

Infosys, Ltd – Finacle Division Comment on the Advanced Notice of Proposed Rulemaking related to the FDIC’s Large Bank Deposit Insurance Determination Modernization

This comment on the Advanced Notice of Proposed Rulemaking (ANPR) related to the FDIC’s Large Bank Deposit Insurance Determination Modernization is being submitted on behalf of Infosys, Limited – Finacle Division. We are makers of core banking software utilized in banking markets across the world, including the US market. Accordingly, our opinions come largely from the perspective of system functionality and capability.

In general, the solution the FDIC seeks can, in part, be found in core banking systems that are secure, robust, well configured, and expandable to meet the needs of an ever evolving regulatory landscape. In particular, the customer information file or “CIF” needs to actively demonstrate these characteristics. Finacle maintains a robust CIF organized by customer name and tax ID number (TIN) to help uniquely identify each customer. In line with Section 360.9 and industry standards, Finacle does maintain placeholders for both name and address for each customer. Further, the system also maintains placeholders for related party or non-customer CIFs such that detailed information can be maintained on cosigners, guarantors, beneficiaries, and other similar types of entities.

Early in the ANPR, the FDIC raises the problem of being able to identify the owners of deposit accounts when an account at a failed bank has been opened through a deposit broker or other agent or custodian. In this situation, usually neither the name or address of the owner appear in failed bank’s electronic records. Utilizing the related party CIF feature in Finacle, the system has the capacity to track the beneficial owners included in a brokered deposit. Similarly, in the case of a Trust account, the system has the capacity to track the beneficiaries to the extent that they are known.

QUESTIONS POSED BY THE FDIC:

GENERAL ISSUES

Applicability

This ANPR presents potential options that, if adopted, would impose requirements only on certain banks with a large number of deposit accounts.

- In general, which banks should be subject to the requirements discussed in this ANPR?

The larger consumer banks whose size and complexity make additional requirements more of an imperative and whose assets make complying more reasonable.

- To what size banks, as measured by number of deposit accounts, should possible rulemaking apply? Should requirements be tiered based on these criteria?

We believe that it may be useful to lower the threshold from the mark set in Section 360.9 to \$10 billion in assets and 100,000 accounts. This expands the total number of banks that would be required to comply but helps capture important, large institutions that could be quite complex in terms of their customer base and present significant challenges for the FDIC if they were to fail.

- Should other factors or a combination of factors be used to determine which banks would be subject to the requirements?

Number of accounts and assets size are sufficient markers to determine which banks should be subject to the requirements.

- Should bank affiliates of certain banks with a large number of deposit accounts be subject to the requirements, regardless of their size or number of deposit accounts? Why or why not?

If any one bank affiliated with a series of FDIC insured banks meets the threshold dollar or account minimum, then all of the affiliates should also be subject to the requirement. Further, if there are series of affiliated banks who independently do not meet the threshold but by aggregating their asset size or number of accounts would meet the threshold, then they should also be subject to the requirement.

Challenges, Costs, and Tradeoffs

- Which requirements would likely cause the most significant changes to banks' deposit operations and systems?

The biggest one would be trying track and maintain information on beneficiaries of formal trusts. Further, in some states, there are laws prohibiting asking for this information.

Benefits

- In light of the financial crisis, what are the potential benefits arising from reduced losses to the DIF and to public confidence and financial stability from systems upgrades that ensure the ability of certain banks with a large number of deposit accounts to make prompt deposit insurance determinations in the event of failure?

The greatest benefit is improved consumer confidence in the FDIC and the banking system. This will encourage consumers to keep more deposits on hand domestically and could also encourage foreign depositors to maintain deposits in US banks. Further, system upgrades create greater efficiencies in the wind-down process which would translate to less time and human capital spent in the wind-down process and less cost associated with the process accordingly.

- Are there potential spillover benefits that would accrue from the proposed systems changes considered in this ANPR in terms of banks' ability to process transactions, maintain data security, and implement cross-product marketing strategies? Would the benefits of the changes considered in this ANPR accrue only to the public in the FDIC's ability to carry out a deposit insurance determination, or would there be spillover benefits for the banks themselves?

One of the standout crossover benefits is the way in which these new procedures would help banks identify more of the beneficiaries on accounts, especially trust and brokered deposits. From an anti-money laundering perspective, greater transparency of beneficiaries is essential to maintaining a strong AML program. With new regulations from FinCEN on the horizon, these regulations are a good fit to support FinCEN's goals as well.

There is also the benefit of being able to communicate with the customer regarding the amount of insurance, but this pre-supposes that we can accurately calculate coverage on trust accounts. We believe that it may be very difficult to do so.

Timetable for Implementation

The FDIC recognizes that banks with a large number of deposit accounts may need substantial time to implement the requirements described in this ANPR.

- How long should banks with a large number of deposit accounts be given to implement the requirements contemplated by this ANPR and why?

Banks need at least 18-24 months to implement the requirements likely with portions of the requirements being implemented in phases across that time period.

- Are there particular requirements that would take more time to implement? If so, which requirements would pose these delays? Why?

Creating additional fields for beneficiaries of accounts is fairly easy. Identifying beneficiaries on many trust accounts thought could be quite labor intensive and would require a significant amount of customer interaction. That interaction would take time to yield the desired result. Further, developing the system functionality to calculate the

deposit insurance for each account and customer by closing night (or any given night) could be particularly onerous, especially if there are various deposit systems to consider.

- If new requirements are adopted, should the FDIC set a single implementation date or phase in the requirements?

Multiple implementation dates would be a useful course of action to give banks time to hit different marks along the way to full compliance. There should be one date for system to be able to calculate insurance and another date for bank to gather all missing information.

Providing Depositors with the Insured and Uninsured Amount of Their Deposit

- If a bank can readily determine the amount of FDIC-insured funds in a depositor's accounts, would it be beneficial to provide this information to the depositor? Should banks be required to provide this information to depositors?

It seems that there would be a nominal benefit to the consumer. Most consumers just want to know that their deposits are insured. Most never reach the limit for coverage and thus the amount of coverage is useless to them. That information is really only useful to the small percentage of customers who maintain large deposits that might come close to or exceed the coverage amount. Given that providing such information would add costs to banks in terms of sending out mailings or finding electronic means to do, it is likely not worth it to require banks to provide this information to depositors. Nonetheless, having the ability to provide the information upon request could have significant customer service/satisfaction benefits. Accordingly, we should provide the information to the depositor if asked but not be required to proactively provide the information to the depositor. There should also be a caveat or safe harbor as it relates to what is available on Trust accounts.

CLOSING NIGHT DEPOSITS AND POST CLOSING DEPOSITS

Savings and Time Accounts

At a minimum, to meet depositors' immediate liquidity needs, deposit insurance determinations would have to be made on transaction and MMDA accounts on closing night. One possibility would focus on making deposit insurance determinations only for transaction and MMDA accounts on closing night, so that banks with a large number of deposit accounts would have to create the capacity to calculate insured and uninsured amounts and debit uninsured balances on closing night only for these types of accounts. Holds would be placed on other types of accounts. Shortly after failure, insurance determinations would be completed for these accounts, and the holds would be replaced with the appropriate debits and credits.

- Should this approach be used? Why or why not?

Yes this seems like a useful approach that prioritizes funds that may be most needed by consumers though it should be transactions, MMDA, **and savings accounts**. As for CDs, they should be included on a voluntary basis by financial institution without the hold.

- How important is it to depositors to be able to have immediate or quick access to accounts other than transaction accounts and MMDAs? Does it depend on the size of the deposit? What are the potential costs associated with delays for these accounts?

It is essential to depositors to have access to their transaction accounts, savings accounts and MMDA's. These are the accounts/funds average consumers use to prosecute their everyday lives. Many of them have a certain amount of their short term savings and emergency funds stored in these products. Not having access to these funds could cause significant panic in the marketplace and create great inconvenience for consumers who might miss paying bills or meeting other important financial obligations. It should not matter what the size of the account when it comes to access in this circumstance.

- What problems or complications might arise if this approach were used?

Following this approach, it is still possible to potentially overpay deposit insurance for certain customers who may be at or over the coverage limit in deposits. We should consider providing access for all customers and all accounts up front as much as possible.

- From a depositor's perspective, this approach would differ from the approach now used by the FDIC at smaller banks. At smaller banks, the insurance determination for all accounts (except those where more information is needed from a depositor) is completed over the weekend following a Friday night bank failure and depositors generally have access to their funds the next business day after the bank fails. How confusing would this be for depositors? What types of problems might this differing treatment introduce?

Since most depositors are not familiar with the process the FDIC uses for making determinations, this likely would not create significant confusion for consumers.

Pass Through Coverage Accounts

In the case of accounts held by agents or custodians, the FDIC provides “pass-through” insurance coverage (*i.e.*, coverage that “passes through” the agent or custodian to each of the actual owners).^[21] This coverage is not available, however, unless certain conditions are satisfied. One of these conditions is that information about the actual owners must be held by either the insured depository institution or by the agent or custodian or other party.^[22] In most cases, the agent or custodian holds the necessary information and the insured depository institution does not, thus making it impossible to determine deposit insurance coverage on closing night. The need to obtain information from the agents or custodians delays the

calculation of deposit insurance by the FDIC, which may result in delayed payments of insured amounts or erroneous overpayment of insurance. At certain banks with a large number of deposit accounts and large numbers of pass-through accounts, potential delays or erroneous overpayments could be substantial. A few options to resolve this problem are described below.

Option 1: Require banks with a large number of deposit accounts to identify pass-through accounts, and place holds on these accounts as if the full balance were uninsured. If such a bank failed, brokers, agents and custodians would have to submit required information in a standard format within a certain time. The standard format could expedite deposit insurance determinations.

Hybrid - There should be a date by which

Option 2: A bank with a large number of deposit accounts would have to maintain up-to-date records sufficient to allow immediate or prompt insurance determinations either for all pass-through accounts or for certain types of pass-through accounts where depositors need access to their funds immediately.

- For what types of brokered, agent or custodial accounts at banks with a large number of deposit accounts would owners likely need immediate or near-immediate access to funds after failure?

None

- How difficult would it be for banks with a large number of deposit accounts to maintain current records on beneficial owners of pass-through accounts? Are there certain types of pass-through accounts where maintaining current records might be relatively easy or relatively difficult?

As discussed earlier, there could be significant challenges acquiring complete records of beneficial owners in pass through accounts.

- In particular, do banks with a large number of deposit accounts maintain full and up-to-date information on the owners of brokered deposit accounts where the broker is an affiliate of the bank? If not, how difficult would it be for banks to maintain current records on beneficial owners of pass-through accounts where the broker is an affiliate of the bank?

In general, most banks are not maintaining full and up to date information on the owners of brokered deposit accounts, regardless of whether the broker is an affiliate. If the broker is an affiliate, it might facilitate more ready access to the information.

- What would the challenges and costs be for agents and custodians to provide information to banks on each principal and beneficiary's interest and to update that information whenever it changes? How do these costs compare to the cost of providing the data in a standard format at closing?

- Which option for pass-through accounts should the FDIC adopt? Why? Is another option preferable? If so, please describe it.

There should be a hybrid approach that allows for maintaining the information on some accounts and to have a time by which the information in the case of failure for other accounts.

Pre-Paid Card Accounts

The FDIC's rules for “pass-through” insurance coverage of accounts held by agents or custodians apply to all types of custodial accounts, including accounts held by prepaid card companies or similar companies. After collecting funds from cardholders (in exchange for the cards), the prepaid card company might place the cardholders' funds into a custodial account at an insured depository institution. Some cardholders might use these cards (and the funds in the custodial account) as a substitute for a checking account. In the event of the failure of the insured depository institution, the cardholders will likely need immediate access to the funds in the custodial account to meet their basic financial needs and obligations.

- To prevent delays in the payment or erroneous insurance overpayments, should the FDIC impose recordkeeping or other requirements on banks with a large number of deposit accounts that would enable a prompt determination of the extent of deposit insurance coverage for prepaid cards, possibly on closing night?

No, probably not. Balances on prepaid cards should be easy to track to help facilitate this effort. Ownership presents significant challenges though.

- How difficult would it be for banks with a large number of deposit accounts to maintain current records on each prepaid cardholder's ownership interest?

It could be very difficult to track ownership on prepaid cards. These cards are often given as gifts, so attributing ownership and keeping records on that would be very difficult, if not impossible.

How difficult would it be for prepaid card issuers to regularly provide current information on each cardholder's ownership interest to banks with a large number of deposit accounts?

It would be next to impossible to do so given the free way in which cards are exchanged from consumer to consumer without bank involvement.

Trust Accounts

In the case of revocable and irrevocable trust accounts, the FDIC provides “per beneficiary” insurance coverage subject to certain conditions and limitations.¹²³¹ For informal trusts (payable-on-death accounts), the bank may have either structured or unstructured information about beneficiaries. In many cases, however, the FDIC cannot calculate “per beneficiary” coverage until it obtains a copy of the trust agreement (with information about the number of beneficiaries and the respective interests of the beneficiaries) from the depositor. The need to obtain and review the trust agreement delays the FDIC's calculation of insurance and may result in delay of insurance payments or overpayment of insurance amounts. Delays or erroneous overpayments may also occur even if the bank has the information for the informal trusts, but the information is not contained in its § 360.9 data. Two potential options for solving these problems are discussed below. These options are similar to the options discussed above for pass-through accounts.

Option 1: A bank with a large number of deposit accounts would have to maintain standardized data on trust accounts to ensure that insured depositors can be paid promptly at failure. These banks would have to collect and maintain relevant information about beneficiaries.

Option 2: Require that banks with a large number of deposit accounts maintain complete information under § 360.9 to identify trust accounts and their owners (but not necessarily beneficiaries). If such a bank failed, preliminary insured and uninsured amounts would be calculated based on the assumption that there is one qualified beneficiary for each trust. Owners of potentially uninsured trust accounts would have to submit required information in a standard format within a certain time to receive greater coverage for multiple beneficiaries.

- How many trust accounts are transaction accounts that depositors will likely need access to immediately after failure? Would providing access to up to \$250,000 immediately after failure be sufficient (with additional insured funds being provided later, when the insurance determination is completed)?

In general this could be a useful short term solution. There may be exceptional circumstances for a small amount of accounts.

- What challenges would trust account holders face if they had to submit information in a standard format to gain the full benefits of insurance coverage beyond \$250,000 per grantor? Would the associated costs exceed the cost of the alternative, which could entail potentially lengthy delays in gaining the additional insurance coverage?

Trust account holders will not always have address, DOB, or SSN for the beneficiaries they select. Further, grantors don't always want beneficiaries to know that they are beneficiaries. Thus requesting the information places the beneficiary on notice. There may need to be a safe harbor for the bank for reasonable interpretations of the trust document that may be incorrect.

- How difficult would it be for banks with a large number of deposit accounts to maintain current records on each beneficiary's ownership interest? How much information do banks already collect and retain on beneficiaries?

To the extent that beneficiaries are known, maintaining the information is not particularly difficult if the bank has a robust core system with a configurable CIF.

- How difficult would it be for trustees to supply the information to banks and keep it current?

This could be difficult because Trustees will not always have address, DOB, or SSN for the beneficiaries they select. Further, grantors don't always want beneficiaries to know that they are beneficiaries. Thus requesting the information places the beneficiary on notice.

Under the two options for trust accounts described above, trust account holders would be treated differently at banks with a large number of deposit accounts compared to other banks, since neither option is required at any bank now. What problems might that cause?

- Which option should the FDIC adopt? Why? Is another option preferable?

There should be a tiered approach. Option 2 should be the standard, option 1 should be an option for the bank to follow if the customer wants to provide the information necessary.

Special Deposit Insurance Categories Created by Statute

Special statutory rules apply to the insurance coverage of certain types of accounts, including retirement accounts,^[24] employee benefit plan accounts^[25] and government accounts.^[26] In some cases, the FDIC cannot apply these special statutory rules without obtaining information from the depositor, which delays the calculation and payment of deposit insurance. Though the FDIC cannot change these special statutory rules, the FDIC could pursue options that are similar to those discussed in the previous section for pass-through accounts.

- How urgently do depositors need immediate or near-immediate access to these types of funds after failure?

It depends more on the depositor's situation than the account type. There are some retirees who use regular distributions from their retirement accounts for living expenses. These customers would urgently need access to these funds. For younger individuals who are still in a contribution phase for their retirement account, the same urgency would not exist. A similar circumstance would likely exist for employee benefit plans.

- These accounts often have characteristics similar to accounts with pass-through coverage. Can banks with a large number of deposit accounts reliably distinguish these special statutory accounts from accounts with pass-through insurance coverage?

Yes, they should be able to distinguish these accounts as they have distinct ownership capacity categories.

- How difficult would it be for banks with a large number of deposit accounts to maintain full and up-to-date information on the owners of these accounts? How difficult would it be for depositors to supply the information and keep it current? Are there certain types of accounts where maintaining current records might be relatively easy or relatively difficult?

These accounts should be relatively easy for banks to maintain full and up to date information on these accounts since the transaction activity is fairly infrequent and account balances more stable than regular transaction and MMDA accounts.

- Should the FDIC apply any of the options for pass-through accounts (described above) to these accounts? If so, which one? Why? Is another option preferable?

At this point, no.