Law Department
MAC C7300-214
1700 Lincoln, 21st Floor
Denver, CO 80274

Tel: 303 863 2796
Fax: 303 863 2750

June 24, 2016

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

By FedEx and email

Attention: Comments

RE: Notice of Proposed Rulemaking - Recordkeeping for Timely Deposit Insurance Determination; RIN 3064 – AE33

Dear Mr. Feldman:

Wells Fargo & Company ("Wells Fargo" or "we") is a diversified financial services company with $1.8 trillion in assets providing banking, insurance, trust and investments, mortgage banking, investment banking, retail banking, brokerage services and consumer and commercial financial services. We appreciate the opportunity to comment on the FDIC's Notice of Proposed Rulemaking on Recordkeeping for Timely Deposit Insurance Determinations dated February 26, 2016 (the "proposed rule").

Wells Fargo has also participated in the preparation of the joint trade association comment letter on the proposed rule submitted by the American Bankers Association, The Clearing House Association, the Consumer Bankers Association, and the Securities Industry and Financial Markets Association ("Joint Trade Letter"). We agree with the substance of the comments in the Joint Trade Letter and want to emphasize particular concerns of Wells Fargo in this letter.

Wells Fargo supports the fundamental objective of the proposed rule: ensuring that depositors of large and complex financial institutions ("covered institutions") including Wells Fargo have prompt access to their insured transaction accounts in the event of a covered institution's failure in order to meet their financial needs and obligations.

At this early stage of analyzing the impact of the proposed rule, we believe compliance will be feasible for a significant majority of our domestic deposits. We carefully considered the assumptions on which we based our analysis. If our assumptions prove to be accurate, we will be able to attain a level of compliance that will significantly further the FDIC's goal of maintaining public confidence in FDIC deposit insurance and the banking system. As we explain below, there are significant compliance challenges with respect to accounts maintained by financial intermediaries and certain trusts. For these accounts, we believe the practical costs of compliance significantly outweigh any benefit.

In developing our initial analysis, we focused on data: whether we possess the customer and account data required to comply with the proposed rule or can identify ways in which it

may be possible for us to obtain the data. Complying with the proposed rule is not, however, simply a matter of whether a covered institution has the data.

We have not begun to develop estimates of the amount of work required to operationalize the data we have or believe we can obtain so that our information technology system is capable of assigning the FDIC's ownership right and capacity codes and accurately calculating deposit insurance coverage. In order to comply with the proposed rule with respect to the deposit accounts for which we have the data, however, we are certain we will need to undertake a great deal of work including significant upgrades to our information technology system for which an extended period of time will be required.

Customers and accounts for which we do not possess the necessary data present more complex challenges. For example, we do not possess the data for (a) beneficial owners of funds that financial intermediaries hold in comingled accounts or (b) trust beneficiaries of trusts that maintain accounts opened through our branches.

We have identified five distinct but interrelated obstacles that would make full compliance with the proposed rule for certain account types extremely difficult if not impossible in practice. These obstacles impact both the accounts for which we possess or can obtain the required data and those for which we do not possess the data. They include (in the order they appear in the proposed rule):

1. §370.3(c)'s requirement that a covered institution assign each account holder a "unique identifier", a requirement we understand is very important but view as extremely challenging to implement for certain types of accounts from an administrative perspective;

2. §370.3(d)'s requirement that a covered institution assign an FDIC ownership right and capacity code to each of its deposit accounts, a requirement not foreshadowed in earlier recordkeeping proposals and one with dramatic potential impacts on covered institutions and significant segments of their customers;

3. §370.3's two-year time frame for implementing multiple requirements in the proposed rule;

4. §370.4(c)'s process for obtaining exceptions and our concerns with the magnitude of the challenges facing Wells Fargo and all covered institutions with respect to financial intermediaries and other customers for which we do not have required data; and

5. §370.6(a)'s requirement that a covered institution annually certify it has successfully tested its information technology system for compliance with the requirements of the proposed rule.

We are particularly concerned with the proposed rule's possible unintended consequence of treating certain deposits at covered institutions differently than the same deposits at non-covered institutions. This disparate treatment has the potential to impact customers negatively. A financial institution's size - whether one of the largest and most

complex, one of the smallest, or anything in between – should not affect deposit insurance determinations. A joint account should receive the same insurance coverage wherever the joint account is held.

We urge the FDIC to apply the same two-pronged approach to making deposit insurance determinations for covered institutions that it applies to making those determinations for non-covered institutions. In the initial period after its appointment as receiver, the FDIC provides as many depositors as possible with prompt access to their insured funds so they can meet their financial needs and obligations. For more complex relationships including those where beneficial owners may not have had immediate access to funds prior to failure and for which the FDIC requires additional information, the FDIC may require additional time. These relationships include accounts involving FDIC pass-through insurance and accounts maintained by trusts. The FDIC's experience with resolutions would appear to confirm that this two-pronged approach does not negatively impact public confidence in FDIC deposit insurance and the banking system.

Further discussion of each of these obstacles and specific recommendations follow.

Proposed 12 CFR 370.3(c) – Assignment of Unique Identifier.

12 CFR § 370.3(c)'s requirement that a covered institution assign a unique identifier to each account holder illustrates the challenges of complying with the proposed rule's interrelated requirements. We understand the importance of a unique identifier. Introducing a unique identifier presents significant challenges that, at least for Wells Fargo, are more practical and administrative than technological. Implementation will require extensive outreach to existing segments of customers like financial intermediaries. This process would likely be extremely time-consuming. Although the proposed rule includes a process for requesting exceptions from the requirements of §370.3(a), we are concerned this process would not be feasible for covered institutions or the FDIC (as discussed beginning on page 7 of this letter).

Financial intermediaries (as well as many covered institutions) are likely to encounter these same administrative challenges and possibly significant technological challenges. Financial intermediaries also illustrate the proposed rule's impact on a significant customer segment that is not currently subject to FDIC supervision. Although deposits maintained by financial intermediaries constitute a small percentage of Wells Fargo's deposits, the number of accounts they maintain with us - approximately 55,000 - is substantial.

The proposed rule would require a covered institution to contact each financial intermediary customer to obtain the required data about each beneficial owner of funds held by the financial intermediary in an account at the covered institution. If the unique identifier were a customer's TIN, the covered institution would be requesting the TIN of each customer of the financial intermediary. Based on our initial discussions about the proposed rule with financial intermediary customers, many are not required to obtain and do not require their customers to provide TINs.

Financial intermediaries would face additional issues. One issue is whether the financial intermediary is permitted to share its customer data with the covered institution. A financial intermediary may need to obtain its customers' consent before sharing their data. It may be concerned about data breaches. It may view the covered institution requesting data on its customers as a competitor and be unwilling to provide the data. Some financial intermediary customers with which we have discussed the proposed rule have stated they have concerns about providing their customer data.

An additional concern raised by a covered institution's reliance on a financial intermediary for data is whether the covered institution would be responsible for ensuring a financial intermediary meets the requirements applicable to the covered institution (but not to the financial intermediary). Does the FDIC envision this would be a contractual matter between the covered institution and the financial intermediary?

Again, we understand the importance of a unique identifier. As explained above, the most significant challenges for Wells Fargo in implementing a unique identifier are administrative. We simply do not have the data for beneficial owners of funds held by financial intermediaries or beneficiaries of certain trusts, and obtaining this data would be a massive undertaking. In connection with its 12 CFR §360.9 rulemaking, the FDIC exempted deposits where beneficial owner data was not maintained by a bank on its deposit recordkeeping system. We recommend the FDIC continue this precedent and modify the proposed rule to provide a broad class exception for deposits of financial intermediaries. Financial intermediaries include any entity that maintains accounts in its own name in which it holds co-mingled funds on behalf of its customers. Typical examples are broker-dealers, escrow companies, insurance companies, numerous non-bank payment intermediaries that operate primarily or exclusively online and governmental entities. Funds in these accounts are typically eligible for FDIC pass-through insurance.

Proposed 12 CFR § 370.3(d) – Assignment of account ownership right and capacity codes.

Of the many obstacles Wells Fargo sees to operationalizing the requirements of the proposed rule, one of the most significant is 12 CFR § 370.3(d)'s requirement that a covered institution assign an account ownership right and capacity code to each of its deposit accounts. The practical implication of this requirement would be to transfer to covered institutions what we believe is the FDIC's responsibility for applying its rules under 12 CFR §330. Non-covered institutions would not take on this additional responsibility.

Satisfying this requirement presents distinct challenges including: (1) systems development, (2) access to data, (3) customer impact, (4) team member expertise/training, and (5) implementation, in particular for existing accounts.

The systems development required to track accounts by FDIC codes (like any systems development) includes establishing requirements, programming, testing and rollout. Wells Fargo's domestic deposit system currently tracks a number of account categories, but many of

these categories do not align exactly with the FDIC's ownership right and capacity codes or 12 CFR §330.

The treatment of joint accounts under the proposed rule exemplifies many of the challenges for covered institutions. Long-standing practice throughout the banking industry is to look to an account's titling on the institution's information system when determining whether the account is a joint account. The titling on the information system may not reflect 12 CFR §330.9(c)(1)(ii)'s requirement that each co-owner personally sign a deposit account signature card (or any other requirement for a "qualifying joint account"). If the rule is adopted as proposed, a qualified institution would need to determine whether it has an appropriate signature card for each account it codes as a joint account. If it doesn't have an appropriately signed signature card, it would need to obtain one in order to code the account as a joint account.

Another example of the challenges of this requirement are deposit accounts opened for formal (written) trusts in our branches. Wells Fargo does not obtain the trust agreement when it opens an account for a trust in a branch. The reasons for not obtaining the trust agreement include potential liability to trust beneficiaries for constructive knowledge of trust provisions. In addition, customers and their legal advisors typically consider information about trusts and their beneficiaries to be highly confidential. Also, state law may prohibit a covered institution (or any bank) from requiring a customer to provide a copy of a trust agreement. Substitutes for a trust agreement like a certificate of trust may not include the information required to assign the correct ownership right and capacity code such as whether the trust is revocable or irrevocable. Special expertise may be needed to understand trust designations and terminology. Also, a certificate of trust may not include trust beneficiaries. Again, this information is generally considered highly confidential.

There is a legitimate concern as to whether requiring covered institutions to assign account ownership right and capacity codes for accounts maintained by fiduciaries would require them to take on responsibilities beyond those of a depository. Determining the type of trust and identifying its beneficiaries can require substantial subject matter expertise (as well as documents and other information a customer may be unwilling to provide). When a covered institution is acting solely as a depository, it should not be responsible for determining the type of trust, the identities of the beneficiaries or the "non-contingent" or "contingent" nature of their interests as provided in 12 CFR §330.13.

The FDIC's rules in 12 CFR § 330 for calculating deposit insurance for certain account types are complex and, in our view, do not lend themselves to the approach required by the proposed rule. For example, §330.10 regarding revocable trust accounts distinguishes between eligible beneficiaries and ineligible beneficiaries. It is difficult to conceive of a bank employee discussing a beneficiary's eligibility or ineligibility with a customer. We view this as a subject more suited to discussion between a customer and the customer's legal advisor. (Interestingly, §330.10(b)(1)'s language about using an institution's electronic deposit account records to identify an account as a revocable trust account takes the approach we recommend the FDIC

adopt with respect to §330.9(c)(1)(ii)'s requirement of a personally signed signature card for a joint account.)

It is essential for the FDIC to understand the magnitude of the challenge that Wells Fargo and, we believe, all covered institutions will have in bringing existing accounts into compliance with the proposed rule. Reviewing signature cards and obtaining new ones for joint accounts for which covered institutions do not have or are unable to locate a signature card personally signed by each co-owner is a massive undertaking. Obtaining information on trust types and trust beneficiaries is also a massive undertaking, the success of which cannot be assured. Wells Fargo's retail banking business maintains several million accounts titled as joint accounts and considerably more than 1 million accounts for trusts.

The requirement that covered institutions assign account ownership right and capacity codes may mean certain deposits at covered institutions would be treated differently to the way we believe the FDIC treats the same category of deposits at non-covered institutions. If the FDIC's role in determining ownership rights and capacities for non-covered institutions continues unchanged after the publication of a final rule, this is likely to lead to the unintended consequence of disparate deposit insurance determinations at covered institutions and non-covered institutions and consequent negative customer impacts.

Joint accounts exemplify this potential disparate treatment. In a resolution scenario, an account at a non-covered institution that the FDIC would treat as a joint account based on account titling alone may not qualify as a joint account at a covered institution because the covered institution was not able to code the account as a joint account. In order to code an account as a joint account under the proposed rule, a covered institution would be required to ensure the account meets each of the requirements in 12 CFR §330.9 including the requirement under §330.9(c)(ii) that each co-owner has personally signed a deposit account signature card.

We believe the FDIC has historically used its administrative discretion to make its insurance determination based on an account's titling in the records of a failed institution without regard to any associated signature card. The proposed rule does not grant covered institutions this discretion. We also believe no insured depository institution - covered or otherwise - currently performs any function comparable to the assignment of account ownership right and capacity codes that the proposed rule would require.

We recommend the FDIC modify the proposed rule to authorize covered institutions to exercise the same administrative discretion we believe the FDIC employs in making insurance determinations. For purposes of the proposed rule's requirement that covered institutions assign an ownership right and capacity code to each account, this would mean allowing a covered institution to assign a right and capacity code based on the titling of an account in a covered institution's records without regard to any associated signature card.

We understand the FDIC may consider updating the rules in 12 CFR §330 as being beyond the scope of the current rulemaking. In this case, we recommend the FDIC initiate a separate rulemaking to better align §330's requirements with those the proposed rule would

assign to covered institutions. Again, a joint account should receive the same insurance determination whether it is held at a covered institution or a non-covered institution. Modernizing §330's rules does not need to result in any reduction in insurance coverage.

Proposed 12 CFR § 370.3(c) – Two-year implementation timeline.

The proposed rule generally provides a two-year implementation period for its key requirements. We recognize the FDIC took a similar approach – a two year implementation period with the possibility of extensions - with its 12 CFR § 360.9 rulemaking, but the proposed rule is much more complex than this earlier rulemaking. We recommend the FDIC accept the banking industry's four-year estimate of the time required to implement the requirements in the ANPR as the starting point for the time required to implement these much more complex requirements and revise the proposed rule to reflect this extended time frame.

Proposed 12 CFR § 370.4(c) – Exceptions.

The proposed rule would allow a covered institution to apply for an exception from 12 CFR § 370.3's requirements in three circumstances: (1) the covered institution does not have the information needed to calculate deposit insurance for an account when the account holder has not been responsive to the covered institution's request for the information; (2) it provides a reasoned legal opinion that the information needed from an account holder to calculate deposit insurance is protected by law; and (3) it can provide an explanation of how the information needed to calculate deposit insurance changes so frequently that updating the information on a continual basis would be neither cost effective nor technologically practicable. This approach is a departure from the FDIC's approach to exceptions in 12 CFR § 360.9, under which the FDIC has granted exceptions (or exemptions) to specified classes of deposits.

The proposed process for obtaining exceptions is, in our view, not feasible for covered institutions or the FDIC. We believe it requires a covered institution to request a separate exception for each financial intermediary declining to provide the information (or declining to respond to its request). In addition, the FDIC would need to rule separately on each request. We understand the preamble to the proposed rule refers to "certain types or categories of deposit accounts", but the text of §370.4(c)(i) uses "account holder".

We cannot overemphasize the difficulty of obtaining exceptions on an account holder-by-account holder basis, particularly for existing customers. The number of accounts financial intermediaries maintain at Wells Fargo illustrates the scale of the problem. Again, we estimate financial intermediaries maintain at least 55,000 accounts at Wells Fargo. Given the number of financial intermediary accounts, we are concerned it is not realistic to expect Wells Fargo to be able to request the number of exceptions it would need or the FDIC to be able to act on the requests in a reasonably timely manner.

We urge the FDIC to revise the proposed rule to include specific exceptions for financial intermediaries and other classes of deposits. The FDIC's 12 CFR §360.9 rulemaking provides a useful precedent for this approach. The FDIC exempted a number of classes of deposits

including general ledger only accounts and suspense or clearing accounts. We recommend the FDIC revise the proposed rule to incorporate these exceptions. We also ask the FDIC to continue to permit covered institutions to request exceptions for types or categories of deposit accounts not covered by specified class exceptions. In our view, it is essential to make it completely clear that covered institutions are not required to request exceptions on an account holder-by-account holder basis and to provide for specific class exceptions.

Proposed 12 CFR § 370.6(a) – Annual certification.

12 CFR §370.6(a) of the proposed rule details requirements for an annual deposit insurance coverage summary report and attestation letter signed by the covered institution's Board of Directors. The letter "shall confirm that the covered institution has implemented *and successfully tested* its information technology system for compliance with this part" (emphasis supplied). Wells Fargo is concerned this language requires annual end-to-end testing. End-to-end testing requires an enormous commitment of time and personnel, which we believe does not produce a corresponding benefit.

An end-to-end test would require the active participation of numerous team members and other resources in a dedicated test environment. This would involve, for each deposit system, (1) establishing a data sample, (2) coordinating among multiple systems and corresponding staff, (3) quantitatively analyzing the data, and (3) validating results through verification of customer-level insurance calculations, owner right and capacity code assignments, and hold and debit functions. An end-to-end test would also need to include financial intermediaries. Given the complexity of FDIC insurance determination calculations and multi-deposit system environments, the systems and data analysis could easily run for a month or more.

Wells Fargo believes annual end-to-end testing would be unduly burdensome for years during which no significant system enhancements or events occurred. Covered institutions would thoroughly test the full functionality of their §370 systems before launch, and the FDIC would test on-site to confirm that the requirements have been met. In addition, audit and supervisors would review compliance periodically.

Wells Fargo recommends the FDIC require testing initially, before launch, as described above, and then only if a covered institution or its systems undergo major changes on the order of an acquisition, merger, or major systems upgrade (for example, adding or replacing a deposit system). Should the FDIC see a need for full testing more frequently, Wells Fargo recommends that such tests be conducted not more frequently than once every three years.

We strongly support the concerns raised in the Joint Trade Letter about the burden created by the annual board certification requirement in the proposed rule. Independently of the proposed rule, the FDIC in collaboration with other banking agencies would always have the ability in the context of regular supervision to examine for compliance with a final rule. This requirement imposes yet another burden directly on the boards of insured institutions that are

already overwhelmed with requirements imposed by regulatory requirements imposed over the last several years. We urge that the FDIC recognize the need for a risk-based approach before imposing yet another burden on boards. There is no reason to elevate this rule to the level of requiring the board's time to oversee a special certification process.

Cashier's Checks and other instruments.

The proposed rule would not be limited solely to conventional deposit accounts. It would extend to cashier's checks, teller's checks, certified checks, and personal money orders. Wells Fargo does not typically have a TIN for a non-customer purchaser, payee or holder of any of these instruments. Wells Fargo recommends the FDIC expressly exempt each of these instruments from the proposed rule.

Deposits in foreign branches.

Under 12 USC 1813(l), deposits in foreign branches of U.S. banks generally do not count as "deposits" under the Federal Deposit Insurance Act and are not FDIC insured. Wells Fargo's foreign deposit systems can apply holds and produce data files meeting 12 CFR §360.9's requirements. The effort to relate foreign deposits customers and their accounts to domestic deposit customers and their accounts would be significant and impractical since foreign deposits are not FDIC insured. Neither Wells Fargo nor, we believe, any covered institution offers dually payable deposits. Wells Fargo recommends the FDIC exempt deposits in covered institutions' foreign offices that comply with 12 CFR §360.9 from the proposed rule's recordkeeping requirements, as the FDIC (1) does not need data about these deposits in order to make deposit insurance determinations, and (2) already has access to the data for these deposits that it needs for purposes other than deposit insurance determinations under12 CFR §360.9.

In conclusion, Wells Fargo understands the FDIC's desire for enhanced recordkeeping for covered institutions and supports the proposed rule's objectives. We are confident we can develop a plan for complying with its requirements for deposit accounts for which we have the required data. Deposit accounts for which we do not have the data present almost overwhelming challenges for which exceptions from the proposed rule will be essential.

We view the proposed process for obtaining exceptions as possibly requiring us to request exceptions on an account holder-by-account holder basis. Due to the number of accounts for which we anticipate needing exceptions, we view this approach as unworkable for covered institutions, important segments of their customers, and the FDIC.

We urge the FDIC to incorporate class exemptions in a final rule. We believe modifying the proposed exception process will enable covered institutions to better focus on ensuring that depositors of covered institutions have prompt access to their insured transaction

accounts in the event of a covered institution's failure. We view the risk of class exceptions as very low. The deposits for which we seek class exceptions like those of financial intermediaries and certain trusts constitute, at least at Wells Fargo, a small percentage of total deposits.

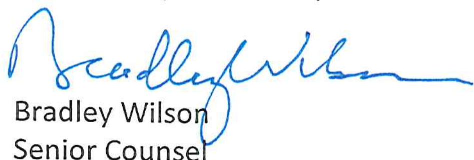
Obtaining the required data for customer segments like financial intermediaries, many trusts, and international customers presents so many challenges that even a greatly extended implementation timeline would not enable us to have a high level of confidence in our ability to comply with the proposed rule.

The proposed rule's requirement that covered institutions assign ownership right and capacity codes to each account is another significant concern. For certain account types including accounts opened in our branches for trusts, we believe assigning these codes is not an appropriate function for any bank (covered institution or not) when it is acting solely as a depository.

Unless the FDIC excepts joint accounts so we can assign the joint account ownership right and capacity code based on an account's titling on our information reporting system, we would ask the FDIC to update the rules in 12 CFR §330 either as part of this rulemaking or as a separate rulemaking. We are concerned with possible disparate treatment of deposits at covered institutions and non-covered institutions and the clear potential for negative customer impacts. We are confident the §330 rules can be updated without any inadvertent reduction in insurance coverage.

Again, we appreciate the opportunity to comment on the proposed rule.

Respectfully submitted,



Bradley Wilson
Senior Counsel