

Comments to FDIC-2014-0118-0001 RIN 3064–AE25 Record Retention Requirements due 12.23.2014

YOU STATE:

The definition in the proposed regulation clarifies that only those documentary materials that are “reasonably accessible” are included in the scope of the rule in order to incorporate the policy behind Federal Rule of Civil Procedure 26(b)(2)(B), which provides that a party from whom discovery is sought need not provide electronically-stored information from sources that are not reasonably accessible because of undue cost or burden.

COMMENTS:

If a party is willing to pay for recovery of *electronically-stored information from sources that are not reasonably accessible* for purposes of a legal action, whether civil or criminal, we believe that party should have the opportunity to obtain such information.

After the banking scandals, the public’s interest are not addressed properly. The public must be protected, not the government in its function. Records that are “*reasonably accessible*” should be accessible and not considered destroyed.

This also effects the definition of *documentary material*. Again, these records should be made available.

YOU STATE:

Paragraph (b)(4) of the proposed rule provides that such a transfer will satisfy the records retention obligations under paragraph (b)(2) and section 210(a)(16)(D) so long as the transfer is made pursuant to a purchase and assumption agreement under which the transferee agrees that it will not destroy the transferred records for at least six years from the date of the appointment of the FDIC as receiver for a covered financial company, unless otherwise notified in writing by the FDIC.

COMMENTS:

Records can be retained for 10 years and this should be consistent with this section.

YOU STATE:

Paragraph (c)(1)

The second factor is whether the documentary material was generated or maintained in accordance with the record retention policies and procedures of the FDIC.

The FDIC will look to its internal procedures for maintaining its own corporate records and use them as a guideline to determine whether documentary material generated or maintained as receiver for a covered financial company comports with these procedures for retention and, thus, should constitute records

COMMENTS:

Reasonably Accessible is a consideration here. Not stated are those internal procedures. It is unclear the treatment that will be taken.

YOU STATE:

Paragraph (b)

The fourth factor used to determine whether documentary material should be classified as records is the expected evidentiary needs of the FDIC and the public. Some records generated or maintained by the financial company may be used to support enforcement actions and litigation.

COMMENTS:

There needs to be consistency so the public can expect records to be revealed that can protect the public's interest and their tax dollars.

YOU STATE:

Paragraph (c)(2)

The requirement that these records be maintained for at least six years following the termination of the receivership reflects the time periods contained in the FDIA final rule with respect to records of a failed insured depository institution and is also similar to the proposed rule's retention schedule time period regarding the inherited records of a covered financial company.

As in the case of the retention of records inherited from covered financial companies, this minimum retention period is intended to ensure that these records are available for a long enough period to satisfy the evidentiary needs of the FDIC and the public in the aftermath of the receivership of a covered financial company

COMMENTS:

Time should be on the public's side, not the financial institutions. A longer time period, even in excess of 10 years needs to be employed and consistent throughout the regulation.

YOU STATE:

Paragraph (c)(4) of the proposed rule makes clear that the records either generated or maintained by the FDIC as receiver do not include the inherited records that existed prior to the date of the appointment of the receiver by the covered financial company itself.

COMMENTS:

Prosecution needs a paper trail. The lack of prosecution places the taxpayer at risk and the companies and their management should be at risk.

YOU STATE:

Paragraph (d)(2) of the proposed rule lists three categories of documentary material that will not qualify as records and thus will not be subject to the record retention requirements of section 210(a)(16)(D) and the proposed rule.

The second category of exclusions from record designation entails the documentary material generated or maintained by a bridge financial company (8) or by a subsidiary or affiliate of a covered financial company.

COMMENTS:

Bridge financial companies, subsidiaries or affiliates should not be excluded.

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