FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AF03

Recordkeeping for Timely Deposit Insurance Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its rule entitled ''Recordkeeping for Timely Deposit Insurance Determination'' to clarify the rule's requirements, better align the burdens of the rule with the benefits, and make technical corrections.

DATES: Effective October 1, 2019.

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SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the final rule is to reduce compliance burdens for insured depository institutions (IDIs) covered by the FDIC's rule entitled ''Recordkeeping for Timely Deposit Insurance Determination'' [1] (part 370 or the rule) while maintaining its benefits and continuing to support the FDIC's ability to promptly determine deposit insurance coverage in the event such an IDI fails. Part 370 requires each IDI with two million or more deposit accounts (each a covered institution, or CI) 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 covered 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 implementing the IT system and recordkeeping capabilities mandated by the rule, the FDIC 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 unclear or unduly burdensome. The final rule seeks to address many of these issues with the result being an overall reduction in compliance burdens for covered institutions while maintaining standards to ensure 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 (original part 370) to facilitate prompt payment of FDIC-insured deposits when large IDIs fail.[2] 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).[3] Fulfilling these statutory obligations is essential to the FDIC's mission. Part 370 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 moral hazard. A regulation that was previously adopted by the FDIC entitled ''Large-Bank Deposit Insurance Determination Modernization'' (§ 360.9) furthered these policy goals with respect to IDIs that have at least $2 billion in domestic deposits and either 250,000 deposit accounts, or $20 billion in total assets.[4] 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).[5] 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), currently $250,000 per right and capacity.[6] The FDIC generally relies on the failed IDI's deposit account records to identify deposit owners and the right and capacity in which deposits are insured.[7] 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 and uninsured deposits at the IDI.[8] 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 failure, facilitate the FDIC's prompt payment of deposit insurance and enhance the FDIC's ability to implement the least costly resolution of these covered 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.[9] The FDIC has engaged in discussions with covered institutions, trade associations, and other interested parties since adoption of part 370 and has learned about issues and challenges these parties face in implementing the capabilities required by part 370. These issues and challenges include: The need for additional time to complete implementation; concerns regarding the nature of the compliance certification; the effect of merger transactions; 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.

On April 11, 2019, the FDIC published in the **Federal Register** a notice of proposed rulemaking (NPR) soliciting public comment on its proposal to amend part 370 (the proposal or proposed rule) to provide for elective extension of the compliance

[1] 12 CFR part 370.

[2] 81 FR 87734 (Dec. 5, 2016).

[3] 12 U.S.C. 1821(f)(1); 12 U.S.C. 1823(c)(4).

[4] 12 CFR 360.9. *See* 73 FR 41180 (July 17, 2008).

[5] 12 U.S.C. 1819(a) (Tenth), 1820(g), 1821(d)(4)(B)(iv).

[6] 12 U.S.C. 1821(a)(1)(C), 1821(a)(1)(E).

[7] 12 U.S.C. 1822(c), 12 CFR 330.5.

[8] 12 U.S.C. 1817(a)(9).

[9] 81 FR 87734, 87738; 12 CFR 370.2(d).

date, revise the treatment of deposits created by credit 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.[10] In the NPR, the FDIC also proposed certain technical changes to part 370. It was the FDIC's belief that the proposal would better align the burdens imposed by part 370 upon covered institutions with the benefit of better enabling the FDIC to achieve its statutory obligations and policy objectives.

The NPR's comment period ended on May 13, 2019. The FDIC received five comment letters in total: Three comment letters from three covered institutions, one joint comment letter from three trade associations, and one comment letter from a financial intermediary that functions as a deposit broker. These comment letters are available on the FDIC's website, and the details of the comments are discussed under III. Discussion of Comments and the Final Rule. The FDIC considered all of the comments it received when developing the final rule.

III. Discussion of Comments and the Final Rule

A. Summary

The FDIC is amending part 370 in advance of the compliance date for the original covered institutions. The FDIC is making changes to part 370 that, among other things:

- Include an optional one-year extension of the compliance date upon notification to the FDIC;
- provide clarifications regarding compliance certification, and the effect of a change in law or a merger transaction on compliance;
- enable IDIs that are not covered institutions to voluntarily become covered institutions under part 370 and be released from the provisional hold and standard data format requirements of § 360.9;
- revise the actions that must be taken by a covered institution with respect to deposit accounts with transactional features that are insured on a pass-through basis;
- amend the alternative recordkeeping requirements for certain types of deposit relationships;
- clarify the process for requesting exception from the rule's requirements, 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

The FDIC proposed to amend § 370.6 of the rule by adding a new paragraph (b)(2) to 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 (to a date no later than 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 and dollar amount of deposits in deposit accounts for which the covered institution expected its IT system would not be able to calculate deposit insurance coverage as of the original April 1, 2020, compliance date. The FDIC recognizes that some of these covered institutions may need additional time to implement new capabilities in their IT systems and to achieve a new level of regularity in their recordkeeping. The FDIC believed 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. In connection with this amendment, the FDIC also proposed to revise the definition of compliance date in § 370.2(d) to reference § 370.6(b).

The commenters voiced support for the FDIC's proposal and found one year to be an appropriate length of time for an extension. One commenter stated that the one year will allow additional time for data clean up, client outreach, and internal testing. This commenter believed that this operational extension will result in improved and enhanced deposit records, fewer items in the pending file, fewer requests for relief or extensions, reduction in potential miscalculations, and enhancements to front-end account opening systems.

Two commenters suggested that the optional extension should be available to all covered institutions because all covered institutions encountered many issues, including interpretive issues and system challenges, that have hindered progress in implementing the rule. One commenter stated that by providing this optional extension to all covered institutions, it would avoid potential arguments that the FDIC was more lenient with certain covered institutions.

Another commenter appreciated the option for the one-year extension but suggested that the extension be automatic without the need to request an extension. This commenter explained that covered institutions did not have three years to comply with the rule because the FDIC provided guidance over a year after the effective date of April 1, 2017. The commenter further argued that a covered institution may be competitively disadvantaged regarding pass-through deposit insurance requirements if a covered institution does not elect the one-year extension because a covered institution's customers may move their business to a covered institution that has not yet imposed the requirements of the rule. Finally, this commenter stated that the majority of covered institutions will request an extension and resources would be better allocated on compliance efforts than on a notification.

The Final Rule

The FDIC has amended the rule as proposed. Part 370 became effective on April 1, 2017, so all IDIs that became covered institutions on that date are subject to a compliance date of April 1, 2020. Part 370 requires covered institutions to achieve a new set of capabilities in their IT systems, and a new level of regularity in their recordkeeping, in some cases requiring the collection of new information from depositors. The nature of these requirements was understood prior to the effective date of the rule, but the amount of time required to achieve compliance could only be estimated at the time the FDIC issued part 370. The FDIC's experience in dealing with covered institutions to date indicates that, despite significant and timely efforts, many covered institutions would be unable to meet part 370's requirements by the compliance date without expending significant resources to complete required IT and recordkeeping tasks on an expedited basis. Each covered institution so situated would need to produce an extension request, adding to its burden, and the FDIC would have to process such requests. Feedback to date has enabled the FDIC to determine that a one-year extension for a covered institution that became a covered institution on the effective date of April 1, 2017, is unlikely to significantly impact the FDIC's ability to achieve its objectives. Accordingly, the final rule provides for an elective one-year extension for such covered institutions upon notification to the FDIC. To be certain, the final rule does not require that an eligible covered institution request the extension, but rather requires that the covered institution notify the FDIC that it has elected to extend its compliance date. This notification must be provided to the

[10] 84 FR 14814 (Apr. 11, 2019).

FDIC prior to the original April 1, 2020, compliance date and state the total number 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 compliance date. The FDIC does not believe that this elective extension should be automatic because some covered institutions may not need it. Further, the FDIC will need to know which covered institutions have elected to take the extension so that it can appropriately stage its compliance testing program. The information provided by each covered institution in its notification will 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. This informational requirement will not affect the ability of a covered institution to extend its compliance date. In connection with this amendment, the final rule also amends the definition of compliance date in § 370.2(d) to reference § 370.6(b).

The final rule does not change the compliance date for IDIs that became covered institutions after the effective date of April 1, 2017. For these covered institutions, the compliance date will be the date that is three years after the date that such IDI became a covered institution. Extending this three-year implementation period for such covered institutions is unnecessary; IDIs are accustomed to anticipating and meeting increased regulatory requirements as their size increases. Further, as part 370's recordkeeping and IT system capabilities become more commonplace in the banking industry, the FDIC expects covered institutions and their advisors to experience less difficulty in implementing these capabilities. That being said, these covered institutions may request an extension under § 370.6(b)(1) should they need it.

The final rule also left undisturbed the ability of the FDIC under § 370.7 to accelerate the implementation of part 370 requirements for a particular covered institution under certain circumstances. Retention of these requirements provides additional assurance that the optional one-year extension of the initial compliance date for all IDIs that were covered institutions as of the effective date of April 1, 2017 may be made without jeopardizing the objectives of part 370.

The FDIC does not share one commenter's view that a covered institution may be competitively disadvantaged regarding pass-through deposit insurance requirements if a covered institution does not elect the one-year extension because a covered institution's customer may move its business to a covered institution that has not yet imposed the requirements of the rule. The FDIC does not believe it likely that a customer will move its business to another covered institution solely based on a covered institution's decision to elect a one-year extension of its compliance date.

C. Compliance

1. Part 370 Compliance Certification and Deposit Insurance Summary Report

In the NPR, the FDIC proposed to revise § 370.10(a)(1) to 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 proposed to clarify that the time frame 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.'' The FDIC proposed 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.'' The FDIC also proposed to clarify the standard by which the § 370.10(a)(1) compliance certification is made by revising this paragraph to state that the certification must be signed by the chief executive officer or chief operating officer and made to the best of his or her ''knowledge and belief after due inquiry.'' This proposal clarified 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.

Many commenters believed that the § 370.10(a) compliance certification is unnecessary and should be eliminated from the rule. These commenters believed that such a certification does not add assurance of compliance but adds more cost and complexity for the covered institution. Additionally, these commenters stated that existing oversight by regulatory authorities and compliance testing by the FDIC would assure part 370 compliance. One commenter stated that compliance with laws and regulations is a priority for every banking organization and senior executives are held responsible for compliance. Two commenters submitted that, if the FDIC requires this compliance certification, then the FDIC should make the proposed ''knowledge and belief after due inquiry'' change.

Two commenters recommended that the rule be revised to allow a qualified compliance certification in which areas of noncompliance that require remediation are acknowledged. One commenter recommended that § 370.10(a) be amended by adding ''such testing indicated that the covered institution is in substantial compliance with this part.'' This commenter also recommended that the certification be provided ''subject to'' identified issues found in testing or otherwise by the covered institution, the FDIC, or other party. Another commenter believed that there is a risk of exposure to liability for the certifying executives if there are acknowledged deficiencies. This commenter also stated that ''CIs have been assured repeatedly by FDIC managers that, when a CI is making a good faith effort to implement part 370, they will be patient with elements of that implementation that have been identified and accepted by them as under construction.''

The Final Rule

The final rule adopts the amendment as proposed. The FDIC did not revise the rule to provide a qualified compliance certification as recommended by certain commenters because covered institutions may request an exception for known deficiencies in compliance. This is important because the FDIC needs to know about the shortcomings of a covered institution's part 370 capabilities in order to make best use of those capabilities in the event of the covered institution's failure. The FDIC believes that the revision to the relief provisions in the rule will facilitate the processing of exception requests. Additionally, the FDIC addressed the strict liability concern raised by covered institutions by adding ''to the best of his or her knowledge and belief after due inquiry'' to § 370.10(a). The FDIC will not informally grant a covered institution's request for relief. All covered institutions seeking relief must formally request such relief according to the requirements of the rule.

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. The FDIC proposed 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. The proposed rule provided 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.

One commenter appreciated FDIC's acknowledgment of the impact on covered institutions of future changes to law that alter the availability or calculation of deposit insurance. This commenter recognized that the scope of future changes to law would impact the part 370 implementation time frame for covered institutions. Several commenters suggested that at least 18 months would be required to update data records and make system changes following such changes to law in order to bring a covered institution's system into compliance with part 370. One commenter incorrectly suggested that § 360.9 provides for at least 18 months to achieve compliance following a legislative change; therefore part 370 should be revised to allow at least as long an adjustment period.[11] Another commenter stated that 12 months is a realistic minimum time frame. This commenter suggested that the FDIC retain discretion to increase the minimum time period depending on the nature and impact of the change to law. The commenter also suggested that the FDIC seek feedback from covered institutions and rely on industry associations to provide guidance for realistic time frames for covered institutions to comply with such changes to law.

The Final Rule

The FDIC has amended the rule in this respect as proposed in the NPR. A covered institution will not be considered to be in violation of part 370 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. The FDIC will publish notice of the specified period of time in the **Federal Register**.

Although commenters suggested a 12-month or 18-month minimum time frame for a covered institution to re-establish compliance with part 370, these commenters also recognized that the amount of time needed will depend upon the scope of a change to law impacting a covered institution's part 370's recordkeeping and IT capabilities. The FDIC does not believe that it is appropriate to set a minimum time period for a covered institution to resolve compliance deficiencies resulting from a change to law without knowing what the change to law is. The FDIC acknowledges that 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 final rule allows the FDIC to provide covered institutions with a time frame to re-establish compliance that is appropriate given the specific change to law.

3. Effect of Merger Transaction by a Covered Institution

Original part 370 does not expressly address merger transactions. In the NPR, the FDIC proposed adding a provision to the rule to provide a covered institution with a one-year period following the effective date of a merger with another IDI to provide the covered institution with time after a merger to ensure that new deposit accounts and IT systems are in compliance with the requirements of part 370.

Several commenters supported the FDIC's proposal to provide covered institutions with a grace period for compliance violations that occur as the direct result of a merger. These commenters requested a 24-month grace period, however, based on the expectation that a covered institution would need more than one year to merge systems and fully integrate records and operations as a result of a merger. One commenter also suggested that this provision should be amended to address deposit assumption transactions.

The Final Rule

The FDIC considered these comments and made two revisions to the proposal. First, the final rule replaces ''merger'' with ''merger transaction.'' For the purposes of this paragraph, ''merger transaction'' has the same meaning as provided in section 18(c)(3) of the FDI Act.[12] This revision clarifies that a ''merger transaction'' is broader than a merger and can include deposit assumption transactions and other merger transactions by a covered institution. Second, the final rule provides a 24-month grace period rather than a one-year grace period following the effective date of a merger transaction. This 24-month grace period does not extend a covered institution's preexisting compliance date; rather, it provides a 24-month grace period to remedy compliance deficiencies that occur as the direct result of a merger transaction. In cases where this 24-month grace period is not sufficient, a covered institution may request a time-limited exception pursuant to § 370.8(b) for additional time to integrate deposit accounts or IT systems.

D. Voluntary Compliance With Part 370

In the NPR, the FDIC proposed to enable an IDI that is not a covered institution to voluntarily become a covered institution. Such IDI would need to notify the FDIC of its election and would be considered a covered institution as of the date on which such notice is delivered to the FDIC. Its compliance date would be the date on which it submits its first certification of compliance and deposit insurance coverage summary report pursuant to § 370.10(a). The FDIC proposed this revision to enable banking organizations with one part 370 covered institution and one 360.9 institution to 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 concerning provisional hold capabilities and standard data format for deposit account and customer data.[13]

One commenter supported this proposal recognizing that an IDI may voluntarily comply with part 370 for efficiency when the IDI has an affiliated covered institution and their holding company would prefer to comply with the rule across its organization.

The Final Rule

The FDIC has amended the definition of ''covered institution'' in § 370.2(c) as proposed. An IDI may voluntarily comply with part 370 by delivering written notice to the FDIC stating that it will voluntarily comply with the requirements of part 370. Such an IDI would be considered a covered institution as of the date on which the notification is delivered to the FDIC. 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). An IDI subject to § 360.9 must continue to comply with § 360.9 until it meets the conditions for release from § 360.9 requirements set forth in § 370.8(d).

[11] Section 360.9 neither expressly addresses effects of changes to law nor provides any minimum time period for such changes to law.

[12] See 12 U.S.C. 1828(c).

[13] 84 FR 14814, 14817.

E. Deposit Accounts With ''Transactional Features''

1. Purpose for Identifying Deposit Accounts With ''Transactional Features''

Part 370 applies a bifurcated approach to recordkeeping requirements, generally requiring that a covered institution itself maintain all information needed to calculate deposit insurance coverage for many types of deposit accounts while allowing covered institutions to maintain less information for other accounts because there are impediments to bringing that information into the covered institution's records. Among these ''alternative recordkeeping'' accounts are those that 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. Part 370 uses the ''transactional features'' definition to identify those alternative recordkeeping accounts that may support depositors' routine financial needs and therefore require a prompt deposit insurance determination to avoid delays in payment processing should the covered institution's deposit operations be continued by a successor IDI. The original part 370 required covered institutions to certify that, for alternative recordkeeping accounts with transactional features, the account holder would submit to the FDIC the information necessary to complete a deposit insurance calculation with regard to the account within 24 hours following the appointment of the FDIC as receiver. It also provided exceptions to this certification requirement for certain types of accounts.

The NPR described the FDIC's efforts to create appropriate recordkeeping requirements for those types of deposit accounts for which depositors need daily access to funds but for which the covered institution is not required to maintain all information needed to complete a deposit insurance determination. In the NPR, the FDIC proposed to retain the bifurcated approach to recordkeeping requirements but change the definition used to classify accounts with transactional features.

The FDIC proposed narrowing 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. As stated in the NPR, the FDIC intends that the transactional features definition identify 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.[14] The FDIC proposed to revise § 370.2(j) to define transactional features primarily by reference to the parties who could 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. Under the proposed revision, an alternative recordkeeping account would have transactional features if it could be used to make transfers to anyone other than the account holder, the beneficial owner of the deposits, or the covered institution itself, by a method that would result in the transfer not being reflected in the close-of-business ledger balance for the account on the day the transfer was initiated. Transfers that are included in the close-of-business account balance for an account on the day of failure generally will be completed under FDIC rules,[15] with funds transferred out of the account not being included in the deposit insurance determination for the account. Since such transfers would not be affected by the deposit insurance determination, any delay in completing the deposit insurance determination for such account would not create delays in processing payments. The proposed definition also included linked accounts that support accounts with transactional features.

In the NPR, the FDIC solicited comment on whether it would be better to eliminate the definition of transactional features and instead provide that any special requirements for alternative recordkeeping accounts be applicable without regard to whether the accounts do or do not have ''transactional features.''

Some commenters supported the FDIC's proposed revisions to the definition. One commenter concluded that the revised definition better supports the FDIC's ability to determine deposit insurance coverage promptly than the original definition, and another commenter noted that the revised definition aids in identifying pass-through accounts that support depositors' routine financial needs in a reasonable, burden-reducing manner. Another commenter made similar comments. All supportive commenters requested some modifications to the proposed definition for the purpose of clarifying that deposit accounts utilized in certain business arrangements would not be considered to have ''transactional features.''

Other commenters expressed opposition to the revisions to the definition. One stated that the revised definition failed to add clarity or improve the description of the accounts that required prompt processing. This commenter requested that the FDIC develop a more customer-friendly definition and suggested that the FDIC simply use the term ''checking accounts.'' Another commenter expressed concern that the definition was still unclear and proposed that the FDIC use the ''transaction account'' definition used in other regulations, such as Regulation D[16] or Regulation CC.[17]

Finally, commenters expressed a variety of responses to the FDIC's question regarding removal of the definition of transactional features and application of the related requirements to all alternative recordkeeping accounts. One supported the proposal, expressing that it appropriately places the onus on the depositors to submit data quickly to obtain a prompt deposit insurance determination. Another supported retaining the definition so that covered institutions could have the flexibility to use the definition to distinguish between accounts on that basis if they so desired, rather than being obligated to comply with the related requirements as to all alternative recordkeeping accounts. Another wrote that maintaining the definition and the option to treat all § 370.4(b)(1) alternative recordkeeping accounts as accounts with transactional features was a benefit of the proposed rule. Finally, one commenter expressed opposition to elimination of the definition and application of the requirements to all alternative recordkeeping accounts on the grounds that some of the requirements would impose a significant burden as certain account holders would be unable to meet these requirements with regard to certain alternative recordkeeping accounts such as trust accounts.

The Final Rule

The final rule reflects the FDIC's continuing effort to establish a framework for providing prompt payment of deposit insurance for deposits maintained in accounts subject to the alternative recordkeeping requirements of § 370.4(b)(1) through capabilities that are least burdensome to

[14] 84 FR 14814, 14818.

[15] See 12 CFR 360.8.

[16] 12 CFR part 204.

[17] 12 CFR part 229.

covered institutions and account holders. The final rule retains the term ''transactional features,'' with clarifying changes to the definition, and alters the required actions that a covered institution must take with respect to deposit accounts with transactional features for which the covered institution maintains its deposit account records in accordance with the alternative recordkeeping requirements set forth in § 370.4(b)(1). The final rule amends § 370.5(b), which lists account types for which a covered institution need not take these actions, as proposed in the NPR.

The proposed definition of transactional features is adopted in the final rule substantially as proposed. Retaining the definition allows the FDIC to focus on those alternative recordkeeping accounts that are most likely to require a deposit insurance determination immediately upon failure. It provides the covered institution with options to comply by taking the actions specified in § 370.5(a) with regard to: Only those alternative recordkeeping accounts described in the definition, a larger subset of alternative recordkeeping accounts, or all alternative recordkeeping accounts other than those described in § 370.5(b). Revising the definition to adopt the ''transaction account'' definitions of Regulation D or Regulation CC, or to limit it to checking accounts, would result in an unacceptably narrow definition that would exclude some accounts for which ready access to funds remains important to depositors and their payees. Use of a narrower definition would also increase the likelihood that some in-process transactions involving the account would be disrupted, should a deposit insurance determination be delayed due to a lack of information regarding deposit ownership.

In response to the comments, the definition is revised from the proposed rule by replacing ''transfers'' with ''transfer,'' ''parties'' with ''party,'' ''methods'' with ''method,'' to make clear the FDIC's intention that the ability to make one or more transfers to any one or more parties other than the account holder, beneficial owner of the deposits, or the covered institution is sufficient for an account to have transactional features, if such transfer or transfers is made by a method or methods that may result in such transfer 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. When interpreting this definition, the FDIC will consider transfers to custodians and trustees acting on behalf of the beneficial owner of the deposits to be transfers to the beneficial owner of the deposits, such that the ability to transfer from the deposit account to a custodian or trustee of the beneficial owner of the deposits, pursuant to a method described in the definition, will not itself result in the account having transactional features. In such circumstances, a custodian or trustee acting on behalf of the beneficial owner of the deposits is not a third party transferee of the type that indicates that the account is being used by the beneficial owner of the deposits to meet its ''day-to-day financial obligations,'' a central motivation for the requirements of § 370.5(a).[18] Rather, as the comment described above indicates, it is merely a transfer between accounts maintained for the beneficial owner of deposits and should be treated accordingly.

2. Actions Required for Certain Deposit Accounts With Transactional Features Under § 370.5(a)

Original part 370 required the covered institution to certify to the FDIC that, for alternative recordkeeping accounts with transactional features, the account holder ''will provide to the FDIC the information needed . . . to calculate deposit insurance coverage . . . within 24 hours after'' failure. In the NPR, the FDIC proposed replacing the certification requirement with a requirement that covered institutions instead 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 relevant deposit accounts within 24 hours after the failure of the covered institution. Under the proposed rule, ''steps reasonably calculated'' included, at a minimum, contractual arrangements with the account holder that obligated the account holder 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 to account holders to inform them that 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.

The FDIC proposed to revise the actions of the covered institution required with respect to alternative recordkeeping accounts with transactional features and also amended the list of accounts excepted from those requirements.

One commenter expressed support for removing the certification requirement and replacing it with an obligation to take steps reasonably calculated to ensure the required depositor information is timely delivered for alternative recordkeeping accounts with transactional features. This commenter and another remarked favorably on the required contractual arrangements called for in the proposed rule, noting that account holders play a role in a deposit insurance determination for accounts with transactional features and that the proposed language appropriately makes them part of a solution that allows for timely processing.

Two commenters objected to the contractual requirement. One emphasized the bilateral nature of its deposit agreements and expressed concern that account holders may not agree to the required contract terms as doing so could be burdensome, and that these account holders may instead move their deposits to banks that are not covered institutions. It requested that the proposed requirement be limited to an obligation to make a good faith ''attempt to enter into contractual arrangements that obligate the account holder to deliver all the information needed . . .'', and to only be required to make the disclosure described in the proposed rule if the account holder did not agree to such terms. This commenter also suggested that the contractual language require the account holder to deliver the information within 24 hours of the covered institution's failure, rather than immediately upon failure. The other commenter objecting to the FDIC's proposal did so in the event that the definition of transactional features was removed from the final rule, and consequently, the requirement would apply to all alternative recordkeeping accounts. It noted the significant difficulties that some account holders would have in meeting both the timing and formatting delivery requirements and suggested limiting the requirement to pass-through accounts that named all beneficial owners and account participants in the account title.

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The final rule furthers the focus of the covered institution's obligations upon

[18] 81 FR 87734, 87751.

its own actions, rather than those of the account holder. To be sure, the FDIC expects that a covered institution will configure its information technology system to calculate deposit insurance coverage for the accounts within 24 hours following delivery of properly formatted depositor information by account holders. The FDIC's proposal to require that the covered institution take ''steps reasonably calculated'' to ensure that certain account holders make a timely delivery of properly formatted information is adopted, with further revision to the specific actions that ''steps reasonably calculated'' must include at a minimum. With respect to the first specific action, the FDIC acknowledges the comments regarding challenges that amendment of bilateral deposit agreements presents to covered institutions and has adjusted the final rule accordingly. Comments demonstrated that this provision could not be accommodated by some account holders for reasons of impossibility. Other commenters highlighted the burden that this imposed on covered institutions to re-negotiate agreements with account holders who may ultimately not accept such terms. The final rule amends § 370.5(a) by adding a new paragraph similar to that proposed in the NPR, but with the requirement that a covered institution make ''a good faith effort to enter into contractual arrangements with the account holder . . .'' By requiring that covered institutions make a good faith effort, the final rule provides flexibility to covered institutions whose account holders are unable or unwilling to execute new deposit agreements addressing part 370-related information production capabilities.

The second specific action to be included among ''steps reasonably calculated'' is comprised of two parts. A covered institution must provide a disclosure to account holders substantially similar to the disclosure set forth in the proposed rule to inform these account holders that their ability to access deposits in a timely manner after the covered institution's failure is dependent on meeting the information production requirements. A covered institution must also provide these account holders with an opportunity to validate their capability to deliver information needed for calculation of deposit insurance coverage in the format required by the covered institution's information technology system. These specific actions are expected to ensure that account holders are aware of the need to make a prompt submission of properly formatted deposit ownership information in order to have timely access to insured deposits, and that the account holder knows the manner in which it must make that submission. The account holder is the party best positioned to collect, maintain, format, and submit the depositor information, and has the greatest incentive to do so should the covered institution fail. The FDIC intends to include a review of a covered institution's efforts to take ''steps reasonably calculated,'' including those minimum requirements, as part of its compliance testing described in § 370.10(b).

3. Exceptions From the Requirements of § 370.5(a) for Certain Types of Deposit Accounts

Original part 370 provided an enumerated list of accounts that a covered institution did not need to address when making the certification required pursuant to § 370.5(a). The FDIC proposed retaining this list of deposit account types in the NPR, but broadened the exception for mortgage servicing accounts under § 370.5(b)(1) to include all deposits in such an account and expanded the list by adding 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 proposed rule also made a technical amendment to § 370.5(b)(4) to correct an incorrect cross reference.

Four commenters were supportive of the proposed changes. One suggested that the list be expanded to include custodial accounts, agency accounts, and fiduciary accounts not used for day to day transactions.

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Section 370.5(b) of the final rule provides an enumerated list of accounts for which a covered institution need not take the actions prescribed under § 370.5(a). In the NPR, the FDIC proposed to make three revisions to the list set forth in § 370.5(b) of the original part 370. First, the FDIC proposed to expand the exception for mortgage servicing accounts under § 370.5(b)(1) to include all deposits in such an account and not limit the exception to the extent that those accounts are comprised of principal, interest, taxes, and insurance. Second, the FDIC proposed a technical amendment to § 370.5(b)(4) to correct an incorrect cross reference to the applicable section of the FDIC's regulations governing deposit insurance coverage for deposit accounts held in connection with an employee benefit plan. Third, the FDIC proposed 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.

Commenters largely agreed with the FDIC's proposed revisions to § 370.5(b). One suggested that ''additional custodial accounts, agency accounts and fiduciary accounts that are not used for day-to-day transactions should be included in the list of exceptions in addition to the employee benefit accounts currently included in the list of excepted accounts. These should include other types of retirement accounts and employee benefit plans, public bond accounts and other types of custody and agency accounts, including those maintained within trust departments of the CIs or trust departments of affiliates of the CIs. Due to the nature and structure of the custodial, agency and other fiduciary relationships, the large majority of these accounts do not require immediate access to funds on deposit.'' The FDIC believes these suggestions are not specific enough to include in the enumerated list under § 370.5(b) and would be more appropriately addressed with a tailored exception request pursuant to § 370.8(b). The FDIC notes, however, that the final rule's revision of § 370.5(a) to focus the covered institution's actions on enabling account holders to best position themselves to take the actions that need to be taken after failure to obtain deposit insurance should provide sufficient flexibility for a covered institution to meet its obligations with respect to these additional custodial accounts, agency accounts and fiduciary accounts that are not used for day-to-day transactions. In all respects, the final rule amends § 370.5(b) as proposed for the reasons discussed in the NPR.

F. Recordkeeping Requirements

1. Alternative Recordkeeping Requirements for Certain Trust Accounts

Section 370.4(b)(2) of the original part 370 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 deposit accounts held in connection with a trust. Specifically, formal revocable trust deposit accounts that are insured as described in 12 CFR 330.10 (''formal 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). (The alternative recordkeeping requirements for these trust deposit accounts are different from the alternative recordkeeping requirements set forth in § 370.4(b)(1), which generally applies to deposit accounts that would be entitled to additional deposit insurance on a pass-through basis).

In the preamble to the original part 370, the FDIC explained that the recordkeeping requirements for formal REV accounts and IRR accounts were intended to ensure that covered institutions maintain enough information to allow for the calculation of an initial minimum amount of deposit insurance that would be available for these deposit accounts. The FDIC stated that ''[f]or deposit accounts held in connection with formal trusts for which the covered institution is not trustee, the covered institution will need to maintain in its deposit account records the unique identifier of the account holder, and the unique identifier of the grantor (if the grantor is not the account holder) if the account has transactional features. *The unique identifier of the grantor is needed in order to begin calculating how much deposit insurance would be available, at a minimum, on deposit accounts held in connection with a formal trust.* The covered institution will also need to maintain in its deposit account records information sufficient to populate the 'pending reason' field of the pending file set forth in Appendix B, which is to be generated by the covered institution's IT system pursuant to § 370.3(b) of the final rule.'' [19] The FDIC explained further that ''many consumers now open formal trust accounts and use them to handle their daily financial transactions. Compliance with this requirement regarding the grantor will permit the FDIC to begin the deposit insurance determination process and, during that delay, allow access to some portion of that deposit account and process outstanding checks.'' [20]

[19] 81 FR 87734, 87739. Emphasis added.

[20] Id. at 87752.

The FDIC expects that a covered institution's IT systems will be able to calculate an initial minimum amount of deposit insurance that would be available for formal REV accounts and IRR accounts based on the information that is maintained in the covered institution's deposit account records, even if that information is not all of the information that would be needed to calculate the full and final amount of deposit insurance that would be available for the deposits in those accounts. Ideally, this could be done within 24 hours after failure, but in any event by the next business day after a covered institution's failure to enable fulfillment of payment instructions presented on one of those accounts. Section 370.4(b)(2)(ii) of the original part 370 requires that a covered institution maintain ''the unique identifier of the grantor'' in its deposit account records for formal REV accounts and IRR accounts if those accounts have transactional features because, without that data element, even an initial amount of deposit insurance cannot be made available. The capability to provide some insurance coverage and enable the depositor to access a portion of the deposit shortly after a covered institution's failure should mitigate the adverse effects that could be caused by restricting access to all deposits in such accounts until the full extent of coverage can be calculated based on additional information delivered by the account holder at some later point in time after the covered institution's failure.

Since the adoption of part 370 in 2016, the FDIC has learned about specific challenges that covered institutions face with respect to certain types of deposit accounts held in connection with a trust. In the NPR, the FDIC proposed two amendments to § 370.4(b)(2) to clarify the rule's requirements and to more closely align part 370's burdens with its benefits. These two amendments are discussed in sections F.1.a. ''DIT accounts'' and F.1.b. ''Right and capacity code for certain trust accounts'' below. Three commenters discussed challenges to identification of trust grantors; while the FDIC has not eliminated this requirement, the final rule clarifies that this requirement will be satisfied upon identification of one grantor notwithstanding the fact that multiple grantors may exist. The FDIC believes that the changes made by this final rule balance its objectives with respect to certain trust accounts in a manner that is appropriate given challenges faced by covered institutions.

a. DIT Accounts

In the NPR, the FDIC proposed to amend § 370.4(b)(2) to include 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) as deposit accounts eligible for the alternative recordkeeping requirements. The FDIC recognized in the NPR that, although a covered institution as trustee for an irrevocable trust should be able to gather and verify the information needed to calculate the amount of deposit insurance coverage for such trust's deposit account(s) at any given time (such information being, among other things, the identities of trust beneficiaries and their respective interests), requiring continuous update of deposit account records could be overly burdensome. Additionally, there may be a significant lag between the time at which a change occurs and when the covered institution as trustee becomes aware of it and is able to update the respective deposit account records accordingly for purposes of part 370. Because of these issues, the FDIC believed it would be appropriate to enable covered institutions to maintain their deposit account records for DIT accounts in accordance with the alternative recordkeeping requirements.

Nearly all of the commenters were supportive of the FDIC's proposal to permit covered institutions to meet the alternative recordkeeping requirements for DIT accounts, and none objected. In light of the challenges associated with maintaining accurate information continuously in deposit account records for these accounts, the final rule amends § 370.4(b)(2) as proposed. DIT accounts are now an additional category of trust deposit accounts for which a covered institution may meet the alternative recordkeeping requirements rather than the general recordkeeping requirements. This amendment may result in a deposit insurance determination for DIT accounts not being made within 24 hours after a covered institution's failure; as discussed below, however, an initial minimum amount of deposit insurance available for these accounts could be calculated within that time frame using information that covered institutions regularly maintain for these accounts. To conform with this amendment, § 370.4 has been revised by removing paragraph (a)(1)(iv), which previously required 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.

b. Right and Capacity Code for Certain Trust Accounts

In the NPR, the FDIC proposed to amend § 370.4(b)(2)(iii) by replacing 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 with a requirement that a covered institution 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. The FDIC explained in the NPR preamble its expectation that covered institutions should be able to identify which of the right and capacity codes apply for deposit accounts that fall into this recordkeeping category 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. As a threshold matter, for a deposit account held in connection with a trust to be eligible for alternative recordkeeping under § 370.4(b)(2), a covered institution must be able to determine that the deposit account would be insured as a REV account, an IRR account, or a DIT account. The FDIC expects that a covered institution should be able to identify the applicable right and capacity code using information that the covered institution already maintains. In most cases, titling of the deposit account, tax reporting information, or documentation generated and maintained by a covered institution to ensure compliance with Bank Secrecy Act and anti-money laundering standards, taken individually or collectively, should be sufficient for a covered institution to determine whether a deposit account is a formal REV account or an IRR account. Where a covered institution is the trustee for an irrevocable trust, then the covered institution should know whether the deposit account it maintains as trustee on behalf of the trust is a DIT account.

Several commenters disagreed with the proposal to require a right and capacity code rather than a pending reason code. One argued that ''provisions in the trust agreement may alter the 'right and capacity' of a trust without the bank's knowledge . . . For example, the bank may not be informed that a revocable trust has turned irrevocable.'' Another commenter reiterated this point. The FDIC does not, however, share this concern. While formal revocable trusts could become irrevocable trusts upon the occurrence of specific events or satisfaction of certain conditions, this change in status alone does not alter the insurability of the deposits in the account. Section 330.10(h) of the FDIC's deposit insurance regulation states that ''if a revocable trust account converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners, the trust account shall continue to be insured under the provisions of this section.'' [21] Further, it provides that ''this section shall apply to all existing and future revocable trust accounts and all existing and future irrevocable trust accounts resulting from formal revocable trust accounts.'' [22] Accordingly, a deposit account established in connection with a formal revocable trust continues to be insured as an REV account even after the trust becomes irrevocable. The applicable category of deposit insurance for REV accounts does not change unless or until the deposit account is restructured.

A different commenter submitted that ''because these accounts would be placed in the pending file initially regardless of assignment of the ownership right and capacity, assigning a pending [reason] code indicating the nature of the account (*i.e.,* trust) similar to the treatment of all other accounts placed in the pending file seems more appropriate.'' This comment does not seem to consider the FDIC's objective of providing an initial minimum amount of deposit insurance available for certain trust deposits held in an account with transactional features. However, the FDIC believes that a solution exists that furthers its objectives without frustrating covered institutions' efforts to meet part 370's recordkeeping requirements.

Specifically, the final rule amends § 370.4(b)(2)(iii) to require covered institutions to maintain the corresponding ''right and capacity code'' from data field 4 of the pending file format set forth in Appendix B *if it can be identified.* If a covered institution makes a reasonable effort to identify the applicable ''right and capacity code'' but cannot be certain that it is correct, then the covered institution may instead maintain the corresponding ''pending reason'' code from data field 2 of the pending file format set forth in Appendix B. The FDIC expects that covered institutions should, for a vast majority of trust accounts, be able to identify the applicable ''right and capacity'' code.

Although § 370.4(b)(2)(iii) has been amended differently than proposed, the FDIC reiterates the notion that only deposit accounts held in connection with a trust that would be insured as either formal REV accounts, IRR accounts, or DIT accounts are eligible for alternative recordkeeping treatment under § 370.4(b)(2). Covered institutions must sufficiently investigate deposit accounts to make this determination in order to avoid treating deposit accounts of trusts that are insured as described in 12 CFR 330.11(a)(2), or any other provision, as deposit accounts that are eligible for alternative recordkeeping. If a covered institution cannot be sure that a deposit account held in connection with a trust would be insured as either a formal REV account, an IRR account, or a DIT account, then it should seek an exception pursuant to § 370.8(b).

For trust accounts with transactional features that would be insured as either a formal REV account, an IRR account, or a DIT account, but for which the covered institution cannot identify which corresponding ''right and capacity'' code is applicable and therefore instead maintains a ''pending reason'' code, the covered institution will need to maintain the identity of at least one of the trust's grantors in order to meet the requirement set forth in § 370.4(b)(2)(ii), even if the account is a DIT account. If the ''right and capacity'' code is not maintained in the deposit account records for a trust account that has transactional features, then the covered institution has no basis to not maintain the identity of a grantor of the trust, unless the covered institution has sought an exception for the respective account(s) pursuant to § 370.8(b). Additionally, any initial minimum amount of deposit insurance available for the account based on aggregation by grantor may be limited if the applicable right and capacity has not been identified prior to a covered institution's failure.

c. Grantor Identification

Pursuant to § 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 formal REV accounts and IRR accounts. The FDIC solicited comment on this requirement in the NPR, asking for which types of trust accounts covered institutions do not maintain identification of the grantor. The FDIC also asked whether it would be difficult for covered institutions to obtain the grantor's identity in order to assign a unique identifier if identifying

[21] 12 CFR 330.10(h).

[22] Id.

information is not maintained in the deposit account records for certain types of trust accounts.

Three commenters provided substantive responses to these questions. One explained that ''[a]lthough the grantor's name may have been recorded in the trust certification or other documentation when the account was opened, a unique identifier, such as a Social Security number, may not have been required or obtained.'' This commenter further explained that any ''identifying information for the grantor [that] was obtained is likely recorded on a records system other than that for deposits, such as a paper file.'' The second commenter shared a substantially similar response, adding that ''the ability to provide a unique identifier and grantor information is limited, as this information is often unknown unless the trust agreements are accessed.'' The third commenter stated that ''assigning the unique identifier of the grantor will be difficult since this information is not always maintained in the bank's systems.'' This commenter added that a ''manual review of trust documents would be needed to determine the grantor named on each trust account, with additional coding required to assign the grantor a unique identifier on the bank's systems.''

Each of these commenters suggested that the FDIC eliminate the requirement to maintain unique identifiers for grantors of trusts under § 370.4(b)(2)(ii). The first commenter provided two alternative bases. First, the commenter contended that ''deposit insurance calculations for trust deposit accounts cannot be completed without both grantor and beneficiary information. However, banks do not need to store this information, as it is obtained during resolution of a bank along with the beneficiary information required for deposit insurance calculations.'' Second, this commenter argued that ''because CIs are not required to maintain beneficiary information under 'alternative recordkeeping,' the recording of grantor information alone is of no benefit.'' This commenter further explained that ''[r]equiring CIs to obtain and input grantor information that they do not and are not otherwise required to maintain would essentially duplicate much of the post-closing process of contacting trustees to identify beneficiaries, yet still would not allow CIs to achieve the part 370 goal of being able to complete deposit insurance calculations.'' The second commenter shared this view, adding that ''[t]here is no benefit to accessing this information prior to bank failure and these accounts should be in the pending file with a process to update that information at bank failure.'' The third commenter reasoned that ''[a]s these accounts would all be placed in the pending file initially, regardless of assignment of the unique identifier for the grantor, it may be more practical to remove this very cumbersome and timely task from the requirements of part 370.''

The FDIC has considered these comments and determined that this requirement should not be eliminated. Part 370 was adopted with the expectation that a covered institution would need to engage in new recordkeeping efforts, to include conversion of information to a format that can be used by its information technology system to calculate deposit insurance coverage in an automated fashion, as well as correction of recordkeeping deficiencies through engagement with depositors or by leveraging other sources of information associated with tax reporting or compliance with Bank Secrecy Act and anti-money laundering requirements. The FDIC believes that covered institutions will generally be able to identify grantors, particularly those associated with formal REV accounts. In instances where satisfying this recordkeeping requirement is just not possible, § 370.8(b) provides covered institutions with the opportunity to request an exception.

It does not appear that the commenters have considered the FDIC's objective to provide an initial minimum amount of deposit insurance coverage for formal REV accounts and IRR accounts that have transactional features. The FDIC expects that covered institutions will recognize the benefits afforded to depositors should the FDIC be in a position to meet this objective because sufficient information is maintained in a covered institution's deposit account records. Moreover, the FDIC expects that the costs that covered institutions may bear in fulfilling this informational requirement are justified.

The final rule retains the requirement that grantor identity be maintained in the deposit account records for formal REV accounts and IRR accounts with transactional features because, without that information, the FDIC cannot begin to calculate the minimum amount of deposit insurance that would be available for those accounts. Having the identity of the grantor upon failure is expected to enable the FDIC, using the covered institution's IT system, to aggregate formal REV accounts that have the same grantor and provide access to combined balances up to the amount of the SMDIA (currently $250,000) in each category so that payment instructions presented against these accounts can be processed after failure. The same capability is expected for IRR accounts having a common grantor. This capability will facilitate the FDIC's resolution efforts by enabling a successor IDI to continue payments processing uninterrupted, and will also mitigate adverse effects of the covered institution's failure on these account holders. When the covered institution identifies a deposit account as a trust account but cannot designate the account as either a formal REV account or as an IRR account, then the covered institution will maintain the ''pending reason'' code in its deposit account records instead of the ''right and capacity'' code. Under those circumstances, the FDIC will not be able to provide access to an initial amount of deposits in each category but rather will need to limit initial coverage to the SMDIA as though all such accounts were insured in the same category.

The FDIC has made a minor revision to § 370.4(b)(2)(ii) in the final rule to clarify that a covered institution must maintain in its deposit account records the unique identifier of ''a'' grantor, rather than ''the'' grantor, if the account has transactional features. For trusts that have multiple grantors, covered institutions do not need to maintain the identification of all grantors. While the FDIC would need to know the identity of all grantors to calculate the total amount of deposit insurance coverage for one of these trusts, it believes that having the identity of one grantor will be sufficient to calculate the minimum amount of deposit insurance coverage so that some deposits can be made available immediately after a covered institution's failure. Any additional deposit insurance coverage would be calculated by the FDIC using the covered institution's IT system as the account holder delivers information substantiating the additional coverage to the FDIC.

The requirement that grantor identity be maintained in the deposit account records for formal REV accounts and IRR accounts does not apply with respect to DIT accounts. Deposits held in DIT accounts are insured per trust without regard to the rule for aggregation by grantor that is applicable in the IRR and REV categories. In the DIT category, each ''trust estate'' is insured to the SMDIA.[23] All DIT accounts held for the same trust are added together and insured, at a

[23] 12 U.S.C. 1817(i) and 12 CFR 330.12. Section 330.1(p) defines ''trust estate'' as the determinable and beneficial interest of a beneficiary or principal.

minimum, to the SMDIA. The FDIC expects to be able to use a covered institution's part 370-compliant IT system to make the minimum amount of deposit insurance available on DIT accounts within the first 24 hours after the covered institution's failure, with the remainder to be made available as information substantiating the right to additional deposit insurance coverage is delivered to and reviewed by the FDIC. The FDIC would then remove the remaining restriction on access to deposits in such accounts or debit uninsured deposits from such accounts accordingly.

2. Recordkeeping Requirements for a Deposit Resulting From a Credit Balance 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). 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.[24] 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 usually linked or integrated in any way with a covered institution's various loan platforms. The covered institutions 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 questioned the need to incur the cost to integrate the loan platforms with the deposit systems.

In order to address the covered institutions' concerns, the FDIC proposed adding 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 maintained 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.

Proposed § 370.4(d)(1) required 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.

Section 370.4(d)(2)(i) required the covered institution to be able to generate a file in the format set forth in Appendix C within 24 hours after 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 applied 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.

With respect to all other types of loan accounts with overpayments, proposed § 370.4(d)(2)(ii) would have required 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.

Four of the five commenters commented on the proposed rule's treatment of credit balances in the event of a covered institution's failure; none of the comments expressed approval of the proposed rule's approach in its entirety. One of the commenters expressly supported the FDIC's decision not to require covered institutions to integrate their loan and deposit systems. Another commenter, however, stated that the proposal required effort which would be ''significant, costly, and provides minimal benefit to the bank or customer.''

The commenters addressed both the ''restricting access'' requirement as well as the requirement to prepare a file of the credit balances in the Appendix C format. One comment letter stated that the covered institutions should not be required to restrict access to the credit balances on open-end or closed-end credit accounts or to amounts equivalent to the credit balance on a borrower's deposit account. Two other commenters believed that access to credit balances on loan systems should not be restricted—particularly on closed-end loan accounts. Several of the commenters also opposed restricting access to the credit balances on credit card accounts; one stated that freezing access to credit card accounts ''would potentially negatively impact customers who rely on credit card transactions for daily purchases such as food and transportation.'' Commenters suggested that the requirement to restrict access to credit balances on credit card accounts should only apply when the credit balance is near or above the SMDIA. Moreover, any accounts above the specified threshold would have access restricted through a manual process. Finally, one commenter asserted that freezing an amount equivalent to the

[24] 12 U.S.C. 1813(*l*)(3).

credit balance on the borrower's loan account on the bank's deposit system would require a matching process ''which is not currently within bank capabilities.''

The other major area of concern discussed in the comments was the requirement to prepare a file of the credit balances in the Appendix C format. Generally, the commenters were not in favor of the Appendix C file format. One commenter stated that to require data in the Appendix C format would be a significant challenge. Another requested that the automated report in the Appendix C format be deleted; this commenter asserted that only a manual review of credit balances would be necessary, and the focus should be limited to the larger credit balances. One commenter suggested that the requisite data regarding closed-end loan credit balances should not have to be prepared in the Appendix C file format. This commenter believed, like several others, that the credit balances file could be processed manually after a covered institution's failure. Finally, one commenter offered two alternatives for preparing the credit balances file. First, the covered institutions would only have to match customer information and create a file of credit balances for those accounts with large credit balances; this list would be prepared manually. Another option would require covered institutions to prepare a credit balance file only for credit balances on open-end loan accounts that exceed a specified dollar threshold; the commenter suggested a dollar threshold of $200,000. In other words, if a covered institution has a customer with a credit balance on its credit card account which is $200,000 or less, then the preparation of a file with the credit balance information would not be required.

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As structured in the proposal, the approach to identifying and including the credit balances in the deposit insurance calculation would require two steps. The first step would restrict access to either the credit balance on the covered institution's loan system or an amount equivalent to the credit balance on the customer's deposit account. The second step would generate the data file in the Appendix C format. In the development of the second step, the FDIC distinguished between closed-end and open-end loan accounts. Production of the data file consisting of the credit balances on open-end credit accounts would be needed immediately to complete the deposit insurance determination within 24 hours of the covered institution's failure. On the other hand, the data file for the closed-end credit accounts could be prepared on a different, less urgent, time frame for use in the deposit insurance calculation.

After due consideration of the comments received, the FDIC has revised the proposed rule to address many of the commenters' concerns. In response to some of the commenters, the FDIC has decided to modify the two step approach—particularly with respect to the requirement to restrict access to accounts on the relevant loan platforms. In the final rule, a covered institution's IT system will not be required to restrict access to the credit balances on its borrowers' credit accounts. This modification applies to both open-end and closed-end loan accounts. The FDIC recognizes that borrowers such as mortgagors cannot access any credit balance existing on a covered institution's mortgage loan system without the authorization and/or participation of the covered institution. Therefore, one of the FDIC's chief concerns is eliminated; *i.e.,* the borrower cannot spend down the credit balance during the pendency of the deposit insurance determination process and potentially receive payment of uninsured funds. As structured, closed-end loan systems already restrict the borrower/customer's ability to access the credit balance autonomously. The covered institutions do not have to implement new procedures or modify their existing systems in order to restrict access to credit balances on the closed-end loan systems.

With respect to credit balances resulting from overpayments on open-end credit accounts, the FDIC has also eliminated the requirement that a failed covered institution's IT system must be able to restrict access to the credit balances on the customers' credit accounts housed on the loan platforms. This means at failure, the covered institution's credit card account systems would remain accessible to its credit cardholders. The credit cardholders would be able to continue to charge the cost of goods and services over closing weekend against any credit balance outstanding on their accounts at the time of the covered institution's failure. Although the final rule would not require the covered institution's IT system to automatically restrict access to an open-end loan system on a system-wide basis, the FDIC expects that after the covered institution's failure, FDIC staff would be able to manually restrict open-end credit accounts when the credit balances equal or exceed the deposit insurance threshold of $250,000 to ensure that no funds are paid on any uninsured portion of the open-end credit account.

Although the requirement to restrict access to both open-end and closed-end credit account systems has been eliminated, the requirement that a covered institution's IT system be able to restrict ''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'' remains. This was not a new requirement and is not specific to § 370.4(d). Rather, it is an existing requirement from § 370.3(b)(3) and is fundamental to the FDIC's process for conducting a deposit insurance determination over any bank's closing weekend. It is customary practice for the FDIC, on closing night, to restrict access to the failed bank's deposit systems until the deposit insurance determination is completed. Usually, funds are available to the failed bank's depositors by the next business day. Rather than requiring the failed covered institution's system to restrict access to the amount equivalent to the credit balance on the loan system, the FDIC expects the covered institution's IT systems to be capable of restricting access to some or all deposits on the covered institution's deposit systems beginning on closing night. Then, provided that the covered institution's IT system is capable of producing the relevant data file in the Appendix C format, the objective is to complete the deposit insurance determination over the closing weekend, any uninsured funds that result from credit balances on open-end credit accounts will be debited, and the remaining funds will be available on the next business day—which is usually the following Monday.

Because the borrowers cannot independently access the overpayments on their closed-end credit accounts, the need to produce the file with the necessary data regarding the overpayments is not as critical as the situation regarding the open-end loan accounts. FDIC staff will use the covered institution's IT system to run the Appendix C data file for such closed-end credit accounts to complete the deposit insurance calculation process at some point after failure. It is important to note that by allowing the closed-end loan credit balances to be handled in a more idiosyncratic manner, it is quite possible that these borrowers/customers of the failed covered institution will have to wait longer to receive any additional deposit insurance funds represented by their overpayments. Nevertheless, these depositors should have access to any

insured funds in their deposit accounts on the next business day because the credit balances on their closed-end loan accounts could be debited at a later time if, when aggregated with other deposits in the same right and capacity, a depositor's total amounts would exceed the SMDIA.

Two of the commenters asserted that the covered institutions are not able to take a ''snapshot'' of credit card accounts to identify credit balances as of close-of-business on the day of failure. From the FDIC's perspective, this functional weakness will have to be rectified. After failure, the FDIC must be able to identify the precise amount of a credit balance as of the close of the business day and will rely on that amount in making its insurance determination. Several commenters offered the alternative of placing holds on loan accounts with credit balances in excess of a predetermined threshold amount. Presumably, the covered institutions must have developed some functionality to determine large credit balances; ideally, this same functionality could be adapted to identify the overpayments on all open-end credit accounts. One commenter noted, however, that ''a cardholder may have incurred transactions earlier in the day that will enter the system for processing later.'' Those transactions would be posted the following business day and therefore are not relevant to the deposit insurance determination.

The second step in the FDIC's approach to include all of the credit balances in the deposit insurance determination requires the covered institution's IT system to produce a data file in the Appendix C format. Several of the commenters suggested limiting the data file to only credit balances that exceed a predetermined threshold such as $200,000 or greater. Additionally, if the list of credit balances were so limited, the commenters concluded that FDIC staff would be able to create the list manually using the covered institution's IT system. Finally, some commenters did not want to use the Appendix C format at all. The FDIC has determined that the proposed requirement to produce files of both the closed-end and the open-end credit balances, respectively, in the Appendix C format will be retained. Nevertheless, as set forth in the proposed rule, the timing of the production of the data file in the Appendix C format will depend upon whether the data file relates to closed-end or open-end credit balances.

The FDIC identified a number of issues with the commenters' recommendations. First, 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 Appendix C file format. The Appendix C format includes the minimum number and type of data fields that the FDIC would need in order to identify and aggregate these credit balances with the other deposits owned by each depositor of the failed covered institution. 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.

Second, it would not be possible for the FDIC to conduct a timely deposit insurance determination on the failed covered institution's deposit accounts if only credit balances in excess of $200,000 on the open-end accounts are available over closing weekend. There were many comments noting that the amount of a credit balance on any individual credit card account, for example, is generally not very large. Therefore, the commenters did not believe that it should be necessary to create the capability to generate the requisite data file on all credit balances at failure. From the FDIC's perspective, there are two issues with that view. A depositor's credit balance, when aggregated with his/her deposit account balance (in the same right and capacity), could exceed the SMDIA—even if the credit balance, alone, is not significant. The FDIC, by statute, is only authorized to pay depositors their *insured deposits* in a failed bank resolution.[25] Paying more would exceed its statutory authority. Moreover, although each individual overpayment may seem insignificant, in the aggregate—across all of the failed covered institution's credit card and deposit account owners, the DIF could fund these overpayments to uninsured depositors by a significant amount. These overpayments to uninsured depositors ultimately would diminish the FDIC's recovery from the failed covered institution's receivership.[26] Paying uninsured depositors would represent a misuse of all IDIs' insurance premiums which fund the DIF. Therefore, the FDIC must be able to receive a data file in the Appendix C format that includes all of the credit balances for both the closed-end and open-end loan accounts.

Finally, the FDIC will require the Appendix C data file for open-end credit balances to be produced in a time frame that will allow the covered institution's IT system to complete the calculation of deposit insurance coverage within the first 24 hours after the covered institution's failure. Because access to the open-end credit systems will not be restricted after the covered institution's failure, the credit cardholders will still be able to run down any credit balances on their accounts during closing weekend. The FDIC will need the requisite data file within 24 hours so that FDIC staff would be able to complete the deposit insurance determination within the prescribed time frame, debit any uninsured amounts from the depositors' deposit accounts, and release the remaining insured funds by the next business day. This objective cannot be accomplished unless the covered institution's IT functionality is capable of producing the Appendix C file on a system-wide basis in a time frame that allows the covered institution's IT system to complete the deposit insurance calculation within the first 24 hours after failure. With respect to the production of the data file for the closed-end loan credit balances, the FDIC believed that the term ''promptly'' in the proposed rule would provide sufficient latitude to produce the requisite file in a reasonable time period. Nevertheless, commenters still expressed concern regarding an acceptable time frame to generate the Appendix C data file. Therefore, the FDIC confirms that there will be no mandated time frame for files generated for closed-end loan accounts in the final rule.

Several commenters expressed concern that if open-end credit systems were required to be restricted after the covered institution's failure, then the failed covered institution's credit card customers would be inconvenienced. On the other hand, if the Appendix C files are not produced in a timely manner and the deposit insurance determination cannot be completed, then the failed covered institution's depositors will be inconvenienced when their deposit accounts are not accessible on the next business day. In order to avoid such an outcome, the FDIC has adopted the § 370.4(d) provisions as set forth in this final rule.

G. Relief

In the NPR, the FDIC proposed to revise § 370.8(b) to expressly allow submission of a request by more than one covered institution for exception from one or more of the rule's requirements. Each covered institution

[25] 12 U.S.C. 1821(f)(1).

[26] The FDIC, in its corporate capacity, has a subrogated claim for the amounts paid to the failed covered institution's depositors. See 12 U.S.C. 1821(g)(1).

would still be required to submit the institution-specific data required to substantiate the request as required under § 370.8(b). The FDIC also proposed 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. The FDIC's notice of exception would not disclose the identity of the requesting covered institution(s) nor any confidential or material nonpublic information. Additionally, the FDIC proposed 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 is electing 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 complete notification letter. Under this proposal, 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.

Commenters generally supported the FDIC's proposal to revise § 370.8(b). Two commenters supported the revision regarding multiple covered institutions submitting an exception request because it reduces burden for covered institutions and the industry. However, one of the two commenters believed that industry associations should also be allowed to submit requests for relief on behalf of covered institutions.

Several commenters recommended the FDIC shorten its proposed 120-day timeframe for disallowing a covered institution's invoked exception. Three commenters suggested that 120 days is too long for the FDIC to deny a deemed exception and suggested the time frame be shortened to 60 days. One of the three commenters argued that covered institutions ''would be concerned with the cost and delay of progressing with part 370 implementation for four months only then to have to backtrack to treat accounts understood to be excused.'' Another commenter suggested a 120-day time frame is too long and a denial of an exception request would result in the need for customer outreach or significant system enhancements. This commenter stated that 30 days seems more reasonable.

Three commenters supported the FDIC's proposal of the ''substantially similar facts and the same circumstances'' standard and believed that this standard was a reasonable basis for deeming an exception granted. Another commenter suggested that this proposed standard be changed to ''substantially similar facts and circumstances'' without providing a rationale.

Additionally, several commenters requested that certain data be removed from the FDIC response to exception requests before publication in the **Federal Register**. One commenter suggested that dollar amounts and bank-specific information be categorized as identifying information and be removed from the FDIC's response. Another commenter advocated that the proposed § 370.8(b)(2) add a nondisclosure provision specifically stating that the notice will not disclose identifying, confidential, or material nonpublic information of the requesting covered institution(s).

The Final Rule

The FDIC has amended § 370.8(b) along the lines proposed, with one further revision based on a comment. The final rule will expressly allow submission of a request by more than one covered institution for exception from one or more of the rule's requirements. Each covered institution will still be required to submit the covered institution-specific data required to substantiate the request as required under current § 370.8(b).

The final rule also provides that the FDIC will publish in the **Federal Register** a notice of its response to each exception request. The FDIC's notice of exception will not disclose the identity of the requesting covered institution(s) nor any confidential or material nonpublic information. The FDIC believes that it is unnecessary to add a provision to the rule stating that the FDIC will not disclose the identity of the requesting covered institution and confidential, material nonpublic information. Subject to statutory and regulatory exceptions, the FDIC does not disclose confidential or material nonpublic information and will not do so under this rule.

The final rule further amends § 370.8(b) to include the ''substantially similar facts and circumstances'' standard as suggested by a commenter. The final rule revises the proposed new paragraph (b)(3) to § 370.8 by allowing a covered institution to notify the FDIC that, based on ''substantially similar facts and circumstances'' as presented in the notice published by the FDIC pursuant to § 370.8(b)(2), the covered institution elects to use the same exception.

The FDIC wants to provide covered institutions with more certainty with respect to exception relief and believes that § 370.8(b)(3) of the final rule provides covered institutions with more flexibility to determine whether one of the FDIC's published responses is applicable to its situation. The FDIC will still make the determination of whether a covered institution's facts and circumstances are substantially similar to the facts and circumstances in the FDIC's published notice and retains the ability to deny a covered institution's invocation of relief pursuant to § 370.8(b)(3). The final rule will also minimize time spent by the FDIC and covered institutions alike on processing this type of exception request.

The FDIC also believes that the 120-day time frame for a response to a request under this process is appropriate. The FDIC understands that covered institutions will be expecting a quick response from the FDIC, and it will make every effort to respond promptly within 120 days. Covered institutions providing notice to the FDIC under § 370.8(b)(3) should submit such notice to the FDIC at least 120 days before the covered institution's compliance date. Any covered institution that is denied a request for relief must comply with the requirements of the rule. However, if the covered institution's compliance date has not passed, the covered institution may submit an extension request at the same time it submits an exception request or notice under § 370.8(b)(3).

H. Technical Modifications

The FDIC proposed to make the following corrections and technical and conforming changes, including:

—Technical amendment to § 370.1 to correct an incorrect cross reference.

—Technical amendment to remove the definition of ''brokered deposit'' from § 370.2 because that term is not used in the regulatory text of part 370.

—Technical amendment to § 370.4(c) to remove reference to future guidance.

—Technical amendment to information technology system requirements in § 370.3(a) by adding a reference to the new paragraph (d) in § 370.4, which addresses treatment of credit balance deposits. Another technical amendment strikes a reference to information collected ''from the account holders'' in the last sentence of paragraph (a), referring instead to

''information collected after failure'' because additional information needed to calculate deposit insurance for accounts may be supplied by the respective account holders or by an additional data production process developed by a covered institution.

—Technical amendment to general recordkeeping requirements accommodating new paragraph (d) in § 370.4 (regarding treatment of credit balance deposits).

—Technical revision 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.

—Technical amendment to § 370.10(b) to clarify that material changes to a covered institution's information technology system, deposit-taking operations, or financial condition occurring after the covered institution's compliance date could result in more frequent testing.

—Technical revisions to ''Appendix B to Part 370—Output Files Structure'' to identify the mandatory versus permissive nature of certain data fields. Appendix B to part 370 provides basic templates for four information files that a covered institution's information technology system should be able to produce during its process for calculating deposit insurance and retain afterward as a record of the calculation. Revisions to these data file templates would indicate what data is non-essential and therefore may be given a null value if the covered institution does not have the information needed to populate the field.

—A new Appendix C is included to provide a file format for covered institutions to deliver the requisite deposit information regarding the credit balances maintained on their loan platforms.

Two commenters addressed these proposed technical amendments. Both commenters suggested that the government ID fields in the appendices should be allowed to be populated with a null value. One commenter explained that part 370 requires a unique ID, which can be a government ID but may be another unique number. This commenter also stated that covered institutions may not have a government ID for every account. Additionally, this commenter stated that the purpose of the DP_Hold_Amount field in the appendices is unclear and reporting this field involves unnecessary complexity for covered institutions.

The Final Rule

The final rule adopts the amendments as proposed. The FDIC believes that covered institutions should have a valid customer identification type as described in the appendices. Additionally, the DP_Hold_Amount cannot be given a null value, but if there is no hold amount then the value should reflect a zero amount.

I. Additional Recommendations From Commenters

Some comment letters also made recommendations that were not addressed in the proposed rule. The FDIC has summarized these comments below and considered all comments for the final rule.

1. Effect of Pending Requests for Relief

One commenter suggested revising § 370.10(c) to provide a one-year grace period for pending requests of relief that are denied. Section 370.10 was not revised in the proposed rule and provides that a covered institution that has submitted a request for extension, exemption, or exception will not be considered in violation while awaiting the FDIC's response. This commenter was concerned that if an exception request is denied, the covered institution will not be in compliance with part 370 immediately upon receipt of such denial.

The FDIC addressed this issue under III. G. Relief. If § 370.10(c) was revised as suggested by the commenter, then a covered institution with a denied request for relief would effectively receive a one-year extension as a result of this recommended revision. Any covered institution that has been denied a request for relief must comply with the requirements of the rule. Therefore, the FDIC has not revised § 370.10(c) in the final rule.

2. Settlement and Clearing Accounts

One commenter recommended that deposits placed in settlement accounts be afforded the same treatment as official items under § 370.4(c). The commenter described settlement accounts as internal accounts that hold comingled funds withdrawn from various deposit accounts and held in the internal accounts pending transfer out of the covered institution. The commenter stated that in the event of a failure, clawing back allotments from these omnibus accounts would take time and require manual intervention, posing the same difficulties in resolution as for official items.

The commenter also suggested that omnibus accounts held by covered institutions in connection with their business as American Depository Receipt (ADR) depositories should be eligible for § 370.4(c) treatment. The commenter described such omnibus accounts in connection with ADRs as accounts which receive payment of cash distributions from the foreign share issuer for eventual transmission out of the covered institution as payment to the ADR holders. The commenter also stated that identifying the beneficial owner due the funds temporarily held in a deposit account at the covered institution is not feasible, which presents a situation similar to that of accounts held at a bank to honor official items or settlement accounts.

This commenter also recommended that clearing accounts be excluded from the final rule. The commenter described clearing accounts as an internal account on the general ledger system or system of record holding funds that represent transactions and balances that require reconciliation or manual review before the funds can be allocated to accounts. The commenter explained that these funds are in clearing accounts because errors have occurred or the transfer of funds is otherwise in-process; consequently, the proper customers and account assignments have not yet been confirmed. Since deposit insurance calculations cannot be performed for funds that have not yet been assigned to customers, the commenter believed that such clearing accounts should be allowed to mirror the treatment accorded other in-process transactions initiated prior to close-of-business and awaiting settlement when a bank fails.

Another commenter recommended that settlement, clearing, and other similar accounts generally utilized for internal operations and processing be excluded from the final rule because ownership interest of such funds is rarely ascertainable, and the funds may not be entitled to FDIC insurance. The commenter requested that if these accounts are to be included in the final rule, these accounts should be permitted to use alternative recordkeeping and be assigned a new pending reason code.

The FDIC considered these comments, and the final rule does not provide for settlement and clearing accounts, as described above, to receive the same treatment as official items under § 370.4(c). Section 3(*l*)(4) of the FDI Act provides a definition of the payment instruments customarily recognized as ''official items'' of an insured depository institution.[27] Many of these instruments are enumerated in § 370.4(c): ''accounts held in the name of the covered institution from which withdrawals are

[27] 12 U.S.C. 1813(*l*)(4).

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.'' Two important characteristics of official items are that (i) the account holding the funds is titled in the name of the covered institution and (ii) the payment instruments are issued by the covered institution. Therefore, it would ordinarily be reasonable to expect a covered institution to be able to comply with the recordkeeping requirements of § 370.4(a). Nevertheless, the covered institution may not have sufficient information in its records to identify the actual owner of the payment instrument at the time of the covered institution's failure. One reason for that impossibility is that many of these instruments are negotiable. The FDIC addressed this situation by including § 370.4(c) in the original final rule, which states that ''[t]o 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).''

The FDIC believes that the funds placed in settlement and clearing accounts are not the same as payment instruments described as official items in § 370.4(c). As defined in the FDI Act, ''official items'' are *deposits,* and are payment instruments issued by the covered institution. These are definitely not funds owned by the covered institution. With respect to certain settlement or clearing accounts described by the commenters, there is no general presumption that can be made regarding the ownership of the funds deposited therein. As described, there are circumstances where the funds might belong to an entity, such as a corporation in the case of the ADR payments or could represent a cash account of the covered institution and not be eligible for deposit insurance at all—as one commenter asserted. In the event of a bank failure, the funds placed in such omnibus settlement and clearing accounts that have not been transmitted from the failed covered institution at the time of failure would be handled in accordance with the procedures set forth in § 360.8 of the FDIC's regulations.[28] Although these funds may not be considered in the initial deposit insurance determination, these funds will be included in the deposit insurance determination once the funds are returned to the customer's deposit account. Because it is not possible to identify with specificity and uniformity which omnibus accounts could qualify for special treatment similar to that afforded to official items, the FDIC recommends that a covered institution submit an exception request for those omnibus settlement or clearing accounts that would meet such a standard.

3. Mortgage Servicing Accounts

One commenter recommended that all mortgage servicing accounts receive the same treatment under § 370.5(b)(1), regardless of whether the account is maintained by a covered institution or an external mortgage servicer is the account holder. This commenter suggested that mortgage servicing accounts that are maintained by the covered institution as the mortgage servicer should be afforded the same treatment as mortgage servicing accounts that are relieved from the 24 hour certification requirement set forth in § 370.5(a).[29] Currently, mortgage servicing accounts that are serviced by the covered institution meet the criteria for recordkeeping pursuant to § 370.4(a) because the covered institution would maintain the necessary depositor information in its own IT systems. This commenter was concerned that the costs that covered institutions must bear to maintain mortgage servicing account to comply with § 370.4(a) could drive business away from covered institutions as mortgage servicers.

The FDIC has considered this request but has determined that such an amendment is not warranted. First, such mortgage servicing deposit accounts do not qualify for § 370.5(b)(1) treatment because such accounts are not eligible for alternative recordkeeping pursuance to § 370.4(b)(1). During periodic outreach calls, covered institutions explained to the FDIC that a large number of them use the mortgage servicing platform software provided by the same service provider. Currently, that software program does not allow the covered institutions to generate principal and interest information at the individual loan level on a daily basis, although it is possible to determine the taxes and insurance component of the mortgage payments received daily, if necessary. The FDIC further understands that a group of the covered institutions have begun working with this service provider to develop the capability to access the principal and interest information on a daily basis. This capability will become available in a matter of time. Under the final rule, covered institutions that are mortgage servicers are required to maintain in their deposit account records for each account, including mortgage servicing accounts, the information necessary for its information technology system to meet the requirements set for in § 370.3 in accordance with the general recordkeeping requirements set forth in § 370.4(a). The FDIC acknowledges that it may take some time for covered institutions to satisfy the requirements of § 370.4(a) for such mortgage servicing accounts. Therefore, a covered institution may request a time-limited exception for such accounts under § 370.8(b).

4. Option To Employ Focused Part 370 Processing

One commenter recommended that part 370 be amended to permit a covered institution to employ an optional focused approach to compliance by notifying the FDIC. The commenter suggested that the FDIC would set a dollar threshold below the SMDIA, and all depositors whose ''total relationship'' (*i.e.,* aggregated deposits across all rights and capacities) falls below that threshold would be excluded from part 370 treatment. Any depositor whose total deposits exceeded the threshold as of the initial compliance date would become subject to all the requirements of part 370. Covered institutions would be required to track the designated depositors' total deposits on a quarterly basis; and covered institutions would be allowed three months to bring a depositor's accounts into compliance if the aggregated deposit exceeded the threshold.

The FDIC believes that the recommended optional focused approach would prevent the FDIC from making a timely and complete deposit insurance determination after a covered institution's failure. All deposit-related information required by part 370, especially deposit ownership information, is necessary for the FDIC to make a complete and accurate deposit insurance determination. At the time of a covered institution's failure, the FDIC would endeavor to pay insured deposits to *all* depositors as soon as possible—not just those depositors whose information would be accessible because of the covered institution's compliance with part 370. It is quite possible that the majority of a covered institution's depositors would have a ''total relationship'' with the covered institution that would be below the established threshold. Because of the size of these largest institutions, the

[28] 12 CFR 360.8.

[29] See 12 CFR 370.5(b)(1).

volume of deposit accounts that would then have to be evaluated using some other IT functionality and recordkeeping system could still be enormous. Missing depositor information, IT functionality as well as the volume of accounts that would not be handled in accordance with the part 370 protocol could cause a significant delay in the FDIC's determination of deposit insurance coverage for the excluded depositors. This would not be acceptable to the FDIC. Moreover, it is unclear how this process of monitoring these excluded accounts on a quarterly basis and subsequent compliance with part 370 when the account exceeds the threshold would alleviate much burden for the covered institutions. Evaluating all of these accounts on a quarterly basis to confirm their excluded status and bringing them into part 370 compliance, when necessary, would seem to be more labor intensive and costly than integrating them into the part 370 recordkeeping and IT functionality initially. Ultimately, the FDIC firmly believes that this recommendation is not feasible for covered institutions; such an approach would not allow the FDIC to achieve its statutory objective of paying insured deposits as soon as possible. This commenter also stated that FDIC managers have accepted an approach adopted by some covered institutions during this part 370 implementation phase whereby total customer relationships above the SMDIA are addressed prior to the implementation date, then low-balance relationships are addressed through service contracts, and other accounts below the SMDIA may be remediated past the compliance date. The FDIC is concerned that the commenter believes that FDIC managers have accepted such an approach. A covered institution must comply with the requirements of the final rule by the covered institution's compliance date, unless the FDIC has approved a request for relief or the covered institution notifies the FDIC that it will invoke relief from certain part 370 requirements in accordance with § 370.8(b)(2).

IV. Expected Effects

The rule is likely to benefit covered institutions by reducing compliance burdens associated with part 370. Additionally, the rule is likely to benefit financial market participants by helping to support prompt determination of deposit insurance in the event a covered institution fails. Part 370 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. According to part 370, the compliance date for covered institutions that became covered institutions on part 370's effective date is April 1, 2020. Although the compliance date of April 1, 2020, has not yet been reached, we consider the effects of the rule relative to a baseline that includes the cost to covered institutions estimated for compliance with original part 370. In 2016, the FDIC estimated that part 370 would result in compliance costs of $386 million for 38 FDIC-insured institutions. After adjusting our calculated costs for original part 370 to account for the 36 institutions covered by the rule after the April 1, 2017 effective date, and after updating the data using December 31, 2018 call reports, the FDIC estimates that this final rule will reduce total compliance costs between $2.1 million and $41.8 million with a baseline estimate of $20.9 million.

A. Benefits

The final rule offers 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 enables 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 change. 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 rule are difficult to quantify.

As discussed previously, original part 370 did not provide for an adjustment period for a covered institution to comply with part 370 after a merger has occurred. The final rule amends part 370 to give covered institutions involved in a merger transaction a twenty-four month 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 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 final rule addresses recordkeeping concerns for several types of accounts and reduces 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 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 final 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 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 final 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 final 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 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 final 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 final rule are subject to uncertainty. That being said, an analysis of deposit account information at

covered institutions suggested that the final rule could affect an estimated one percent to 20 percent of accounts on average for covered institutions.[30] 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 amendments would likely provide. To conservatively estimate the expected benefits of the final rule, the FDIC assumed that the reduced recordkeeping requirements would affect between one percent and 20 percent of all deposit accounts at covered institutions. Therefore, the final rule is estimated to reduce the compliance burden of part 370 to between 41,803 and 836,028 hours for all covered institutions, which equates to an estimated reduction in compliance costs of between $2.1 million and $41.8 million.

B. Costs

The final rule is unlikely to impose significant costs on covered institutions. It offers 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. Extending the time to comply with part 370 would increase the risk that a covered institution would not have fully implemented the capabilities that part 370 calls for should the covered institution fail during that time. An inability to make timely deposit insurance determinations for deposit accounts at a covered institution in the event of failure 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 final rule may pose some 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 65 labor hours doing so on average, at a cost of $7,790.

[30] 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 rule.

V. Alternatives Considered

The FDIC considered several alternatives while developing this final rule. The FDIC first considered leaving part 370 unchanged. The FDIC rejected this alternative because the final 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 adopted 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.

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 final rule is entitled ''Recordkeeping for Timely Deposit Insurance Determination'' The information collection requirements contained in this final 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).

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 email to *oira_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.[31]

Current Action: The final rule is estimated to reduce recordkeeping and reporting requirements by 418,056 hours or $20.9 million dollars. The final rule reduces 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
- Deeming certain exceptions granted if based on substantially similar facts

[31] 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.

and the same circumstances as a request previously granted by the FDIC.

An analysis of deposit account information at covered institutions suggested that the final rule could affect an estimated one to 20 percent of accounts on average, for covered institutions.[32] 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 final 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 nonretirement accounts consist of the type of accounts for which the final rule reduces compliance burden. The number of accounts affects only one of eight components of the burden model for original part 370 adopted in 2016: 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 final rule would affect only that estimate.

Using this adjusted burden as a baseline for the burden reduction of the final rule, we estimate that the final rule would reduce the implementation burden by 418,056 hours. The final rule would not otherwise change the annual ongoing burden, but the FDIC estimates that the provisions for requesting relief or exceptions would require 65 labor hours per request.

For original part 370, 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 decreased by $20.9 million because of the final rule over three years.

Methodology

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. The 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.

For original part 370, the FDIC 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.[33] For this final rule, the FDIC updated the list of covered institutions to 36 and the types of accounts covered. The FDIC also updated the data in the model to December 31, 2018.

Implementation Burden:[34]

	Number of respondents[35]	*Estimated annual frequency*	*Estimated average hours per response*[36]	*Estimated total burden hours*
Original Part 370:				
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

[32] 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.

[33] See 81 FR 87734 for further discussion of the cost estimation model.

[34] Implementation costs and hours are spread over a three-year period.

[35] 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).

[36] 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.

[37] 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. In 2016, the FDIC estimated 38 banks would be covered. As of April 1, 2017, the effective date of the rule, only 32 banks were covered by the rule. Four additional banks became covered by the rule in later quarters for a total of 36 covered banks. This section uses bank-level data from December 31, 2018, updating the original burden estimate based on December 31, 2016, data.

	Number of respondents[35]	Estimated annual frequency	Estimated average hours per response[36]	Estimated total burden hours
Original Part 370 Total	38		137,014	5,206,516
Updated Data and Coverage:[37]				
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
Updated Data and Coverage Total	36	1	147,850	5,322,588
Change from Updated Data	*−2*			*116,072*
Final Rule:				
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
Final Rule Total	*36*	*1*	*136,237*	*4,904,532*
Change due to Final Rule	***0***			***(418,056)***

Ongoing Burden:

	Number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated total annual burden hours
Original Part 370:				
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
Original Part 370 Total	*38*		*526*	*20,000*
Updated Data and Coverage:				
Lowest Complexity Institutions	12	1	487	5,844
Middle Complexity Institutions	12	1	488	5,856
Highest Complexity Institutions	12	1	558	6,696
Updated Data and Coverage Total	*36*		*511*	*18,396*
Change due to Updated Data and Coverage	*−2*			*(1,604)*
Final Rule without Exceptions:				
Lowest Complexity Institutions	12	1	487	5,844
Middle Complexity Institutions	12	1	488	5,856
Highest Complexity Institutions	12	1	558	6,696
Change due to Final Rule, excl. Requests for Exceptions or Release	*36*		*511*	*18,396*
Exceptions or Release:				
Requests for Release[38]	*1*	*1*	*5*	*5*
Requests for Exception	*1*	*1*	*60*	*60*
Change due to Final Rule	***0***			***65***

The implementation costs for all covered institutions are estimated to total $362.4 million and require approximately 4.9 million labor hours over three years. This represents a decline of $20.9 million and 418,056 labor hours over three years for covered institutions due to the final 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.

During the three-year implementation, the estimated PRA burden for individual covered institutions was between 11,946 and 762,185 burden hours, and these monetized burden hours range from $1.6 million to $97.2 million. This represents a decline for covered institutions of 269 to 61,803 burden hours and $13,456 to $1.0 million, respectively.

The estimated ongoing burden on individual covered institutions for reporting, testing, maintenance, and other periodic items is estimated to range between 433 and 661 labor hours, and these ongoing burden hours are monetized to be between $64,973 and $99,222 annually. There is an additional ongoing burden of 65 hours and $7,790 for each request for relief.

The previous tables presented the total estimated compliance burdens for part 370 as revised by the final rule. This burden is spread over a three-year implementation period. As mentioned

[38] Part 370 allows for banks to request exceptions from rule's requirements or extensions of time to implement part 370 capabilities. The FDIC cannot estimate how many banks will request such exceptions or extensions.

previously, the compliance date for the regulation is April 1, 2020, and the final rule gives covered institutions the option to extend their April 1, 2020, compliance date by up to one year (to a date no later than April 1, 2021) upon notification to the FDIC. The FDIC does not know how many institutions will utilize the optional extension. The FDIC assumes that implementation costs were distributed evenly over three years. Therefore, the FDIC estimates the revised, annual implementation burdens to be:

Implementation Burden:

	Number of respondents[39]	*Annual frequency*	*Average hours per response*[40]	*Total annual burden hours*
Original Part 370:				
Lowest Complexity Institutions	12	1	5,176	62,108
Middle Complexity Institutions	13	1	7,724	100,408
Highest Complexity Institutions	13	1	54,249	705,237
Original Part 370 Total	*38*		22,836	867,753
Updated Data and Coverage:[41]				
Lowest Complexity Institutions	12	1	5,051	60,612
Middle Complexity Institutions	12	1	9,685	116,220
Highest Complexity Institutions	12	1	59,189	710,268
Updated Data and Coverage Total	*36*	*1*	*24,642*	*887,100*
Change due to Updated Data	*−2*			*19,347*
Final Rule less 10% Excepted Accounts:				
Lowest Complexity Institutions	12	1	4,717	56,604
Middle Complexity Institutions	12	1	8,941	107,292
Highest Complexity Institutions	12	1	54,461	653,532
Final rule Total less Exceptions	*36*		*22,706*	*817,428*
Change due to Final rule	***0***		***(1,936)***	***(69,672)***

ESTIMATED MONETIZED COSTS BY COMPONENT

Components	*Original part 370*	*Updated data and coverage*	*Final rule*	Change in cost from final rule
	Component cost **	Component cost **	Component cost **	
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 Final Rule			(20,902,365)	

[39] 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).

[40] 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.

[41] 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. For original part 370, the FDIC used data as of December 31, 2016, and estimated 38 banks would be covered. As of April 1, 2017, the effective date of the rule, only 32 banks were covered by the rule, and the identities of covered banks had changed. Four additional banks became covered by the rule in later quarters for a total of 36 covered banks. The updated calculations use data for the covered banks from December 31, 2018.

The estimated annual burden for the ''Recordkeeping for Timely Deposit Insurance Determination'' information collection (OMB Control Number 3064–0202) is as follows:

Implementation burden:[42]

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

Estimated time per response:[43] 136,237 hours (average).

Low complexity: 11,946–41,406 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: 485–661 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.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a final rule, to prepare and make available a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[44] 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.[45] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

The FDIC insures 5,486 institutions, of which 4,047 are considered small entities for the purposes of RFA.[46]

This final 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.[47] Since this rule does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[48] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[49]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[50] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[51] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[52]

In accordance with these provisions, the FDIC has considered the final rule's benefits and any administrative burdens that the final rule would place on covered institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. Section IV, Expected Effects details the expected benefits of the final rule and the administrative burdens that the final rule would place on depository institutions and their customers. The final rule imposes additional reporting and other requirements IDIs, and accordingly, shall take effect on October 1, 2019, which is the first day of a calendar quarter which begins on or after the date

[42] Implementation costs and hours are spread over a three-year period.

[43] For PRA purposes, covered institutions are presented in roughly equal-sized low, medium and high complexity tranches ranked by their PRA implementation hours.

[44] 5 U.S.C. 601 *et seq.*

[45] The SBA defines a small banking organization as having $550 million or less in assets, where an organization'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). In its determination, the ''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 entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[46] Call Report data, September 30, 2018, the latest date for which bank holding company data is available.

[47] FDIC Call Report data, December 31, 2018.

[48] 5 U.S.C. 801 *et seq.*

[49] 5 U.S.C. 801(a)(3).

[50] 5 U.S.C. 804(2).

[51] 12 U.S.C. 4802(a).

[52] 12 U.S.C. 4802(b).

on which the regulations are published in final form, consistent with RCDRIA.

E. Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final 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).

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [53] 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 final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

List of Subjects in 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 revises 12 CFR part 370 to read as follows:

PART 370—RECORDKEEPING FOR TIMELY DEPOSIT INSURANCE DETERMINATION

Sec.

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 a transfer from the deposit account to a party other than the account holder, beneficial owner of deposits, or the covered institution itself, by method that may result in such transfer 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 to this part;

(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

[53] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

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 to this part (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 a 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 a 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 to this part if it can be identified, otherwise the corresponding ''pending reason'' code from data field 2 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 to this part (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 paragraph (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 all of the deposits in every borrower's deposit account(s) at the covered institution in accordance with § 370.3(b)(3); and

(2) Producing a file in the format provided in appendix C to this part for:

(i) Credit balances on open-end credit accounts (revolving credit lines) such as credit card accounts and home equity lines of credit within a time frame that will allow the covered institution's information technology system to meet the requirements set forth in § 370.3(b)(1), (2), and (4) within 24 hours after failure; and

(ii) Credit balances on closed-end loan accounts 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 perform the functions set forth in § 370.3(b). At a minimum, ''steps reasonably calculated'' shall include:

(1) A good faith effort to enter into 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 within a timeframe sufficient to allow the covered institution's information technology system to perform the functions set forth in § 370.3(b) within 24 hours after the appointment of the FDIC as receiver in order for the account holder to have access to deposits on the next business day after failure; and

(2) Regardless of whether the covered institution and the account holder enter into contractual arrangements as set forth in paragraph (a)(1) of this section, the covered institution providing the account holder with:

(i) A written disclosure specifying the information and format requirements of its information technology system and stating that the account holder may not have access to deposits in its deposit account before delivery of information in a format that is compatible with the covered institution's information technology system; and

(ii) An opportunity to validate the capability to deliver the required information in the appropriate format so that a timely calculation of deposit insurance coverage can be made.

(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) *Initial compliance.* 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 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 transaction shall be deemed not to constitute a violation of this part for a period of 24 months following the effective date of the merger transaction.

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.

Code	Illustrative description
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.

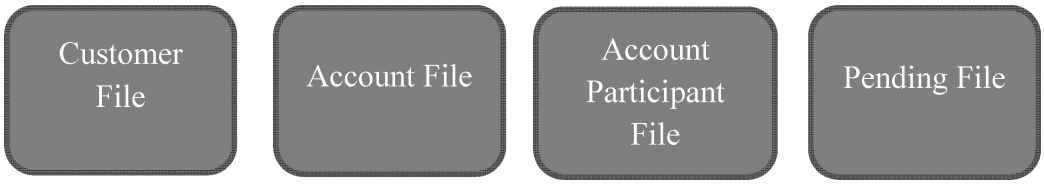
Code	Illustrative description
BUS	Business/Organization Account (12 CFR 330.11): An account of an organization engaged in an 'independent activity' (as defined in § 330.1(g)), but not an account of a sole proprietorship. This category includes: a. Corporation Account: An account owned by a corporation. 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:

Field name	Description	Format	Null value allowed?
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.

Field name	Description	Format	Null value allowed?
2. CS_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filling. 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.
3. CS_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.
4. CS_Type	The customer type field indicates the type of entity the customer is at the covered institution. The valid values are:. —IND—Individual —BUS—Business —TRT—Trust —NFP—Non-Profit —GOV—Government — OTH—Other	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.
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/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.	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:

Field name	Description	Format	Null value allowed?
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 —SGL—Single accounts. —JNT—Joint accounts. —REV—Revocable trust accounts. —IRR—Irrevocable trust accounts. —CRA—Certain retirement accounts. —EBP—Employee benefit plan accounts. —BUS—Business/Organization accounts. —GOV1, GOV2, GOV3—Government accounts (public unit accounts). —MSA—Mortgage servicing accounts for principal and interest payments. —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust. —ANC—Annuity contract accounts. —PBA—Public bond accounts. —BIA—Custodian accounts for American Indians. —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.	Character (4) ...	No.
4. DP_Prod_Cat	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. For credit card accounts with a credit balance that create a deposit liability, use a NULL value for this field.
5. DP_Allocated_Amt	The current balance in the account at the end of business on the effective date of the file, allocated to a specific owner in that insurance category. For JNT accounts, this is a calculated field that represents the allocated amount to each owner in JNT category. For REV accounts, this is a calculated field that represents the allocated amount to each owner-beneficiary in REV category. For other accounts with only one owner, this is the account current balance. 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).	Decimal (14,2)	No.
6. DP_Acc_Int	Accrued interest allocated similarly as data field #5 DP_Allocated_Amt. The amount of interest that has been earned but not yet paid to the account as of the date of the file.	Decimal (14,2)	No.
7. DP_Total_PI	Total amount adding #5 DP_Allocated_Amt and #6 DP_Acc_Int	Decimal (14,2)	No.
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:

Field name	Description	Format	Null value allowed?
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 —SGL—Single accounts. —JNT—Joint accounts. —REV—Revocable trust accounts. —IRR—Irrevocable trust accounts. —CRA—Certain retirement accounts. —EBP—Employee benefit plan accounts. —BUS—Business/Organization accounts. —GOV1, GOV2, GOV3—Government accounts (public unit accounts). —MSA—Mortgage servicing accounts for principal and interest payments. —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust. —ANC—Annuity contract accounts. —PBA—Public bond accounts. —BIA—Custodian accounts for American Indians. —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.	Character (4) ...	No.
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.
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:

Field name	Description	Format	Null value allowed?
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. —A—agency or custodian. —B—beneficiary. —OI—official item. —RAC—right and capacity code. For alternative recordkeeping requirements, use the following codes. —ARB—depository organization for brokered deposits (Brokered deposit has the same meaning as provided in 12 CFR 337.6(a)(2)). —ARBN—non-depository organization for brokered deposits (Brokered deposit has the same meaning as provided in 12 CFR 337.6(a)(2)). —ARCRA—certain retirement accounts. —AREBP—employee benefit plan accounts. —ARM—mortgage servicing for principal and interest payments. —ARO—other deposits. —ARTR—trust accounts. 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	Account ownership categories —SGL—Single accounts. —JNT—Joint accounts. —REV—Revocable trust accounts. —IRR—Irrevocable trust accounts. —CRA—Certain retirement accounts. —EBP—Employee benefit plan accounts. —BUS—Business/Organization accounts. —GOV1, GOV2, GOV3—Government accounts (public unit accounts). —MSA—Mortgage servicing accounts for principal and interest payments. —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust. —ANC—Annuity contract accounts. —PBA—Public bond accounts. —BIA—Custodian accounts for American Indians. —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.	Character (4)	Yes.
5. 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.
6. DP_Cur_Bal	Current balance—The current balance in the account at the end of business on the effective date of the file. This balance 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).	Decimal (14,2)	No.
7. DP_Acc_Int	Accrued interest The amount of interest that has been earned but not yet paid to the account as of the date of the file.	Decimal (14,2)	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:	Character (3)	No.

Field name	Description	Format	Null value allowed?
	—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.		
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 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.	Variable Character	Yes.
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*

A covered institution's IT system should be able to produce a file in the format below that can be used to calculate deposit insurance coverage for deposits resulting from credit balances on accounts for debt owed to the covered institution (''credit balances''). This file format is derived from the ''Broker Submission File Format'' found in the FDIC's ''Deposit Broker's Processing Guide,'' supplemented by the ''Addendum to the Deposit Broker's Processing Guide'' used for Part 370 alternative recordkeeping entity processing. The file format below identifies fields that are not applicable for processing credit balances. These fields should be null while also maintaining the pipe delimiters. Additional information regarding the FDIC's Deposit Broker's Processing Guide for part 370 covered institutions may be found at *https://www.fdic.gov/deposit/deposits/brokers/part-370-appendix.html*

Field name	Description	Null value allowed? (Y/N)
01 Broker Number	Not applicable	Y.
02 Account Number	Account number of account holding pending payments or other items for refunds of credit balances.	N.
03 Customer Account Number.	Assigned customer account number	N.
04 CUSIP	Not applicable	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.

Field name	Description	Null value allowed? (Y/N)
07 Name	Full name of credit balance owner	N.
08 Name 2	Name 2	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.
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 IRA Code	Not applicable	Y.
18 Credit Balance	Credit balance of the account as of the institution failure date	N.
19 Sub-broker Indicator	Not applicable	Y.
20 Deposit Account Ownership Category.	Account ownership right and capacity	N.
21 Transactional Flag	Not applicable	Y.
22 Retained Interest	Not applicable	Y.
23 Amount of Overfunding	Not applicable	Y.
24 Account Participant Full Name.	Not applicable	Y.
25 Account Participant Type	Not applicable	Y.
26 Amount of Account Participant's Non-contingent Interests.	Not applicable	Y.
27 Amount of Account Participant's Contingent Interests.	Not applicable	Y.
28 Account Participant's Government-Issued ID.	Not applicable	Y.
29 Account Participant's Government-Issued ID Type.	Not applicable	Y.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 16, 2019.

Robert E. Feldman,

Executive Secretary.

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