

Guidelines for Relief from Part 370

A. Introduction

The "Recordkeeping for Timely Deposit Insurance Determination" rule (12 CFR Part 370 of the FDIC's Rules and Regulations) ("Part 370"), requires each insured depository institution that has two million or more deposit accounts (a "Covered Institution," as defined in § 370.2(c) of the rule) to (1) configure its information technology system to be capable of calculating the insured and uninsured amount in each deposit account by ownership right and capacity, which would be used by the FDIC to make deposit insurance determinations in the event of the institution's failure, and (2) maintain complete and accurate information needed by the FDIC to determine deposit insurance coverage with respect to each deposit account, except as otherwise provided.

The following Guidelines for Relief from Part 370 (the "Guidelines") describe the procedures for CIs to follow when submitting requests for relief from aspects of Part 370 to the FDIC. Further, the Guidelines describe the process by which the FDIC will consider these requests for relief, including the expected timing of review. The procedures set forth in these Guidelines are subject to modification and the FDIC recommends that CIs submit all requests for relief with adequate time to respond to a decision, sufficiently in advance of any deadline prescribed in Part 370.

B. Timing

Covered Institutions should submit request for relief in advance of the initial compliance date. The FDIC expects to consider, process, and provide a response to a request for relief within 120 days of the receipt of a complete request. Covered Institutions should expect to receive written acknowledgment of receipt within three business days of submitting a request and to receive clarifying questions and requests for additional supporting information or documentation within 30 days of submitting a request.

Incomplete or insufficient requests for relief may delay the FDIC's consideration of a request. Covered Institutions are advised to consider these Guidelines when submitting a request for relief from Part 370.

C. Institutions Eligible to Submit a Request for Relief

These Guidelines apply to all Covered Institutions under Part 370.

D. Request for Relief Requirements

1. **Exemptions** - §370.8(a): Covered Institutions may submit requests for exemption from Part 370 if "it demonstrates that it does not take deposits from any account holder which, when aggregated, would exceed the SMDIA for any owner of the funds on deposit and will not in the future." In considering these requests, the FDIC will seek descriptions of the Covered Institution's deposit accounts, including ownership

types, average balances, and the total number of accounts, along with the Covered Institution's total assets. Further, the FDIC will review a description of a Covered Institution's business models and controls with an emphasis on the steps a Covered Institution takes, and will take, to ensure that no accounts exceed the SMDIA, when aggregated.

2. **Exceptions** - §370.8(b): "A [C]overed [I]nstitution may submit a request in the form of a letter to the FDIC for exception from any specific aspect of the information technology system requirements, recordkeeping requirements, certification requirements, or reporting requirements set forth in [Part 370] if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. In its request letter, the covered institution must demonstrate the need for exception, describe the impact of an exception on the ability to quickly and accurately calculate deposit insurance for the related deposit accounts, and state the number of, and the dollar value of deposits in, the related deposit accounts."

To assess the impact of an exception on the ability to quickly and accurately calculate the deposit insurance for the related deposit accounts, the following information must be provided to the FDIC in accordance with section 370.8(b):

- Clearly conveyed and adequately demonstrated need for exception.
- Explanation of how compliance with the requirement from which relief is sought would be impracticable or overly burdensome. The FDIC will consider whether a legal impediment or logical impossibility to compliance exists.
- Explanation of how the exception, if granted, will impact the ability of the Covered Institution's information technology system to quickly and accurately calculate deposit insurance for the related deposit accounts. The FDIC needs to know the effect the exception will have on its efforts to conduct deposit insurance determination in the event of the Covered Institution's failure.
- Identification of whether the accounts have transactional features, as defined under section 370.2(j), and if so:
 - Description of the daily volume and any large variance from day to day.
 - Description of the ability to continue to conduct depositors' transactions until the deposit insurance determination is complete.
 - Identification of alternative sources and sufficiency of available liquidity to support continued transaction clearing during the pendency of the insurance determination, including the number of days funding will be available based on average daily transaction flows.
- State the number of, and dollar value of deposits in, the related deposit accounts. The FDIC needs to know the effect the exception will have on its efforts to conduct deposit insurance determination in the event of the Covered Institution's failure.

Depending on the nature of the relief request, providing the following information, as necessary, with a relief request would facilitate the review of the necessary elements listed above:

- Identification of the beneficial owners of the funds by type (individual, commercial, government, etc.) if the beneficial owner is not the account holder.
 - Breakdown of the number of affected deposit accounts above and below \$250,000 and the average account balance, the proportion of all deposit accounts that these deposit accounts represent, and the proportion of the Covered Institution's deposit dollar volume that they represent.
 - Estimated time required for banks or account holders to submit the information required to complete a deposit insurance determination.
 - Description of trends or volatility, in the number of accounts and dollar value, of the affected over time in relation to the number of accounts reported in the request for relief today.
 - Description of disclosures made to the depositors about timely access to insured funds.
 - Description of remediation plans that have been developed including a timeline for execution, resources dedicated and expected progress at key milestones.
3. **Extensions** - §370.6(b): "A [C]overed [I]nstitution may submit a request to the FDIC for an extension of its compliance date. The request shall state the amount of additional time needed to meet the requirements of this part, the reason(s) for which such additional time is needed, and the total number and dollar value of accounts for which deposit insurance coverage could not be calculated using the covered institution's information technology system were the covered institution to fail as of the date of the request. The FDIC's grant of a covered institution's request for extension may be conditional or time-limited." The FDIC will review the Covered Institution's reason for the extension, the reasonableness of the duration of the requested extension, and the total number and dollar amount of accounts affected by the extension.
4. **Release** - §370.8(c): "A [C]overed [I]nstitution may submit a request in the form of a letter to the FDIC for release from this part if, based on its Reports of Condition and Income filed with the appropriate federal banking agency, it has less than two million deposit accounts during any three consecutive quarters after becoming a [C]overed [I]nstitution." The FDIC will review the reason for the decrease in the Covered Institution's number of deposit accounts, as well as a description of the accounts at the Covered Institution, including total number and dollar value as well as account types.

E. Submission of Requests for Relief

Requests for relief from Part 370 should be made, in writing, to:

Office of the Director,
Division of Resolutions and Receiverships,
Federal Deposit Insurance Corporation,
550 17th Street NW,
Washington, DC 20429-0002.

Electronic copies of request for relief packages should also be sent to Part370@fdic.gov. Requests for relief from Part 370 should be labeled to indicate that it is a request for relief from Part 370 and should contain the name, address, including e-mail address, and telephone number of the Covered Institution and its point of contact for the request for relief.

F. Scope of Review and Decision

The FDIC will review all submissions concerning requests for relief from Part 370 and aims to respond to all requests and provide a written decision within 120 days of a complete request for relief receipt.

G. Guidelines Generally

Requests for relief from Part 370 will be governed by these Guidelines. The FDIC retains the discretion to waive any provision of the Guidelines for good cause; and the FDIC may adopt supplemental guidelines for requests for relief from Part 370.