May 6, 2019

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

Attention: Comments

     RE: Notice of Proposed Rulemaking: Joint Ownership Deposit Accounts 12 CFR §330
             [RIN 3064–AF04][1]

Dear Mr. Feldman:

The American Bankers Association, The Bank Policy Institute, and the Consumer Bankers Association (collectively, the "Associations")[2] are pleased to submit this response to the Notice of Proposed Rulemaking (the "Proposal") addressing deposit insurance determinations for qualifying joint accounts under Part 330 of the rules of the Federal Deposit Insurance Corporation (the "FDIC"). Part 330 implements the Federal Deposit Insurance Act ("FDI Act"), which provides, among other things, that deposits maintained by each depositor in the same capacity and the same right at an insured institution generally must be aggregated and insured up to the standard maximum deposit insurance amount (currently $250,000).[3] Because the FDI Act does not define "right" or "capacity," however, Part 330 of the FDIC's regulations recognizes various categories of accounts, such as single ownership accounts and joint ownership accounts and specifies how insurance coverage is determined.

Under Part 330, if a deposit meets the requirements for a particular category, the deposit is insured up to the $250,000 limit separately from deposits held by the depositor in a different category at that institution. For example, deposits in the single ownership category are separately insured from deposits in the joint ownership category held by the same depositor at the same institution. "Qualifying joint ownership accounts" that meet criteria established under Part 330 are eligible for such separate insurance. The current Part 330 requirements include—

    (1) all co-owners of the funds in the account must be "natural persons;"[4]
    (2) each co-owner must have personally signed a deposit account signature card; and
    (3) each co-owner must possess withdrawal rights on the same basis.[5]

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[1] www.fdic.gov/news/board/2019/2019-03-29-notice-dis-c-fr.pdf, 84 *Fed. Reg.* 13,148 (April 4, 2019).

[2] Descriptions of the Associations are provided in Appendix A.

[3] 12 U.S.C. 1821(a)(1)(B), (C).

[4] As defined in 12 CFR §330.1(*l*).

[5] 12 CFR §330.9(b).

The Proposal would provide an alternative method to satisfy the "signature card" requirement. Under the Proposal, the "signature card" requirement could be satisfied by information contained in the deposit account records of the insured institution establishing co-ownership of the deposit account. This evidence may include, but is not limited to, the fact that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner.[6] For the reasons discussed below, the Associations believe that this change to the standards for "qualifying joint accounts" would be appropriate and beneficial in several important respects. The Associations also offer below several suggested clarifications that, consistent with the Proposal's objectives and the FDIC's policies and practices in making deposit insurance determinations, would enhance the Proposal's clarity.

Importance of Aligning Part 330 with Current Customer Service Approaches to Deposit Account Opening and Documentation

The signature card requirement is a long-standing feature of FDIC deposit insurance regulations. The Proposal would retain the current means of fulfilling this requirement based on either ink or electronic signatures.[7] We support this retention, as it reflects the current practice of many insured institutions. In recent years, however, the growth of telephone and online banking and other developments in bank-customer communication channels have resulted in many innovations and efficiencies in deposit-account opening and documentation procedures. More advanced and effective methods of counterparty recognition mean that accepting only the current means of signature documentation has become an obstacle to efficient customer service without providing meaningful additional protections or capturing any additional information.

As such, the Proposal's contemplated use of alternative information maintained in an institution's deposit account records to satisfy Part 330's signature card requirement would provide improved alignment with the diverse deposit account documentation protocols currently used by many institutions. The flexibility to rely on deposit account record systems, which are critical to the fundamental business of the institution, would significantly improve the alignment between current customer service standards and the FDIC's deposit insurance regulations.

The Associations also acknowledge that adoption of the Proposal would facilitate other objectives of the FDIC's deposit insurance regime, including facilitating implementation of the agency's large bank deposit recordkeeping requirements.[8] Under Part 370 of the FDIC's regulations, an institution with a large number of deposit accounts ("covered bank") must put in place management information systems and other infrastructure to permit the FDIC to make a reliable deposit insurance determination in the event the covered bank is placed in resolution. A covered bank must demonstrate to the FDIC on a regular basis that it can determine key details of the insurance status and amount of insured balances in its deposit accounts. To the extent that the "right and capacity" of joint account holders continues to depend on verification of paper

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[6] Proposal at 13,148.

[7] Electronic Signatures in Global and National Commerce Act, P.L. 106-229.

[8] *See* 12 CFR §370.

records (such as signature cards), this process threatens to become unduly arduous and potentially inaccurate. Since automated deposit account records serve as the basis for bank operations generally, and are also, as we understand, the assumed point of reference for the FDIC when an institution enters resolution, the Proposal would eliminate some unintended barriers to the successful implementation of Part 370. Including alternatives to paper signature card records thus will materially facilitate important objectives of the FDIC's Part 370 proposal.

Recommended Clarifications of the Proposal

The Associations strongly favor permitting insured institutions and their customers to treat the institutions' deposit account records as the controlling source for determinations of depositor ownership rights and capacity, and it is our understanding that the FDIC's practice generally follows this approach. The Proposal's revised language would retain the signature card requirement as part of the standards for "qualifying joint accounts" and add a paragraph that provides for alternative reliance on information in the institution's deposit account records to satisfy that requirement.

Because the language of the signature card requirement in the current 12 CFR §330.9(c)(1)(ii) is retained, the Associations are concerned that simply adding a new subparagraph (c)(4) could be confusing. We believe revising the language of 12 CFR §330.9(c) to read as follows would address this concern and be fully consistent with the Proposal's intent:

  §330.9 Joint ownership accounts.

  (c) Qualifying joint accounts.

   (1) Qualification requirements. A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:
   (i) All co-owners of the funds in the account are "natural persons" (as defined in §330.1(l));
   (ii) **Subject to paragraph (c)(4), each**~~Each~~ co-owner has personally signed, which may include signing electronically, a deposit account signature card; and
   (iii) Each co-owner possesses withdrawal rights on the same basis.
   …

   (4) Alternative method to satisfy signature-card requirement. The signature-card requirement of paragraph (c)(1)(ii) of this section also may be satisfied by information contained in the deposit account records of the insured depository institution establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner.

In the same vein, the Associations recommend that the FDIC acknowledge in the Supplementary Information accompanying a final rule that the types of evidence cited in 12 CFR §330.9(c)(4) are intended as a non-exclusive list of examples.

Additional Considerations – Modernization of Deposit Insurance Rules

In addition to acknowledging the improvements that the Proposal represents, the Associations urge the FDIC to consider a comprehensive review of its deposit insurance regulations. The account documentation innovations discussed above represent only one aspect of the revolution in bank record systems and customer interface with respect to account opening and other routine matters. These innovations have meant real improvements in customer service and enhanced efficiency and reliability in bank information management. As our discussions with the FDIC leading up to the Proposal have suggested, however, the relevant regulatory frameworks should align with such innovations and thus need review. In reviewing the specific issues covered in the Proposal, a number of institutions expressed the view that signature cards could be eliminated altogether.

Given the implications for the broader banking industry and the near-term needs that the Proposal is intended to address, the Associations urge the FDIC to finalize the Proposal immediately, although with the clarifications recommended herein. In the near future, however, the Associations wish to engage the FDIC in a broader conversation to examine additional potential improvements.

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If you have any questions, please do not hesitate to contact the undersigned via electronic mail as shown below.
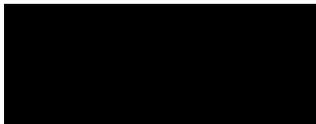
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APPENDIX A

THE ASSOCIATIONS

The American Bankers Association. The American Bankers Association is the voice of the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly $14 trillion in deposits, and extend more than $10 trillion in loans.

The Bank Policy Institute. The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

The Consumer Bankers Association. Established in 1919, the Consumer Bankers Association is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository