



**6714-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 370**

**RIN 3064-AF03**

**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 to make certain substantive revisions to “Recordkeeping for Timely Deposit Insurance Determination,” to clarify the rule’s requirements, better align the burdens of the rule with its benefits, and make technical corrections.

**DATES:** Comments must be received by [INSERT DATE WHICH IS 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on the notice of proposed rulemaking, identified by RIN number, by any of the following methods:

- **Agency Website:** <http://www.FDIC.gov/regulations/laws/federal>. Follow instructions for submitting comments on the agency web site.
- **E-mail:** [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include RIN 3064-AF03 in the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW, Washington, DC 20429.
- **Hand Delivery/Courier:** Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

*Public Inspection:* All comments received, including any personal information provided, will be posted without change to

<http://www.fdic.gov/regulations/laws/federal/>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Policy Objectives**

The policy objective of the proposed rule is to reduce compliance burdens for insured depository institutions (IDIs) covered by the FDIC's rule entitled "Recordkeeping for Timely Deposit Insurance Determination"<sup>1</sup> (part 370 of the Rule) while continuing to support the FDIC's ability to promptly determine deposit insurance coverage in the event a covered institution fails. Part 370 requires each IDI with two million or more deposit accounts (each a covered institution) to (1) configure its information technology system (IT system) to be capable of calculating the insured and uninsured amount in each deposit account by right and capacity, for use by the FDIC in making deposit insurance determinations in the event of the institution's failure, and (2) maintain complete and accurate information needed by the FDIC to determine deposit insurance coverage with respect to each deposit account, except as otherwise provided. After the Rule was adopted and while covered institutions began preparing to implement it, the FDIC

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<sup>1</sup> 12 CFR part 370.

received feedback from covered institutions, industry consultants, information technology service providers, and agents placing deposits on behalf of others, who identified components of the Rule that are insufficiently clear or unduly burdensome. The proposed rule addresses these issues by: establishing the option to extend the part 370 compliance date for certain institutions; simplifying the process for requesting exception from the Rule's requirements; amending the scope of certain provisions; and making technical amendments. The proposed amendments are likely to reduce compliance burdens for covered institutions while still ensuring that covered institutions implement the recordkeeping and IT system capabilities needed by the FDIC to make a timely deposit insurance determination for an IDI of such size and scale.

## **II. Background**

In 2016, the FDIC adopted part 370 to facilitate prompt payments of FDIC-insured deposits when large IDIs fail. By reducing the difficulties that the FDIC would face in making a prompt deposit insurance determination at a failed covered institution, part 370 enhances the ability of the FDIC to meet its statutory obligation to pay deposit insurance "as soon as possible" following failure and to resolve the covered institution in the manner least costly to the Deposit Insurance Fund (DIF).<sup>2</sup> Fulfilling these statutory obligations is essential to the FDIC's mission. It also achieves significant policy objectives: maintaining public confidence in the FDIC and the banking system; enabling depositors to meet their financial needs and obligations; preserving the franchise value of the failed covered institution and protecting the DIF by allowing a wider range of resolution options; and promoting long term stability in the banking system by reducing

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<sup>2</sup> 12 U.S.C. 1821(f)(1); 12 U.S.C. 1823(c)(4).

moral hazard. An earlier regulation, the FDIC's rule entitled "Large-Bank Deposit Insurance Determination Modernization" (§ 360.9), furthered these policy goals at IDIs having at least \$2 billion in domestic deposits and either 250,000 deposit accounts, or \$20 billion in total assets.<sup>3</sup> Part 370 provides the necessary additional measures required by the FDIC to ensure prompt and accurate payment of deposit insurance to depositors of the larger, more complex IDIs that qualify as covered institutions.

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).<sup>4</sup> 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 applies the standard maximum deposit insurance amount (SMDIA) of \$250,000.<sup>5</sup> The FDIC generally relies on the failed institution's deposit account records to identify deposit owners and the right and capacity in which deposits are maintained.<sup>6</sup> Section 7(a)(9) of the FDI Act authorizes the FDIC to take action as necessary to ensure that each IDI maintains, and the FDIC receives on a regular basis from such IDI, information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution.<sup>7</sup> The requirements of part 370, obligating covered institutions to maintain complete and accurate records regarding the ownership and insurability of deposits and to have an IT system that can be used to calculate deposit insurance coverage in the event of

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<sup>3</sup> 12 CFR 360.9. *See* 73 FR 41180 (July 17, 2008).

<sup>4</sup> 12 U.S.C. 1819(a) (Tenth), 1820(g), 1821(d)(4)(B)(iv).

<sup>5</sup> 12 U.S.C. 1821(a)(1)(C), 1821(a)(1)(E).

<sup>6</sup> 12 U.S.C. 1822(c), 12 CFR 330.5.

<sup>7</sup> 12 U.S.C. 1817(a)(9)

failure, facilitate the FDIC's prompt payment of deposit insurance and enhance the ability to implement the least costly resolution of these institutions.

Part 370 became effective on April 1, 2017, with a compliance date of April 1, 2020, for IDIs that became covered institutions on the effective date.<sup>8</sup> The FDIC has carried out a continuous outreach program to covered institutions, trade associations, and other interested parties since issuing part 370. The FDIC learned through its interactions with these parties about issues and challenges they face in implementing the capabilities required by part 370. These include: the need for additional time to complete this complex exercise; concerns regarding the nature of the compliance certification; the effect of mergers; the scope of the definition of "transactional features"; and the covered institution's ability to certify performance by a third party with respect to submission of information to the FDIC within 24 hours for deposit accounts with transactional features that are insured on a pass-through basis.

The FDIC acknowledges that the burden of complying with some of the requirements of part 370 with regard to certain types of accounts is not commensurate with the benefit of improvements to prompt payment of deposit insurance and resolvability that such compliance achieves. Further, practical difficulties in implementation justify an extension of the initial compliance date for those covered institutions that became covered institutions on the initial effective date of the Rule. Accordingly, the FDIC is issuing this notice of proposed rulemaking (NPR) to amend part 370 (the proposal, proposed rule, or proposed amendments) to provide for elective extension of the compliance date, revise the treatment of deposits created by credit

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<sup>8</sup> 81 FR 87734, 87738 (December 5, 2016); 12 CFR 370.2(d).

balances on debt accounts, modify the requirements relating to accounts with transactional features, change the procedures regarding exceptions, and clarify matters relating to certification requirements. The proposed amendments would also make certain technical changes to part 370 and correct typographical errors. These proposed amendments would better align the burdens imposed by part 370 upon covered institutions with the resultant benefits in terms of achievement of the FDIC's statutory obligations and policy objectives.

### **III. Discussion of proposed amendments and request for comment**

#### **A. Summary**

The FDIC is undertaking this notice of proposed rulemaking to amend part 370 in advance of the compliance date for the first covered institutions. The FDIC is proposing to make extensive changes to part 370. Therefore, the FDIC is proposing to revise the text of part 370 in full rather than prepare fragmentary amendments. The proposal would, among other things:

- include an optional one-year extension of the compliance date upon notification to the FDIC;
- provide clarifications regarding certification of compliance under § 370.10, and the effect of a change in law or a merger on compliance;
- provide for voluntary compliance with part 370;
- revise the actions that must be taken under § 370.5(a) with respect to deposit accounts with transactional features that are insured on a pass-through basis;
- amend the recordkeeping requirements set forth in § 370.4 for certain types of deposit relationships;

- clarify the process for exceptions requested pursuant to § 370.8(b), provide for published notice of the FDIC's responses, and provide that certain exceptions may be deemed granted; and
- make corrections and technical and conforming changes.

***B. Elective extension of the compliance date***

Section 370.2(d) establishes the initial compliance date as the date that is three years following either the effective date of part 370 or the date on which an IDI becomes a covered institution, whichever is later. In order to comply with part 370, covered institutions must add a new set of capabilities in their IT systems and a new level of regularity in their recordkeeping. Part 370 became effective on April 1, 2017, so each insured depository institution that became a covered institution on that date has a compliance date of April 1, 2020. The FDIC recognizes that some of these covered institutions may need additional time to implement these new capabilities. The FDIC has determined that an extension of up to one year would help these covered institutions more efficiently focus their efforts on complying with part 370 rather than on seeking exceptions to compliance with part 370. Accordingly, the FDIC proposes to add a new paragraph (b)(2) to § 370.6 that would provide covered institutions that became covered institutions on the effective date with the option to extend their April 1, 2020, compliance date by up to one year (as late as April 1, 2021) upon notification to the FDIC. The notification would need to be provided to the FDIC prior to the original April 1, 2020, compliance date and state the total number of, and dollar amount of deposits in, deposit accounts for which the covered institution expects its IT system would not be able to calculate deposit insurance coverage as of the original April 1, 2020, compliance date.

This information would help the FDIC understand the extent to which the covered institution's capabilities could be utilized prior to the extended compliance date should those capabilities be needed. In connection with this proposed amendment, the definition of compliance date in § 370.2(d) would also be revised to reference § 370.6(b).

*Questions: The FDIC invites comment on its proposal to allow insured depository institutions that became covered institutions on April 1, 2017, to extend their compliance date by up to one year. What are the advantages or disadvantages of extending the compliance date? Is this one-year extension too long or too short? Why? Should this extension option be available to all current covered institutions? What alternatives, if any, should the FDIC consider?*

### **C. Compliance**

#### **1. Part 370 compliance certification and deposit insurance summary report**

The proposed amendments to § 370.10(a)(1) address the requirements for the certification of compliance that a covered institution must submit to the FDIC upon its initial compliance date and annually thereafter. The FDIC is proposing to clarify that the timeframe within which a covered institution must implement the capabilities needed to comply with part 370 and test its IT system is the "preceding twelve months" rather than during the "preceding calendar year." Because a covered institution's compliance date might not coincide with the end of a calendar year, there was confusion over whether a covered institution's self-test must occur during the calendar year before a covered institution's compliance date even if the compliance date is in the next calendar year. This proposed amendment is intended to clarify that a covered institution must certify

that it has implemented the capabilities required by part 370 and has tested those capabilities at least once during the preceding 12 months.

The FDIC proposes to revise the testing standard for the certification from confirmation that a covered institution has “successfully tested” its IT system to confirmation that “testing indicates that the covered institution is in compliance...” because “successful” testing is a subjective standard. Some covered institutions have questioned whether testing can be considered “successful” if they identify deficiencies in compliance. The objective of part 370 is for a covered institution to implement the recordkeeping and IT system capabilities that would enable the FDIC to conduct a deposit insurance determination for all of a covered institution’s deposit accounts. To do this, a covered institution’s IT system must be capable of calculating deposit insurance coverage for accounts once all information needed to do so is available.

The FDIC also proposes to clarify the standard to which the § 370.10(a)(1) compliance certification is made by revising this paragraph to state that the certification must be made to the best of the executive’s “knowledge and belief after due inquiry.” Covered institutions and their representatives have expressed concern that the current language could be viewed as creating a liability standard by which an executive could be held liable should the covered institution experience any deficiency in compliance. This proposed amendment would clarify that the executive’s essential duty is to take reasonable steps to ensure and verify that the certification is accurate and complete to the best of his or her knowledge after due inquiry.

*Questions: The FDIC invites comment on its proposed amendments to § 370.10(a)(1). What level of certainty should a covered institution’s executive have that*

*the requirements of part 370 are being met? Are the standards for the certification clear? Are they appropriate? If not, why not? What other changes to this certification requirement should the FDIC consider making, if any?*

## **2. Effect of changes to law**

The FDIC recognizes that future changes to law could impact a covered institution's compliance with the requirements of part 370 by, among other things, changing deposit insurance coverage and related recordkeeping and calculation requirements. These changes in law may be made with immediate effect, yet the covered institutions may reasonably require time to collect necessary records and reconfigure their IT systems to calculate deposit insurance under the changed laws. The FDIC is proposing to add a new paragraph (d) to § 370.10 to address the effect of changes to law that alter the availability or calculation of deposit insurance. This new paragraph (d) would provide that a covered institution would not be in violation of part 370 as a result of such change in law for such period as specified by the FDIC following the effective date of such change in law. The FDIC would publish notice of the specified period of time in the *Federal Register*.

*Questions: The FDIC invites comment on its proposal to add a new paragraph (d) to § 370.10 to allow a covered institution time to consider and address changes in law that alter the availability, or calculation of, deposit insurance and thereby would impact a covered institution's compliance with part 370. Should a minimum period of time following a change in law be added? Why? What alternatives, if any, should the FDIC consider?*

## **3. Effect of merger involving a covered institution**

Part 370 does not expressly address mergers. Under the Rule, a covered institution is required to comply with the requirements of part 370 on and after its compliance date without regard for complications that could be caused by merger. The covered institution would need to ensure that it is in compliance with respect to its newly acquired deposit accounts and IT systems unless it had requested and been granted a time-limited exception by the FDIC.

The FDIC recognizes that covered institutions may need time after a merger to come into compliance with part 370 again. For that reason, the FDIC proposes to add a new paragraph (e) to § 370.10 to provide a covered institution with a one-year period following the effective date of its merger with another insured depository institution to ensure that new deposit accounts and IT systems comply with the requirements of part 370. This proposed one-year period would not extend a covered institution's preexisting compliance date; rather, it would provide a one-year grace period to remedy deficiencies in compliance resulting from the merger. In cases where this one-year period is not sufficient, a covered institution could request a time-limited exception for additional time to integrate deposit accounts or IT systems. To illustrate, if a covered institution merges with an insured depository institution that is not a covered institution, then the covered institution's compliance date would not change, but it would have a one-year period to bring the deposit accounts from the merged institution into compliance with the requirements of part 370. If two insured depository institutions, neither a covered institution, merge to become a covered institution, then the new covered institution would be required to comply with part 370 by its compliance date and the one-year grace period provided under this proposed paragraph would not be applicable. If two covered

institutions merge, then the one-year grace period provided under this proposed paragraph would apply, but only with respect to instances of non-compliance occurring as the direct result of the merger.

*Questions: The FDIC invites comment on its proposal to add a new paragraph (e) to § 370.10 to provide a one-year grace period for instances of non-compliance following merger. Is a one-year grace period sufficient? If not, how much time would be sufficient and why? Should a grace period be considered for deposit assumption transactions as well? What alternatives, if any, should the FDIC consider?*

**D. Voluntary compliance with part 370**

The proposed amendments would provide a mechanism for voluntary compliance with part 370, which may be mutually beneficial to both the FDIC and certain insured depository institutions. Part 370 currently defines a “covered institution” as an insured depository institution that had two million or more deposit accounts during the two consecutive quarters preceding the Rule’s effective date of April 1, 2017, or once it has two million or more deposit accounts for two consecutive quarters thereafter. The FDIC proposes to expand the definition to include any other insured depository institution that voluntarily opts into coverage. To do so, an IDI would deliver written notice to the FDIC stating that it will voluntarily comply with the requirements of part 370. Such an insured depository institution would be considered a covered institution as of the date on which the FDIC receives the notification.

The proposed amendments also designate a compliance date for insured depository institutions that voluntarily become covered institutions pursuant to the proposed § 370.2(c)(2). The proposed rule would add a new paragraph (d)(3) to § 370.2

providing that the compliance date for such an IDI would be the date on which the covered institution submits its first certification of compliance and deposit insurance coverage summary report pursuant to § 370.10(a). The FDIC recognizes that while an insured depository institution could voluntarily become a covered institution under the proposed amendments, the FDIC should not enforce the requirements of the Rule upon such a covered institution until after it submits a certification of compliance and deposit insurance coverage report.

As a result of this proposed amendment, an IDI that is not covered under part 370 but is covered under § 360.9 (a 360.9 institution) could voluntarily comply with part 370 and be released from § 360.9, pursuant to § 370.8(d), upon submission of the compliance certification and deposit insurance summary report to the FDIC as required under § 370.10(a). A 360.9 institution must continue to comply with § 360.9 until it meets the conditions for release. A significant benefit of this proposed amendment would be that a banking organization with one part 370 covered institution and one 360.9 institution could develop a single unified deposit recordkeeping and IT system that would be compliant with part 370 and no longer have to maintain a separate, parallel system to satisfy the requirements of § 360.9.

*Questions: The FDIC invites comment on its proposal to revise § 370.2(c) to allow an insured depository institution that does not have two million or more deposit accounts to voluntarily comply with part 370. Would insured depository institutions that are not covered institutions under part 370 elect to voluntarily comply? If your banking organization consists of both a part 370 covered institution and a 360.9 institution, would*

*it consider voluntarily complying with part 370? What alternatives, if any, should the FDIC consider?*

***E. Transactional features***

**1. Purpose for identifying deposit accounts with “transactional features”**

In formulating part 370, the FDIC recognized that for certain types of deposit accounts, depositors need daily access to funds, but deposit insurance determinations regarding some of these accounts requires access to records that an IDI is not required to maintain under the existing regulatory framework. For example, deposits may be insured on a pass-through basis under part 330, with records maintained outside of the IDI by an agent or third party authorized to maintain such records. Creating appropriate recordkeeping requirements for those accounts for which the information need not reside at the covered institution, and providing for their timely delivery in a format that permits the FDIC to use a covered institution’s IT system to calculate deposit insurance promptly in the event of a failure, was a central concern of the part 370 rulemaking process.

Originally, in the Advance Notice of Proposed Rulemaking (ANPR) relating to part 370,<sup>9</sup> the FDIC presented a potential solution that involved identifying a large subset of deposits as “closing night deposits.” Under this approach, the covered institution would be required to obtain and maintain data on all closing night deposits at the end of any business day sufficient to make deposit insurance determinations on closing night. Comments to the ANPR led the FDIC to conclude that there was no consensus among potential covered institutions and other interested parties as to what deposits should be considered “closing night deposits.” The FDIC proposed, in the Notice of Proposed

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<sup>9</sup> 80 FR 23478 (April 28, 2015).

Rulemaking for part 370,<sup>10</sup> requiring covered institutions to collect and maintain the necessary depositor information for all deposit accounts, with limited exceptions. Commenters raised concerns about the volume and nature of data that would be transmitted nightly under such approach.

In issuing the final rule, the FDIC adopted a bifurcated approach to recordkeeping requirements. The FDIC generally requires that a covered institution itself maintain the complete set of information required to allow the FDIC to promptly determine the deposit insurance coverage for each deposit account. But for certain accounts, including those that may meet the requirements of §§ 330.5 (Recognition of deposit ownership and fiduciary relationship) and 330.7 (Accounts held by agent, nominee, guardian, custodian or conservator) and certain trust accounts, this information may be maintained off-site and with third parties rather than at the covered institution. These accounts are “alternative recordkeeping” accounts under part 370. The FDIC recognized, however, that some alternative recordkeeping accounts may support depositors’ routine financial needs and require a prompt deposit insurance determination to avoid delays in payment processing should the covered institution’s deposit operations be continued by a successor institution.<sup>11</sup> The FDIC created a definition of “transactional features” to identify such accounts and required covered institutions to certify that, for alternative recordkeeping accounts with transactional features, the account holder will submit to the FDIC the information necessary to complete a deposit insurance calculation with regard

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<sup>10</sup> 81 FR 10026 (February 26, 2016).

<sup>11</sup> 81 FR 87737, 87740. The successor institution may be an open institution that acquires these operations or accepts the transfer of the failed covered institution’s insured deposit liabilities, or a bridge bank organized by the FDIC for such purposes. A failed covered institution’s deposit operations will not be continued in all potential resolution scenarios.

to the account within 24 hours following the appointment of the FDIC as receiver. The FDIC provided a set of exceptions to this certification requirement as well.

The proposed amendments would retain the bifurcated approach to recordkeeping requirements but change the definition used to describe accounts with transactional features, as well as revise the actions of the covered institution required with respect to alternative recordkeeping accounts with transactional features; the set of exceptions to the requirements has been amended as well.

## **2. Proposed amendments to the definition of “transactional features”**

The proposed amendments would narrow the definition of transactional features to focus on accounts capable of making transfers directly from the covered institution to third parties by methods that would necessitate a prompt insurance determination to avoid disruptions to payment processing. Interested parties have expressed concerns that the current transactional features definition is over-inclusive, capturing accounts for which the FDIC would not need to make a deposit insurance determination within 24 hours to achieve its policy goals of preserving stability and avoiding disruption to depositors. Under the existing definition, an account has transactional features if it can be used “to make payments or transfers to third persons or others (including another account of the depositor or account holder at the same institution or at a different institution)” by use of any of a long list of methods. Examples of such deposit accounts include, but are not limited to: deposits placed by third parties with associated sweep accounts, whether or not those sweep accounts are categorized as brokered deposits, and prepaid accounts.<sup>12</sup> The FDIC remains concerned that if the funds in these accounts are not accessible on the

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<sup>12</sup> 81 FR 87734, 87751 (December 5, 2016).

next business day after a covered institution's failure because the FDIC cannot complete the deposit insurance determination, then "the inability to access their funds could result in returned checks and an inability to handle their day-to-day financial obligations."<sup>13</sup>

This breadth of included transfer methods, together with the impression that the described set of transferees is all-inclusive, created the impression among some interested parties that the FDIC intended that all accounts other than some accounts comprised of time deposits fall into the transactional features definition.

The FDIC intends that the transactional features definition itself capture only the subset of alternative recordkeeping accounts for which an insurance determination within 24 hours following its appointment as receiver is essential to fulfillment of its policy objectives noted above. Accordingly, it proposes to amend the definition to narrow the set of accounts that are identified as having transactional features for purposes of part 370. The proposed amendments would define transactional features primarily by reference to the parties who can receive funds directly from the account by methods that may not be reflected in the close-of-business account balance on the day of initiation of such transfer. If the account can be used to make transfers to parties other than the account holder, the beneficial owner of the deposits, or the covered institution itself, by use of a method that results in the transfer not being reflected in the close-of-business ledger balance for the account on the day the transfer is initiated, it is an account with transactional features. Generally, under FDIC rules,<sup>14</sup> on the day of failure, transfers that are included in the close-of-business account balance for an account will be completed, with funds transferred out of the account not being included in the deposit insurance

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<sup>13</sup> Id. at 87752.

<sup>14</sup> See 12 CFR 360.8.

determination for the account. Therefore, such transfers will not be affected by the deposit insurance determination, and any delay in completing the deposit insurance determination for such account will not create delays in processing payments.

Application of this approach can be illustrated by two examples. In the first example, an account that can be used by the account holder or depositor to initiate transfers to other parties by check – a method that may not be reflected on the day of such transfer is initiated, even if prior to the cutoff time for that specific type of transaction – would be an account with transactional features under the proposed definition. This transfer may not be reflected in the close-of-business ledger balance for the account when initiated by delivery of the check to the payee. Under part 370, the FDIC should receive the information necessary to complete a deposit insurance determination with regard to such an account within 24 hours following its appointment as receiver, providing it the ability to minimize disruption to payment processing if the covered institution’s deposit operations are continued following the resolution. In the second example, an account that can only be used to make transfers to others by wire transfer – a method that is reflected in the close-of-business balance for the account if initiated prior to the cutoff time – is not an account with transactional features solely as a result of this transfer capability. The funds transmitted by a timely initiated wire are not included in the close-of-business balance for the account, so no deposit insurance determination with regard to the account is required in connection with the processing of that payment.

The proposed definition of transactional features contains an additional provision, intended to include linked accounts that support accounts with transactional features. Under this provision, an account also has transactional features if preauthorized or

automatic transfer instructions provide for transfers to an account with transactional features at the same institution. These automatic or preauthorized instructions indicate that the deposits in such account are integral to supporting payment processing in the account with transactional features, such that completing a deposit insurance determination in the account otherwise lacking transactional features is essential to ensuring continuing processing of payment instructions at the account with transactional features. It is therefore appropriate to subject such account to the same expectations regarding timely delivery of the information needed to conduct a deposit insurance determination should the covered institution fail.

Unlike under the current definition, the capability to make transfers to another account of the depositor or account holder at another institution does not itself result in an account having transactional features for purposes of part 370 under the proposed definition. The prior definition included such capabilities to capture accounts associated with brokered sweep accounts and prepaid account programs administered by a third party that places deposits at an IDI on behalf of the cardholders or other depositors, regardless of whether such accounts were traditional transactional accounts, such as demand deposit accounts, or money market deposit accounts (MMDA) or savings accounts not traditionally considered transactional in nature. By including these accounts, the FDIC sought to enable deposit insurance determinations within 24 hours following the FDIC's appointment based on its belief that such accounts were relied upon for transactions and material delay could undermine public confidence and be extremely disruptive.<sup>15</sup> In order to achieve this goal, the final rule required covered institutions to

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<sup>15</sup> 81 FR 87734, 87740 (December 5, 2016).

make certifications, described below, regarding future delivery of depositor information by third parties that are not under the control of the covered institution or subject to regulation by the FDIC. Engagement with deposit brokers, covered institutions and their representatives during implementation suggested that the benefit of these requirements might be less than expected, and the burdens of compliance greater given the wide variety of account types, third parties, and arrangements involved.

Many brokered sweep programs and prepaid card programs operate through arrangements involving one or more intermediate or clearing accounts located at institutions other than the covered institution. The day-to-day transactional activity in such programs can occur in accounts outside of the covered institution, with the account at the covered institution being accessed less frequently. The net activity of all of the customers in the program determines whether the periodic activity in the account at the covered institution is a deposit or withdrawal. Covered institutions noted that the other parties involved in the administration of such programs, such as the deposit brokers, broker dealers, program managers, and administrators, have ongoing business relationships with the brokered deposit sweep and prepaid card customers and with other third parties involved in processing customer transactions.

Where customer transactions originate with an instruction first presented to an account at an IDI other than the covered institution, the need to conduct a deposit insurance determination within 24 hours after the covered institution's failure may not exist. According to some of the covered institutions and other industry representatives, the net activity of customers or the schedule for accessing the account at the covered institution, may result in no draw on the account at the covered institution in the days

following failure. Further, interested parties have stated that actions by the other parties involved in the program, such as advancing funds to intermediate accounts during the pendency of a deposit insurance determination to preserve customer relationships, may further ameliorate any disruption to depositors resulting from the failure. As a result, requiring that information needed for deposit insurance determination be delivered in such timeframe may be less beneficial and more burdensome than anticipated. The proposed definition thus no longer captures accounts which transfer to other accounts of the depositors or account holders at IDIs other than the covered institution. It is possible that customers of broker dealers who have cash management accounts or certain prepaid cardholders may experience a delay in their ability to access the funds in their accounts or that underlie their cards if the settlement or processing of their transactions takes place at another IDI but are funded by deposits held in the covered institution.

Prepaid cardholders should, however, have access to the funds loaded on their cards on the next business day after a covered institution fails when prepaid card programs are structured so that the cardholders' transactions actually settle through a deposit account at the covered institution. Note that the proposed definition of accounts with "transactional features" includes linked accounts wholly within the covered institution, to the extent that those accounts support an account with transactional features. Accordingly, a savings account at the covered institution that supports, via automatic or preauthorized instructions, a demand deposit account at the covered institution that can be accessed by prepaid cards or checks – methods that may not be reflected in the close-of-business ledger balance of the account – is itself considered an account with transactional features for purposes of the proposed definition. Finally, when

the covered institution issues the prepaid cards and acts as the program manager of the prepaid account program (and thus, maintains the requisite information regarding the prepaid cardholders), then the prepaid cardholders would have access to their funds on the next business day after the covered institution's failure.

*Questions: The FDIC invites comment on the proposed definition of transactional features. Does the proposed definition improve the description of such accounts? Is the focus on whether or not transfers are reflected in the close-of-business ledger balance for the account a workable approach to defining the transfer capabilities of an account that do not result in it having transactional features? Should other transfers be included in that category? Is it reasonable for the FDIC to rely upon the covered institutions' and other industry representatives' representations regarding the necessity of funds availability in these accounts immediately after failure? Is it possible for the covered institutions to evaluate the potential hardship for broker dealer customers or prepaid cardholders when the programs are structured so that their transactions would settle at another IDI? Should the proposed rule simply remove the definition of transactional features and provide that any special requirements for certain types of deposit accounts be applicable without regard for whether the accounts do or do not have transactional features? What are the other advantages or disadvantages of this proposed amendment? What alternatives, if any, should the FDIC consider?*

**3. Actions required for certain deposit accounts with transactional features under § 370.5(a).**

As part 370 stands now, for those deposit accounts that a covered institution maintains its deposit account records in accordance with the alternative recordkeeping

requirements set forth in § 370.4(b)(1) and that also have transactional features, the covered institution must certify to the FDIC that the account holder “will provide to the FDIC the information needed. . . to calculate deposit insurance coverage. . . within 24 hours after” failure. Covered institutions have expressed concern that this provision imposes a duty on a covered institution to control the actions that an account holder must take after failure, and that a covered institution employee who signs the certification could be liable to the FDIC if an account holder does not take those actions. The FDIC designed this provision with the expectation that covered institutions would work with account holders to create a mechanism by which account holders are able to provide, upon the covered institution’s failure, the information necessary for the covered institution’s IT system to calculate deposit insurance coverage.

It was not the FDIC’s intent to make a covered institution or a covered institution’s employees liable for the actions, or inactions, of an account holder. For this reason, the FDIC is proposing to revise paragraph (a) of § 370.5 by removing the certification requirement and instead requiring covered institutions to take “steps reasonably calculated” to ensure that the account holder would provide to the FDIC the information needed for the FDIC to use a covered institution’s part 370-compliant IT system to accurately calculate deposit insurance available for the respective deposit accounts within 24 hours after the failure of the covered institution. This change should clarify that the covered institution would be expected to design and implement in its IT system the capability to use information provided by account holders after the covered institution’s failure. This change should also clarify that neither the covered institution

nor its employees would be responsible for the actions that an account holder does or does not actually take to supply such information after the covered institution's failure.

Covered institutions would have discretion to determine the methods by which this requirement may be accomplished, but at a minimum "steps reasonably calculated" would include having contractual arrangements in place with account holders that would obligate those account holders to deliver information needed for deposit insurance calculation to the FDIC in a format compatible with the covered institution's IT system immediately upon the covered institution's failure and a disclosure that informs account holders that their delay in delivery of information to the FDIC, or submission in a format that is not compatible with the covered institution's IT system, could result in delayed access to deposits should the covered institution fail and the FDIC need to conduct a deposit insurance determination. This requirement would apply to any deposit account for which the details of the deposit relationship and the interests of the underlying beneficial owners of the deposits are not in records maintained by the covered institution, but in records maintained by the account holder or by some person or entity that has undertaken to maintain such records for the account holder. There could be a delay in the availability of the deposits at the covered institution because the information needed to complete the deposit insurance determination must first be provided by the account holder. This situation would apply to any accounts eligible for pass-through deposit insurance coverage unless the underlying information regarding beneficial ownership of deposits is maintained at the covered institution.

As a result of the proposed amendment discussed above, a conforming amendment would need to be made to paragraph (c) of § 370.5, which provides that a

covered institution will not be in violation of part 370 if the FDIC has granted the covered institution relief from the certification requirement set forth in § 370.5(a). The proposed amendment to § 370.5(a) would remove the certification requirement and § 370.5(c) would no longer be relevant. Therefore, the FDIC is proposing to remove paragraph (c) from § 370.5.

*Questions: The FDIC invites comment on its proposal to revise § 370.5(a) to clarify the actions a covered institution must take pursuant to that paragraph. Generally, would a contractual mechanism between a covered institution and an account holder that requires immediate submission of information needed for deposit insurance calculation help ensure that deposit insurance can be determined quickly for these accounts so that insured deposits can be made available as soon as possible? What are the advantages or disadvantages of adding this language? Does it provide greater clarity regarding the requirements and purpose therefor?*

*Should this requirement apply to all alternative recordkeeping accounts or should it be limited to only those accounts that meet the revised definition of transactional features? Is it more burdensome for covered institutions and account holders to draw a distinction between alternative recordkeeping accounts with transactional features and those without than it would be to simply apply the requirement to all alternative recordkeeping accounts?*

*What impediments, if any, prevent a covered institution from adding language to certain of its deposit account agreements to address means by which an account holder could submit information to the FDIC after failure of the covered institution so that the FDIC, using the capabilities of a covered institution's part 370 compliant IT system,*

*could quickly and accurately calculate deposit insurance and provide access to the relevant deposit account(s)? Would account holders be more likely to supply information needed to calculate deposit insurance coverage in a format compatible with the covered institution's IT system immediately after the covered institution's failure if they are contractually obligated to?*

*What impediments, if any, prevent a covered institution from providing notice to certain account holders that the account holders' delay in providing information to the FDIC after the covered institution's failure may delay access to deposits? Are covered institutions or their account holders receptive to the idea of using technology to expedite the process by which the FDIC determines deposit insurance? What alternatives, if any, should the FDIC consider if this approach is unworkable?*

#### **4. Exceptions from the requirements of § 370.5(a) for certain types of deposit accounts**

Currently, § 370.5(b) provides an enumerated list of accounts that a covered institution need not address in order to make the certification required pursuant to § 370.5(a). The FDIC proposes to retain this list of excepted deposit account types to be clear that covered institutions would not be required to take the actions prescribed in revised § 370.5(a) for those types of accounts. Additionally, the FDIC proposes to make three revisions to this list. First, the FDIC is proposing to expand the exception for mortgage servicing accounts under § 370.5(b)(1) to include all deposits in such an account. Under the Rule, mortgage servicing accounts are excepted from the § 370.5(a) requirement only to the extent that those accounts are comprised of principal, interest, taxes, and insurance. Covered institutions have represented to the FDIC that deposits for

other purposes, such as reserves, may also be held in mortgage servicing accounts. Removing this limitation clarifies that covered institutions need not take the actions required under § 370.5(a) with respect to those accounts.

Second, the FDIC is proposing a technical amendment to § 370.5(b)(4) to correct an incorrect cross reference. The applicable section of the FDIC's regulations governing deposit insurance coverage for deposit accounts held in connection with an employee benefit plan is 12 CFR 330.14, not 12 CFR 330.15(f)(2).

Third, the FDIC is proposing to add to this list deposit accounts maintained by an account holder for the benefit of others to the extent that the deposits in the custodial account are held for: a formal revocable trust that would be insured as described in 12 CFR 330.10; an irrevocable trust that would be insured as described in 12 CFR 330.12; or an irrevocable trust that would be insured as described in 12 CFR 330.13. The FDIC recognizes that an account holder that places deposits with a covered institution on behalf of such a trust may not be able to immediately provide to the FDIC all of the information needed to calculate the total amount of coverage available for deposits insured in any one of these three deposit insurance categories should the covered institution fail. It may take some time for an account holder to obtain such information from a trustee, who in turn may need time to review the relevant trust document and confirm the status of the trust's beneficiaries and the nature of those beneficiaries' interests in the assets of the trust at the time of the covered institution's failure. After the information is submitted by the account holder, the FDIC will need to review trust-specific documentation to verify eligibility for deposit insurance and calculate the amount of coverage available. Moreover, including custodial deposit accounts holding trust deposits among the list of exceptions set forth in

§ 370.5(b), to the extent that those accounts are comprised of trust deposits that would be insured in one of these three deposit insurance categories, would be more consistent with the recordkeeping requirements for trust accounts set forth in § 370.4(b)(2). This is the case because deposit accounts for which a covered institution maintains its deposit account records in accordance with § 370.4(b)(2) would be processed after the information needed for deposit insurance determination is provided by the account holder and the timing for that information submission is within the account holder's discretion and control.

*Questions: The FDIC invites comment on its proposal to revise § 370.5(b) to add an exception for deposit accounts with transactional features that are insured on a pass-through basis, to the extent that the deposits in that deposit account are held for the benefit of a formal revocable trust that would be insured as described in 12 CFR 330.10, an irrevocable trust that would be insured as described in 12 CFR 330.12, or an irrevocable trust that would be insured as described in 12 CFR 330.13. In order to determine whether this exception would apply, are covered institutions able to identify the extent to which such an account is comprised of deposits that would be insured in one of the three deposit insurance categories that provide additional deposit insurance for trusts? What are the advantages or disadvantages of this proposed amendment? Generally, would delayed access to deposits in these accounts present hardship to the account holder or the beneficial owner(s) of the deposits? What alternatives, if any, should the FDIC consider?*

*Should other types of deposit accounts be included in the list of exceptions set forth in § 370.5(b)? Why should those types of deposit accounts be excepted? What would*

*be the consequences of delayed access to the deposits in those types of deposit accounts if the account holder does not supply information needed for deposit insurance calculation immediately upon a covered institution's failure?*

**F. Recordkeeping requirements**

**1. Alternative Recordkeeping Requirements for Certain Trust Accounts**

Part 370 currently provides covered institutions with the option of meeting the alternative recordkeeping requirements set forth in § 370.4(b)(2) rather than the general recordkeeping requirements set forth in § 370.4(a) for certain types of trust deposit accounts. Specifically, formal revocable trust deposit accounts that are insured as described in 12 CFR 330.10 (“REV accounts,” for which the corresponding right and capacity code is “REV” as set forth in Appendix A) and irrevocable trust deposit accounts that are insured as described in 12 CFR 330.13 (“IRR accounts,” for which the corresponding right and capacity code is “IRR” as set forth in Appendix A) are eligible for alternative recordkeeping under § 370.4(b)(2). Covered institutions must meet the general recordkeeping requirements set forth in § 370.4(a) with respect to irrevocable trust deposit accounts that are insured as described in 12 CFR 330.12 (“DIT accounts,” for which the corresponding right and capacity code is “DIT” as set forth in Appendix A). It is the FDIC’s expectation that, where a covered institution is the trustee for an irrevocable trust, the covered institution will have the information needed to calculate the amount of deposit insurance coverage for such trust’s deposit account(s) at any given time. This information would be, among other things, the identities of trust beneficiaries and their respective interests. The FDIC recognizes that the covered institution as trustee would need to be able to monitor for changes in facts that impact deposit insurance

coverage afforded to the trust and update its deposit account records when such changes occur in order for the covered institution's IT system to accurately calculate deposit insurance coverage within the first 24 hours after failure should the covered institution be placed in receivership.

Representatives of covered institutions have explained to FDIC staff that updating deposit account records continuously could be overly burdensome or impracticable in some cases, and that there may be a significant lag between the time at which a change occurs, the time at which the covered institution as trustee becomes aware of the change, and the time at which the covered institution can update its deposit account records accordingly for purposes of part 370. The FDIC acknowledges that covered institutions face challenges in meeting the general recordkeeping requirements for these accounts but seeks to gain a better understanding of the impediments a covered institution faces in its efforts to update deposit account records upon changes in facts affecting deposit insurance coverage for DIT accounts. The FDIC also seeks to gain a better understanding of the adverse impact of delay in the ability to access and use deposits in a DIT account while the deposit insurance determination is pending. The FDIC is proposing to revise § 370.4(b)(2) to include DIT accounts as another category of deposit accounts for which a covered institution may meet the alternative recordkeeping requirements rather than the general recordkeeping requirements should it find that such change is justified. For DIT accounts specifically, a covered institution would not need to maintain the unique identifier of the grantor(s), however, because DIT accounts are insured without regard to the rule for aggregation by grantor applicable in the IRR and REV categories for deposit insurance. To conform with this proposed amendment, § 370.4 would be revised by

removing paragraph (a)(1)(iv), which currently requires a covered institution to maintain in its deposit account records for each DIT account the unique identifier for the trust's grantor and each trust beneficiary.

The FDIC is also proposing a technical amendment to § 370.4(b)(2)(iii) to replace the requirement that a covered institution maintain in its deposit account records for certain trust deposit accounts the corresponding "pending reason" code from data field 2 of the pending file format set forth in Appendix B. Instead, § 370.4(b)(2)(iii) of the proposed rule would require covered institutions to maintain in the respective deposit account records the corresponding "right and capacity code" from data field 4 of the pending file format set forth in Appendix B. Covered institutions should be able to identify which of the right and capacity codes apply for deposit accounts that fall into this recordkeeping category. This determination can be made based on the titling of the deposit account or documentation maintained in a covered institution's deposit account records concerning the relationship between the covered institution and the named account holder.

*Questions: The FDIC invites comment on its proposal to revise § 370.4(b)(2) to include irrevocable trust deposit accounts that are insured as described in 12 CFR 330.12. What are the advantages or disadvantages of allowing a covered institution to maintain in its deposit account records less than all of the information needed to calculate deposit insurance coverage for such deposit accounts? What impediments does a covered institution face in its efforts to update deposit account records upon a change in facts and circumstances affecting deposit insurance coverage for DIT accounts? Will delayed access to deposits in DIT accounts present hardship to the respective trusts while*

*the deposit insurance determination is pending? What alternatives, if any, should the FDIC consider?*

*Under § 370.4(b)(2)(ii), a covered institution is required to maintain the unique identifier of the grantor of a trust in its deposit account records for certain trust accounts. Covered institutions have represented that the identity of a trust's grantor is not typically maintained in an IDI's records. The FDIC invites comment on this requirement. What types of trust accounts is this the case for? Would it be difficult for covered institutions to obtain the grantor's identity in order to assign a unique identifier if identifying information is not maintained in the deposit account records for certain types of trust accounts?*

**2. Recordkeeping requirements for deposits resulting from credit balances on an account for debt owed to the covered institution.**

During the FDIC's outreach calls and meetings with many covered institutions, the covered institutions described many functional and operational impediments to their ability to comply with the various recordkeeping requirements of § 370.4. Generally, when the covered institution maintains the requisite depositor information in its own records to perform the deposit insurance calculation, the FDIC would expect the covered institution to comply with § 370.4(a) of the regulation. Other types of accounts, like agent or fiduciary accounts (based on pass-through deposit insurance principles), certain trust accounts, and official items, have already been addressed in §§ 370.4(b) and –(c). However, another recordkeeping problem raised by the covered institutions occurs when a borrower of a covered institution has a credit balance on a debt owed to a covered institution. For example, if a bank customer/credit cardholder has a positive balance on a

credit card account after returning merchandise and receiving a credit to the account, then that credit amount would be recognized as the customer's "deposit" at the covered institution. In accordance with § 3(l)(3) of the FDI Act, such an overpayment on a debt owed to a covered institution would constitute a deposit.<sup>16</sup> The FDIC must include (and aggregate, if necessary) such a deposit in order to perform a deposit insurance determination in the event of a covered institution's failure.

Upon initial review, it would appear that a covered institution should be able to comply with the requirements of § 370.4(a) because the covered institution will presumably have in its IT system(s) all of the relevant information regarding the depositor (created by making an overpayment on his or her outstanding debt with the covered institution). The problem, as described to the FDIC by various covered institutions, is that the requisite information regarding the ownership of the deposit, the amount of the deposit as well as other relevant information such as a unique identifier, would be maintained on a covered institution's loan platform rather than on any of its deposit systems. Moreover, the deposit platforms are not necessarily linked or integrated in any way with a covered institution's various loan platforms. The covered institutions have informed the FDIC that it would be unduly expensive for them to integrate or link the various loan platforms with their deposit systems based on their assertions that not many of the credit balances are very high; i.e., much lower than the SMDIA. Therefore, they question the need to incur the cost to integrate the loan platforms with the deposit systems.

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<sup>16</sup> 12 U.S.C. 1813(l)(3).

The FDIC understands that for an individual loan account, the amount of a customer's credit balance may not seem significant. Nevertheless, if the FDIC were obligated to conduct a deposit insurance determination upon the failure of a covered institution, part of that process would require the FDIC to include and aggregate the credit balance/deposit with any other deposit accounts owned by that particular depositor held in the same right and capacity. For example, a depositor could have a deposit of \$ 250,000 in the covered institution in the individual right and capacity as well as a credit balance of several thousand dollars. If the FDIC is unable to identify the credit balance and aggregate that amount with the other deposit funds held in the covered institution in the same right and capacity, then the FDIC will pay out uninsured deposits to that individual depositor. While several thousand dollars might not seem to be significant with respect to one depositor, the FDIC would risk overpaying a number of depositors if it were not possible for the FDIC to restrict access to the credit balances on all affected accounts until a full deposit insurance determination could be completed. In the aggregate, the amount of overpayment could be significant. Additionally, the covered institutions have asserted that this operational issue applies to all of their various loan platforms, including credit cards, home equity lines of credit (HELOCs), automobile loans, and mortgage loans. Again, in the aggregate, overpayments on a number of accounts across many different loan platforms could result in a significant pay out of uninsured funds to the failed covered institution's depositors. Such a result would be in contravention of the FDIC's statutory mandate to make payment of "*insured deposits ... as soon as possible.*"<sup>17</sup>

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<sup>17</sup> 12 U.S.C. 1821(f)(1) (Emphasis added).

In order to address the covered institutions' concerns, the FDIC is proposing to add a new paragraph (d) to § 370.4. Covered institutions would not be required to comply with the recordkeeping requirements of § 370.4(a) even though they maintain the depositor information necessary to perform a deposit insurance determination on their internal IT systems – just not their deposit platforms. In lieu of integrating their various loan platforms with their deposit systems, the covered institutions would be required to address the issue of credit balances existing on their loan platforms in another manner.

Section 370.4(d)(1) would require that immediately upon a covered institution's failure, its IT system(s) must be capable of restricting access to (i) any credit balance reflected on a customer's account associated with a debt obligation to the covered institution or (ii) an equal amount in the customer's deposit account at the covered institution. The FDIC believes that it would be preferable for the covered institutions to be able to restrict access to the credit balances on the associated loan platform. Over the closing weekend, if access to the credit balance is not restricted, then the credit cardholder, for example, would be able to charge expenses to the credit card account which would, in effect, eliminate the credit balance. The elimination of the credit balance represents a payment of deposit insurance. If the credit cardholder's deposit account funds are also released "as soon as possible," then the outflow of deposit insurance funds could result in a payment of uninsured funds to that depositor and credit cardholder.

Many of the covered institutions have asserted that it is not possible to restrict access to the credit balances associated with their customers' loan accounts. The alternative approach would be for the covered institution's IT system to be able to restrict access to an amount equal to the credit balance on the customer's deposit account at the

covered institution. This second option raises a concern that the requisite information from the covered institution's loan platform regarding the identity of the customer/depositor, the amount of the credit balance, and the appropriate right and capacity will not be available in time to restrict access to an equivalent amount in the corresponding deposit account. The FDIC's objective is to make funds in transactional accounts available to a failed covered institution's depositors by the next business day. If the funds in deposit accounts are released before the amount of the credit balance is restricted, then the FDIC would again be faced with the possibility that uninsured funds would be paid to the failed covered institution's depositors. Nevertheless, § 370.4(d)(1)(ii) allows the covered institution to ensure that its IT system would be capable of restricting access to an amount equal to the overpayment in the customer's deposit account instead.

In order to complete the deposit insurance determination, a covered institution must be able to extract the requisite information from the data on its loan platforms to create a file listing the credit balances on the loan accounts as well as the other data fields as set forth in the file included as Appendix C to this regulation. The file included as Appendix C to this part 370 is derived from the "Broker Input File Requirements" set forth in Section V of the FDIC's *Deposit Broker's Processing Guide*. Additionally, a field to identify the ownership right and capacity code has been included. The FDIC determined that it would be appropriate to include the file as part of the regulation because its use in this context is somewhat different than its customary use for third parties that have deposited funds on behalf of others and who maintain the records identifying the underlying beneficial owners. In the situation where the covered

institution's loan customer has a credit balance which is recognized as a deposit, the covered institution actually maintains the necessary information to enable its IT system to perform the deposit insurance calculation; the requisite data is housed, however, on a different loan platform. The FDIC would expect the covered institution's IT system, which must be compliant with § 370.3(b), to be able to accept and process the file as formatted in Appendix C. In contrast, while the FDIC suggests that deposit brokers and other account holders acting as agents or fiduciaries submit their depositors' information in the format set forth in the *Deposit Broker's Processing Guide*, a third party deposit broker or agent for a beneficial owner is not required to provide the deposit ownership information in that format. Most of these third party deposit brokers are not subject to the FDIC's supervision or regulation.

Section 370.4(d)(2)(i) would require the covered institution to be able to generate a file in the format set forth in Appendix C within 24 hours of failure for all credit balances related to open-end loans (revolving credit lines) such as credit card accounts and HELOCs. In other words, the 24-hour requirement would apply to any type of consumer loan account where the customer or borrower has the ability to draw on the credit line without the prior approval or intervention of the covered institution. This time frame would be necessary to ensure that the FDIC would have sufficient time, after the covered institution's failure, to identify the loan customers with credit balances, match them to their corresponding deposit accounts, and restrict access to an amount equal to the overpayment in the customer's deposit account before the next business day. As mentioned previously, it is always the FDIC's goal to make insured funds available to all depositors of a failed insured depository institution as soon as possible, ideally on the

next business day after failure. Nevertheless, if this process does not work as intended, then the FDIC will be unable to make deposit insurance payments without the potential for overpayment.

With respect to all other types of loan accounts with overpayments, § 370.4(d)(2)(ii) would require the covered institution to be able to generate a file in the format set forth in Appendix C promptly after the covered institution's failure. For closed-end loan accounts, where the borrower has paid more than the balance owed or the outstanding principal balance, the credit balances would not be available or accessible to the customer without the covered institution's authorization or initiation of the payment. Examples of such loan accounts would include a final payment on a mortgage loan or auto loan which exceeds the payoff amount. Because the credit balance would not be readily available to the customer prior to the final deposit insurance calculation, from the FDIC's perspective, there would not be as much urgency to receive and process the file as provided in Appendix C.

*Questions: The FDIC requests comment on this proposal to allow recordkeeping for deposits reflected as credit balances on a debt account pursuant to a different procedure. Could covered institutions produce the file set forth in Appendix C to be used by the covered institution's IT system to calculate deposit insurance coverage within the first 24 hours after the covered institution's failure? Should this time frame apply to credit balances on both open-end and closed-end loan accounts? What are the approximate costs and IT challenges of developing the capabilities to restrict access to credit balances as reflected on the loan account platforms? Are there other examples of*

*either closed-end or open-end loan products that should be explicitly recognized or mentioned?*

**G. Relief**

**1. Exception requests generally**

The FDIC is proposing to revise § 370.8(b) to clarify the required elements of a covered institution's exception request. The FDIC also proposes to revise the Rule to expressly allow submission of a request by more than one covered institution for exception from one or more of the Rule's requirements. While part 370 currently does not preclude this, the FDIC is proposing this revision to expressly permit a joint submission because some scenarios under which a grant of exception would be appropriate would be common to multiple covered institutions. Submission of a joint exception request would allow covered institutions to better manage resources, and it would allow the FDIC to streamline exception determinations. Each covered institution would still be required to submit the institution-specific data required to substantiate the request as required under current § 370.8(b).

*Questions: The FDIC invites comment on its proposal to revise § 370.8(b)(1).*

*Would this proposed clarification reduce burden for covered institutions generally?*

*Would covered institutions coordinate to submit joint exception requests?*

**2. Publication of FDIC's response to exception requests**

The FDIC also proposes to add a new paragraph (b)(2) to § 370.8 to provide that the FDIC will publish in the *Federal Register* a notice of its response to each exception request. This change would facilitate transparency and enable covered institutions to better understand the types of requests that the FDIC would grant or deny and the reasons

therefor. The FDIC's notice of exception would not disclose the identity of the requesting covered institution(s), nor any confidential or material nonpublic information.

*Questions: The FDIC invites comment on its proposal to revise § 370.8 by adding a new paragraph (b)(2). Should the FDIC publish notice of all exceptions requested? Should the FDIC publish only exceptions that are granted and not those that are denied? Is there a reason that the FDIC should not publish notice of its response to exceptions requested by covered institutions?*

### **3. Certain exceptions deemed granted**

The FDIC is proposing a new paragraph (b)(3) to § 370.8 that would allow a covered institution to notify the FDIC that, based on substantially similar facts and the same circumstances as presented in the notice published by the FDIC pursuant to § 370.8(b)(2) in the proposed rule, the covered institution elects to use the same exception. Such exception would be considered granted subject to the same conditions stated in the FDIC's published notice unless the FDIC informs the covered institution to the contrary within 120 days after receipt of the covered institution's notification letter. Under this proposed amendment, the covered institution's notification letter would need to include the information required under § 370.8(b)(1), cite the applicable notice of exception published pursuant to § 370.8(b)(2), and demonstrate how the covered institution's exception is based upon substantially similar facts and the same circumstances as described in the applicable notice published by the FDIC. The FDIC believes that § 370.8(b)(3) of the proposed rule would provide covered institutions with more flexibility and clarity regarding exceptions to part 370's requirements. It would also minimize time spent by FDIC and covered institutions alike on processing this type of exception request.

*Questions: The FDIC invites comment on its proposal to revise § 370.8 to add this new paragraph (b)(3). Is “substantially similar facts and the same circumstances” a reasonable basis for deeming an exception granted? Is the 120-day time frame for FDIC to notify a covered institution to the contrary sufficient? Is this time frame too long or too short? What alternatives, if any, should the FDIC consider?*

#### **H. Technical modifications**

##### **1. Technical amendment to revise § 370.1 “Purpose and scope”**

The FDIC is proposing a technical amendment to § 370.1 to correct a cross reference. The applicable paragraph in which the term “covered institution” is defined is § 370.2(c), not § 370.2(a).

##### **2. Technical amendment to remove definition of “brokered deposit” from § 370.2**

The FDIC is proposing a technical amendment to § 370.2(b) to remove the definition of “brokered deposit” because that term is not used in the regulatory text of part 370. Paragraph (b) of § 370.2 references 12 CFR 337.6(a)(2), the source for the substantive definition of the term. This paragraph would be reserved for future use, if needed.

##### **3. Technical amendment to revise recordkeeping requirements for official items**

Under § 370.4(c), a covered institution is required to maintain in its deposit account records the information needed for its IT system to calculate deposit insurance coverage with respect to payment instruments drawn on an account of the covered institution such as a cashier’s check, teller’s check, certified check, personal money order, or foreign draft (commonly referred to as “official items”). Such payment

instruments represent deposit liabilities of the covered institution to the respective payees. To illustrate the types of payment instruments that could be used to draw on the account, this paragraph contains a non-exhaustive list of examples, concluding with “or any similar payment instrument that the FDIC identifies in guidance issued to covered institutions in connection with this part.” The FDIC recognizes that the inclusion of this language would incorporate guidance, which does not carry the force and effect of law, into a regulatory requirement and proposes that this reference to future guidance be removed. The FDIC seeks to minimize the confusion between rules duly issued through notice and comment rulemaking and agency guidance. Therefore, the FDIC proposes that this reference to future guidance be removed.

#### **4. Technical amendment to revise IT system requirements**

The FDIC is proposing to amend § 370.3(a) by adding a reference to the proposed new paragraph (d) in § 370.4, which addresses recordkeeping treatment for deposits resulting from credit balances on an account for debt owed to a covered institution. For such deposits, a covered institution’s IT system must be able to meet the requirements set forth in § 370.3(b), as modified by the proposed new paragraph (d) in § 370.4, after the covered institution’s IT system generates an input file containing the data elements needed to calculate deposit insurance coverage factoring in those credit balances. Covered institutions that implement this mechanism would develop the capability for their IT systems to produce the necessary data. The data would not be supplied by the account holder (in this situation the debtor listed on the account for debt owed to a covered institution), but by a covered institution’s IT system itself using information maintained in its records for the respective debt account. For this reason, the FDIC

proposes to strike the reference to information collected “from the account holders” in the last sentence of § 370.3(a). Instead, the sentence would read “. . . information collected after failure. . .” because additional information needed to calculate deposit insurance for accounts for which the general recordkeeping requirements set forth in 370.4(a) are not met may be supplied by the respective account holders, but may also be supplied by an additional data production process developed by a covered institution.

**5. Technical amendment to revise general recordkeeping requirements**

The FDIC is proposing to add a new paragraph (d) in § 370.4, which addresses recordkeeping treatment for deposits resulting from credit balances on an account for debt owed to a covered institution. As a result, § 370.4(a) would need to be amended to include a reference to that new paragraph. To the extent that a covered institution elects to meet the recordkeeping requirements set forth in the proposed new § 370.4(d), it would not need to meet the general recordkeeping requirements set forth in § 370.4(a).

**6. Technical amendment to revise 370.8(d) regarding release from 12 CFR 360.9**

The FDIC is proposing a technical amendment to § 370.8(d) to clarify that a covered institution that is released from § 360.9 under § 370.8(d) remains released from § 360.9 only for so long as it is a covered institution as defined by part 370. If a part 370 covered institution released from § 360.9 ceases to be a part 370 covered institution, and would otherwise be a 360.9 institution, then it must comply with the requirements of § 360.9 (unless it has independent basis for exemption from § 360.9).

**7. Technical amendment to revise § 370.10(b) “FDIC Testing”**

The FDIC is proposing a technical amendment to § 370.10(b)(1) to clarify that material changes to a covered institution's IT system, deposit-taking operations, or financial condition *occurring after the covered institution's compliance date* could result in more frequent testing. The FDIC does not expect to conduct compulsory testing on the basis of changes to a covered institution's IT system, deposit-taking operations, or financial condition *before* a covered institution's compliance date. A covered institution's compliance date may be accelerated, however, on the conditions specified in § 370.7 regarding accelerated implementation.

**8. Technical amendment to revise § 370.7(a)(2)**

In 2018, 12 CFR parts 324 and 325 were revised to consolidate the prompt corrective action capital category definitions into 12 CFR part 324. The FDIC is proposing a technical amendment to § 370.7(a)(2) to revise the cross reference by 12 CFR part 324 instead of 12 CFR part 325.

**9. Technical amendment to revise “Appendix B to part 370 – Output Files Structure”**

Appendix B to part 370 provides basic templates for four information files that a covered institution's IT system must be able to produce during its process for calculating deposit insurance. These files must be retained afterward as a record of the calculation. Some of the data that would be included in these files is essential for deposit insurance calculation, while some is non-essential but nonetheless useful. The FDIC is proposing to revise these data file templates to indicate what data is non-essential and therefore may be omitted while the covered institution does not have the information needed to populate the field.

*Questions: The FDIC invites comment on its proposal to revise these data file templates to indicate which data fields must be populated by the covered institution's IT system and which data fields should be populated if the covered institution has such data. Has the FDIC identified any fields for which a "null value" is not permissible, but for which a covered institution does not maintain the relevant data? If so, why doesn't the covered institution maintain that data?*

#### **IV. Expected Effects**

The proposed rule is likely to benefit covered institutions by reducing compliance burdens associated with part 370. Additionally, the proposed rule is likely to benefit financial market participants by helping to support prompt determination of deposit insurance in the event a covered institution fails. The Rule requires all IDIs with two million or more deposit accounts to have complete deposit insurance information, by ownership right and capacity, except as otherwise permitted. As of December 31, 2018, there were 36 covered institutions. The compliance date for these covered institutions is April 1, 2020. Although the compliance date of April 1, 2020, has not yet been reached, we consider the effects of the proposed rule relative to a baseline that includes the cost to covered institutions estimated for compliance with the Rule. The FDIC estimates that part 370 will result in compliance costs of \$362.4 million for 36 FDIC-insured institutions.<sup>18</sup> The proposed amendments will likely mitigate some of those costs.

##### **A. Benefits**

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<sup>18</sup> The 2016 Final Rule estimated total costs of \$478 million, with \$386 million of those costs to 38 covered financial institutions and the remainder borne by the FDIC and account holders. See 12 CFR Part 370 RIN 3064-AE33, *Recordkeeping for Timely Deposit Insurance Determination*, Federal Register, Vol. 81, No. 233, Monday, December 5, 2016 for further discussion of the cost estimation model. For this proposed rule, the FDIC updated the list of covered institutions to 36 as of the effective date of the 2016 Final Rule. The FDIC also updated the data in the model to December 31, 2018.

As discussed earlier, the proposed rule would offer covered institutions that became covered institutions on the effective date the option to extend their April 1, 2020, compliance date by up to one year. The option of extending the implementation period would grant covered institutions that elect to extend their compliance date greater flexibility to comply with part 370 in a manner that would be less burdensome. Feedback the FDIC has received from covered institutions suggests that they would benefit from this proposal. It is difficult to quantify how much covered institutions would benefit from this compliance date extension option because the FDIC does not know how many institutions will elect to use it or the progress they may have already made towards compliance.

Similarly, streamlining the exception request process is expected to reduce the costs to covered institutions for obtaining exceptions from the Rule's requirements. The FDIC does not know how many covered institutions will request such relief, so the benefits of this portion of the proposed rule are difficult to quantify.

As discussed previously, the part 370 does not provide for an adjustment period for a covered institution to comply with part 370 after a merger has occurred. The proposed rule amends part 370 to give covered institutions involved in a merger a one-year grace period for compliance violations. This additional relief for merger activity would grant covered institutions greater flexibility to comply with part 370 in a manner that is less burdensome, thereby potentially reducing compliance costs. It is difficult to estimate the benefits this proposed amendment would provide covered institutions because it is difficult to estimate the volume of future merger activity or the extent to

which additional efforts would be needed to integrate deposit account recordkeeping or IT system capabilities.

The proposed amendments address recordkeeping concerns for several types of accounts and would reduce the associated recordkeeping burdens. These include accounts where electronic evidence of an account relationship exists, certain trust accounts, certain accounts with transactional features that are eligible for pass-through deposit insurance, mortgage servicing accounts, and others. These proposed amendments would likely benefit covered institutions by reducing their total compliance costs without unduly increasing the risk of untimely deposit insurance payments; however, it is difficult to quantify these benefits because the FDIC does not currently have access to data on the number of such accounts held by covered institutions.

The proposed rule also improves the clarity of certain part 370 provisions and makes corrections. This is expected to benefit covered institutions by reducing uncertainty regarding compliance with part 370. The benefits to covered institutions of these proposed amendments is difficult to quantify because the FDIC does not have access to data that would shed light on the extent to which compliance costs by covered institutions were increased as a result of uncertainty.

The reductions in recordkeeping requirements associated with the proposed rule would likely reduce the current estimated compliance burdens associated with part 370. It is difficult to estimate the benefits each covered institution is likely to incur as a result of the proposed rule because the estimation depends upon the progress each covered institution has already made toward compliance, and the likelihood that a covered institution would avail itself of the benefits offered by the proposed amendments, among

other things. Additionally, it is difficult to estimate the benefits each covered institution would be likely to enjoy as a result of the proposed rule because the FDIC does not currently have access to data on the number of accounts held by covered institutions for which these benefits would accrue.

For all the reasons described in this section, quantitative estimates of the reduction in recordkeeping burden under the proposed rule are subject to uncertainty. That being said, an analysis of deposit account information at covered institutions suggested that the proposed rule could affect an estimated one to 20 percent of accounts on average for covered institutions.<sup>19</sup> The realized effect would vary depending upon the types of accounts that a covered institution holds. The more accounts a covered institution has, the greater the reduction in recordkeeping requirements these proposed amendments would likely provide. To conservatively estimate the expected benefits of the proposed rule, the FDIC assumed that the reduced recordkeeping requirements would affect between one and 20 percent of all deposit accounts at covered institutions. Therefore, the proposed rule is estimated to reduce the compliance burden of part 370 to between 41,738 and 836,028 hours for all covered institutions, which equates to an estimated reduction in compliance costs of between \$2.0 million and \$41.8 million.

## **B. Costs**

The proposed rule is unlikely to impose any significant costs to covered institutions. The proposed rule would offer covered institutions that became covered institutions on the effective date the option to extend their April 1, 2020, compliance date

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<sup>19</sup> The FDIC analyzed the dollar volume of retirement, mortgage servicing, and trust accounts as reported on the December 31, 2018, Call Report for covered institutions. Additionally, the FDIC analyzed pre-paid card account data from The Nilson Report's, Top 50 U.S. Prepaid Card Issuers July 2015, Issue 1067 to determine an estimated range of deposit accounts at covered institutions that might be affected by the proposed rule.

by up to one year. Expanding the time to comply with part 370 would increase the risk that a covered institution might fail without having fully implemented the capabilities that part 370 calls for. An inability to make timely deposit insurance determinations for deposit accounts at a covered institution could increase the potential for disruptions to check clearing processes, direct debit arrangements, or other payment system functions. However, the FDIC does not believe that the incremental costs or risks of extending the initial compliance date for up to one additional year are large. Also, the FDIC presumes that covered institutions have made some progress toward compliance in the past two to three years, likely mitigating the issues that would be associated with recordkeeping deficiencies in the event that a covered institution were to fail. Finally, to the extent that covered institutions have made some progress toward compliance with part 370, the proposed rule may pose some small costs associated with requisite changes to part 370 compliance efforts. However, the FDIC believes that these costs are likely to be small. The FDIC estimates that covered institutions requesting exception from certain part 370 requirements will expend 60 labor hours doing so on average.

*The FDIC invites comment on the information presented in this section. Are there any other costs or benefits the FDIC should consider?*

## **V. Alternatives Considered**

The FDIC considered several alternatives while developing this proposal. The FDIC first considered leaving part 370 unchanged. The FDIC rejected this alternative because the proposed rule would benefit covered institutions by reducing compliance burdens or clarifying some of the requirements while still supporting a prompt deposit insurance determination process in the event of failure. The FDIC considered providing a

one-year extension to all covered institutions that were covered institutions as of the effective date of part 370, but opted instead for the elective extension as the burden of obtaining the extension is minimal and is outweighed by the value of earlier compliance and the information regarding compliance status to be gained by the proposed approach. The FDIC considered limiting the availability of the alternative recordkeeping requirements for deposits resulting from credit balances on accounts for debt owed to the covered institution to overpayments on credit card accounts, but rejected this approach as the same difficulties that justified this alternative could arise in connection with other debts to the covered institution. The FDIC considered not requiring covered institutions to deliver notification letters to the FDIC prior to relying on exceptions granted to other covered institutions, but rejected this approach due to the FDIC's need to be aware of which covered institutions are relying on previously granted exceptions.

*The FDIC invites comment on these alternatives and any others not discussed in this section.*

## **VI. Regulatory Analysis and Procedures**

### ***A. Paperwork Reduction Act***

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The information collection related to this proposed rule is entitled “Recordkeeping for Timely Deposit Insurance Determination” and has been cleared by

OMB under Control Number 3064-0202. This information collection will be extended for three years, with revision. The information collection requirements contained in this proposed rule have been submitted by the FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320).

*Comments are invited on:*

- *Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;*
- *The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;*
- *Ways to enhance the quality, utility, and clarity of the information to be collected;*
- *Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and*
- *Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.*

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395-6974; or e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), Attention, FDIC Desk Officer.

*Proposed Information Collection*

*Title of Information Collection:* Recordkeeping for Timely Deposit Insurance

Determination.

*Frequency:* On occasion.

*Affected Public:* Insured depository institutions having two million or more deposit accounts and their depositors.<sup>20</sup>

*Current Action:* The proposed rule is estimated to reduce recordkeeping and reporting requirements by 418,026 hours or \$20.9 million dollars. The proposed rule would reduce compliance burdens for covered institutions associated with recordkeeping and reporting in the following ways:

- Removing the certification requirement covered institutions must make with respect to deposit accounts with transactional features that would be eligible for pass-through deposit insurance coverage;
- Enabling covered institutions to maintain deposit account records for certain trust accounts in accordance with the alternative recordkeeping requirements set forth in § 370.4(b)(2) rather than the general recordkeeping requirements set forth in § 370.4(a);
- Offering a different recordkeeping/reporting method for deposits created as a result of credit balances on accounts for debt owed to a covered institution;
- Enabling covered institutions to file joint requests for exception pursuant to § 370.8(b); and

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<sup>20</sup> Covered institutions will, as necessary, contact their depositors to obtain accurate and complete account information for deposit insurance determinations. For the purposes of this analysis, the FDIC assumes that depositors will voluntarily respond.

- Deeming certain exceptions granted if based on substantially similar facts and the same circumstances as a request previously granted by the FDIC.

An analysis of deposit account information at covered institutions suggested that the proposed rule could affect an estimated one to 20 percent of accounts on average, for covered institutions.<sup>21</sup> The realized effect would vary depending upon the types of accounts that a covered institution offers. The more deposit accounts a covered institution has, the greater the reduction in recordkeeping requirements these proposed amendments would provide. To conservatively estimate the expected benefits of the proposed rule, the FDIC assumed that between one and 20 percent of all deposit accounts at covered institutions would be affected.

For the purposes of the Paperwork Reduction Act, the FDIC estimates that approximately 10 percent of non-retirement accounts consist of the type of accounts for which the FDIC has granted relief. The number of accounts affects only one of eight components of the burden model for the final rule for part 370 adopted in 2016 (the 2016 Final Rule): Legacy Data Clean-up. This component consists of two portions: 1) automated clean-up, and 2) manual clean-up. The number of accounts affects only the manual portion associated with correcting bank records, and thus the proposed rule would affect only that estimate.

Using this adjusted burden as a baseline for the burden reduction of the proposed rule, we estimate that the proposed rule would reduce the implementation burden by 418,026 hours. This includes 418,058 of burden reduction but adds 32 hours of additional

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<sup>21</sup> The FDIC analyzed the dollar volume of retirement, mortgage servicing, and trust accounts as reported on the December 31, 2018, Call Reports for covered institutions.

burden for requests for extensions and exemptions under the proposed rule. The proposed rule would not change the annual ongoing burden.

For the purpose of the 2016 Final Rule, the FDIC estimated that manual data clean-up would involve a 60 percent ratio of internal to external labor, and that this labor would cost \$65 per hour and \$85 per hour, respectively. The FDIC assumed that 5 percent of deposit accounts had erroneous account information and that manual labor would correct 10 accounts per hour of effort. The FDIC also assumed that for every hour of manual labor used by covered institutions, depositors would also exert one hour toward correcting account information at a national average wage rate of \$27 per hour. From this, the FDIC estimated a total implementation cost of manual data clean-up of \$207.4 million.

As with the burden hours, the FDIC adjusted the original burden model to account for updated data and included IDIs that were actually covered by the Rule as a new baseline. After this adjustment, the FDIC estimates that the cost of manual data clean-up fell to \$188.1 million, a decrease of \$20.9 million because of the proposed rule.

### *Methodology*

In estimating the costs of part 370, the FDIC engaged the services of an independent consulting firm. Working with the FDIC, the consultant used its extensive knowledge and experience with IT systems at financial institutions to develop a model to provide cost estimates for the following activities:

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

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

Cost estimates for these activities were derived from a projection of the types of workers needed for each task, an estimate of the amount of labor hours required, an estimate of the industry average labor cost (including benefits) for each worker needed, and an estimate of worker productivity. The analysis assumed that manual data clean-up would be needed for 5 percent of deposit accounts, 10 accounts per hour would be resolved, and internal labor would be used for 60 percent of the clean-up. This analysis also projected higher costs for IDIs based on the following factors:

- 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 business lines, accounts, and operations.

Approximately half of part 370's estimated total costs are attributable to legacy data clean-up. These legacy data clean-up cost estimates are sensitive to both the number of deposit accounts and the number of deposit IT systems. More than 90 percent of the legacy data clean-up costs are associated with manually collecting account information from customers and entering it into the covered institutions' IT systems. Data

aggregation, which is sensitive to the number of deposit IT systems, makes up about 13 percent of the Rule’s estimated costs.

The 2016 Final Rule estimated total costs of \$478 million, with \$386 million of those costs to 38 covered financial institutions and the remainder borne by the FDIC and account holders.<sup>22</sup> For this proposed rule, the FDIC updated the list of covered institutions to 36 as of the effective date of the 2016 Final Rule and the types of accounts covered. The FDIC also updated the data in the model to December 31, 2018.

**Implementation Burden:**<sup>23</sup>

	<i>Number of respondents<sup>24</sup></i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response<sup>25</sup></i>	<i>Estimated total annual burden hours</i>
<b>2016 Final Rule</b>				
Lowest Complexity Institutions	12	1	31,054	372,648
Middle Complexity Institutions	13	1	46,342	602,446
Highest Complexity Institutions	13	1	325,494	4,231,422
<i>2016 Final Rule Total</i>	<i>38</i>		<i>137,014</i>	<i>5,206,516</i>
<b>Updated Data and Coverage<sup>26</sup></b>				
Lowest Complexity Institutions	12	1	30,304	363,648
Middle Complexity Institutions	12	1	58,113	697,356
Highest Complexity Institutions	12	1	355,132	4,261,584
<i>Updated Data and Coverage Total</i>	<i>36</i>	<i>1</i>	<i>147,850</i>	<i>5,322,588</i>

<sup>22</sup> See 81 FR 87734 (December 5, 2016) for further discussion of the cost estimation model.

<sup>23</sup> Implementation costs and hours are spread over a three-year period.

<sup>24</sup> None of the respondents required to comply with the Rule are small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets).

<sup>25</sup> Weighted average rounded to the nearest hour. For PRA purposes, covered institutions are presented in roughly equal-sized low, medium and high complexity tranches ranked by their PRA implementation hours.

<sup>26</sup> This section incorporates changes to the baseline estimate of Rule burden based on changes in the number of covered institutions as well as changes to the data inputs for the burden model. The 2016 Final Rule estimated 38 IDIs would be covered. As of April 1, 2017, the effective date of the Rule, only 32 IDIs were covered by the Rule. Four additional IDIs became covered by the Rule in later quarters for a total of 36 covered institutions. This section uses bank-level data from December 31, 2018, updating the original burden estimate based on December 31, 2016, data.

<i>Change from Updated Data</i>	-2			116,072
<b><i>Proposed Rule less Exceptions</i></b>				
Lowest Complexity Institutions	12	1	28,304	339,648
Middle Complexity Institutions	12	1	53,643	643,716
Highest Complexity Institutions	12	1	326,764	3,921,168
<i>Proposed Rule Total less Exceptions</i>	36	1	136,237	4,904,532
<b><i>Exceptions or Release</i><sup>27</sup></b>				
<i>Requests for Release of Requirements</i>	1	1	5	5
<i>Requests for Exception</i>	1	1	60	60
				<b>4,904,608</b>
<b><i>Change from Proposed Rule</i></b>	<b>0</b>			<b>(417,980)</b>

**Ongoing Burden:**

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated total annual burden hours</i>
<b><i>2016 Final Rule</i></b>				
Lowest Complexity Institutions	12	1	493.1	5,917
Middle Complexity Institutions	13	1	516.7	6,718
Highest Complexity Institutions	13	1	566.6	7,365
<i>Proposed Rule Total</i>	38		526	20,000
<b><i>Updated Data and Coverage</i></b>				
Lowest Complexity Institutions	12	1	487	5,844
Middle Complexity Institutions	12	1	488	5,856
Highest Complexity Institutions	12	1	558	6,696
<i>Updated Data and Coverage Total</i>	36		511	18,396
<i>Change</i>	-2			(1,604)
<b><i>Proposed Rule</i></b>				
Lowest Complexity Institutions	12	1	487	5,844
Middle Complexity Institutions	12	1	488	5,856
Highest Complexity Institutions	12	1	558	6,696
<i>Updated Data and Coverage Total</i>	36		511	18,396
<b><i>Change from Proposed Rule</i></b>	<b>0</b>			<b>0</b>

<sup>27</sup> The proposed rule allows for covered institutions to request exceptions from Rule requirements or extensions of time to comply. The FDIC cannot estimate how many covered institutions will request such exceptions or extensions.

The implementation costs for all covered institutions are estimated to total \$362.4 million and require approximately 4.9 million labor hours. This represents a decline of \$20.9 million and 417,980 labor hours for covered institutions due to the proposed rule. The implementation costs cover (1) making the deposit insurance calculation, (2) legacy data cleanup, (3) data extraction, (4) data aggregation, (5) data standardization, (6) data quality control and compliance, and (7) data reporting.

In terms of initial implementation, the estimated PRA burden for individual covered institutions after enacting the proposed rule would require between 9,056 and 275,112 burden hours, and these burden hours would be monetized to range from \$757,851 to \$31.0 million. This represents a decline for covered institutions of 675 to 29,007 burden hours and \$33,787 to \$532,873 million, respectively.

The estimated ongoing burden on individual covered institutions for reporting, testing, maintenance, and other periodic items is estimated to range between 481 and 666 labor hours, and these ongoing burden hours are monetized to be between \$72,146 and \$99,865 annually. The ongoing cost burdens remain the same.

#### **ESTIMATED MONETIZED COSTS BY COMPONENT**

<b>Components</b>	<i>2016 Final Rule</i> <b>Component Cost**</b>	<i>Updated Data and Coverage</i> <b>Component Cost**</b>	<i>Proposed Rule</i> <b>Component Cost**</b>	<b>Change in Cost from Proposed Rule</b>
Legacy Data Cleanup	\$226,482,333	\$227,449,750	\$206,547,385	(\$20,902,365)
Data Aggregation	64,015,373	62,707,618	62,707,618	0

Data Standardization	36,573,894	35,811,558	35,811,558	0
Data Extraction	25,397,761	25,073,291	25,073,291	0
Quality Control & Compliance	18,403,006	18,024,478	18,024,478	0
Insurance Calculation	9,500,400	8,584,000	8,548,000	0
Reporting	5,971,800	5,661,000	5,661,000	0
Implementation Costs	\$367,936,888	\$383,311,695	\$362,409,330	(\$20,902,365)
Ongoing Operations	2,999,963	2,758,899	2,758,899	0
TOTAL COST	\$389,344,530	\$386,070,594	\$365,168,229	0
Change from Updating Data		(\$3,273,936)		
Change from Proposed Rule			(\$20,902,365)	

The estimated annual burden for the “Recordkeeping for Timely Deposit Insurance Determination” information collection (OMB Control Number 3064-0202) if the proposed rule is adopted would be as follows:

Implementation Burden:<sup>28</sup>

*Estimated number of respondents:* 36 covered institutions and their depositors.

*Estimated time per response:*<sup>29</sup> 136,237 hours (average).

Low complexity: 11,946–41,406 hours.

<sup>28</sup> Implementation costs and hours are spread over a three-year period.

<sup>29</sup> For PRA purposes, covered institutions are presented in roughly equal-sized low, medium and high complexity tranches ranked by their PRA implementation hours.

Medium complexity: 41,947–74,980 hours.

High complexity: 75,404–762,185 hours.

*Estimated total implementation burden: 4.9 million hours.*

Ongoing Burden:

*Estimated number of respondents: 36 covered institutions and their depositors.*

*Estimated time per response: 511 hours (average) per year.*

Low complexity: 433–530 hours.

Medium complexity: 434–530 hours.

High complexity: 435–661 hours.

*Estimated total ongoing annual burden: 18,396 hours per year.*

*Description of Collection:*

Part 370 requires a covered institution to (1) maintain complete and accurate data on each depositor's ownership interest by right and capacity for all of the covered institution's deposit accounts, except as provided, and (2) configure its IT system to be capable of calculating the insured and uninsured amount in each deposit account by ownership right and capacity, which would be used by the FDIC to make deposit insurance determinations in the event of the covered institution's failure.

These requirements also must be supported by policies and procedures and will involve ongoing burden for testing, reporting to the FDIC, and general maintenance of recordkeeping and IT systems' functionality. Estimates of both initial implementation and ongoing burden are provided.

Compliance with part 370 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 24 hour time frame set forth in the final rule. If a covered institution experiences a significant change in its deposit taking operations, it may be required to demonstrate more frequently than annually that its IT system can calculate deposit insurance coverage accurately and completely.
- In connection with the certification, covered institutions shall complete a deposit insurance coverage summary report.
- Covered institutions may seek relief from any specific aspect of the final rule's requirements if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. When doing so, they must demonstrate the need for exception, describe the impact of an exception on the ability to quickly and accurately calculate deposit insurance for the related deposit accounts, and state the number of, and the dollar value of deposits in, the related deposit accounts.

### ***B. Regulatory Flexibility Act***

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., generally requires an agency, in connection with a proposed rule, to prepare and make available an initial regulatory flexibility analysis that describes the impact of a proposed rule on small

entities.<sup>30</sup> However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$550 million who are independently owned and operated or owned by a holding company with less than \$550 million in total assets.<sup>31</sup>

The FDIC insures 5,486 institutions, of which 4,047 are considered small entities for the purposes of RFA.<sup>32</sup>

This proposed rule will affect all insured depository institutions that have two million or more deposit accounts. The FDIC does not currently insure any institutions with two million or more deposit accounts that have \$550 million or less in total consolidated assets.<sup>33</sup> Since this proposal does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

*The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposal have any significant effects on small entities that the FDIC has not identified?*

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<sup>30</sup> 5 U.S.C. 601 et seq.

<sup>31</sup> The SBA defines a small banking organization as having \$550 million or less in assets, where “a financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended, effective December 2, 2014). “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered institution’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered institution is “small” for the purposes of RFA.

<sup>32</sup> Call Report data, September 30, 2018, the latest date for which bank holding company data is available.

<sup>33</sup> FDIC Call Report data, December 31, 2018.

### ***C. Plain Language***

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat.1338, 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.

*The FDIC invites your comments on how to make this revised proposal easier to understand. For example:*

- *Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?*
- *Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?*
- *Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?*

### ***D. Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families***

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

#### **List of Subjects**

**12 CFR Part 370**

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

### **Authority and Issuance**

For the reasons set forth in the preamble, the Federal Insurance Deposit Corporation proposes to amend 12 CFR part 370 by revising it to read as follows:

## **PART 370—RECORDKEEPING FOR TIMELY DEPOSIT INSURANCE DETERMINATION**

Sec.

370.1 Purpose and scope.

370.2 Definitions.

370.3 Information technology system requirements.

370.4 Recordkeeping requirements.

370.5 Actions required for certain deposit accounts with transactional features.

370.6 Implementation.

370.7 Accelerated implementation.

370.8 Relief.

370.9 Communication with the FDIC.

370.10 Compliance.

APPENDIX A TO PART 370—OWNERSHIP RIGHT AND CAPACITY CODES

APPENDIX B TO PART 370—OUTPUT FILES STRUCTURE

APPENDIX C TO PART 370—CREDIT BALANCE PROCESSING FILE STRUCTURE

**Authority:** 12 U.S.C. 1817(a)(9), 1819 (Tenth), 1821(f)(1), 1822(c), 1823(c)(4).

### **§ 370.1 Purpose and scope.**

Unless otherwise provided in this part, each “covered institution” (defined in § 370.2(c)) is required to implement the information technology system and recordkeeping capabilities needed to calculate the amount of deposit insurance coverage available for each deposit account in the event of its failure. Doing so will improve the FDIC’s ability to fulfill its statutory mandates to pay deposit insurance as soon as possible after a covered institution’s failure and to resolve a covered institution at the least cost to the Deposit Insurance Fund.

**§ 370.2 Definitions.**

For purposes of this part:

- (a) *Account holder* means the person or entity who has opened a deposit account with a covered institution and with whom the covered institution has a direct legal and contractual relationship with respect to the deposit.
- (b) *[Reserved.]*
- (c) *Covered institution* means:
  - (1) 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; or
  - (2) Any other insured depository institution that delivers written notice to the FDIC that it will voluntarily comply with the requirements set forth in this part.
- (d) *Compliance date* means, except as otherwise provided in § 370.6(b):

- (1) April 1, 2020, for any insured depository institution that was a covered institution as of April 1, 2017;
  - (2) The date that is three years after the date on which an insured depository institution becomes a covered institution; or
  - (3) The date on which an insured depository institution that elects to be a covered institution under § 370.2(c)(2) files its first certification of compliance and deposit insurance coverage summary report pursuant to § 370.10(a).
- (e) *Deposit* has the same meaning as provided under section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).
- (f) *Deposit account records* has the same meaning as provided in 12 CFR 330.1(e).
- (g) *Ownership rights and capacities* are set forth in 12 CFR part 330.
- (h) *Payment instrument* means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).
- (i) *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).
- (j) *Transactional features* with respect to a deposit account means that the account holder or the beneficial owner of deposits can make transfers from the deposit account to parties other than the account holder, beneficial owner of deposits, or the covered institution itself, by methods that may result in such transfers being reflected in the end-of-day ledger balance for such deposit account on a day that is later than the day that such transfer is initiated, even if initiated prior to the

institution's normal cutoff time for such transaction. A deposit account also has transactional features if preauthorized or automatic instructions provide for transfer of deposits in the deposit account to another deposit account at the same institution, if such other deposit account itself has transactional features.

- (k) *Unique identifier* means an alpha-numeric code associated with an individual or entity that is used consistently and continuously by a covered institution to monitor the covered institution's relationship with that individual or entity.

**§ 370.3 Information technology system requirements.**

- (a) A covered institution must configure its information technology system to be capable of performing the functions set forth in paragraph (b) of this section within 24 hours after the appointment of the FDIC as receiver. To the extent that a covered institution does not maintain its deposit account records in the manner prescribed under § 370.4(a) but instead in the manner prescribed under § 370.4(b), (c) or (d), the covered institution's information technology system must be able to perform the functions set forth in paragraph (b) of this section upon input by the FDIC of additional information collected after failure of the covered institution.
- (b) Each covered institution's information technology system must be capable of:
- (1) Accurately calculating the deposit insurance coverage for each deposit account in accordance with 12 CFR part 330;
  - (2) Generating and retaining output records in the data format and layout specified in Appendix B;

- (3) Restricting access to some or all of the deposits in a deposit account until the FDIC has made its deposit insurance determination for that deposit account using the covered institution's information technology system; and
- (4) Debiting from each deposit account the amount that is uninsured as calculated pursuant to paragraph (b)(1) of this section.

**§ 370.4 Recordkeeping requirements.**

(a) *General recordkeeping requirements.* Except as otherwise provided in paragraphs (b), (c), and (d) of this section, a covered institution must maintain in its deposit account records for each account the information necessary for its information technology system to meet the requirements set forth in § 370.3. The information must include:

- (1) The unique identifier of each:
  - (i) Account holder;
  - (ii) Beneficial owner of a deposit, if the account holder is not the beneficial owner; and
  - (iii) Grantor and each beneficiary, if the deposit account is held in connection with an informal revocable trust that is insured pursuant to 12 CFR 330.10 (e.g., payable-on-death accounts, in-trust-for accounts, and *Totten* Trust accounts).
- (2) The applicable ownership right and capacity code listed and described in Appendix A to this part.

(b) *Alternative recordkeeping requirements.* As permitted under this paragraph, a covered institution may maintain in its deposit account records less information than is required under paragraph (a) of this section.

(1) For each deposit account for which a covered institution's deposit account records disclose the existence of a relationship which might provide a basis for additional deposit insurance in accordance with 12 CFR 330.5 or 330.7 and for which the covered institution does not maintain information that would be needed for its information technology system to meet the requirements set forth in § 370.3, the covered institution must maintain, at a minimum, the following in its deposit account records:

- (i) The unique identifier of the account holder; and
- (ii) The corresponding "pending reason" code listed in data field 2 of the pending file format set forth in Appendix B (and need not maintain a "right and capacity" code).

(2) For each formal revocable trust account that is insured as described in 12 CFR 330.10 and for each irrevocable trust account that is insured as described in either 12 CFR 330.12 or 12 CFR 330.13, and for which the covered institution does not maintain the information that would be needed for its information technology system to meet the requirements set forth in § 370.3, the covered institution must, at a minimum, maintain in its deposit account records:

- (i) The unique identifier of the account holder;
- (ii) The unique identifier of the grantor if the deposit account has transactional features (unless the account is insured as described in 12

CFR 330.12, in which case the unique identifier of the grantor need not be maintained for purposes of this part); and

(iii) The corresponding “right and capacity” code listed in data field 4 of the pending file format set forth in Appendix B.

(c) *Recordkeeping requirements for official items.* A covered institution must maintain in its deposit account records the information needed for its information technology system to meet the requirements set forth in § 370.3 with respect to accounts held in the name of the covered institution from which withdrawals are made to honor a payment instrument issued by the covered institution, such as a certified check, loan disbursement check, interest check, traveler’s check, expense check, official check, cashier’s check, money order, or similar payment instrument. To the extent that the covered institution does not have such information, it need only maintain in its deposit account records for those accounts the corresponding “pending reason” code listed in data field 2 of the pending file format set forth in Appendix B (and need not maintain a “right and capacity” code).

(d) *Recordkeeping requirements for deposits resulting from credit balances on an account for debt owed to the covered institution.* A covered institution is not required to meet the recordkeeping requirements of paragraphs (a) or (b) of this section with respect to deposit liabilities reflected as credit balances on an account for debt owed to the covered institution if its information technology system is capable of:

(1) Immediately upon failure, restricting access to:

- (i) Such credit balances on the account for debt owed to the covered institution, or
  - (ii) An equal amount in that borrower's deposit account(s) at the covered institution; and
- (2) Producing:
- (i) Within 24 hours after failure, a file listing credit balances on open-end credit accounts (revolving credit lines) such as credit card accounts and home equity lines of credit in the format provided in Appendix C to this part 370 that can be used by the covered institution's information technology system to meet the requirements set forth in § 370.3(b)(1), (2) and (4); and
  - (ii) Promptly after failure, a file listing the credit balances on closed-end loan accounts in the format provided in Appendix C to this part 370 that can be used by the covered institution's information technology system to meet the requirements set forth in § 370.3(b)(1), (2) and (4).

**§ 370.5 Actions required for certain deposit accounts with transactional features.**

- (a) For each deposit account with transactional features for which the covered institution maintains its deposit account records in accordance with § 370.4(b)(1), a covered institution must take steps reasonably calculated to ensure that the account holder will provide to the FDIC the information needed for the covered institution's information technology system to calculate deposit insurance coverage as set forth in § 370.3(b) within 24 hours after the appointment of the FDIC as receiver. At a minimum, "steps reasonably calculated" shall include:

- (1) Contractual arrangements with the account holder that obligate the account holder to deliver information needed for deposit insurance calculation to the FDIC in a format compatible with the covered institution's information technology system immediately upon the covered institution's failure; and
  - (2) A disclosure stating that the account holder's delay in delivery of such information, or the account holder's delivery of information in a format that is not compatible with the covered institution's information technology system, could result in delayed access to deposits should the covered institution fail.
- (b) A covered institution need not take the steps required pursuant to paragraph (a) of this section with respect to:
- (1) Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors;
  - (2) Accounts maintained by real estate brokers, real estate agents, or title companies in which funds from multiple clients are deposited and held for a short period of time in connection with a real estate transaction;
  - (3) Accounts established by an attorney or law firm on behalf of clients, commonly known as an *Interest on Lawyers Trust Accounts*, or functionally equivalent accounts;
  - (4) Accounts held in connection with an employee benefit plan (as defined in 12 CFR 330.14); and
  - (5) An account maintained by an account holder for the benefit of others, to the extent that the deposits in the account are held for the benefit of:

- (i) A formal revocable trust that would be insured as described in 12 CFR 330.10;
- (ii) An irrevocable trust that would be insured as described in 12 CFR 330.12; or
- (iii) An irrevocable trust that would be insured as described in 12 CFR 330.13.

**§ 370.6 Implementation.**

- (a) A covered institution must satisfy the information technology system and recordkeeping requirements set forth in this part before the compliance date.
- (b) *Extension.*
  - (1) A covered institution may submit a request to the FDIC for an extension of its compliance date. The request shall state the amount of additional time needed to meet the requirements of this part, the reason(s) for which such additional time is needed, and the total number and dollar value of accounts for which deposit insurance coverage could not be calculated using the covered institution's information technology system were the covered institution to fail as of the date of the request. The FDIC's grant of a covered institution's request for extension may be conditional or time-limited.
  - (2) An insured depository institution that became a covered institution on April 1, 2017, may extend its compliance date for up to one year upon written notice to the FDIC prior to April 1, 2020. Such notice shall state the total number of, and dollar amount of deposits in, deposit accounts for which the covered

institution's information technology system cannot calculate deposit insurance coverage as of April 1, 2020.

**§ 370.7 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 324; 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 role as insurer of the covered institution.

**§ 370.8 Relief.**

- (a) *Exemption.* A covered institution may submit a request in the form of a letter to the FDIC for an exemption from this part if it demonstrates that it does not take deposits from any account holder which, when aggregated, would exceed the SMDIA for any owner of the funds on deposit and will not in the future.
- (b) *Exception.* (1) One or more covered institutions may submit a request in the form of a letter to the FDIC for exception from one or more of the requirements set forth in this part if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. The request letter must:
- (i) Identify the covered institution(s) requesting the exception;
  - (ii) Specify the requirement(s) of this part from which exception is sought;
  - (iii) Describe the deposit accounts the request concerns and state the number of, and dollar amount of deposits in, such deposit accounts for each covered institution requesting the exception;
  - (iv) Demonstrate the need for exception for each covered institution requesting the exception; and
  - (v) Explain the impact of the exception on the ability of each covered institution's information technology system to quickly and accurately calculate deposit insurance for the related deposit accounts.
- (2) The FDIC shall publish a notice of its response to each exception request in the *Federal Register*.

(3) By following the procedure set forth in this paragraph, a covered institution may rely upon another covered institution's exception request which the FDIC has previously granted. The covered institution must notify the FDIC that it will invoke relief from certain part 370 requirements by submitting a notification letter to the FDIC demonstrating that the covered institution has substantially similar facts and the same circumstances as those of the covered institution that has already received the FDIC's approval. The covered institution's notification letter must also include the information required under paragraph (b)(1) of this section and cite the applicable notice published pursuant to paragraph (b)(2) of this section. The covered institution's notification for exception shall be deemed granted subject to the same conditions set forth in the FDIC's published notice unless the FDIC informs the covered institution to the contrary within 120 days after receipt of a complete notification for exception.

(c) *Release from this part.* A covered institution may submit a request in the form of a letter to the FDIC for 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.

(d) *Release from 12 CFR 360.9 requirements.* A covered institution is released from the provisional hold and standard data format requirements of 12 CFR 360.9 upon submitting to the FDIC the compliance certification required under § 370.10(a). A

covered institution released from 12 CFR 360.9 under this paragraph (d) shall remain released for so long as it is a covered institution.

- (e) *FDIC approval of a request.* The FDIC will consider all requests submitted in writing by a covered institution on a case-by-case basis in light of the objectives of this part, and the FDIC's grant of any request made by a covered institution pursuant to this section may be conditional or time-limited.

**§ 370.9 Communication with the FDIC.**

- (a) *Point of contact.* Not later than ten business days after either the effective date of this part or becoming a covered institution, a covered institution must notify the FDIC of the person(s) responsible for implementing the recordkeeping and information technology system capabilities required by this part.
- (b) *Address.* Point-of-contact information, reports and requests made under this part shall 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.

**§ 370.10 Compliance.**

- (a) *Certification and report.* A covered institution shall submit to the FDIC a certification of compliance and a deposit insurance coverage summary report on or before its compliance date and annually thereafter.
- (1) The certification must:
- (i) Confirm that the covered institution has implemented all required capabilities and tested its information technology system during the preceding twelve months;

- (ii) Confirm that such testing indicates that the covered institution is in compliance with this part; and
  - (iii) Be signed by the covered institution's chief executive officer or chief operating officer and made to the best of his or her knowledge and belief after due inquiry.
- (2) The deposit insurance coverage summary report must include:
- (i) A description of any material change to the covered institution's information technology system or deposit taking operations since the prior annual certification;
  - (ii) The number of deposit accounts, number of different account holders, and dollar amount of deposits by ownership right and capacity code (as listed and described in Appendix A);
  - (iii) The total number of fully-insured deposit accounts and the total dollar amount of deposits in all such accounts;
  - (iv) The total number of deposit accounts with uninsured deposits and the total dollar amount of uninsured amounts in all of those accounts; and
  - (v) By deposit account type, the total number of, and dollar amount of deposits in, deposit accounts for which the covered institution's information technology system cannot calculate deposit insurance coverage using information currently maintained in the covered institution's deposit account records.
- (3) If a covered institution experiences a significant change in its deposit taking operations, the FDIC may require that it submit a certification of compliance

and a deposit insurance coverage summary report more frequently than annually.

(b) *FDIC Testing.*

(1) The FDIC will conduct periodic tests of a covered institution's compliance with this part. These tests will begin no sooner than the last day of the first calendar quarter following the compliance date and would occur no more frequently than on a three-year cycle thereafter, unless there is a material change to the covered institution's information technology system, deposit-taking operations, or financial condition following the compliance date, in which case the FDIC may conduct such tests at any time thereafter.

(2) A covered institution shall provide the appropriate assistance to the FDIC as the FDIC tests the covered institution's ability to satisfy the requirements set forth in this part.

(c) *Effect of pending requests.* A covered institution that has submitted a request pursuant to § 370.6(b) or § 370.8(a) through (c) will not be considered to be in violation of this part as to the requirements that are the subject of the request while awaiting the FDIC's response to such request.

(d) *Effect of changes to law.* A covered institution will not be considered to be in violation of this part as a result of a change in law that alters the availability or calculation of deposit insurance for such period as specified by the FDIC following the effective date of such change.

(e) *Effect of merger.* An instance of non-compliance occurring as the direct result of a merger between a covered institution and another insured depository institution

shall be deemed not to constitute a violation of this part for a period of one year following the effective date of the merger.

## **Appendix A to Part 370: *Ownership Right and Capacity Codes***

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

<b>CODE</b>	<b>ILLUSTRATIVE DESCRIPTION</b>
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.
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.
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:  (1) 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.  (2) 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.
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, in which case the applicable code is DIT.

- CRA Certain Other Retirement Accounts (12 CFR 330.14 (b)-(c)) 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, including an individual retirement account described in section 408(a) of the Internal Revenue Code (26 U.S.C. 408(a)), an account of a deferred compensation plan described in section 457 of the Internal Revenue Code (26 U.S.C. 457), an account of an individual account plan as defined in section 3(34) of the Employee Retirement Income Security Act (29 U.S.C. 1002), a plan described in section 401(d) of the Internal Revenue Code (26 U.S.C. 401(d)).
- 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 (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 a Certain Retirement Account.
- BUS Business/Organization Account (12 CFR 330.11): An account of an organization engaged in an ‘independent activity’ (as defined in § 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)
- GOV1-GOV2-GOV3 Government Account (12 CFR 330.15): An account of a governmental entity.

GOV1	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)
GOV2	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)
GOV3	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.
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.
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.
DIT	IDI as trustee of irrevocable trust accounts (12 CFR 330.12): "Trust funds" (as defined in § 330.1(q)) account held by an insured depository institution as trustee of an irrevocable trust.
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.
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.

DOE

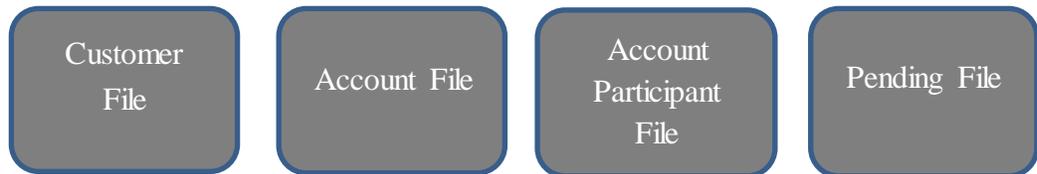
IDI Accounts under Department of Energy Program: Funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.

## **Appendix B to Part 370: Output Files Structure**

These output files will include the data necessary for the FDIC to determine deposit insurance coverage in a resolution. A covered institution's information technology system must have the capability to prepare and maintain the files detailed below. These files must be prepared in successive iterations as the FDIC receives additional data from external sources necessary to complete the deposit insurance determinations, and, as it updates pending determinations. The files will be comprised of the following four tables. The unique identifier and government identification are required in all four tables so those tables can be linked where necessary.

A null value, as indicated in the table below, is allowed for fields that are not immediately needed to calculate deposit insurance. To ensure timely calculations for depositor liquidity purposes, the information with null-value designations can be obtained after the initial deposit insurance calculation. As due diligence for recordkeeping progresses throughout the years of ongoing compliance, the FDIC expects that the banks will continue efforts to capture the null-value designations and populate the output file to alleviate the burden at failure. If a null value is allowed in a field, the record should not be placed in the pending file.

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 customer information. All files are pipe delimited. Do not pad leading and trailing spacing or zeros for the data fields.



**Customer File.** Customer File will be used by the FDIC to identify the customers. One record represents one unique customer.

The data elements will include:

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
1	CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there shall not be duplicates.	Variable Character	No
2	CS_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filing. Populate as follows: <ul style="list-style-type: none"> <li>- For a United States individual - SSN or TIN</li> <li>- For a foreign national individual - where a SSN or TIN does not exist, a foreign passport or other legal identification number (e.g. Alien Card)</li> <li>- For a Non-Individual - the Tax identification Number (TIN), or other register entity number</li> </ul>	Variable Character	No
3	CS_Govt_ID_Type	The valid customer identification types, are noted below: <ul style="list-style-type: none"> <li>- SSN - Social Security Number</li> <li>- TIN - Tax Identification Number</li> <li>- DL - Driver's License, issued by a State or Territory of the United States</li> <li>- ML - Military ID</li> <li>- PPT - Valid Passport</li> <li>- AID - Alien Identification Card</li> <li>- OTH - Other</li> </ul>	Character (3)	No
4	CS_Type	The customer type field indicates the type of entity the customer is at the covered institution. The valid values are: <ul style="list-style-type: none"> <li>- IND - Individual</li> <li>- BUS - Business</li> <li>- TRT - Trust</li> <li>- NFP - Non-Profit</li> <li>- GOV - Government</li> <li>- OTH - Other</li> </ul>	Character (3)	Yes
5	CS_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No
6	CS_Middle_Name	Customer middle name. Use only for the name of individuals and the primary contact for entity.	Variable Character	Yes
7	CS_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No
8	CS_Name_Suffix	Customer suffix.	Variable Character	Yes

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
9	CS_Entity_Name	The registered name of the entity. Do not use this field if the customer is an individual.	Variable Character	Yes
10	CS_Street_Add_Ln1	Street address line 1. The current account statement mailing address of record.	Variable Character	Yes
11	CS_Street_Add_Ln2	Street address line 2. If available, the second address line.	Variable Character	Yes
12	CS_Street_Add_Ln3	Street address line 3. If available, the third address line.	Variable Character	Yes
13	CS_City	The city associated with the mailing address.	Variable Character	Yes
14	CS_State	The state for United States addresses or state/province/country for international addresses. - For United States addresses use a two-character state code (official United States Postal Service abbreviations) associated with the mailing address. - For international address follow that country state code.	Variable Character	Yes
15	CS_ZIP	The Zip/Postal Code associated with the customer's mailing address. - For United States zip codes, use the United States Postal Service ZIP+4 standard - For international zip codes follow that standard format of that country.	Variable Character	Yes
16	CS_Country	The country associated with the mailing address. Provide the country name or the standard International Organization for Standardization (ISO) country code.	Variable Character	Yes
17	CS_Telephone	Customer telephone number. The telephone number on record for the customer, including the country code if not within the United States.	Variable Character	Yes
18	CS_Email	The email address on record for the customer.	Variable Character	Yes
19	CS_Outstanding_Debt_Flag	This field indicates whether the customer has outstanding debt with covered institution. This field may be used by the FDIC to determine offsets. Enter "Y" if customer has outstanding debt with covered institutions, enter "N" otherwise.	Character (1)	Yes
20	CS_Security_Pledge_Flag	This field shall only be used for Government customers. This field indicates whether the covered institution has pledged securities to the government entity, to cover any shortfall in deposit insurance. Enter "Y" if the government entity has outstanding security pledge with covered institutions, enter "N" otherwise.	Character (1)	No

**Account File.** The Account File contains the deposit ownership rights and capacities information, allocated balances, insured amounts, and uninsured amounts. 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:

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
1	CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there cannot be duplicates.	Variable Character	No
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.	Variable Character	No
3	DP_Right_Capacity	Account ownership categories.  <ul style="list-style-type: none"> <li>- SGL - Single accounts</li> <li>- JNT - Joint accounts</li> <li>- REV - Revocable trust accounts</li> <li>- IRR - Irrevocable trust accounts</li> <li>- CRA - Certain retirement accounts</li> <li>- EBP - Employee benefit plan accounts</li> <li>- BUS - Business/Organization accounts</li> <li>- GOV1, GOV2, GOV3 - Government accounts (public unit accounts)</li> <li>- MSA - Mortgage servicing accounts for principal and interest payments</li> <li>- DIT - Accounts held by a depository institution as the trustee of an irrevocable trust</li> <li>- ANC - Annuity contract accounts</li> <li>- PBA - Public bond accounts</li> <li>- BIA - Custodian accounts for American Indians</li> <li>- DOE - Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy</li> </ul>	Character (4)	No

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
4	DP_Prod_Cat	<p>Product category or classification.</p> <ul style="list-style-type: none"> <li>- DDA - Demand Deposit Accounts</li> <li>- NOW - Negotiable Order of Withdrawal</li> <li>- MMA - Money Market Deposit Accounts</li> <li>- SAV - Other savings accounts</li> <li>- CDS - Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.</li> </ul>	Character (3)	<p>Yes</p> <p>For credit card accounts with a credit balance that create a deposit liability, use a NULL value for this field.</p>
5	DP_Allocated_Amt	<p>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.</p> <p>For JNT accounts, this is a calculated field that represents the allocated amount to each owner in JNT category.</p> <p>For REV accounts, this is a calculated field that represents the allocated amount to each owner-beneficiary in REV category.</p> <p>For other accounts with only one owner, this is the account current balance.</p> <p>This balance shall not be reduced by float or holds. For CDs and time deposits, the balance shall reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest)</p>	Decimal (14,2)	No
6	DP_Acc_Int	<p>Accrued interest allocated similarly as data field #5 DP_Allocated_Amt.</p> <p>The amount of interest that has been earned but not yet paid to the account as of the date of the file.</p>	Decimal (14,2)	No
7	DP_Total_PI	Total amount adding #5 DP_Allocated_Amt and #6 DP_Acc_Int.	Decimal (14,2)	No

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
8	DP_Hold_Amount	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)	No
9	DP_Insured_Amount	The insured amount of the account.	Decimal (14,2)	No
10	DP_Uninsured_Amount	The uninsured amount of the account.	Decimal (14,2)	No
11	DP_Prepaid_Account_Flag	This field indicates a prepaid account with covered institution. Enter "Y" if account is a prepaid account with covered institutions, enter "N" otherwise.	Character (1)	No
12	DP_PT_Account_Flag	This field indicates a pass-through account with covered institution. Enter "Y" if account is a pass-through with covered institutions, enter "N" otherwise.	Character (1)	No
13	DP_PT_Trans_Flag	This field indicates whether the fiduciary account has sub-accounts that have transactional features. Enter "Y" if account has transactional features, enter "N" otherwise.	Character (1)	No

**Account Participant File.** The Account Participant File will be used by the FDIC to identify account participants, to include the official custodian, beneficiary, bond holder, mortgagor, or employee benefit plan participant, for each account and account holder. One record represents one unique account participant. The Account Participant File is linked to the Account File by CS\_Unique\_ID and DP\_Acct\_Identifier.

The data elements will include:

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
1	CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there shall not be duplicates.	Variable Character	No
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.	Variable Character	No
3	DP_Right_Capacity	Account ownership categories.  <ul style="list-style-type: none"> <li>- SGL - Single accounts</li> <li>- JNT - Joint accounts</li> <li>- REV - Revocable trust accounts</li> <li>- IRR - Irrevocable trust accounts</li> <li>- CRA - Certain retirement accounts</li> <li>- EBP - Employee benefit plan accounts</li> <li>- BUS - Business/Organization accounts</li> <li>- GOV1, GOV2, GOV3 - Government accounts (public unit accounts)</li> <li>- MSA - Mortgage servicing accounts for principal and interest payments</li> <li>- DIT - Accounts held by a depository institution as the trustee of an irrevocable trust</li> <li>- ANC - Annuity contract accounts</li> <li>- PBA - Public bond accounts</li> <li>- BIA - Custodian accounts for American Indians</li> <li>- DOE - Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy</li> </ul>	Character (4)	No

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
4	DP_Prod_Category	Product category or classification.  - DDA - Demand Deposit Accounts - NOW - Negotiable Order of Withdrawal - 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)	Yes
5	AP_Allocated_Amount	Amount of funds attributable to the account participant as an account holder (e.g. Public account holder of a public bond account) or the amount of funds entitled to the beneficiary for the purpose of insurance determination (e.g. Revocable Trust)	Decimal (14,2)	No
6	AP_Participant_ID	This field is the unique identifier for the Account Participant. It will be generated by the covered institution and there shall not be duplicates. If the account participant is an existing bank customer this field is the same as CS_Unique_ID field.	Variable Character	No
7	AP_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filing. Populate as follows: - For a United States individual - Legal identification number (e.g. SSN, TIN, Driver's License, or Passport Number) - For a foreign national individual - where a SSN or TIN does not exist, a foreign passport or other legal identification number (e.g. Alien Card) - For a Non-Individual - the Tax identification Number (TIN), or other register entity number	Variable Character	No
8	AP_Govt_ID_Type	The valid customer identification types, are: - SSN - Social Security Number - TIN - Tax Identification Number - DL - Driver's License, issued by a State or Territory of the United States - ML - Military ID - PPT - Valid Passport - AID - Alien Identification Card - OTH - Other	Character (3)	No
9	AP_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
10	AP_Middle_Name	Customer middle name. Use only for the name of individuals and the primary contact for entity.	Variable Character	Yes
11	AP_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No
12	AP_Entity_Name	The registered name of the entity. Do not use this field if the participant is an individual.	Variable Character	Yes
13	AP_Participant_Type	This field is used as the participant type identifier. The field will list the "beneficial owner" type: - OC - Official Custodian - BEN - Beneficiary - BHR - Bond Holder - MOR - Mortgagor - EPP - Employee Benefit Plan Participant	Character (3)	Yes

**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.

The data elements will include:

	<b>Field Name</b>	<b>Description</b>	<b>Format</b>	<b>Null Value Allowed?</b>
1	CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there cannot be duplicates.	Variable Character	No
2	Pending_Reason	Reason code for the account to be included in Pending file.  For deposit account records maintained by the bank, use the following codes. <ul style="list-style-type: none"> <li>- A - agency or custodian</li> <li>- B - beneficiary</li> <li>- OI - official item</li> <li>- RAC - right and capacity code</li> </ul> For alternative recordkeeping requirements, use the following codes. <ul style="list-style-type: none"> <li>- ARB - depository organization for brokered deposits (Brokered deposit has the same meaning as provided in 12 CFR 337.6(a)(2)).</li> <li>- ARBN - non-depository organization for brokered deposits (Brokered deposit has the same meaning as provided in 12 CFR 337.6(a)(2)).</li> <li>- ARCRA – certain retirement accounts</li> <li>- AREBP – employee benefit plan accounts</li> <li>- ARM - mortgage servicing for principal and interest payments</li> <li>- ARO - other deposits</li> <li>- ARTR – trust accounts</li> </ul> The FDIC needs these codes to initiate the collection of needed information.	Character (5)	No
3	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.	Variable Character	No

4	DP_Right_Capacity	<p>Account ownership categories.</p> <ul style="list-style-type: none"> <li>- SGL - Single accounts</li> <li>- JNT - Joint accounts</li> <li>- REV - Revocable trust accounts</li> <li>- IRR - Irrevocable trust accounts</li> <li>- CRA - Certain retirement accounts</li> <li>- EBP - Employee benefit plan accounts</li> <li>- BUS - Business/Organization accounts</li> <li>- GOV1, GOV2, GOV3 - Government accounts (public unit accounts)</li> <li>- MSA - Mortgage servicing accounts for principal and interest payments</li> <li>- DIT - Accounts held by a depository institution as the trustee of an irrevocable trust</li> <li>- ANC - Annuity contract accounts</li> <li>- PBA - Public bond accounts</li> <li>- BIA - Custodian accounts for American Indians</li> <li>- DOE - Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy</li> </ul>	Character (4)	Yes
5	DP_Prod_Category	<p>Product category or classification.</p> <ul style="list-style-type: none"> <li>- DDA - Demand Deposit Accounts</li> <li>- NOW – Negotiable Order of Withdrawal</li> <li>- MMA – Money Market Deposit Accounts</li> <li>- SAV – Other savings accounts</li> <li>- CDS – Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.</li> </ul>	Character (3)	Yes
6	DP_Cur_Bal	<p>Current balance. The current balance in the account at the end of business on the effective date of the file.</p> <p>This balance shall not be reduced by float or holds. For CDs and time deposits, the balance shall reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest)</p>	Decimal (14,2)	No
7	DP_Acc_Int	<p>Accrued interest. The amount of interest that has been earned but not yet paid to the account as of the date of the file.</p>	Decimal (14,2)	No
8	DP_Total_PI	Total of principal and accrued interest.	Decimal (14,2)	No

9	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)	No
10	DP_Prepaid_Account_Flag	This field indicates a prepaid account with covered institution. Enter "Y" if account is a prepaid account, enter "N" otherwise.	Character (1)	No
11	CS_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filing. Populate as follows: - For a United States individual SSN or TIN - For a foreign national individual - where a SSN or TIN does not exist, a foreign passport or other legal identification number (e.g. Alien Card) - For a Non-Individual - the Tax identification Number (TIN), or other register entity number	Variable Character	No
12	CS_Govt_ID_Type	The valid customer identification types: - SSN - Social Security Number - TIN - Tax Identification Number - DL - Driver's License, issued by a State or Territory of the United States - ML - Military ID - PPT - Valid Passport - AID - Alien Identification Card - OTH - Other	Character (3)	No
13	CS_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No
14	CS_Middle_Name	Customer middle name. Use only for the name of individuals and the primary contact for entity.	Variable Character	Yes
15	CS_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No
16	CS_Name_Suffix	Customer suffix.	Variable Character	Yes
17	CS_Entity_Name	The registered name of the entity. Do not use this field if the customer is an individual.	Variable Character	Yes
18	CS_Street_Add_Ln1	Street address line 1. The current account statement mailing address of record.	Variable Character	No
19	CS_Street_Add_Ln2	Street address line 2. If available, the second address line.	Variable Character	Yes
20	CS_Street_Add_Ln3	Street address line 3. If available, the third address line.	Variable Character	Yes
21	CS_City	The city associated with the mailing address.	Variable Character	Yes
22	CS_State	The state for United States addresses or	Variable	Yes

		state/province/county for international addresses. - For United States addresses use a two-character state code (official United States Postal Service abbreviations) associated with the mailing address. - For international address follow that country state code.	Character	
23	CS_ZIP	The Zip/Postal Code associated with the customer's mailing address. - For United States zip codes, use the United States Postal Service ZIP+4 standard - For international zip codes follow the standard format of that country.	Variable Character	Yes
24	CS_Country	The country associated with the mailing address. Provide the country name or the standard International Organization for Standardization (ISO) country code.	Variable Character	Yes
25	CS_Telephone	Customer telephone number. The telephone number on record for the customer, including the country code if not within the United States.	Variable Character	Yes
26	CS_Email	The email address on record for the customer.	Variable Character	Yes
27	CS_Outstanding_Debt_Flag	This field indicates whether the customer has outstanding debt with covered institution. This field may be used to determine offsets. Enter "Y" if customer has outstanding debt with covered institutions, enter "N" otherwise.	Character (1)	Yes
28	CS_Security_Pledge_Flag	This field indicates whether the CI has pledged securities to the government entity, to cover any shortfall in deposit insurance. Enter "Y" if the government entity has outstanding security pledge with covered institutions, enter "N" otherwise. This field shall only be used for Government customers.	Character (1)	No
29	DP_PT_Account_Flag	This field indicates a pass-through account with covered institution. Enter "Y" if account is a pass-through with covered institutions, enter "N" otherwise.	Character (1)	No
30	PT_Parent_Customer_ID	This field contains the unique identifier of the parent customer ID who has the fiduciary responsibility at the covered institution.	Variable Character	No
31	DP_PT_Trans_Flag	This field indicates whether the fiduciary account has sub-accounts that have transactional features. Enter "Y" if account has transactional features, enter "N" otherwise.	Character (1)	No

**Appendix C to Part 370: Credit Balance Processing File Structure**

1. Data must be in an ASCII-flat, pipe delimited file.
2. All files must contain 29 columns, even if the field name is blank or a null value is present.
3. Do not include column headers or summary lines. The file must contain only credit balance records.

Col	Field Name	Description	Null Value Allowed? (Y/N)
01			Y
02	Account Number	Account number of account holding pending payments or other items for refunds of credit balances.	Y
03	Customer Account Number	Assigned customer account number.	N
04			Y
05	Tax ID	Taxpayer identification number of the account holder.	N
06	Tax ID Code	Code indicates corporate (TIN) or personal tax identification number (SSN).	N
07	Name	Full name of credit balance owner.	N
08			Y
09	Address 1	Address line 1 as it appears on the credit balance owner's statement.	N
10	Address 2	Address line 2 as it appears on the credit balance owner's statement.	Y
11	Address 3	Address line 3 as it appears on the credit balance owner's statement.	Y
12	City	Address city as it appears on the credit balance owner's statement.	N
13	State	State postal abbreviation as it appears on the credit balance owner's statement.	Y. If Country, column 12, is "USA", value must be a valid 2-character US postal

			code (e.g., FL for Florida, IA for Iowa, etc.). If Country, column 12, is not "USA", value must be null.
14	Zip/Postal	The Zip/Postal Code associated with the credit balance owner's address at it appears on the credit balance owner's statement --For United States zip codes, use the United States Postal Service ZIP+4 standard. For international zip codes follow that standard format of that country.	N
15	Country	Country code as it appears on the credit balance owner's statement.	N
16	Province	Province as it appears on the credit balance owner's statement.	Y
17			Y
18	Credit Balance	Credit balance of the account as of the institution failure date.	N
19			Y
20	Deposit Account Ownership Category	Account ownership category	Y. Null value allowed ownership if account ownership category will be assigned by the covered institution's information technology system upon file processing.
21			Y
22			Y
23			Y
24			Y
25			Y
26			Y
27			Y
28			Y

29			Y
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By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 2, 2019.

**Robert E. Feldman.**

*Executive Secretary.*

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