR 330.10): An account owned by one or more persons that evidences an intention that, upon the death of the owner(s), the funds shall belong to one or more beneficiaries. There are two types of revocable trust accounts:

(a) Payable-on Death Account (Informal Revocable Trust Account): An account owned by one or more persons with one or more testamentary or "payable-on-death" beneficiaries.

(b) Revocable Living Trust Account (Formal Revocable Trust Account): An account in the name of a formal revocable "living trust" with one or more grantors and one or more testamentary beneficiaries.

4. IRR — Irrevocable Trust Account (12 CFR 330.13): An account in the name of an irrevocable trust (unless the trustee is an insured depository institution).

5. IRA — Individual Retirement Account or Certain Other Retirement Accounts (12 CFR 330.14 (b) and (c)): An individual retirement

account described in section 408(a) of the Internal Revenue Code (26 U.S.C. 408(a)); or an account of a deferred compensation plan described in section 457 of the Internal Revenue Code (26 U.S.C. 457); or an account of an individual account plan as defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) or a plan described in section 401(d) of the Internal Revenue Code (26 U.S.C. 401(d)), to the extent that participants under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan.

6. EBP	Employee Benefit Plan Account (12 CFR 330.14): An account of an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002), including any plan described in section 401(d) of the Internal Revenue Code (26 U.S.C. 401(d)), but not including any account classified as an Individual Retirement Account or Certain Other Retirement Account.
7. BUS	Business/Organization Account (12 CFR 330.11): An account of an organization engaged in an 'independent activity' (as defined in 12 CFR 330.1(g)), but not an account of a sole proprietorship.

This category includes:

(a) Corporation Account: An account owned by a corporation.

(b) Partnership Account: An account owned by a partnership.

(c) Unincorporated Association Account: An account owned by an unincorporated association (*i.e.*, an account owned by an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose).

8. GOV1 Government Account (12 CFR 330.15): All time and savings deposit accounts of the United States and all time and savings deposit accounts of a state, county, municipality or political subdivision depositing funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state).

9. GOV2 Government Account (12 CFR 330.15): All demand deposit accounts of the United States and all demand deposit accounts of a state, county, municipality or political subdivision depositing funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state).

10. GOV3	Government Account (12 CFR 330.15): All deposits, regardless of whether they are time, savings or demand deposit accounts of a state, county, municipality or political subdivision depositing funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located.
11. MSA	Mortgage Servicing Account (12 CFR 330.7(d)): An account held by a mortgage servicer, funded by payments by mortgagors of principal and interest or taxes and insurance premiums.
12. PBA	Public Bond Accounts (12 CFR 330.15(c)): An account consisting of funds held by an officer, agent or employee of a public unit for the purpose of discharging a debt owed to the holders of notes or bonds issued by the public unit.
13. DIT	IDI as trustee of irrevocable trust accounts (12 CFR 330.12): "Trust funds" (as defined in 12 CFR 330.1(q)) account held by an insured depository institution as trustee of an irrevocable trust.
14. ANC	Annuity Contract Accounts (12 CFR 330.8): Funds held by an insurance company or other corporation in a deposit account for

the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts.

15. BIA	Custodian accounts for American Indians (12 CFR 330.7(e)): Funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the "BIA") on behalf of American Indians pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of American Indians pursuant to similar authority, in an insured depository institution.
16. DOE	IDI Accounts under Department of Energy Program: Funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.

Appendix B—Output Files

The output files will include the data necessary for the FDIC to determine the deposit insurance coverage in a resolution. A covered institution must have the capability to prepare and maintain the files detailed below. These files must be prepared in successive iterations as the covered institution receives additional data from external sources necessary to complete any pending deposit insurance calculations. The unique identifier is required in all four files to link the depositor information. All files are pipe delimited. Do not pad leading and trailing spacing or zeros for the data fields.

A. CUSTOMER FILE

The Customer file will be used by the FDIC to identify the depositor. One record represents one unique depositor. The data elements will include:

Table A1—Customer File Data Elements

	Field Name	Description	Format
1	CS_Unique_ID	Unique identifier. In most instances, this will be the tax identification number maintained on the account. In the rare instances where a tax identification number is not available the IDI should assign a number that is sufficiently distinct in composition that it will not be confused with a taxpayer identification number. For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN").	Character (25)
2	CS_First_Name	Customer first name. Use only for individuals, not for businesses or companies.	Character (50)
3	CS_Middle_Name	Customer middle name. Use only for individuals, not for businesses or companies.	Character (50)
4	CS_Last_Name	Customer last name or company name.	Character (50)
5	CS_Name_Suffix	Customer suffix such as "Jr."	Character (10)
6	CS_Street_Add_Ln1	Street address line 1. The current account statement mailing address of record.	Character (100)
7	CS_Street_Add_Ln2	Street address line 2. If available, the second address line.	Character (100)
8	CS_Street_Add_Ln3	Street address line 3. If available, the third address line.	Character (100)
9	CS_City	The city associated with the permanent legal address.	Character (50)
10	CS_State	The state abbreviation associated with the permanent legal address.	Character (2)
11	CS_ZIP	The U.S. Postal Service ZIP+4 code associated with the permanent legal address.	Character (10)
12	CS_Country	The country associated with the mailing address. Provide the country name or the standard IRS country code.	Character (50)
13	CS_Telephone	Customer telephone number. The telephone number on record for the customer.	Character (20)

	Field Name	Description	Format
14	CS_Email	The email address on record for the customer.	Character (50)

B. Account File

The Account file contains the deposit ownership right and capacity information including allocated balances, and insured and uninsured amounts. Each customer may have multiple records within each account ownership category (right and capacity) if the customer has multiple accounts in an insurance category. The balances are in U.S. dollars. The Account file is linked to the Customer file by the CS_Unique_ID. The data elements will include:

Table A2—Account File Data Elements

	Field Name	Description	Format
1	CS_Unique_ID	Unique identifier. In most instances, this will be the tax identification number maintained on the account. In the rare instances where a tax identification number is not available the IDI should assign a number that is sufficiently distinct in composition that it will not be confused with a taxpayer identification number. For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN").	Character (25)
2	DP_Acct_Identifier	Deposit account identifier. The primary field used to identify a deposit account. The account identifier may be composed of more than one physical data element to uniquely identify a deposit account.	Character (100)

	Field Name	Description	Format
3	DP_Right_Capacity	Account ownership categories. Additional information is provided in section 7. - **SGL** - Single accounts - **JNT** - Joint accounts - **REV** - Revocable trust accounts - **IRR** - Irrevocable trust accounts - **IRA** - Certain retirement accounts - **EBP** - Employee benefit plan accounts - **BUS** - Business/Organization accounts **- GOV1, GOV2, GOV3 -** Government accounts (public unit accounts) - **MSA -** Mortgage servicing accounts for principal and interest payments - **DIT -** Accounts held by a depository institution as the trustee of an irrevocable trust - **ANC** - Annuity contract accounts - **PBA** - Public bond accounts - **BIA** - Custodian accounts for American Indians - **DOE -** Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy	Character (4)
4	DP_Prod_Cat	Product category or classification. - **DDA** - Non-interest bearing checking accounts. - **NOW** – Interest bearing checking accounts. - **MMA** – Money market deposit accounts. - **SAV** – Other savings accounts **- CDS** – Time deposit accounts and certificate of deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.	Character (3)

	Field Name	Description	Format
5	DP_Allocated_Amt	The current balance in the account at the end of business on the effective date of the file, allocated to a specific owner in that insurance category. For JNT accounts, this is a calculated field that represents the allocated amount to each owner in JNT category. For REV accounts, this is a calculated field that represents the allocated amount to each owner-beneficiary in REV category. For other accounts with only owner, this is the account current balance. This balance should not be reduced by float or holds. For CDs and time deposits, the balance should reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest).	Decimal (14,2)
6	DP_Acc_Int	Accrued interest allocated similarly as data field #5 DP_Allocated_Amt. The amount of interest that has been earned but not yet paid to the account as of the date of the file.	Decimal (14,2)
7	DP_Total_PI	Total amount adding #5 DP_Allocated_Amt and #6 DP_Acc_Int.	Decimal (14,2)
8	DP_Hold_Amount	Bank hold amount on the account. The available balance of the account is reduced by the hold amount. It has no effect on current balance (ledger balance).	Decimal (14,2)
9	Insured_Amount	The insured amount of the account in dollars.	Decimal (14,2)
10	Uninsured_Amount	The uninsured amount of the account in dollars.	Decimal (14,2)

C. Beneficiary File

The Beneficiary file will be used by the FDIC to identify the beneficiaries for each account and account owner. One record represents one unique beneficiary. The Beneficiary file is linked to the Account file by CS_Unique_ID and DP_Acct_Identifier. The data elements will include:

Table A3—Beneficiary File Data Elements

	Field Name	**Description**	**Format**
1	CS_Unique_ID	Unique identifier. In most instances, this will be the tax identification number maintained on the account. In the rare instances where a tax identification number is not available the IDI should assign a number that is sufficiently distinct in composition that it will not be confused with a taxpayer identification number. For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN").	Character (25)
2	DP_Acct_Identifier	Deposit account identifier. The primary field used to identify a deposit account. The account identifier may be composed of more than one physical data element to uniquely identify a deposit account.	Character (100)
3	DP_Right_Capacity	Account ownership categories applicable to have beneficiaries. - **REV** - Revocable trust accounts - **IRR** - Irrevocable trust accounts	Character (4)
4	CS_Bene_ID	Unique identifier for the beneficiary. In most instances, this will be the tax identification number maintained for the beneficiary. In the rare instances where a tax identification number is not available the IDI should assign a number that is sufficiently distinct in composition that it will not be confused with a taxpayer identification number.	Character (25)
5	CS_Bene_Name	Beneficiary name.	Character (100)

D. PENDING FILE

The Pending file contains the information needed for the FDIC to contact the owner or agent requesting additional information to complete the deposit insurance calculation. Each record represents a deposit account.

Table A4—Pending File Data Elements

	Field Name	Description	Format
1	CS_Unique_ID	Unique identifier. In most instances, this will be the tax identification number maintained on the account. In the rare instances where a tax identification number is not available, the covered institution should assign a number that is sufficiently distinct in composition that it will not be confused with a taxpayer identification number. For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN").	Character (25)
2	DP_Acct_Identifier	Deposit account identifier. The primary field used to identify a deposit account. The account identifier may be composed of more than one physical data element to identify a deposit account.	
3	DP_Acct_Title	Account title line. Account styling or title of the account. This should be how the account is titled on the signature card or certificate of deposit. Data in this field can be used to identify the owner(s) and beneficiaries of the account. It is the statement name or account name to be used to issue checks or for the uninsured title.	Character (100)
4	CS_Street_Add_Ln1	Street address line 1. The current account statement mailing address of record.	Character (100)
5	CS_Street_Add_Ln2	Street address line 2. If available, the second address line.	Character (100)
6	CS_Street_Add_Ln3	Street address line 3. If available, the third address line.	Character (100)
7	CS_City	The city associated with the permanent legal address.	Character (50)

8	CS_State	The state abbreviation associated with the permanent legal address.	Character (2)
9	CS_ZIP	The U.S. Postal Service ZIP+4 code associated with the permanent legal address.	Character (10)
10	CS_Country	The country associated with the mailing address. Provide the country name or the standard IRS country code.	Character (50)
11	CS_Telephone	Customer telephone number. The telephone number on record for the customer.	Character (20)
12	CS_Email	The email address on record for the customer.	Character (50)
13	DP_Cur_Bal	Current balance. The current balance in the account at the end of business on the effective date of the file. This balance should not be reduced by float or holds. For CDs and time deposits, the balance should reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest).	Decimal (14,2)
14	DP_Acc_Int	Accrued interest. The amount of interest that has been earned but not yet paid to the account as of the date of the file.	Decimal (14,2)
15	DP_Total_PI	Total of principal and accrued interest.	Decimal (14,2)
16	DP_Hold_Amount	Hold amount on the account. The available balance of the account is reduced by the hold amount. It has no impact on current balance (ledger balance).	Decimal (14,2)
17	Pending_Reason	Reason code for the account to be included in Pending table. • A = need agency, custodian, or nominee account information • B = missing beneficiary info • CAT = missing right and capacity code • F = foreign deposit • OI = official item The FDIC needs these codes to initiate the collection of needed information post-closing.	Character (5)

By order of the Board of Directors.

Dated at Washington, D.C., this 17th day of February, 2016.

Federal Deposit Insurance Corporation

Robert E. Feldman

Executive Secretary

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