

## **Statement on Advance Notice of Proposed Rulemaking on Large Bank Deposit Insurance Determination Modernization**

Thank you, Mr. Chairman. I would like to begin by thanking today's presenters and their staff for the work in preparing this ANPR. I support issuing today's ANPR as I believe it is vital that the FDIC seek public comment on this important issue.

Since its creation in 1933, one of the core responsibilities of the FDIC has been the resolution of failed insured depository institutions.<sup>1</sup> Presently, when a bank fails, the FDIC assumes the role of receiver for the failed bank and must resolve the bank in a manner that minimizes losses to the Deposit Insurance Fund pursuant to a statutory least-cost test.<sup>2</sup> The FDIC is also under a statutory mandate to pay deposit insurance (by payout or transfer) "as soon as possible" following the failure of an insured depository institution.<sup>3</sup>

Banks perform critical functions for the economy and have unique access to facilities such as the FDIC Deposit Insurance Fund that could see substantial losses in the event that a bank or multiple banks fail. Recently, the FDIC took an important step in addressing the potential challenges and losses arising out of bank failures and resolutions when the Board of Directors approved guidance to all banks with assets greater than \$50 billion.<sup>4</sup> The guidance requires these banks to provide a fully developed discussion and analysis of a range of realistic resolution strategies that would allow the FDIC to resolve

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<sup>1</sup> Throughout this statement, the term "bank" is used synonymously with "insured depository institution."

<sup>2</sup> 12 U.S.C. § 1823(c)(4).

<sup>3</sup> 12 U.S.C. § 1821(f)(1).

<sup>4</sup> See Federal Deposit Insurance Corporation, "FDIC Issues Guidance on the Resolution Plans of Large Banks" Press Release (December 17, 2014) *available at* <https://www.fdic.gov/news/news/press/2014/pr14109.html>.

the institution in an orderly manner that enables prompt access of insured deposits, maximizes the return from the failed institution's assets, and minimizes losses realized by the Deposit Insurance Fund.<sup>5</sup> Today's ANPR, addressing issues surrounding performing deposit insurance determinations at banks, represents another necessary step towards facilitating the resolution of banks in a manner consistent with the FDIC's statutory mandate.

In 2005, the FDIC attempted to enhance its ability to make prompt deposit insurance determinations at certain large banks in a rulemaking process beginning with an Advance Notice of Proposed Rulemaking and culminating in 2008 with a Final Rule.<sup>6</sup> The 2008 Final Rule required a certain subset of large banks to have in place an automated process for placing and removing holds on deposit accounts and to be able to produce upon request data files that use a standard data format populated by mapping preexisting data elements regarding deposit accounts.

As noted in today's ANPR, the FDIC's experience during the financial crisis and its interaction with firms in implementing the 2008 Final Rule suggest that the rule might not be sufficient to enable the FDIC to complete a timely deposit insurance determination

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<sup>5</sup> Additionally, the FDIC, Federal Reserve, and OCC recently stated, in promulgating regulations implementing the Liquidity Coverage Ratio, that certain larger banks and bank holding companies should be able to identify applicable insurance coverage for their deposits and "are expected to have adequate policies and procedures in place for determining whether deposits are above the applicable FDIC-insurance limits." Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, "Liquidity Coverage Ratio: Liquidity Risk Measurement Standards," Final Rule, 79 FR 61440, 61495 (October 10, 2014).

<sup>6</sup> See Federal Deposit Insurance Corporation, "Large-Bank Deposit Insurance Determination Modernization Proposal" Final Rule. 73 FR 41180 (July 17, 2008); Federal Deposit Insurance Corporation, "Large-Bank Deposit Insurance Determination Modernization Proposal" Notice of Proposed Rulemaking, 73 FR 2364 (January 14, 2008); Federal Deposit Insurance Corporation, "Large-Bank Deposit Insurance Determination Modernization Proposal" Advance Notice of Proposed Rulemaking, 71 FR 74857 (December 13, 2006); Federal Deposit Insurance Corporation, "Large-Bank Deposit Insurance Determination Modernization Proposal" Advance Notice of Proposed Rulemaking, 70 FR 73652 (December 13, 2005).

of “closing night deposits.”<sup>7</sup> Such inability would frustrate the FDIC’s objective to pay insured depositors accurately and promptly.

The financial crisis also demonstrated that failures can occur rapidly and simultaneously in times of stress. From 2009-2015, the FDIC was called upon to resolve 47 institutions within 30 days from the launch of the resolution process to the ultimate closure of the bank. This problem would have been exacerbated but for substantial government intervention to prevent additional failures. These experiences during the crisis illustrate that rendering insurance determinations and making accurate and prompt payments can be increasingly more difficult when the FDIC is without time to gather necessary data and prepare for the failure. Requiring the availability of necessary data, including potentially requiring banks to be able to state each customer’s level of insured deposits would improve accuracy and efficiency in the event of rapid resolutions in the future. While the potential challenges of resolving a failed bank certainly could increase if a bank has a larger number of deposit accounts, the concerns about which this ANPR seeks comment might not necessarily be limited to banks with more than 2 million accounts.

In addition to causing the possibility of either a delayed payment or overpayment to insured depositors, the inability to complete a deposit insurance determination might have other negative consequences. Specifically, the inability to complete a deposit insurance determination might limit the FDIC’s options through which to resolve a failed bank, potentially increasing the cost of the resolution. Timely and accurate deposit

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<sup>7</sup> The ANPR contemplates that “closing night deposits” would include those where depositors have the greatest need for immediate access to funds (such as transaction accounts and money market deposit accounts) but seeks comment on what types of deposits should be deemed “closing night deposits.”

account information is necessary not only to ensure that the FDIC can fulfill its statutory mandates but also to foster a sound resolution framework that furthers market discipline.

Today's rulemaking process serves the important goal of seeking comment on ways to enhance the FDIC's ability to pay insured depositors accurately and promptly and to maximize the FDIC's resolution options consistent with the agency's statutory mandate. I look forward to receiving the public comments. Thank you.