Statement of Martin J. Gruenberg

Member, FDIC Board of Directors

Notice of Proposed Rulemaking: Amendments to 12 CFR Part 370

Recordkeeping for Timely Deposit Insurance Determination

March 29, 2019

In December 2016, the FDIC Board adopted a final rule establishing additional recordkeeping requirements to facilitate prompt payment of FDIC-insured deposits when large insured depository institutions (IDI) with two million or more accounts fail.[1] As of year-end 2018, there were 36 insured depository institutions subject to the rule ("covered institutions").

I believe this is one of the most important rules that the FDIC has adopted to manage the orderly failure of large, complex banks. As the preamble to the current rule states, "The FDIC believes that prompt payment of deposit insurance is essential to the FDIC's mission …. First, prompt payment of deposit insurance maintains public confidence in the FDIC, the banking system, and overall financial stability. Second, facilitating prompt access to insured funds for depositors enables them to meet their financial needs and obligations. A delay in the payment of deposit insurance – especially in the case of the failure of one of the

[1] 81 Fed. Reg. 87734 (Dec. 5, 2016) (12 CFR Part 370, Recordkeeping for Timely Deposit Insurance Determination).

largest IDI's – could harm the entire financial system and national economy."

The Notice of Proposed Rulemaking (NPR) before the FDIC Board today would, in the words of the preamble to the NPR, "make extensive changes" to the current rule. Since I intend to vote against the NPR, I would like to take this opportunity to explain the reasons for my vote.

First, the NPR would allow banks subject to the current rule to delay compliance for a year. The current rule provided a three-year compliance period from the April 1, 2017 effective date of the rule to the current implementation date of April 1, 2020. The proposed rule would provide a fourth year to comply at the discretion of covered institutions.

While I recognize the significant operational challenges associated with compliance with this rule, I believe a three-year compliance period for covered institutions is more than sufficient. The covered institutions are large and have considerable resources. In addition, we are in the tenth year of an economic expansion that will soon be the longest expansion on record in July. If a large bank should get into difficulty during the next economic downturn, the ability to make timely deposit insurance determinations will be essential to an orderly resolution.

I would note that the NPR for the current rule originally proposed a two-year period for covered banks to come into compliance. In response to comments on that NPR, the final rule provided for a three-year compliance period. In my view, we should not delay implementation of this rule to a fourth year.

Second, a critical purpose of this rule was to deal with timely deposit insurance determinations on so-called pass-through accounts at institutions likely to have large numbers of such accounts. As the preamble to the proposed rule points out, "For example, deposits may be insured on a pass-through basis [under deposit insurance regulations], with records maintained outside of the IDI by an agent or third party authorized to maintain such records. Creating appropriate recordkeeping requirements for those accounts for which the information need not reside in the covered institution, and providing for their timely delivery in a format that permits the FDIC to use a covered institution's IT system to calculate deposit insurance promptly in the event of failure, was a central concern of the Part 370 rulemaking process."

The current rule has "alternative recordkeeping requirements" that apply to certain pass-through accounts. The proposed rule would change the definition of the "transactional features" that would qualify pass-through accounts for these alternative requirements. I have concerns that the new definition of "transactional features" lacks clarity and may create confusion as to what accounts would qualify for alternative treatment. In addition, I am concerned that the standard for compliance with this requirement of the rule would be changed from a certification of compliance by the covered institution to a requirement that the institution "take steps reasonably calculated to ensure" compliance. Given the importance of this provision to the overall rule, I believe we should maintain the current compliance standard.

Finally, under the current rule, a covered institution may submit a written request to the FDIC for exception from any specific requirement if circumstances exist that would make it impracticable or overly burdensome to meet the requirement. Under the proposal, multiple covered institutions could jointly request an exception from one or more of the proposed rule's requirements based on data specific to each individual institution. In addition, the FDIC would publish in the Federal Register a notice of its response to each exception request to facilitate transparency and a better understanding of the types of requests that the FDIC would grant or deny and the reasons supporting the decisions.

While I have no objections to these proposed changes, the proposal goes further to allow a covered institution to notify the FDIC of an exception election based on a published determination for another covered institution with substantially similar facts and the same circumstances. This election of another institution's exception would be considered granted unless the FDIC informs the institution to the contrary within 120 days after receipt of the institution's notification letter. According to the preamble, this would minimize the time spent by the FDIC and covered institutions in processing this type of exception.

The requirements of this rule, as I noted, are critical to the orderly failure of a large, covered institution. There should not be a presumption of approval for exceptions for one institution based on exceptions granted to other institutions, even if the institution's notification letter to the FDIC would need to include supporting information. In my view, the discipline provided by the FDIC's responsibility to analyze and approve such a request, and reply in writing with an explanation, would assure the appropriate rigor of analysis that granting such an exception should warrant.

For these reasons, I intend to vote against this notice of proposed rulemaking.