



# Federal Register

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**Monday,  
January 14, 2008**

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**Part IV**

**Federal Deposit  
Insurance  
Corporation**

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**12 CFR Part 360**

**Processing of Deposit Accounts in the  
Event of an Insured Depository  
Institution Failure and Large-Bank Deposit  
Insurance Determination Modernization;  
Proposed Rule**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 360

RIN 3064-AD26

#### Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure and Large-Bank Deposit Insurance Determination Modernization

**AGENCY:** Federal Deposit Insurance Corporation (“FDIC”).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FDIC is seeking comment on a proposed rule composed of two parts. The first part would establish the FDIC’s practice for determining deposit account balances at a failed insured depository institution. The second part would require the largest insured depository institutions to adopt mechanisms that would, in the event of the institution’s failure: provide the FDIC with standard deposit account and customer information; and allow the FDIC to place and release holds on liability accounts, including deposits. The first part of the proposal would apply to *all* insured depository institutions. The second part of the proposal would apply only to insured depository institutions having at least \$2 billion in domestic deposits and either: more than 250,000 deposit accounts (currently 152 institutions); or total assets over \$20 billion, regardless of the number of deposit accounts (currently 7 institutions). The FDIC is seeking comment on all aspects of the proposed rule.

**DATES:** Comments must be submitted on or before April 14, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Agency Web site:* <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include “Processing of Deposit Accounts and Insurance Determination Modernization” in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Public Inspection:* All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:** James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898-7151 or [jmarino@fdic.gov](mailto:jmarino@fdic.gov), Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898-7349 or [jdinuzzo@fdic.gov](mailto:jdinuzzo@fdic.gov), Christopher L. Hencke, Counsel, Legal Division, (202) 898-8839 or [chencke@fdic.gov](mailto:chencke@fdic.gov) or Catherine Ribnick, Counsel, Legal Division, (703) 562-2407 or [cribnick@fdic.gov](mailto:cribnick@fdic.gov).

**SUPPLEMENTARY INFORMATION:** The proposed rule comprises two parts. The first part would establish the FDIC’s practice for determining deposit account balances at a failed insured depository institution.<sup>1</sup> The second part would require the largest insured depository institutions to adopt systems that would, in the event of the institution’s failure: (1) Provide the FDIC with standard deposit account and customer information; and (2) allow the FDIC to place and release holds on liability accounts, including deposits.

#### I. Determining Deposit Account Balances at a Failed Insured Depository Institution

##### A. Background

Upon the failure of an FDIC-insured depository institution, the FDIC must determine the total insured amount for each depositor. 12 U.S.C. 1821(f). To make this determination, the FDIC must ascertain the balances of all deposit accounts owned by the same depositor in the same ownership capacity at a failed institution as of the day of failure.

The second part of this proposed rule, among other things, would require certain large depository institutions to place holds on liability accounts, including deposits, in the event of failure. The amount held would vary depending on the account balance, the nature of the liability (whether it is a deposit or non-deposit for insurance purposes) and the expected losses resulting from the failure. In order to

<sup>1</sup> Part one imposes no requirements on insured depository institutions, rather it only establishes the FDIC’s practices for determining deposit account balances in the event of failure.

calculate these hold amounts, the rules used by the FDIC to determine account balances as of the day of failure must be clearly established.

A deposit account balance can be affected by transactions<sup>2</sup> presented during the day. A customer, a third party or the depository institution can initiate a deposit account transaction. All depository institutions process and post these deposit account transactions according to a predetermined set of rules to determine whether to include a deposit account transaction either in that day’s close-of-business balances or in the next day’s close-of-business balances. These rules establish cutoff times that vary by institution and by type of deposit account transaction—for example, check clearing, Fedwire, ATM, and teller transactions. Institutions post transactions initiated before the respective cutoff time as part of that day’s business and generally post transactions initiated after the cutoff time the following business day. Further, institutions automatically execute prearranged “sweep” instructions affecting deposit balances at various points throughout the day. The cutoff rules for posting deposit account transactions and the prearranged automated instructions define the close-of-business balance for each deposit account on any given business day.<sup>3</sup>

In the past, the FDIC usually took over an institution as receiver after it had closed on a Friday. For institutions with a few branches in one state, deposit account transactions for the day were completed and determining account balances on that day was relatively straightforward. The growth of interstate banking and branching over the past two decades and the increasing complexity of bank products and practices (such as sweep accounts) has made the determination of account balances on the day of closing much more complicated. Financial institutions are much larger and the industry is more concentrated than in the past, factors further complicating the determination.

<sup>2</sup> A deposit account transaction, such as deposits, withdrawals, transfers and payments, causes funds to be debited from or credited to the account.

<sup>3</sup> Some depository institutions operate “real-time” deposit systems in which some deposit account transactions are posted throughout the business day. Most depository institutions, however, process deposits in a “batch mode,” where deposit account transactions presented before the cutoff time are posted that evening or in the early morning hours of the following day. With either system—batch or real-time—the institution calculates a close-of-business deposit balance for each deposit account on each business day.

## B. The proposed rule

### Overview

*In general.* The FDIC makes deposit insurance determinations based upon deposit account balances at a failed institution on the day of failure. The proposed rule would define what is meant by a deposit account balance on the day an insured depository institution fails and, thus, would define the deposit account balances on which the FDIC would make insurance determinations. A deposit account balance on the day of failure would be defined as the end-of-day *ledger* balance of the deposit on the day of failure. Whether a deposit account transaction would be included in the end-of-day ledger balance on the day of failure would depend generally upon how it normally would be treated using the institution's ordinary cutoff time on that day. As mentioned above, many institutions have different cutoff times for different kinds of transactions, such as check clearing, Fed wire, ATM and teller transactions.

Under the proposed rule, the FDIC would establish the FDIC Cutoff Point, defined as a point in time after it takes control of the failed institution as receiver. If the institution's ordinary cutoff time on the day of failure for any particular kind of transaction preceded the FDIC Cutoff Point, the institution's ordinary cutoff time would be used. Otherwise, the institution's ordinary cutoff time for an individual kind of transaction would be replaced by the FDIC Cutoff Point. The "Applicable Cutoff Time" used for any kind of transaction thus would be the earlier of the institution's ordinary cutoff time or the FDIC Cutoff Point. In practice, there might be several Applicable Cutoff Times for a given failed institution, since different kinds of transactions could have different cutoff times. No Applicable Cutoff Time would be later than the FDIC Cutoff Point established by the FDIC, though some could be earlier.

Transactions occurring after the Applicable Cutoff Time would be posted to the next day's business, if the operations of the failed institution were carried on by a successor institution. In a depository institution failure where deposit operations are not continued by a successor institution, account transactions on the day of failure would be posted to the applicable deposit accounts until the FDIC takes control of the institution as receiver. This practice would be consistent with the FDIC's current practice in handling deposit

account transactions in deposit insurance *payout* situations.<sup>4</sup>

Upon taking control of a failed institution as receiver, the FDIC would take steps necessary to limit additional transactions to ensure, to the extent practicable, that funds would not be received by or removed from the failed institution. These steps might include the suspension of wire activities and new deposit account transactions. For example, wire transactions not yet executed by the FDIC Cutoff Point would not be allowed to occur.

For a failed institution operating in several time zones, the FDIC Cutoff Point, which would set the latest possible time for any particular transaction's Applicable Cutoff Time, would be translated into local time. For example, a 6 p.m. Eastern Time FDIC Cutoff Point on the day an institution was closed would mean a 5 p.m. FDIC Cutoff Point in the Central Time zone. As receiver, the FDIC would attempt, as it has customarily done in the past, to close all offices of the failed institution as soon as practicable after taking over as receiver.

To illustrate the Applicable Cutoff Time, consider an institution whose normal cutoff time for teller transactions is 3 p.m. local time. Assume that the institution has branches in both the Eastern and Pacific Time zones. Assume also that the FDIC designates 5 p.m. Eastern Time as the FDIC Cutoff Point. The Applicable Cutoff Time for teller transactions would then be 3 p.m. Eastern Time for branches in the east and 2 p.m. Pacific Time for branches in the west. Thus, a deposit made at a teller station at a branch in the west at 1 p.m. local time would be posted to (and included in) the end-of-day ledger balance on the day of failure. A deposit made at a teller station at a branch in the west at 2:30 p.m. local time (assuming that the FDIC could not immediately close the branch) would not be posted to (or included in) the end-of-day ledger balance on the day of failure. Instead, the deposit would be included in the next day's business, unless no successor institution continued the operations of the failed institution, in which case it would either be included in the day-of-failure's business or returned. The deposit insurance implications of including or

<sup>4</sup> This is when the FDIC handles the resolution of a failed depository institutions by making payments to insured depositors. More commonly, the FDIC handles a failed institution by arranging a purchase-and-assumption transaction with a healthy depository institution. In those cases, insured depositors' funds are transferred to the assuming institution and available at that institution to depositors.

not including the deposit in the end-of-day ledger balance on the day of failure are discussed below.

*Prearranged instructions to "sweep" funds after the posting process.* Certain account agreements, such as those applying to *zero balance accounts*<sup>5</sup> and other internal sweep accounts,<sup>6</sup> provide for the automated transfer from one account at an institution to another account at the institution after transactions are posted for the day, but before the end-of-day balance is established. Applicable contracts and business rules governing these accounts determine the amount to be transferred. Under the proposed rule, any automated internal sweep transaction from one account at the failed institution to another account at the failed institution would be completed on the day of failure.<sup>7</sup> In effect, the FDIC, as receiver would recognize the transfer, pursuant to the account agreement, in determining the end-of-day balance for deposit insurance and depositor preference purposes. The completion of prearranged internal sweep transactions results in the calculation of end-of-day deposit balances for insurance purposes consistent with how such funds currently are treated for Call Report and assessment purposes.

<sup>5</sup> In the case of a zero balance account ordinarily a customer has a master account tied to one or more subsidiary accounts. The institution's agreement with the customer calls for the subsidiary account to have a zero balance at the end of each day. For example, if funds need to be transferred from the master account to cover checks presented against the subsidiary account, this will be done during the nightly processing cycle. Alternatively, if there are excess funds in the subsidiary account they will be transferred to the master account prior to the end of the day.

<sup>6</sup> Insured depository institutions maintain two types of sweep accounts. Internal sweep arrangements—such as those where the investment vehicle is a "deposit" in a foreign branch of the institution or its international banking facility—sweep funds only within the institution itself by accounting or bookkeeping entries. External sweep arrangements—such as those connected to investments in money market mutual funds—move funds (usually by wire transfer) outside the institution and, hence, off its books altogether.

<sup>7</sup> The FDIC as receiver would not, however, complete an external sweep—a sweep in which funds leave the institution and another entity assumes liability to the customer—if funds have not already left the failed institution by the FDIC general cutoff time. An external sweep includes, for example, an account where funds are swept from a deposit account at the institution and wired to a third party money market mutual fund every evening. External sweeps also would include an arrangement where funds are swept from a deposit account at a depository institution to an account or product at an affiliate of the institution, even if the transfer is accomplished through a book-entry at the depository institution. In some cases it would not be practicable to stop an external sweep from occurring after the FDIC general cutoff time. In these cases the FDIC would use the pre-sweep deposit balance for insurance purposes.

For example, assume an agreement between a depository institution and its customer provides that, at the close of every business day, the funds in excess of a designated amount are to be transferred from the customer's checking account at the institution's domestic branch to a Eurodollar account at the institution's foreign branch. Under the proposed rule, the transfer of funds to the foreign branch would be deemed to have been completed on the day of failure, regardless of the FDIC Cutoff Point, because the transfer was authorized as of that day as part of the agreement between the institution and its customer.

The proposed treatment of internal zero balance and other sweep accounts has important implications for a customer's depositor and creditor status and chances of recovery from the receivership estate. The implications are discussed below.

*Post-closing adjustments.* Under the proposed rule, the FDIC, as receiver, would be able to correct errors and omissions after the day of failure and reflect them in the day-of-closing deposit account balances.

*No requirements proposed.* The proposed rule would not require insured institutions to have in place computer systems capable of applying the FDIC Cutoff Point to determine deposit account balances upon an institution's day of failure. The FDIC requests comments on whether such a requirement should be imposed for either all institutions or, alternatively, for "Covered Institutions"—defined in the second part of the proposed rule as institutions having at least \$2 billion in domestic deposits and either: more than 250,000 deposit accounts; or total assets over \$20 billion, regardless of the number of deposit accounts.

#### Treatment of Uncollected Deposited Checks

Under the proposed rule, in determining deposit account balances at a failed insured depository institution, the FDIC would deem all checks deposited into and posted to a deposit account by the Applicable Cutoff Time as part of the deposit account balance for insurance purposes. This approach means that the FDIC would use the "ledger balance" of the account for purposes of its deposit insurance determination, in contrast to using either "available funds" or "collected funds" account balances.

The FDIC proposes to use deposit account ledger balances for deposit insurance purposes for several reasons:

- Depository institutions use and calculate the ledger balance in a more consistent way than other balances.
- It is consistent with the way that depository institutions report deposits on Call Reports and Thrift Financial Reports and it is the balance the FDIC uses to determine an institution's deposit base for calculating the institution's deposit insurance assessments.<sup>8</sup>
- It is the easiest balance for depositors to understand, and it is the most frequently used balance on financial statements provided to customers.

Using ledger balances also is consistent with the definition of "deposit" in the Federal Deposit Insurance Act ("FDI Act"), which includes balances both "conditionally" or "unconditionally" credited to a deposit account. 12 U.S.C. 1813(l).

Further, especially in a large depository institution failure, using ledger balances may be the only operationally feasible means for the FDIC to make deposit insurance determinations timely and expeditiously. As discussed in more detail in the second part of this rulemaking, the FDIC is statutorily obligated to pay insured deposits "as soon as possible" after an insured depository institution fails. 12 U.S.C. 1821(f)(1). The FDIC places a high priority on providing access to insured deposits promptly and, in the past, has usually been able to allow most depositors access to their deposits on the business day following closing. The largest insured institutions are much bigger than any institution has been in the past and are growing increasingly complex. Providing prompt access to depositors if one of these institutions were to fail would prove difficult if adjustments for uncollected funds were necessary.

The proposed rule differs from the FDIC's past and current practice in an important way. In the past, for a check that was posted to an account but not yet collected at the time of failure—including a check already forwarded by

<sup>8</sup> The FDIC's recent revisions to the FDIC's risk-based assessment system have made an institution's assessment base, which is used to determine its deposit insurance assessment, virtually identical with an institution's deposits as defined in the Federal Deposit Insurance Act. The revisions eliminated the "float" deductions previously used to compute an institution's assessment base; hence, deposits posted to a deposit account but not yet collected are now part of the assessment base. The stated rationale for eliminating the float deduction from the calculation of an institution's assessment base was that such deductions were small and decreasing as a result of legal, technological and system payment changes. 71 FR 69720 (Nov. 30, 2006).

the failed institution for collection but not yet collected—the FDIC acted as agent or trustee for the depositor and remitted or credited payments received on these checks to the depositor in full. These checks were not included in deposits on the day of failure for insurance purposes and were not subject to deposit insurance limits.<sup>9</sup> In contrast, under the proposed rule, when a check is posted to an account at the failed institution as provided by the Applicable Cutoff Time, the check would be included in the end-of-day balance and would be subject to deposit insurance limits, even if uncollected.<sup>10</sup>

To illustrate, assume again that the FDIC Cutoff Point for teller transactions at a failed institution is 2 p.m. Pacific Time for branches in the west. In the past, the receiver, as agent or trustee, would collect any deposit made to the account (whether before or after 2 p.m. local time) that was uncollected on the day of failure and credit or remit the proceeds to the depositor without regard to insurance limits. The amount of the checks would not have counted against the depositor's deposit total for insurance purposes. Under the proposed rule, however, any deposit made at a teller station at a branch in the west up to 2 p.m. local time (possibly including deposits made in previous days) would be included in the end-of-day ledger balance on the day of failure (unless previously withdrawn by the depositor). If such a deposit caused the depositor's total deposits to exceed the maximum deposit insurance amount for that ownership capacity, the depositor would have uninsured deposits.

Some depositors may receive less favorable treatment under the proposed rule than if the FDIC were to continue to use its current approach to handling uncollected deposited checks. The increasing speed with which checks are processed as a result of electronic check processing, the use of checking account debit cards and other developments, however, should limit the effect of the proposed rule in this regard. Moreover, the current approach would not be feasible in a larger bank failure, and the FDIC must plan for all contingencies.

#### Treatment of Internal Sweep Accounts in General

*Background.* In a prearranged, internal sweep arrangement, the nature of an institution's liability to its customer changes automatically and repeatedly (usually once or twice every

<sup>9</sup> FDIC Adv. Op. 95-2 (Jan. 23, 1995).

<sup>10</sup> If the check ultimately proved to be uncollectible, the ledger balance would be adjusted accordingly.

day). Usually, some or all of the funds in an obligation denominated a deposit account (typically, a checking account) are transferred to a non-deposit liability account within the same depository institution (an "internal sweep"). For many such internal sweeps (such as sweeps to Eurodollar accounts, discussed below), funds do not usually transfer; rather, a ledger or accounting entry is used to record that the obligation has moved to another type of account.

Most agreements between sweep customers and a depository institution expressly provide that the institution's liability, once the sweep occurs, is not a *deposit* (as defined in section 3(l) of the FDI Act) and that the institution will pay interest (typically overnight) while the liability remains a non-deposit liability. These sweep agreements allow an institution to pay interest without violating the statutory prohibition on the payment of interest on demand deposits.<sup>11</sup> These sweep agreements also relieve insured institutions from having to maintain reserve requirements for the swept liabilities under the regulations issued by the Board of Governors of the Federal Reserve System.<sup>12</sup> In addition, the agreements relieve institutions from having to pay deposit insurance assessments (or premiums) on the swept liabilities, since only deposits are included in the base upon which institutions pay assessments.<sup>13</sup>

*The Adagio decision.* The need for a rule to govern the treatment of internal sweep accounts in an institution failure is motivated, in part, by a recent court decision involving the treatment of sweep accounts. In *Adagio Investment Holding Ltd. v. FDIC*, 338 F. Supp. 2d 71 (D.D.C. 2004), the FDIC was appointed as the receiver of the failed Connecticut Bank of Commerce. On the night of the bank's failure, in accordance with its customary practice, the FDIC "completed the day's business" which involved processing pending transactions, including approximately \$20.2 million which had been authorized to be swept from a demand deposit account in the bank to a non-insured non-deposit account in the bank's international banking facility ("IBF"). Because "deposits" in an IBF are not deposits for purposes of section 3(l) of the FDI Act, the FDIC issued (pursuant to the national deposit preference statute, described below) the

holders of these "deposits" receivership certificates as general creditors rather than according them priority status as depositors. The creditors, claiming that the receiver did not have authority to permit the sweeps, sued the FDIC. In the *Adagio* case, the court concluded that the sweep should not have been performed in light of the lack of "any provision in either the statute or regulations that would permit the sweep that occurred." \* \* \* 338 F. Supp. 2d at 81.

*Operation of the proposed rule as to sweeps.* Under the proposed rule, the FDIC would complete a prearranged internal sweep transaction on the day of the institution's failure if the applicable sweep account agreement provides for the automated sweep after transactions are posted for the day, but before the final deposit account balance is established.

As in the *Adagio* situation, a sweep that resulted in a non-deposit liability would leave the creditor with an unsecured general creditor claim against the receivership. This is because under the national deposit preference statute (section 11(d)(11) of the FDI Act, 12 U.S.C. 1821(d)(11)), unsecured general creditor claims receive payment from the receivership estate only after all deposit claims, including uninsured deposits and the FDIC's claim as the subrogee of all insured deposits, have been paid in full. As a result, general creditors often receive little or no recovery in the receivership of a failed depository institution, while uninsured depositors have historically recovered at least part of their funds. Thus, the sweep of a liability from a deposit account to a non-deposit account (on the day of the institution's failure) could significantly reduce the account holder's recovery from the receivership estate.

Customers could either lose or gain from having internal sweeps completed. Eurodollar sweeps and sweeps to IBF accounts are two examples of internal sweep arrangements that would result in customers losing due to the sweep being completed. The Eurodollar and IBF sweep arrangement typically begins each business day with balances only in a domestic deposit account. At the end of the day, the customer's claim is denominated a Eurodollar account (typically associated with the bank's branch in the Cayman Islands or Bahamas) or an IBF account. At the start of the next business day, the depository institution will sweep the balance back to the domestic deposit account. The cycle typically repeats itself daily.

Usually the underlying contract for a Eurodollar sweep specifies that the obligation at the foreign branch is not

payable in the United States and, hence, is not a *deposit*,<sup>14</sup> for deposit insurance and depositor preference purposes. Upon an institution failure, amounts in a Eurodollar account in a non-insured branch of the failed institution would be treated as foreign deposits and would not be deposits for insurance or depositor preference purposes. The same treatment would apply to sweeps to IBFs, which by statutory definition are not deposits. Eurodollar and IBF accountholders would be accorded general creditor status in the receivership estate. Institutions do not pay deposit insurance assessments on liabilities denominated, as of an institution's close of business, as foreign deposits or IBF deposits.

Thus, under the proposed rule, the sweep to the IBF described in the *Adagio* decision would be completed by the receiver on the day of failure and the account holders, who held IBF accounts after the sweep, would be deemed to be general creditors of the receivership, rather than depositors, under the deposit preference statute.<sup>15</sup>

Completing repurchase agreement sweeps could—if the accounts are properly structured—benefit the customer. In a repurchase sweep, the process is similar to that of a Eurodollar or IBF sweep. At the start of the business day, the customer balances reside in a deposit account. At some point during the day the obligation is changed to an interest-bearing, non-deposit liability account, and is so reported by the institution as of the close of business. In some cases, the institution sells securities to the customer (and agrees to repurchase them later). At the start of the next business day, the depository institution will repurchase the securities by re-crediting the deposit account. The cycle repeats itself daily.

Under the proposed rule, internal repurchase account sweeps would be

<sup>14</sup> The definition of "deposit" in the FDI Act expressly excludes: "any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless (i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at an office located in any State; and (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State." 12 U.S.C. 1813(l)(5)(A). Also, the FDI Act defines IBF obligations as non-deposits. 12 U.S.C. 1813(l)(5)(B).

<sup>15</sup> Rights are fixed as of the close of the day's business. Those rights would not be changed if, for example, it was impractical to reprogram the bank's computers before a liability swept to a foreign branch of an insured institution as of the day of the institution's failure was swept back to a deposit account at the bridge bank serving as the successor to the failed institution.

<sup>11</sup> In general, insured depository institutions are prohibited from paying interest on commercial demand deposits. See 12 U.S.C. 371a; 12 U.S.C. 1828(g); 12 CFR part 217; 12 CFR part 329.

<sup>12</sup> 12 CFR Part 204.

<sup>13</sup> 12 CFR 327.5.

accorded the same treatment as other pre-arranged, automated sweep arrangements. That is, the FDIC would consider sweep transactions to be completed on the day of the institution's failure if the applicable sweep account agreement provides for the automated sweep before the final deposit account balance is established.

Some repurchase sweep agreements provide for an actual sale of securities by the depository institution to a customer (followed by the institution's "repurchase" of the securities from the customer). When the customer uses a deposit account to make the purchase, the bank's deposit liability to the customer is extinguished. In other cases, however, the so-called repurchase agreement does not provide for the actual sale and repurchase of securities. Rather, the agreement provides for the transfer of the customer's claim from a deposit account at the depository institution to another liability account, collateralized by either specific securities or a pool of securities, at the same institution. In this regard, the FDIC seeks comment on specific questions: Do some or all repurchase arrangements as actually executed: (1) Pass title to the customer in a transaction that is enforceable against the FDIC? or (2) create perfected security interests that are enforceable against the FDIC? Comments also are requested as to whether the nature of some or all repurchase sweep arrangements satisfies the definition of "deposit" in section 3(l) of the FDI Act. In addition, comments are requested as to what arguments may be made that repurchase arrangements in which the institution collateralizes its liability are permissible, given restrictions on collateralizing private deposits. See *Texas & Pacific Railway Company v. Pottorff*, 291 U.S. 245 (1934).

#### Treatment of Sweep Accounts Involving the Transfer of Funds Outside the Depository Institution

The proposed rule would apply differently to sweep accounts involving the transfer of funds outside the depository institution. In those situations, the status of the funds as of the institution's day of failure would depend on whether the funds left the institution (via wire transfer or otherwise) before the FDIC Cutoff Point. For example, assume the customer and the institution have an agreement that funds in excess of a certain amount are to be wired to a mutual fund (outside the institution) at 5 p.m. each business day. The institution fails and the FDIC Cutoff Point is set at 4 p.m. If the funds have not been wired out of the

institution by 4 p.m., the FDIC would consider the funds to be part of the deposit account balance upon which the FDIC would make a deposit insurance determination. Conversely, under the same facts, except that the FDIC Cutoff Point is set at 6 p.m., the wire transfer would be executed at 5 p.m., and the wired funds would no longer be part of the deposit account balance upon which the FDIC would make a deposit insurance determination.

Where funds subject to a prearranged, automated external sweep have been temporarily transferred to an intermediate deposit account (or omnibus account) at the failed institution awaiting transfer to an external source, but have not actually been transferred to the external source (for example, the mutual fund) by the FDIC Cutoff Point, those funds would still be considered part of the customer's deposit account balance for deposit insurance and receivership purposes.

External sweep arrangements typically provide that invested funds remain outside the institution on a day-to-day basis. In this regard, at the point of failure the preponderance of a customer's funds would reside in the external sweep investment vehicle and not be considered a deposit for Call Report, assessment or insurance purposes. Such external funds typically would not be subject to loss in the event of failure. The proposed rule would affect only those balances leaving the institution on the day of failure. Thus, the proposed treatment of external sweep arrangements is consistent with the FDIC's practice, upon taking control of a failed institution as receiver, to limit the removal of funds from the failed institution.

*Request for comment on sweeps alternative.* As described above, funds subject to an internal sweep that is to take place before end-of-day balances are calculated would not be accorded treatment as deposits because they would be swept, within the depository institution, by prearrangement, before the institution's close of business, from a deposit to a non-deposit account. Under such an arrangement, no deposit insurance premiums would have been assessed against these funds since they would not have been reported as deposits by the institution. The FDIC requests comments on whether, if the swept funds in such arrangements were to be assessed insurance premiums, they also should be eligible to be treated as deposits for purposes of FDIC deposit insurance and depositor preference. The FDIC requests comment on whether or to what extent such an option would involve any operational or regulatory

burden or other adverse regulatory consequences.

#### Request for Comment on Part One of the Proposed Rule

In addition to requesting responses to the specific questions posed above and requesting comments on all aspects of this part of the proposed rulemaking, the FDIC requests comments on alternative approaches for determining deposit account balances at a failed insured depository institution, including whether the FDIC should have the discretion to establish a universal cut-off time for such determinations at the time it takes control of a failed insured depository institution.

### II—Large-Bank Deposit Insurance Determination Modernization

As mentioned above, the second part of the proposed rule would require the largest insured depository institutions to adopt mechanisms that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information and (2) allow the placement and release of holds on liability accounts, including deposits.

#### A. Overview

This part of the proposed rule applies to large FDIC-insured institutions, defined in the proposed rule as "Covered Institutions." The definition would encompass insured depository institutions having at least \$2 billion in domestic deposits and at least either: (1) 250,000 deposit accounts; or (2) \$20 billion in total assets, regardless of the number of deposit accounts. Currently, the combined total number of *Covered Institutions* would be 159.<sup>16</sup> In summary, *Covered Institutions* would be required to adopt mechanisms that would, in the event of the institution's failure:

- Allow automatic posting of provisional holds on large liability accounts in any percentage specified by the FDIC on the day of failure.
- Provide the FDIC with deposit and customer account data in a standard format.
- Allow automatic removal of the provisional holds and posting of the results of insurance determinations as specified by the FDIC.

#### B. Need for a Rule

When handling a depository institution failure the FDIC is required to structure the least costly of all possible resolution transactions, except

<sup>16</sup> Based upon Call Reports dated June 30, 2007.

in the event of systemic risk.<sup>17</sup> In addition, the FDIC is required to pay insured deposits “as soon as possible” after an institution fails.<sup>18</sup> The FDIC places a high priority on providing access to insured deposits promptly and, in the past, has usually been able to allow most depositors access to their deposits on the business day following closing. Doing so enables the FDIC to:

- (1) Maintain public confidence in the banking industry and the FDIC;
- (2) provide the best possible service to insured depositors by minimizing uncertainty about their status and avoiding costly disruptions that may limit their ability to meet financial obligations;
- (3) mitigate the spillover effects of a failure, such as risks to the payments system, problems stemming from depositor illiquidity and a substantial reduction in credit availability; and
- (4) retain, where feasible, the franchise value of the failed institution (and thus minimize the FDIC’s resolution costs).

The largest insured depository institutions are growing increasingly complex. The proposed rule would help facilitate an insurance determination and dramatically improve upon access to depositor funds if one of these institutions were to fail. The proposed rule is intended to allow the deposit operations of a failed institution to be continued on the day following failure. It is also intended to permit the FDIC to meet its legal mandates regarding the resolution of failed insured institutions, provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different institutions and reduce the

FDIC’s costs by preserving the franchise value of a failed institution.

*Limitations of current processes.* Making deposit insurance determinations is inherently complex because a single depositor may have more than one account and may hold accounts in different ownership capacities, each of which may be separately insured.<sup>19</sup> To make insurance determinations, the FDIC must aggregate all accounts owned by a depositor in a single ownership capacity. This process often requires reviewing detailed account agreements and other documents.

The larger the *number* of deposit accounts at an institution, the more complex and difficult the insurance determination becomes. Complexity also depends upon the *volume* of transactions, the amount of uninsured funds, the number of separate computer systems or “platforms” on which deposit accounts are maintained and the speed at which the institution’s deposit operations must be resumed following failure. These factors all present significant challenges in a large-bank failure.

All of the insured institution failures using the FDIC’s current processes and procedures have been of modest size, the largest being NetBank (2007) with total deposits at the time of closure of \$1.9 billion and roughly 175,000 deposit accounts. With this proposed rule, the FDIC’s processes and procedures for determining deposit insurance coverage would be improved to avoid delays.

Table 1 reflects the increasing number of deposit accounts at the largest insured institutions over the past 10

years. If this trend continues, the largest institutions will hold even more deposit accounts in the future.

TABLE 1.—TOP TEN INSTITUTIONS, BY NUMBER OF DEPOSIT ACCOUNTS (In Millions)

Rank	1997	2002	2007
1 .....	11.3	27.9	54.0
2 .....	10.4	17.3	33.9
3 .....	5.0	11.1	24.1
4 .....	4.1	10.7	20.5
5 .....	4.0	10.4	19.4
6 .....	3.8	10.0	16.2
7 .....	3.7	9.0	12.7
8 .....	3.7	6.8	9.5
9 .....	3.6	6.0	9.4
10 .....	3.2	5.1	7.2
Total .....	52.7	114.3	206.8

In most instances, larger institutions are considerably more complex, have more deposit accounts, are more geographically dispersed and have more diverse systems and data-integration issues than small institutions. This is especially true of large institutions that have engaged in merger activity.

Table 2 shows some of the differences between *Covered Institutions* under the proposed rule, and all other institutions (*Non-Covered Institutions*). By definition, *Covered Institutions* typically have more accounts than other institutions. *Covered Institutions* also usually have more complex deposit systems and require a rapid resumption of deposit operations in the event of failure to protect the institution’s franchise value.

TABLE 2.—INDUSTRY SEGMENTATION

Segment	Definition	Number	% of Total	Total domestic deposits (billions)	% of Total
Covered .....	Total domestic deposits of at least \$2 billion with: (1) over 250,000 deposit accounts or (2) total assets over \$20 billion but less than 250,000 deposit accounts.	159	1.8	4,612	68.9
Non-Covered .....	All insured institutions not Covered .....	8,466	98.2	2,086	31.1
Total .....	.....	8,625	100.0	6,698	100.0

Note: Data are as of June 30, 2007.

<sup>17</sup> Section 13(c)(4)(A)(ii) of the FDI Act, 12 U.S.C. 1823(c)(4)(A)(ii), and section 13(c)(4)(G)(i) of the FDI Act, 12 U.S.C. 1823(c)(4)(G)(i).

<sup>18</sup> Section 11(f)(1) of the FDI Act, 12 U.S.C. 1821(f)(1).

<sup>19</sup> The basic FDIC insurance limit is \$100,000 per depositor, per insured institution, although the insurance limit for Individual Retirement Accounts and other specified types of retirement accounts

was recently increased to \$250,000. 71 FR 14629, March 23, 2006. Deposits maintained by a person or entity in different ownership rights and capacities at one institution are aggregated and separately insured up to the insurance limit. All types of deposits (for example, checking accounts, savings accounts, certificates of deposit, interest checks and cashier’s checks) held by a depositor in the same ownership category at an institution are added together before the FDIC applies the

insurance limit for that category. Today the FDIC generally relies upon the deposit account records of a failed institution in making a deposit insurance determination. The FDIC’s rules and regulations for deposit insurance coverage describe the categories of ownership rights and capacities eligible for separate insurance coverage. FDIC refers to these as “ownership categories.” Addendum 1 describes the main ownership categories.

Even when a smaller institution fails, making insurance determinations is a time consuming process. The FDIC typically needs several months of advance planning to make deposits available to insured depositors on the next business day. In the past, insured institution closures typically have occurred on a Friday, which has allowed the FDIC two days to prepare for the next business day. But Friday closures are not always the case and the FDIC must be prepared for all contingencies.

*Previous ANPRs.* In 2005, the FDIC published an advance notice of proposed rulemaking (the 2005 ANPR),<sup>20</sup> which requested comment on three options for enhancing the speed at which depositors at larger, more complex insured institutions would receive access to their funds in the event of failure.<sup>21</sup> All of the options would have required that *Covered Institutions* modify their deposit account systems. Option 1 would have imposed requirements very similar to those in this proposed rule, except that, in addition, institutions would have been required to maintain a unique identifier for each depositor and for the insurance ownership category of each account.

Option 2 was similar to Option 1 except that the standard data set would have included only information that institutions currently possessed. The option would not have required institutions to create a unique identifier for each depositor or to classify each account by ownership category, similar to the requirements in this proposed rule.

Option 3 was to require the largest ten or twenty insured institutions (in terms of the number of deposit accounts) to know the insurance status of their depositors and to be able to deduct expected losses from uninsured deposit accounts in the event of failure.

Sixty-four percent of the 28 comment letters on the 2005 ANPR opposed the proposal, citing high costs and regulatory burden.<sup>22</sup>

In response, the FDIC published a second advance notice of proposed rulemaking (the 2006 ANPR)<sup>23</sup> focusing on the less costly and burdensome alternatives. The 2006 ANPR proposed

dividing *Covered Institutions* into two tiers. Tier 1 institutions would comprise the largest, most complex *Covered Institutions*. The Tier 1 proposed requirements were the same as the Option 1 requirements under the 2005 ANPR, except that the deposit insurance category would not be required for each deposit account. Tier 2 institutions—the remainder of *Covered Institutions*—would have the same requirements as Tier 1, except that there would not be a unique depositor ID requirement.

The comment letters from the trade associations nevertheless still cited high costs and regulatory burden and argued that the benefits to the FDIC would be low and might never materialize.<sup>24</sup> These letters suggested that the FDIC should conduct more research on the costs of the options and the potential benefits. It was recommended that the FDIC focus on troubled institutions or abandon the initiative altogether.<sup>25</sup>

In response, the FDIC has further reduced the potential costs and burdens in this NPR by dropping the requirement that the largest, most complex *Covered Institutions* provide a unique identifier for each depositor. The FDIC's has striven to limit costs and burdens as much as possible while still maintaining the proposed capability for resolving failed institutions at the least cost and providing depositors prompt access to funds.

In each ANPR the FDIC requested comment on other alternatives allowing it to meet its objectives in a less costly or burdensome manner. No alternative strategies have been proposed. Some trade organizations proposed delaying implementation of these requirements until a *Covered Institution* becomes troubled. Given the technological complexity of making funds available quickly and the risk that a *Covered Institution* could fail with limited warning, this proposal is not compatible with the FDIC's obligation to be prepared for a large-bank failure.

In response to the 2006 ANPR, the Board of Governors of the Federal Reserve System noted that the options reduced the likelihood of a too-big-to-fail resolution structure, promoted market discipline, lowered resolution costs and should be in place and tested before a large institution becomes troubled. The Federal Reserve Bank of

Minneapolis also argued that the FDIC must revamp its systems for determining insurance at large institutions, should work with the industry to minimize the costs of the proposed options (but still ensure they meet the FDIC's objectives) and should not wait to implement the options until a bank becomes troubled.<sup>26</sup> The FDIC agrees.

### C. The Proposed Rule

Use of the terms “deposit,” “foreign deposit” and “international banking facility deposit.”

In this part of the proposed rule, the term “deposit” continues to be used as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)). A deposit—also called a “domestic deposit”—includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution. Insured depository institutions may maintain deposit liabilities in a foreign branch (“foreign deposits”), but these liabilities are not deposits in the statutory sense (for insurance or depositor preference purposes) for the time that they are payable solely at a foreign branch or branches. Insured depository institutions also may maintain deposit liabilities in an international banking facility (IBF). An “international banking facility deposit,” as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), also is not a deposit for insurance purposes under section 3(l) or depositor preference purposes.

### Definition of Institutions Covered

This part of the proposed rule would apply to a *Covered Institution*, which would be defined as any insured depository institution having at least \$2 billion in domestic deposits and at least either: (1) 250,000 deposit accounts; or (2) \$20 billion in total assets, regardless of the number of deposit accounts.<sup>27</sup> Any other insured depository institution would be a *Non-Covered Institution*,

<sup>26</sup> Board of Governors of the Federal Reserve System (February 27, 2007) and Federal Reserve Bank of Minneapolis (January 17, 2007).

<sup>27</sup> For the purposes of the criteria in the text, an “insured depository institution” includes all institutions defined as such in the FDI Act. 12 U.S.C. 1813(c)(2). Other applicable terms would be as defined in the Reports of Condition and Income (Call Report) instructions (for insured banks) and Thrift Financial Reports (TFR) instructions (for insured savings associations): “deposit accounts” mean the total number of deposit accounts (including retirement accounts), “domestic deposits” mean total deposits held in domestic offices (for insured banks) or deposits (for insured savings associations), and “total assets” means the reported amount of total assets.

<sup>20</sup> 70 FR 73652 (Dec. 13, 2005).

<sup>21</sup> In the 2005 ANPR *Covered Institutions* were defined to include all insured institutions with total number of deposit accounts over 250,000 and total domestic deposits over \$2 billion. A full description of the three options is provided in the 2005 ANPR.

<sup>22</sup> The 2005 ANPR comment letters are available at: <http://www.fdic.gov/regulations/laws/federal/2005/05comlargebank.html>. Addendum 2 provides a more complete discussion of comments.

<sup>23</sup> 71 FR 74857 (Dec. 13, 2006).

<sup>24</sup> See comment letters provided by American Bankers Association (March 13, 2007), America's Community Bankers (March 13, 2007) and The Financial Services Roundtable (March 7, 2007).

<sup>25</sup> In total, the FDIC received 13 comments on the 2006 ANPR. The 2006 comment letters are available at: <http://www.fdic.gov/regulations/laws/federal/2006/06comAC98.html>. Addendum 2 provides a more complete discussion of comments.



and would not be subject to this part of the proposed rule.<sup>28</sup> The FDIC requests specific comment on the proposed definition.

#### Continuation of Business Operations

In the event of failure a *Covered Institution's* legal entity status will terminate. In most cases, however, it is expected that a new entity will carry on the *Covered Institution's* business operations.<sup>29</sup> The new legal entity under which business operations will be continued is the *Successor Institution*, which could include an established or new insured depository institution or a bridge bank operated by the FDIC. The proposed rule is intended to provide a means to facilitate access to deposit funds and maintain the franchise value of the failed *Covered Institution* or a *Successor Institution*. Thus, in most

<sup>28</sup> The criteria for a Covered Institution apply to separately chartered insured depository institutions. Commonly owned depository institutions are not aggregated for the purposes of these criteria. Furthermore, a holding company may own insured depository institutions that are both Covered and Non-Covered.

<sup>29</sup> The provisional hold functionality and other requirements of the proposed rule should be developed in this context. It is possible a Covered Institution may be liquidated in the event of failure. The decision to liquidate or continue the deposit operations of a Covered Institution will be made on a case-by-case basis depending on the individual circumstances at the time.

cases, core business operations will continue post failure, although some operations may be suspended temporarily.

#### Process Overview

As discussed in part one of the proposed rule, in the event of failure, the FDIC would complete daily account processing to generate the deposit balances used by the FDIC for insurance purposes. Under part two of the proposed rule, after completion of the failed *Covered Institution's* final daily processing, the *Successor Institution* would place provisional holds on selected<sup>30</sup> deposit accounts, foreign liability accounts subject to a sweep arrangement. Provisional holds, once posted, would allow depositors access to the remaining balance in their accounts the day following failure, yet guard against the possibility of an uninsured depositor or unsecured general creditor receiving more than allowed under deposit insurance rules or the depositor preference statute.<sup>31</sup>

<sup>30</sup> The FDIC will supply the business rules upon which a provisional hold will be placed. These business rules will be based upon current balance and account product types.

<sup>31</sup> Uninsured depositors are entitled to a pro rata distribution of the receivership proceeds with respect to their claim. The FDIC—at its discretion—may immediately distribute receivership proceeds

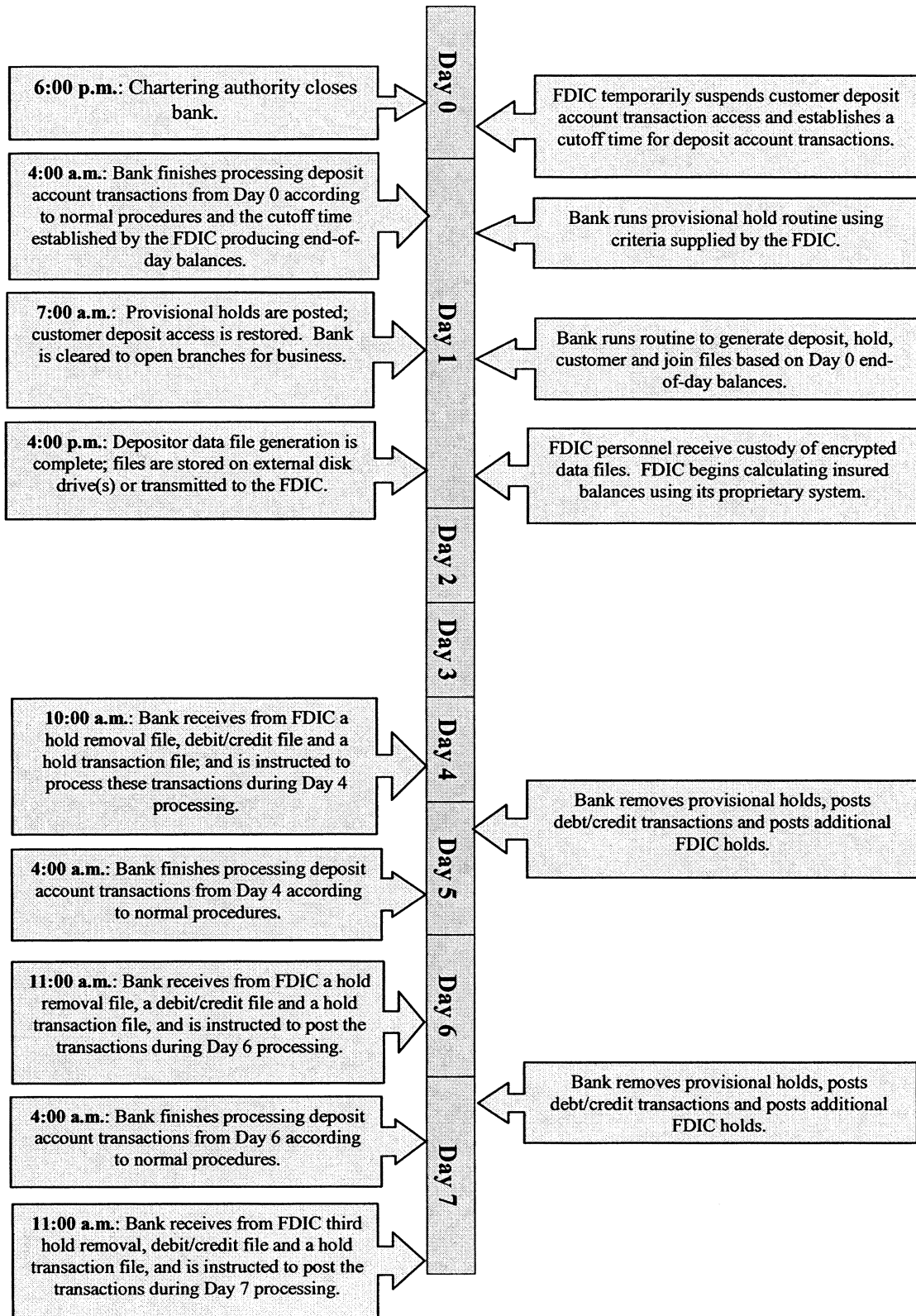
The FDIC would use a standard set of depositor and customer data to make deposit insurance determinations. These determinations would be provided to the *Successor Institution*, probably several days after failure. The *Successor Institution* would then remove the provisional holds as specified by the FDIC and, if necessary, replace them with additional holds or debits based upon the deposit insurance determinations. The FDIC would continue to notify the *Successor Institution* to remove additional holds as information is received from depositors to complete the insurance determination. Figure 1 presents a hypothetical timeline of this process using local time at the *Successor Institution's* headquarters.

The FDIC requests comment on all aspects of this proposed approach, including costs, benefits and alternative approaches that would allow the FDIC to accomplish its objectives of affording a timely deposit insurance determination, a prompt release of funds to depositors, while preventing depositors and creditors from receiving more than they are entitled to under applicable law.

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in the form of advance dividends at failure. Advance dividends are based on the expected recovery to uninsured depositors.

**Figure 1. Sample Resolution Timeline Using Provisional Holds**



## Provisional Holds

*General description.* Under the proposed rule, *Covered Institutions* would be required to have in place an automated process for implementing provisional holds concurrent with or immediately following the daily deposit account processing on the day of failure. After the placement of provisional holds, all other holds previously placed by the institution would still remain in effect.<sup>32</sup> The proposal would not require development of mechanisms to stop or alter interest accrual for the affected accounts.

*Account-by-account application.* Provisional holds would be applied to individual accounts in an automated fashion. Commonly owned accounts would not be aggregated by ownership for the purposes of calculating or placing provisional holds. Provisional holds would extend to all non-closed deposit accounts held in domestic and foreign offices, as well as certain sweep account arrangements.<sup>33</sup>

*The nature of a provisional hold.* The provisional hold is intended to bar access to some or all of a customer's account pending the results of the insurance determination. Preventing access could be accomplished using various methods, each of which have different implications for customer access and implementation costs. As described in the previous ANPRs, the FDIC contemplated the use of a persistent or hard hold. But other hold types or mechanisms may also accomplish the FDIC's objectives. Possible options include:

- *Persistent hold.* A "persistent" provisional hold would be applied once (on or immediately after the day of failure) and stay on the deposit account until it is removed at the order of the FDIC. Once applied, the persistent hold would reduce the customer's available balance. Only "forced post" transactions,<sup>34</sup> as dictated by the *Covered Institution's* normal practices, will post through a persistent provisional hold. In this regard, a persistent provisional hold protects held funds until the results of the insurance

determination can be provided. The customer would be blocked from accessing funds held by a persistent hold regardless of the account transaction mechanism or the time of day.

- *Memo hold.* A provisional hold could be a "memo hold" for institutions that post deposit account transactions via batch process. A memo-type provisional hold remains effective only intra-day and does not affect the batch deposit posting process. The memo-type provisional hold amount is calculated immediately after end-of-day balances are available on the day of failure and the same amount is applied on a daily basis until changed or removed at the instruction of the FDIC. Once applied, a memo-type provisional hold would reduce the customer's available intra-day balance, blocking wire, over-the-counter, on-line, ATM, POS, VRU, and call center transactions in a batch-posting institution. A memo-type hold would block the customer from accessing funds intra-day and would allow the posting of all transactions during the nightly processing cycle. The memo-type provisional hold essentially protects the held balance from being authorized and therefore the declined items would not be presented for nightly processing.

- *Holding balances in an alternate account.* Rather than placing an account hold, balances could be removed from the account to which a provisional hold is to be applied and otherwise "held" in a work in progress (WIP) or suspense account. Since balances are removed from the affected account, they would not be available to the customer until the provisional hold was removed and the balance restored to the original account.

The more effective the hold mechanism is at preventing access to held amounts, the more likely it is to generate NSF checks. Holding balances in a separate account or using a persistent provisional hold protects the FDIC's interests by blocking customer access to held amounts at all times. These hold types thus may have the most severe effect on items returned due to insufficient funds. However, it may be possible to reduce the volume of returned items to a manageable level by instructing account officers, who would be reviewing the larger deposit account relationships, to limit the number of returned items if doing so would alleviate operational difficulties and the risk of loss due to nonpayment is expected to be low.

A memo-type provisional hold would allow transactions to be processed business-as-usual during the nightly

cycle. In an institution with a "pay-all" policy, in which NSF items are processed during the batch nightly processing cycle and the return decision is made the following morning, either through automated decision rules or by account officer review, each of the three types of provisional holds might be equally effective. On the other hand, if the institution has a "pay-none" policy, in which NSF items not protected by a pre-existing overdraft agreement are slated for return the following business day, a memo-type hold may allow the FDIC more latitude in managing returned items and be less costly for the *Covered Institution*. However, it may place the FDIC at higher risk of inadvertently paying a claimant more than he or she is entitled to under the law. If a *Covered Institution* uses a memo-type provisional hold, the FDIC could require it to have in place practices and procedures for returning as NSF those items reducing the deposit account balance below the amount of the provisional hold, and to demonstrate the effectiveness of this process.

A persistent provisional hold may require greater systems development and other implementation costs on the part of the *Covered Institution* compared to holding balances in a separate account or a memo hold. Further, persistent provisional holds may take longer to post following failure, potentially making it difficult or impossible for some *Covered Institutions* to be opened in a timely fashion the following business day.

The FDIC is considering the desirability of each hold format discussed above, or whether to allow any combination of the three depending on the circumstances of the *Covered Institution*. If the FDIC were to allow the use of multiple hold types, it might require *Covered Institutions* to notify the FDIC which types are being used and why they are effective in limiting access to held amounts. The FDIC is asking for industry comment on the extent to which a particular type of hold better accomplishes the FDIC's objectives of preventing depositors and creditors from receiving more than they are entitled to under applicable law, maintaining franchise value of the institution, limiting systems development and implementation costs at *Covered Institutions* and improving the speed at which holds can be posted after failure. The FDIC also is interested in knowing whether other hold mechanisms not discussed here should be considered.

*Provisional holds for deposit accounts.* On the day of failure, the

<sup>32</sup> Provisional holds could overlap preexisting holds if the entire account is held or the unheld account balance before posting the provisional hold is less than the amount of the provisional hold. In such cases posting the provisional hold would have to be constructed so that it did not cause the account to become "overdrawn" and trigger service fees against the account.

<sup>33</sup> Non-closed deposit accounts include those that are open, dormant, inactive, abandoned, restricted, frozen or blocked, in the process of closing or subject to escheatment.

<sup>34</sup> Forced post transactions may include items such as ATM withdrawals, POS transactions, cashed checks, fees and deposit corrections.

FDIC would specify a deposit account balance (the “account balance threshold”) that would determine whether a provisional hold would be placed on a particular deposit account.<sup>35</sup> No provisional hold would be placed on a deposit account with a balance less than or equal to the account balance threshold. For a deposit account above the account balance threshold, the FDIC would specify, again on the day of failure, a percentage (the “provisional hold percentage”) that would be multiplied by the account balance in excess of the account balance threshold.<sup>36</sup> The product of this multiplication would equal the dollar amount of the provisional hold. Institutions would be required to adopt systems that would allow the hold to be calculated and placed. The account balance threshold as well as the provisional hold percentage could vary for the following four categories, as the *Covered Institution* customarily defines them:

1. Consumer demand deposit, negotiable order of withdrawal (“NOW”) and money market deposit accounts (“MMDA”).
2. Other consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).
3. Non-consumer demand deposit, NOW accounts and MMDAs.
4. Other non-consumer deposit accounts (time deposit and savings accounts, excluding NOW accounts and MMDAs).

The likely value of the account balance threshold for deposit accounts would be between \$30,000 and \$80,000. Based on data provided by a sample of insured institutions, this range of values would make only about 10 percent of deposit accounts subject to the provisional hold at most institutions. Given the historical loss experience for large institutions and their general liability structure, the FDIC expects that the provisional hold percentage on domestic deposits would usually be less than 15 percent.

*Provisional holds for foreign deposits.* For foreign deposits the provisional hold methodology will be the same as for deposit accounts, except that the account balance thresholds and the provisional hold percentages may vary based on the country in which the account is located.

*Provisional holds for international banking facility deposits.* For

international banking facility deposits the provisional hold methodology will be the same as for deposit accounts, except that the account balance thresholds and the provisional hold percentages may differ.

*Provisional holds for deposit accounts with prearranged, automated sweep features.* As discussed in part one of the proposed rule, certain deposit accounts have a feature to “sweep” funds periodically according to predefined rules into another deposit account, a foreign deposit or an alternative investment vehicle.<sup>37</sup> The deposit account through which the customer has primary access to deposited funds—usually a demand deposit account—is the “base sweep account.” The investable or excess account balance is swept periodically into a “sweep investment vehicle.” Sweep investment vehicles may include, but are not limited to: (1) A deposit account at the same institution or an affiliated insured depository institution, (2) a foreign or IBF deposit, (3) repurchase agreements, (4) federal funds, (5) commercial paper and (6) a proprietary or third-party money market mutual fund.

Some sweep accounts would be subject to the same provisional hold requirements as a deposit account. These are defined as “Class A” sweep accounts and include:

- Base sweep accounts where the sweep investment vehicle is another deposit account in an office of the same institution. Both the base sweep account and the sweep investment vehicle are deposits that will be subject to the provisional hold requirements of a deposit account.
- Base sweep accounts where funds are wired from the *Covered Institution* to a separate legal entity other than the *Covered Institution* (e.g. a proprietary or third-party money market mutual fund). In this case, funds residing in the base sweep account (if any) would be subject to a provisional hold as any other deposit account held in a domestic office. No provisional hold would be required for funds residing outside the *Covered Institution* in the sweep investment vehicle.

All other sweep accounts—defined as “Class B” sweep accounts—would have a dual provisional hold methodology. For the fund balance remaining in the

base sweep account as of the institution’s customary close-of-business on the day of failure, the provisional hold methodology would be the same as applied to other deposit accounts. For the funds residing in the sweep investment vehicle as of the institution’s customary close-of-business, the provisional hold methodology would have the capability of a separate account balance threshold and provisional hold percentage.<sup>38</sup> The balance threshold as well as the provisional hold percentage may vary for different types of sweep investment vehicles.<sup>39</sup>

The proposed rule would not require mechanisms to stop the processing of any prearranged deposit account sweep transactions in the event of failure. The provisional holds described above would allow for the transfer of balances from a deposit account to a sweep investment vehicle. The provisional holds would apply to liability accounts as they are designated on the books and records of the institution at its customary close-of-business.

Consider, for example, a prearranged automated sweep transaction in which a customer’s entire deposit account balance is swept to the institution’s Cayman Island branch prior to the institution’s customary close-of-business. Under part one of the proposed rule, the Cayman Island branch deposit would be classified and treated as a foreign deposit. In the event of failure the FDIC could request a provisional hold on the Cayman Island foreign deposit with an account balance threshold of \$0 and a provisional hold percentage of 100. The funds booked as a Cayman Island branch deposit as of the institution’s customary close-of-business could be swept back to a deposit account the morning following failure, but only if the provisional hold remains in place.<sup>40</sup> Thus the depositor will not be allowed to remove held amounts from the *Successor Institution*.

*Provisional holds for deposit accounts which accept automated credits from*

<sup>38</sup> Some *Covered Institutions* may allow a single base sweep account to be associated with multiple investment vehicles. In this case a separate provisional hold methodology must be developed for each investment vehicle.

<sup>39</sup> Some alternative investment vehicles are deposits held in foreign offices. These foreign deposits would be subject only to the provisional hold methodology for the sweep alternative investment. Such foreign deposits would be excluded from the provisional hold methodology designed for non-sweep deposits held in the same foreign office.

<sup>40</sup> While funds may be swept back to the deposit account the morning following failure, the rights of these funds for claims purposes were set based on the institution’s end-of-day account balances, and are not changed by the early morning sweep.

<sup>35</sup> The account balance threshold could be any dollar amount specified by the FDIC, including zero.

<sup>36</sup> The provisional hold percentage could be any percentage specified by the FDIC, from 0 to 100 percent.

<sup>37</sup> Sweep accounts as described here do not include zero balance account (ZBA) arrangements that move funds to and from a master (or concentration) deposit account and one or more subsidiary deposit amounts at the same bank. Such deposit account arrangements are not intended to provide a yield on excess deposit balances nor do they change the customer’s insurance status. ZBAs would be subject to the provisional hold methodology for deposit accounts described above.

*funds invested within the Covered Institution.* Certain customers may provide the institution with instructions each day or periodically to invest funds in a non-deposit investment vehicle within the institution (e.g., an overnight time account at the Cayman Island branch), whereby such funds are automatically credited to the customer's deposit account the following day ("automated credit account"). While the daily decision to invest funds—and in what amounts—rests with the customer, the return of the funds the following day to the customer's deposit account is automated and may be functionally similar or identical to the return of funds in a sweep account arrangement. In some cases the deposit account receiving automated credits also will be a sweep base account accepting funds from a sweep investment vehicle.

Automated credit accounts would have a dual provisional hold methodology. For the fund balance remaining in the automated credit account as of the institution's customary close-of-business the provisional hold methodology would be the same as applied to other deposit accounts. For the funds residing in the investment vehicle as of the institution's customary close-of-business, the provisional hold methodology would have the capability of a separate account balance threshold and provisional hold percentage.<sup>41</sup> The account balance threshold, as well as the provisional hold percentage, may vary for different types of investment vehicles. These account balance thresholds and provisional hold percentages could be different from those applied to: (1) Funds automatically swept into a similar or identical investment vehicle or (2) funds held in a similar or identical investment

vehicle that does not provide for an automated crediting of funds.<sup>42</sup>

*Account balance used for provisional hold calculation.* The account balance threshold and provisional hold percentage would be applied against the ledger balance calculated by the institution as of the end of the business day, in the event of failure.

*Provisional hold duration.* Under the proposed rule, the methodology for implementing a provisional hold process must be designed to hold funds until removed by the *Successor Institution* as instructed by the FDIC. Provisional holds will be removed when the results of the deposit insurance determination are available, generally anticipated being several days after failure, depending on the size and complexity of the failed institution's deposit base.

*Provisional hold designation.* Provisional holds should be labeled "FDIC PHold".

*Provisional hold customer disclosure.* The FDIC is considering whether to require the provisional hold, once placed, to be apparent if the customer views account information on-line or through other means. Some deposit systems, for example, have the capability to display point of sale (POS) authorized holds. The FDIC requests comment on the desirability and cost of such a requirement. If required, how should such disclosure be structured?

*Security level and mechanism for manual removal of provisional holds.* The *Covered Institution* will create policies, procedures and systems reasonably capable of preventing the alteration of FDIC provisional holds or other FDIC hold amounts except under the specific written direction of the FDIC.

*Timeliness of the provisional holds process.* The mechanisms put in place by a *Covered Institution* must have the capability of placing provisional holds on the applicable accounts prior to the *Successor Institution* opening for business the following day, but in no case later than 9 a.m. local time the day following the day of the depository institution failure.

*Exception for systems with a small number of accounts.* A *Covered Institution* may have multiple account systems through which provisional holds will be placed. Some account systems may service a relatively small number of accounts making the manual

application of provisional holds feasible. The FDIC is considering whether to allow practices and procedures whereby provisional holds could be applied manually in certain cases, if the *Covered Institution* can demonstrate the holds could be applied in a timely fashion. If so, the manual application of provisional holds must be approved by the FDIC in response to a written request, which would include a justification for the manual process and its relative effectiveness for posting provisional holds in the event of failure. The FDIC requests comment on whether such exceptions would be desirable and, if so, how and in what circumstances they should be considered.

*Institutional contacts.* A *Covered Institution* would be required to notify the FDIC of the person(s) responsible for producing the standard deposit data download and administering provisional holds, both while this functionality is being constructed and on an on-going basis. The *Covered Institution* would be responsible for ensuring such contact information is current.

The FDIC requests specific comments on all aspects of these proposed requirements concerning provisional holds on deposits.

#### Removal of Provisional Holds

*General process.* The FDIC will begin forwarding insurance determination results to the *Successor Institution* once a substantial number of the insurance determinations have been made, which should be within a few days after failure. These results must be incorporated into the institution's deposit systems as soon as practicable, perhaps as quickly as the day following the receipt of the standard depositor and customer data sets. The results would contain instructions for the removal of provisional holds as well as replacement transactions, which could include the placement of new holds or account debits and credits.

The processing would work as follows. The FDIC would notify the *Successor Institution* that some or all of the deposit insurance determination results are available. The *Successor Institution* would remove the specified provisional holds and then, for uninsured accounts: (1) The account would be debited for the uninsured amount or (2) a debit and credit of the account (that is, debit the uninsured balance and credit an advance dividend). A new hold also may be applied to certain accounts. Removal of provisional holds and placement of new FDIC holds, debits and credits must be completed in the same nightly

<sup>41</sup> Some automated credit accounts may also be a base sweep account. In this case a separate provisional hold methodology must be developed for each investment vehicle. It is possible, for example, for a customer to each day provide the institution with instructions to invest a certain amount of funds in a Cayman Island branch time account where the funds would be returned to the customer's demand deposit account the following morning. Further, the customer may also have provided prearranged instructions to have excess balances residing in the same deposit account swept to a Cayman Island branch account where such funds also are returned to the demand account the following morning. In this case the *Covered Institution* must have a provisional hold methodology that: (1) *Treats* funds residing in the demand deposit account as of the institution's end-of-day consistent with other deposit accounts, (2) *treats* funds residing in the Cayman Island branch account as a result of the prearranged sweep consistent with other Cayman Island sweep investment vehicles and (3) *treats* funds residing in the Cayman Island branch account as a result of the daily investment instructions using a separate account balance threshold and provisional hold percentage.

<sup>42</sup> Some investment vehicles are foreign deposits. These funds would be subject only to the provisional hold methodology for the automated credit account. Such accounts would be excluded from the provisional hold methodology designed for non-sweep foreign deposits held in the same office.

processing schedule and the institution would have to be open for business as usual on the next business day. Since certain accounts cannot be determined without obtaining additional information from the depositor, the removal of provisional holds will occur in stages. In each stage the FDIC will provide the list of accounts against which provisional holds are to be removed as well as the corresponding hold, debit or credit transactions.

**Removal of provisional holds.** The *Successor Institution* must be able to remove provisional holds in batch as specified by the FDIC. On the day(s) provisional holds are to be removed, the FDIC would provide the *Successor Institution* with a file listing the accounts subject to removal of the provisional hold. The file format is shown in Addendum 3. The file would be in a *tab-* or pipe-delimited format and provided to the *Successor Institution* through *FDICconnect* or Direct Connect, depending on the size of the file. The file would be encrypted using a FDIC-supplied algorithm.

#### Provisional Hold Replacement Transactions

**Debiting and crediting accounts after provisional holds are removed.** On the day a provisional hold removal file is provided to the *Successor Institution*, the FDIC also would provide a file or set of files either in ACH format<sup>43</sup> or in a *tab-* or pipe-delimited format listing the accounts subject to debit or credit transactions, which reflect the results of the insurance determination process.<sup>44</sup> Addendum 4 provides details on the debit/credit data file structure. Multiple files may be needed to optimize the number of transactions to be processed in a single batch. For a large bank there could be millions of debit and credit transactions which may require multiple batch files.

The debit and credit transaction file would be transmitted to the *Successor Institution* through *FDICconnect* or Direct Connect, depending on the size of the file. The file would be encrypted using a FDIC-supplied algorithm to secure data during the transport process. The FDIC would provide the *Successor*

*Institution* with the necessary software algorithms needed to decrypt the data files.

**Posting of additional FDIC holds.** On the day provisional holds are to be removed, the FDIC also would provide the *Successor Institution* with a file listing the accounts subject to a new hold to be placed after the removal of the provisional hold. The FDIC is considering whether to require a persistent or memo-type hold, the transfer of funds to a WIP account, or allow various alternatives depending on the circumstances of the *Covered Institution*. (As noted, we also are interested in comments on other alternatives.) The file format is shown in Appendix 3. The file would be in a *tab-* or pipe-delimited format and provided to the *Successor Institution* through *FDICconnect* or Direct Connect, depending on the size of the file. The file would be encrypted using a FDIC-supplied algorithm.

#### Removal of Additional FDIC Holds

In some cases provisional holds would be replaced by a second FDIC hold. These holds would be removed over time as further information is gathered from depositors needed to complete the insurance determination. These additional FDIC holds would be removed using the same file format described in Appendix 3.

#### The Generation of Deposit Account and Customer Data in a Standard Structure

A *Covered Institution* would be required to have in place practices and procedures to provide the FDIC with required depositor and customer data in a standard format following the close of any day's business. *Covered Institutions* would not be required to collect or generate new depositor or customer information. The standard data files are created through a mapping of pre-existing data elements and internal institution codes into standard data formats. Data will be provided on all non-closed deposit or foreign deposit accounts as well as Class B and automated credit accounts.

**Files.** The FDIC would require these data to be provided in the following five separate files:

1. **Deposit file.** Data fields for each non-closed deposit or foreign deposit account, except those deposit or foreign deposit accounts serving as an investment vehicle reported in the Class B Sweep/Automated Credit file. See Appendix A for more detail.

2. **Class B Sweep/Automated Credit file.** Data fields capturing information on funds residing in investment vehicles linked to each non-closed

deposit account: (1) Involved in Class B sweep activity or (2) which accept automated credits. See Appendix B for more detail.

3. **Hold file.**<sup>45</sup> Deposit hold data fields for each non-closed deposit account. See Appendix C for more detail.

4. **Customer file.** Data fields for each customer. See Appendix D for more detail.

5. **Deposit-customer join file.** Data necessary to link each deposit and foreign deposit with the customers who have an interest in the account. See Appendix E for more detail.

**Possible file combinations.** Data could be submitted using one of each deposit, Class B sweep/automated credit, hold, customer, customer address and deposit-customer join files.

Alternatively, data could be supplied using multiple files for each type. The number of files could correspond to the number of institutional systems of record, for example. When deposit accounts are maintained in multiple deposit applications (e.g., Business, IRA or Trust), then multiple data files adhering to the required data structure are acceptable to the FDIC. When an institution provides multiple data files for a single deposit application, all of the files must sum to the institution's subsidiary system control totals. In addition, either a set of customer files or a single customer file must accompany the deposit file(s). See Appendix F for rules governing the possible file combinations for depositor and customer data.

**File format.** Depositor and customer data files would be provided in *tab-* or pipe-delimited format. Each file name would contain the institution's FDIC Certificate Number, the file type (deposit, sweep hold, customer, customer address, join or other) and the date of the extract. Additional data could be provided, not required by the regulation, that may be helpful to the FDIC's deposit insurance determination process. For these additional files, the names should describe the file content such as "lookup table" or "product codes". All files would be encrypted using a FDIC-supplied algorithm. The FDIC would transmit the encryption algorithm over *FDICconnect*. The FDIC will support both ASCII and EBCDIC delimited files. All EBCDIC fields must

<sup>43</sup>The FDIC will be establishing ACH transactions, through the proper ACH definition channels to register the debit and credit transactions proposed here.

<sup>44</sup>The FDIC is proposing an optional *tab-* or pipe-delimited file format to ensure that *Covered Institutions* can apply debits and credits to all account types. The FDIC is unsure whether ACH transactions can be applied to all of the account classes (e.g. CDs and IRAs) maintained by the all *Covered Institutions*; therefore, this format has been included as an alternative means to process debit and credit transactions.

<sup>45</sup>The Hold file contains information on holds against each deposit account, including FDIC provisional holds. Since provisional holds may be generated after the completion of an institution's nightly deposit processing cycle, they may not be reflected fully in the Hold file generated as of the day of closing. The FDIC may require a second Hold file to be generated the day following closing to fully capture provisional holds that may not have been posted until the next deposit processing cycle.

be provided in Pic(X) format. Binary, packed or signed numeric formats will not be allowed.

*File transmission mechanism.* The FDIC would require that the data files be provided to the FDIC in the most expeditious manner. Data which can be compressed and encrypted could be transmitted to FDIC using existing telecommunication services. Should the volume be too great to transmit in the most expeditious manner then a portable hard drive should be used and physically transported by FDIC personnel to the FDIC's data processing facilities. The FDIC requests comment on various transmission/transport mechanisms.

#### Reporting Requirements

The criteria defining a *Covered Institution* include the number of its deposit accounts, total domestic deposits and total assets. Total domestic deposits and total assets are reported quarterly on the Consolidated Reports of Condition and Income (insured bank) and the Thrift Financial Report (insured savings association). Savings associations report the number of deposit accounts quarterly, but banks report on the total number of deposit accounts only annually, as part of the June reporting cycle. The FDIC would recommend quarterly reporting of the number of deposit accounts for all insured institutions with total assets over \$1 billion.

#### Testing Requirements

The FDIC will conduct an initial test at each *Covered Institution* sometime after the initial implementation period ends.<sup>46</sup> All testing would be coordinated with the financial institution and conducted at the site of their choosing if multiple sites are available. Once the initial test is completed successfully, the FDIC anticipates that it would conduct additional tests infrequently at institutions that do not make major changes to their deposit systems<sup>47</sup>—perhaps only once every three-to-five years. More frequent testing may be necessary for institutions that make major acquisitions, experience financial distress (even if the distress is unlikely to result in failure) or undertake major system conversions.

<sup>46</sup> In addition to testing, the FDIC expects to require that information contact points be validated (and updated as needed) every three-to-six months.

<sup>47</sup> A major change to a deposit system means a change made to a *Covered Institution's* data environment affecting one or more of the data elements described in attached Appendices. Changes could be the result of a merger or the streamlining of a financial institution's systems of record.

*Covered Institutions* would be responsible for establishing a series of test accounts on their deposit account systems that could be used for verification purposes. These accounts would be used to verify the processing of holds, debits and credits. During the institution verification process the FDIC would expect to send transactions to the *Covered Institution* using *FDICconnect* or otherwise to verify that each institution could properly process these transactions.

The FDIC is contemplating development of a XML validation service which would be provided to each *Covered Institution* for the purpose of establishing compliance with the NPR standard data requirements for depositor and customer records. The XML schema would read a file (which has been created in the NPR standard format), validate the accuracy and integrity of the file content and provide a report that establishes the institution's compliance with the NPR criteria. In addition to the XML service, the FDIC also would provide a more readable description of the validation process to help facilitate institutional testing. The report generated from the XML validation would not contain any bank specific account information and the files would be encrypted prior to transmission to the FDIC. The results of the XML validation process would be reviewed by the institution to ensure that it does not contain any personally identifiable account information prior to being transmitted to the FDIC.

A *Covered Institution* would be responsible for ensuring that a representative sample of data has been passed through the XML validation service. At a minimum the sampling strategy should cover a cross-section of: (1) The geographies for the institution; (2) insurance categories found in Addendum 1; (3) the age of accounts; and (4) a cross section of account ledger balances maintained by the institution. The *Covered Institution* would be required to provide the FDIC its sampling strategy along with the validation results as a part of the periodic verification process. The FDIC is anticipating making available this XML validation service in the third quarter of 2008.

To reduce the frequency of FDIC testing and ensure ongoing compliance, the FDIC expects to require *Covered Institutions* to conduct tests in-house on a regular basis (perhaps every year) and provide the FDIC with evidence that the test was conducted and a summary of the test results.

In addition, the FDIC would have to test certain other requirements inside

the institution, including but not limited to the ability to place and remove provisional holds, place new holds and implement debits and credits using a data set that meets the FDIC standards.

To protect financial privacy, the FDIC's testing process would not require that *Covered Institutions* transmit any sensitive customer data outside of the institution's premises. Therefore, all testing involving any sensitive customer data would be conducted on the institution's premises. The FDIC does not intend to remove sensitive data from the institution's premises under the proposed testing process. These items include, but might not be limited to, the completeness and reliability of the standard data structure, the format requirements of the standard data structure, and the accuracy and effectiveness of the provisional holds.

#### Implementation Requirements

*Institutions meeting the criteria of a Covered Institution upon the effective date of the regulation.* A *Covered Institution* would have 18 months from the regulation's effective date to fully implement the respective requirements.

*Institutions meeting the criteria of a Covered Institution after the effective date of the regulation.* Any insured institution meeting the criteria of a *Covered Institution* for at least two consecutive quarters would have 18 months following the end of the two consecutive quarters in which to fully implement the respective requirements.

*Merger involving two Covered Institutions.* Under the proposed rule, the requirements must be fully implemented within 18 months following the completion of the acquisition, although the acquisition does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

*Merger involving a Covered and Non-Covered Institution.* Under the proposed rule, the requirements must be fully implemented within 18 months following the completion of the acquisition, although the merger does not delay any implementation requirements which may already have been in place for the individual institutions involved in the merger.

*Exception for troubled institutions.* Under the proposed rule, on a case-by-case basis, the FDIC could accelerate the implementation timeframe of all or part of the proposed rule for a *Covered Institution* that either: (1) Has a composite rating of 3, 4 or 5 under the Uniform Financial Institutions Rating System (commonly referred to as

CAMELS)<sup>48</sup> or (2) is undercapitalized as defined for purposes of the prompt corrective action (“PCA”) rules.<sup>49</sup> In determining the accelerated implementation timeframe for such institutions, the FDIC would be required to consider such factors as the: (1) Complexity of the institution’s deposit systems and operations; (2) extent of asset quality difficulties; (3) volatility of funding sources; (4) expected near-term changes in capital levels; and (5) other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution. The proposed rule would require the FDIC to consult with the *Covered Institution’s* primary federal regulator in determining whether to implement this provision of the proposed rule.

*Applications for extension of implementation requirements.* A *Covered Institution* could request an extension of the 18-month deadline for implementing the requirements of the proposed rule. An application for such an extension would be subject to the FDIC’s rules of general applicability, 12 CFR 303.251. For good cause shown, the FDIC could grant the application for an extension.

#### New Deposit Accounts

Knowing the identity of each depositor is an important aspect of a deposit insurance determination. The previous ANPRs contemplated requiring a unique ID for each depositor under certain options. This proposed rule does not require a unique depositor ID, rather the FDIC would rely upon customer information already maintained by the *Covered Institution* to link commonly owned accounts. Nevertheless, a unique depositor ID could prove helpful and speed the insurance determination process, especially for *Covered Institutions* with a large number of deposit accounts. Should the FDIC require a unique depositor ID to be assigned by *Covered Institutions* when a new account is opened? What would be the relative costs of such a requirement?

#### III. Request for Comments

The FDIC realizes that the proposed requirements for *Covered Institutions* could not be implemented without some regulatory and financial burden on the industry. The FDIC is seeking to minimize the burden while at the same time ensuring it can effectively carry out its mandates to make insured funds

available quickly to depositors and provide a least-cost resolution for *Covered Institutions*. The FDIC seeks comment on the potential industry costs and feasibility of implementing the requirements of the proposed rule. The FDIC also is interested in comments on whether there are other ways to accomplish its goals that might be more effective or less costly or burdensome. In other words, what approach or combination of approaches (which may include new alternatives) most effectively meets this cost/benefit tradeoff? The FDIC seeks comments on all aspects of both parts of the proposed rule. In particular, the FDIC seeks comments on these specific issues:

1. The definition of a *Covered Institution*.
2. The desirability and structure of requiring the provisional hold, once placed, to be apparent if the customer views account information on-line or through other means.
3. The cost and effectiveness of the proposed provisional holds requirements.
4. The various mechanisms for transmitting data to the FDIC.
5. The cost and effectiveness of the proposed testing process.
6. The desirability of a unique depositor ID requirement for new deposit accounts.

#### Solicitation of Comments on Use of Plain Language

Also, section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

#### Discussion Meetings

Between 2004 and 2007, the FDIC met with six would-be *Covered Institutions*

and four software vendors/servicers for *Covered Institutions*. These meetings took place at various stages in the development process. The FDIC found these meetings to be extremely helpful to its understanding of industry systems, practices and cost issues, and is requesting additional meetings with interested parties. FDIC staff is willing to travel to facilitate a meeting or structure a teleconference. Any such meetings will be documented in the FDIC’s public files to note the institution’s general views on the proposed rule or answers to questions that have been posed. In past meetings, the institutions and software vendors/servicers discussed proprietary information. Such confidential information would not be made public. Any institution or organization wishing to discuss this proposal in more detail should contact James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898–7151 or [jmarino@fdic.gov](mailto:jmarino@fdic.gov).

#### IV. Paperwork Reduction Act

*OMB Number:* New Collection.  
*Frequency of Response:* On occasion.  
*Affected Public:* Insured depository institutions having at least \$2 billion in domestic deposits and either at least: (i) 250,000 deposit accounts; or (ii) \$20 million in total assets.

*Estimated Number of Respondents:* 159.

*Estimated time per response:* 80–75,000 hours per respondent.

*Estimated Total Annual burden:* 312,500–625,000 hours.

*Background/General Description of Collection:* Section 360.9 contains collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (“PRA”). In particular, the following requirements of this proposed rule constitute collections of information as defined by the PRA: all notices that *Covered Institutions* must provide the FDIC of persons responsible for producing the standard data download and administering provisional holds, both while the functionality is being constructed and on an on-going basis (360.9(c)(3)); written practices and procedures for providing the FDIC with required deposit account and customer data, as to all accounts held in domestic and foreign offices, in a standard format upon the close of any day’s business, to be created through a mapping of pre-existing data elements into standard data formats in six separate files, as indicated in the appendices to this Part 360 (360.9(d)(1) and (2)); all data provided to the FDIC pursuant to 360.9(d)(3); and the dollar costs and

<sup>48</sup> CAMELS is an acronym drawn from the first letters of the individual components of the rating system: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk.

<sup>49</sup> 12 CFR Part 325.



time burdens associated with information systems acquisition, modification and maintenance that respondents will need in order to respond to the information requirements. The collections of information contained in this proposed rule have been submitted to OMB for review.

*Estimated costs:* Compliance with these requirements will require *Covered Institutions* to implement functionality to post provisional holds, remove provisional holds, post debit and credit transactions, post additional holds and provide customer data in a standard format reconciled to supporting subsidiary systems. These requirements also must be supported by policies and procedures and well as notification of individuals responsible for the systems. Further, the requirements will involve on-going costs for testing and general maintenance and upkeep of the functionality. Estimates of both initial implementation and on-going costs are provided.

Implementation costs will vary widely among the *Covered Institutions*. There are considerable differences in the complexity and scope of the deposit operations across *Covered Institutions*. Some *Covered Institutions* only slightly exceed the 250,000 deposit account threshold while several institutions have over 20 million deposit accounts. In addition, some *Covered Institutions*—most notably the largest—have proprietary deposits systems likely requiring an in-house, custom solution for the proposed requirements while most—generally the small-to-mid-sized ones—purchase deposit software from a vendor or use a servicer for deposit processing. Deposit software vendors and servicers are expected to incorporate the proposed requirements into their products or services to be available for their clients. In these cases implementation costs will be greatly reduced. This analysis assumes 100 of the 159 *Covered Institutions*, or 63 percent, would have reduced implementation costs due to the use of software or services from a vendor.

Comments from the 2005 and 2006 ANPRs provided some indication of implementation and on-going costs. Further, during November 2007 the FDIC had conversations with several *Covered Institutions* and deposit software vendors, which assisted in formulating these cost estimates.

For *Covered Institutions* with proprietary deposit systems implementation costs will vary considerably. The costs for the least complex of these institutions are estimated to range between \$250,000

and \$350,000.<sup>50</sup> For super-regional organizations implementation costs are estimated to be between \$2 million and \$4 million.<sup>51</sup> The costs for the largest, most complex *Covered Institutions* are estimated to be several times that of the super-regional organizations. For *Covered Institutions* using software or servicing provided by a vendor implementation costs were estimated to be \$13,000 to \$20,000 per institution. These costs primarily are due to installation of software received from the vendor.

Using this methodology overall industry implementation costs are estimated to range between \$50 million and \$100 million. The best estimate of implementation costs is the mid-point of this range, or \$75 million. In reviewing implementation costs as part of the comments received from previous ANPRs the FDIC viewed them relative to a one basis point assessment against deposits. In this context the estimated implementation costs range between 11 and 21 percent of a one basis point assessment against deposits of *Covered Institutions*. The mid-point cost estimate would be 16 percent.

On-going costs for testing, maintenance and other periodic items is estimated to range between \$6,000 and \$13,000 for those *Covered Institutions* using software or servicing provided by a vendor. For super-regional organizations on-going costs are estimated to be between \$150,000 and \$250,000. The largest, most complex *Covered Institution* was estimated to have on-going costs as high as \$500,000 per year. Overall, on-going industry cost estimates ranged from \$4 million to \$6.5 million, or 0.8 to 1.4 percent of a one basis point assessment against the deposits of *Covered Institutions*.

*Comments:* In addition to the questions raised elsewhere in this Preamble, comment is solicited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of

<sup>50</sup> Compliance with the proposed requirements will require staff time. This analysis assumes an hourly cost of \$160 for *Covered Institutions*.

<sup>51</sup> The comment letter provided by the American Bankers Association dated March 13, 2007 in response to the 2006 ANPR indicated cost estimates provided by members ranged from \$2 million to \$6 million per institution for implementation (page 3).

information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

*Addresses:* Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to "Large Bank Deposit Insurance Determination, 3064-xxxx." Comments may be submitted by any of the following methods:

- *Agency Web Site:* <http://www.FDIC.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* [comments@FDIC.gov](mailto:comments@FDIC.gov). Include "Large Bank Deposit Insurance Determination, 3064-xxxx" in the subject line of the message.

- *Mail:* Executive Secretary, Attention: Comments, FDIC, 550 17th St., NW., Room F-1066, Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).

- A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

*Public Inspection:* All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

## V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires an agency publishing a notice of proposed rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a "small entity" includes

a bank holding company, commercial bank, or savings association with assets of \$165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA (5 U.S.C. 605(b)), the FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule consists of two parts. The first part would establish the FDIC's practice for determining deposit account balances at a failed insured depository

institution. It would impose no requirements on insured depository institutions. The second part of the proposed rule would require the largest insured depository institutions to adopt systems that would, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information; and (2) allow the FDIC to place and release holds on liability accounts, including deposits. This part of the proposed rule would apply only to *Covered Institutions*—defined in the proposed rule as insured depository institutions having at least \$2 billion in domestic deposits and either: (1) More than 250,000 deposit accounts; or (2) total assets over \$20 billion, regardless of the number of deposit accounts. There are no small

banking organizations that would come within the definition of *Covered Institutions*.

**VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

**Addendum 1—Overview of Primary FDIC Deposit Insurance Categories**

Insurance category	Description
1. Single Ownership .....	Funds owned by a natural person including those held by an agent or custodian, sole proprietorship accounts and accounts that fail to qualify in any other category below. Coverage extends to \$100,000 per depositor.
2. Joint Ownership .....	Accounts jointly owned as joint tenants with the right of survivorship, as tenants in common or as tenants by the entirety. Coverage extends to \$100,000 per co-owner. <ul style="list-style-type: none"> <li>• The account title generally must be in the form of a joint account (“Jane Smith &amp; John Smith”).</li> <li>• Each of the co-owners must sign the account signature card. (This requirement has exceptions, including certificates of deposit.)</li> <li>• The withdrawal rights of the co-owners must be equal.</li> </ul>
3. Revocable Trust .....	Accounts whereby the owner evidences an intention that upon his or her death the funds shall belong to one or more qualifying beneficiaries. For each owner, coverage extends to \$100,000 per beneficiary. <ul style="list-style-type: none"> <li>• The title of the account must include “POD” (payable-on-death) or “trust” or some similar term.</li> <li>• The beneficiaries must be specifically named in the account records. (This requirement applies to informal “POD” accounts but does not apply to formal “living trust” accounts.)</li> <li>• The beneficiaries must be the owner’s spouse, children, grandchildren, parents or siblings.</li> </ul>
4. Irrevocable Trust .....	Accounts established pursuant to an irrevocable trust agreement. Coverage extends to \$100,000 per beneficiary. <ul style="list-style-type: none"> <li>• The account records must indicate that the funds are held by the trustee pursuant to a fiduciary relationship.</li> <li>• The account must be supported by a valid irrevocable trust agreement.</li> <li>• Under the trust agreement, the grantor of the trust must retain no interest in the trust funds.</li> <li>• For “per beneficiary” coverage, the interest of the beneficiary must be “non-contingent.”</li> </ul>
5. Self-Directed Retirement ..	Individual retirement accounts under 26 U.S.C. 408(a), eligible deferred compensation plans under 26 U.S.C. 457, self-directed individual account plans under 29 U.S.C. 1002 and self-directed Keogh plans under 26 U.S.C. 401(d). Coverage extends to \$250,000 per owner or participant. <ul style="list-style-type: none"> <li>• The account records must indicate that the account is a retirement account.</li> <li>• The account must be an actual retirement account under the cited sections of the Tax Code.</li> </ul>
6. Corporation, Partnership or Unincorporated Association.	Accounts of a corporation, partnership or unincorporated association. Coverage extends to \$100,000 per entity. <ul style="list-style-type: none"> <li>• The account records must indicate that the entity is the owner of the funds or that the nominal accountholder is merely an agent or custodian (with the entity’s ownership interest reflected by the custodian’s records).</li> <li>• The entity must be engaged in an “independent activity.”</li> <li>• The entity must not be a sole proprietorship (which is treated as a single ownership account).</li> </ul>
7. Employee Benefit Plan ....	Deposits of an employee benefit plan as defined at 29 U.S.C. 1002, including any plan described at 26 U.S.C. 401(d). Coverage extends to \$100,000 per participant. <ul style="list-style-type: none"> <li>• The account records must indicate that the funds are held by the plan administrator pursuant to a fiduciary relationship.</li> <li>• The account must be supported by a valid employee benefit plan agreement.</li> <li>• For “per participant” coverage the interests of the participants must be ascertainable and non-contingent.</li> </ul>
8. Public Unit .....	Funds of “public units” or “political subdivisions” thereof. Coverage extends to \$100,000 for interest-bearing deposits and \$100,000 for non-interest-bearing deposits for each official custodian of the public unit or subdivision. <ul style="list-style-type: none"> <li>• For separate coverage for the non-interest-bearing deposits, the insured financial institution must be located in the same State as the public unit.</li> <li>• The account records must indicate that the funds are held by the custodian in a custodial capacity.</li> <li>• For “per custodian” coverage, the custodian must be a separate “official custodian.”</li> <li>• For “per subdivision” coverage, the governmental entity must be a separate “political subdivision.”</li> </ul>

**Addendum 2—Summary of 2005 and 2006 ANPR Comments**

The FDIC received 28 comment letters in response to the 2005 ANPR and 13 from the 2006 ANPR. While most of the comment letters touched on multiple points, they generally focused on a

common theme. The various themes of the letters are summarized in Table 3. In response to the 2005 ANPR 64 percent of the comment letters indicated opposition due to the view that implementation costs of the options outweighed any potential benefits, high potential costs and regulatory burdens,

or the options simply are not needed, compared to 62 percent of the 2006 ANPR comments. In other words, these commenters expressed the general belief during both years that the FDIC failed to make a compelling case in favor of any of the options in light of their perceptions of the costs.

TABLE 3.—SUMMARY OF 2005 AND 2006 ANPR COMMENTS

General comment	2005 ANPR		2006 ANPR	
	Number	Percentage	Number	Percentage
Costs Outweigh Benefits or Opposed Due to Costs/Burdens .....	15	53.6	6	46.2
Options Are Not Needed .....	3	10.7	2	15.8
Do Not Include Our Institution As Covered .....	2	7.1	1	7.7
Supportive, But In Some Cases Expressed Concern Over Costs .....	5	17.9	1	7.7
Supportive Because Of Too-Big-To-Fail and/or Market Discipline .....	2	7.1	2	15.8
Options Raise Significant Privacy Issues .....	1	3.6	1	7.7
Total .....	28	100.0	13	100.0

The 2005 ANPR noted that the FDIC was considering expanding the definition of a *Covered Institution* to include any institution with at least \$20 billion in total assets, regardless of the total number of deposit accounts. Two institutions falling into this category commented that the definition of a *Covered Institution* should not be changed from the original definition of at least 250,000 deposit accounts and \$2 billion in domestic deposits. The 2006 ANPR more explicitly included the expanded definition of *Covered Institutions*. One respondent falling within this expanded definition noted they should not be defined as a *Covered Institution*.

During both comment periods, some commenters were expressly supportive of one or more of the options, but in some cases indicated concern over costs. In particular, the letter from Dollar Bank stated it “understands and supports the need for the FDIC to have a rapid and effective process for determining insurance coverage. Not only does this benefit the FDIC directly, but effective performance by the FDIC also benefits the entire banking system by assuring the public of the reliability of federal insurance of deposits. The FDIC asked in this Proposal for suggestions on alternative approaches that might achieve approximately the same benefits for the FDIC at lower costs for banks. Because Dollar sees no reasonable alternative, it supports the general thrust of the Proposal.”<sup>52</sup>

In response to the 2006 ANPR the Board of Governors of the Federal

Reserve indicated it “strongly supports the goal of the 2006 ANPR, which is to ensure that the largest and most complex insured depositories and the FDIC have in place data and other management systems that would enable the FDIC to promptly identify insured deposits and resolve the institution in an orderly manner that is least costly to the FDIC and to taxpayers. Moreover, the Board fully agrees that it is important for these systems to be in place and operationally tested before a large or complex institution becomes troubled.”<sup>53</sup>

The FDIC received comment letters from the Federal Reserve Bank of Minneapolis in response to both ANPRs. Its letter regarding the 2006 ANPR provided three recommendations to the FDIC.<sup>54</sup>

- “Given the net benefits of its suggested reforms, the FDIC must revamp the current insurance determination procedures; the question, therefore, is “how” not “if.”
- The FDIC should reject, as time-inconsistent, proposals to address flaws in the status quo only when banks become riskier.
- The FDIC should adjust its proposals, based on industry input, to minimize costs while ensuring that the recommended approach remains credible and covers institutions for which the current system would not facilitate least-cost resolution.”

<sup>53</sup> Comment letter provided by the Board of Governors of the Federal Reserve System dated February 27, 2007 in response to the 2006 ANPR, page 1.

<sup>54</sup> Comment letter provided by the Federal Reserve Bank of Minneapolis dated January 17, 2007 in response to the 2006 ANPR, page 1.

The 2005 and 2006 ANPRs solicited comment on alternative means of meeting the objective of conducting a timely insurance determination on Covered insured institutions.” No alternative suggestions were received.

Since such a large portion of the comment letters raised concerns about costs versus benefits, this topic will be discussed in the next section. This will be followed by a discussion of other issues raised in the comment letters.

*Commenters’ Views on Costs Versus Benefits*

*General arguments.* Many commenters—including all responses from the trade organizations—argued that any options presented in either ANPR would impose high or significant costs on *Covered Institutions*. These costs would come in the form of dollar expenditures and the utilization of scarce technological resources.

Many commenters also argued that the likelihood of a Covered-Institution failure was remote. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FIDICA”) and the Federal Deposit Insurance Reform Act of 2005 (“FDIRA”) were cited as containing provisions reducing the likelihood of large-institution failures. It was noted that the FDIC is undergoing the longest period in its history without a failure. Furthermore, responders pointed out that the most recent failures were of institutions not proposed to be covered by the regulation. It also was argued that the FDIC likely will have ample warning of a large-institution failure, thereby allowing for adequate preparation time.

<sup>52</sup> Comment letter provided by Dollar Bank dated March 13, 2006 in response to the 2005 ANPR, page 1.

Several commenters recommended applying the 2005 ANPR options only in the event the *Covered Institution* reaches problem status. This suggestion is discussed in more detail below.

*Failure preparation time.* The joint trade association letter noted “failures that have occurred in the last few years were among financial institutions that would not be covered by this 2005 ANPR. Regulators frequently had knowledge of the problems undermining these institutions and had time to prepare for closure. Sudden failures were more likely to have been caused by fraud or other criminal activity. It is highly unlikely that such a series of similar events could cause a failure of covered financial institutions because of their size, capital strength and diversity of lines of business. Constructing, maintaining and periodically testing the programs proposed under this 2005 ANPR solely because of the remote chance of sudden failure resembles an expensive solution in search of a very low probability problem.”<sup>55</sup>

The 2005 ANPR noted that *Covered Institutions* are more likely to be closed due to liquidity reasons, thus are prone to fail on any day of the week. *Covered Institutions* generally would be handled through a bridge bank structure, and to preserve franchise value the failed institution must open the day following failure. The provisional hold functionality included in Options 1 and 2 allows for a next-day opening of the bridge institution. The nightly processing cycle of *Covered Institutions* does not end until the early morning hours, often extending until 4 a.m. and, in some cases, until 7:30 a.m. Once the nightly processing schedule is complete a failed institution must generate deposit data to be used by the FDIC to make the deposit insurance determination. The 2005 ANPR options recognize that, even under the best of circumstances, it would be impossible for the FDIC to complete the steps necessary for a deposit insurance determination and have the results posted in time for the opening of the bridge bank the business day following

failure.<sup>56</sup> Therefore, it is the FDIC’s view that one or more of the 2005 ANPR options appear necessary for a successful bridge bank opening, regardless of the advance warning or preparation time allotted.

*Additional research recommended.* In both ANPRs the trade organizations stressed that the costs of the FDIC’s proposed approaches far exceeded any quantifiable benefits. This theme was present in the comments to the 2005 ANPR, and continued—in some cases more vigorously—in the 2006 ANPR comments. In addition, in the 2006 ANPR comments the trade organizations placed greater emphasis on the FDIC’s need to gather more information on costs and benefits to make an informed decision.

With regard to potential benefits, The Financial Services Roundtable “recommends that the FDIC publish for public comment the stages that a large bank and its supervisor would go through before the bank reached the point where it would be deemed to be a ‘failed’ institution. This analysis is needed so that the probability of a large institution becoming a failure can be assessed. These stages, which almost certainly would be spread over several years, include recapitalizations, downsizing, management changes, strategic redirections, acquisition by a healthy bank, supervisory interventions, and other actions which would steer the institution away from failure long before it became a failed institution. As a point of fact, there have been instances when this has occurred among larger banks—most recently when Riggs Bank was acquired by PNC. It may be that, given these stages, the probability of a large bank failing at a cost to the FDIC is so low and the cost upon failure being so low, that the *additional benefit* provided by the proposed rule, relative to the FDIC’s present procedures, is essentially zero.”<sup>57</sup>

Also, with regard to potential costs, The Financial Services Roundtable “is concerned that the FDIC has not

properly estimated the cost of implementing the proposed rule and maintaining the related information systems. In particular, the Roundtable is concerned that the FDIC has not gathered any cost information in a systematic manner as to what it would cost *Covered Institutions* to not only implement the proposed rule, but also to maintain deposit data in a manner that complies with the proposed rule. The implementation cost data provided in Table 4 of the [2005] ANPR does not constitute a rigorous cost estimate gathered from a representative sample of *Covered Institutions* which could then be extrapolated to a realistic cost estimate for all *Covered Institutions*. Instead, these cost estimates are fairly ad-hoc and not prepared in accordance with a predetermined cost-survey methodology. The FDIC should conduct a systematic study of the cost of implementing the proposed rule, including its own costs in ensuring compliance with the proposed rule.”<sup>58</sup>

*Estimated costs—the 2005 ANPR.* No trade organization provided specific cost estimates on the 2005 ANPR options, other than to say the costs would be “high” or “very substantial.” Four of the 14 large-institution responders—Wachovia Corporation, Capital One Financial Corporation, First Tennessee and Dollar Bank—provided cost estimates for one or more of the options. These estimates generally were characterized as being “rough” and frequently contained caveats. The estimates provided are listed in Table 4, which also shows the assessable deposit base of the institution (indicating institution size) and the impact of a 1-basis point annual FDIC assessment (indicating a basis for relative cost comparison).

The paucity of data provided on Option 3 reflects the view among most commenters that it is unfeasible. Wachovia Corporation indicated, for example, that Option 3 was “wholly unacceptable,”<sup>59</sup> which appears to be the reason why no cost estimate was provided for this option. First Tennessee was the only responder providing an estimate for Option 3 indicating it was roughly five times higher than that for Option 2.

<sup>55</sup> American Bankers Association, America’s Community Bankers and The Financial Services Roundtable, page 3.

<sup>56</sup> These steps include: (1) Generating the depositor data file, (2) transmitting the data file to the FDIC, (3) processing the depositor data to produce the deposit insurance determination results and (4) transmitting and posting these results on the institution’s deposit systems.

<sup>57</sup> Comment letter from The Financial Services Roundtable dated March 7, 2007 in response to the 2006 ANPR, page 3.

<sup>58</sup> *Ibid.*

<sup>59</sup> Wachovia Corporation, page 3.

TABLE 4.—COST ESTIMATES OF 2005 ANPR OPTIONS

Responder	Comment	Estimated implementation cost	Assessable deposits (\$ Millions)	1-Basis point annual FDIC assessment (\$ Millions)	Estimated cost as a % of 1 BP assessment
Wachovia Corporation .....	Option 2, for demand deposit, time deposit and securities systems only.	“\$2 mm or more” .....	307,000	30.7	7%
Capital One Financial Corporation.	Option 1 .....	“over \$220,000” .....	44,000	4.4	5
First Tennessee .....	Option 2 .....	“exceed \$1,000,000” .....	23,000	2.3	44
First Tennessee .....	Option 3 .....	“mid seven figures” .....	23,000	2.3	200
Dollar Bank .....	Cost of Option 2, “negligible” additional cost for Option 1.	“approximately \$60,000” .....	4,500	0.45	13

For Options 1 and 2 the cost estimates provided in the table are fairly modest when matched against other potential deposit insurance costs. Compared to a 1-basis point annual FDIC assessment, the estimated implementation costs of Options 1 or 2 ranged from 5 to 44 percent. The FDIC expects that implementation costs will vary across institutions. The deposit systems at *Covered Institutions* are different. In particular, some institutions rely primarily on proprietary systems while others use software or servicing provided by an outside vendor.

Both ANPRs noted that many *Covered Institutions* use deposit software supplied by a common vendor or have their deposits serviced by a common servicer. The ANPRs suggested this structure may help mitigate the implementation costs of the options. No deposit software vendor or servicer responded to either ANPR. In commenting on the 2006 ANPR, The Financial Services Roundtable indicated “there is very little commonality across the deposit-accounting systems of *Covered Institutions* because each institution, over the years, has customized its systems to meet its own needs and to integrate the acquisition of other banks. This absence of systems commonality will greatly increase the cost of implementing the proposed rule.”<sup>60</sup> The FDIC believes this common usage would mitigate implementation costs.

*Estimated costs—the 2006 ANPR.* The 2006 ANPR comments provided additional cost information. The American Bankers Association noted that “[c]ost estimates provided by our members ranged from \$2 million to \$6 million per institution for initial compliance, testing, and training, plus additional testing and validation costs

of approximately \$500,000 per year. These are rough estimates, of course, given that the ANPR, by design, did not provide enough specifications for a bank to know precisely what it would spend.”<sup>61</sup>

Two commercial banks also provided cost information for the 2006 ANPR requirements. Union Bank of California indicated “the proposed functionality by all banks system-wide could be in the billions of dollars,” although no documentation was provided in support of this estimate.<sup>62</sup> Zions Bancorporation indicated “it would cost our institution millions of dollars to implement.”<sup>63</sup>

*Too big to fail and market discipline.* During both comment periods several commenters raised the issue of TBTF, effectively expressing the concern that uninsured depositors of a large institution could be made whole in the event of failure, regardless of expected losses in the failed institution. The Federal Reserve Bank of Minneapolis letter in response to the 2005 ANPR noted that “[i]n the face of insufficient technology to segregate deposits or information to determine the insurance status of deposits, therefore, the FDIC would likely prefer to provide depositors with access to deposits even if they might be uninsured. This preference, even if understandable, undercuts least cost resolution and puts pressure on policymakers to invoke the systemic risk exception of [FDICIA]. Invoking the systemic risk exception due to limitations in the resolution process (as opposed to preventing a true systemic crisis) could contribute to substantial resource misallocation in the

economy over time.”<sup>64</sup> The letter noted that these costs are difficult to quantify, although they could be substantial.

#### *FDIC's Views on the Cost/Benefit Tradeoff*

Any option will impose industry costs, but benefits also will accrue. The FDIC must balance these costs and benefits.

*Summary of costs.* In its 2005 visitations to the four large deposit software vendors/servicers, two of the organizations indicated the cost of the provisional hold functionality was fairly modest. Both ANPRs specifically requested comment on the costs of implementing the various options. The limited data summarized above suggests fairly modest implementation costs for an Option 2 approach and, for some institutions, Option 1 as well, as defined in the 2005 ANPR. These options are similar to the options presented in the 2006 ANPR. The consensus of comments was that 2005 ANPR Option 3 would be extremely expensive.

Many responders to both ANPRs noted the low likelihood of a *Covered-Institution* failure. Historical evidence indicates this to be the case. The FDIC also agrees that the reforms implemented in FIRREA, FDICIA and FDIRA serve to reduce the probability of a *Covered-institution* failure. However, even if the likelihood of a failure among *Covered Institutions* is perceived to be low, it is not zero. The FDIC should have in place a credible plan for resolving the failure of an institution of any size with the least possible costs. The ability to determine the insurance status of depositors in a failed institution in a timely manner is a critical element for ensuring a least-costly resolution.

*Meeting the FDIC's legal mandates.* FDICIA was one of the most important

<sup>60</sup> Comment letter provided by The Financial Services Roundtable dated March 7, 2007 provided in response to the 2006 ANPR, page 4.

<sup>61</sup> Comment letter provided by the American Bankers Association dated March 13, 2007 in response to the 2006 ANPR, page 3.

<sup>62</sup> Comment letter provided by Union Bank of California dated March 13, 2007 in response to the 2006 ANPR, page 1.

<sup>63</sup> Comment letter provided by Zions Bancorporation dated March 5, 2007 in response to the 2006 ANPR, page 1.

<sup>64</sup> Federal Reserve Bank of Minneapolis, pages 2–3.

pieces of legislation affecting the FDIC's failure resolution process. Its least-cost requirement effectively requires uninsured depositors to be exposed to losses. Also, FDICIA's legislative history and the nature of the systemic risk exception provide a clear message that uninsured depositors of large institutions are to be treated on par with those of any size. Meeting these mandates is an important benefit of the requirements being proposed.

*Providing liquidity to depositors.* The provisional hold functionality proposed in both ANPRs create a mechanism for the FDIC to provide customer access to their deposit accounts immediately after failure, albeit with some FDIC provisional hold for large accounts. The ability to continue uninterrupted the deposit operations of a Covered Institution in the event of failure has significant benefits for depositors as well as the preservation of the institution's franchise value.

*Enhancement of market discipline.* The FDIC's legal mandates have direct implications for TBTF and market discipline. If financial markets perceive uninsured depositors in large institutions will be made whole in the event of failure, deposits will be directed toward these larger depository institutions. The result would be the misallocation of economic resources. Many market observers believe there are substantial benefits of improved market discipline that accrue even without serious industry distress or bank failures. The FDIC agrees with Mr. Stern's assessment that this resource misallocation could be significant.

Effective market discipline also limits the size of troubled institutions and results in a more rapid course toward failure. Both serve to mitigate overall resolution losses. Lower resolution losses benefit insured institutions through lower insurance assessments.

*Equity in the treatment of depositors of insured institutions.* In the absence of one or more of the options outlined in the 2005 and 2006 ANPRs, the FDIC is concerned that the resolution of a Covered Institution could be accomplished only through a significant departure from its normal claims procedures. This departure could involve leaving the bank closed until an insurance determination is made or the use of shortcuts to speed the opening of

the bridge institution. The use of shortcuts or other mechanisms to facilitate depositor access to funds will imply disparate treatment among depositors within the failed institution and certainly different treatment relative to the closure of a Non-Covered Institution. The FDIC places a high priority on the consistent implementation of its claims policies and procedures regardless of the size or complexity of the institution.

*Preservation of franchise value in the event of failure.* The sale of the franchise of a failed institution can provide significant value to mitigate failure costs and is a necessary ingredient to a least-cost resolution. Superior Bank, FSB, one of the largest failures over the past 10 years, generated a franchise premium of \$52 million, or 17 percent of current estimated FDIC losses in the failure. An ineffective claims process—especially one deviating significantly from the FDIC's normal policies and procedures—risks reducing or destroying an important asset of the receivership. Preservation of franchise value in the event of failure of a Covered Institution will be an important benefit of the proposed options.

#### Implementation of Options Upon Reaching Problem Status

In response to both ANPRs several commenters suggested delaying the implementation of any options until a Covered Institution reaches "problem bank status."<sup>65</sup> For supervisory purposes problem bank status refers to any insured depository institution with a composite CAMELS rating of "4" or "5".

Several commenters also provided insights into the potential time needed to implement the proposed rules. The Clearing House, for example, noted that "material information system changes take significant time. Our member banks have discussed the ANPR with their technical staffs and have determined that any of the requested changes *could* be made, but only over a significant period of time. Without more specific direction, they cannot put a specific timeframe on the project, but to make any substantial changes over multiple

systems, and then fully test them, is likely to take more than a year."<sup>66</sup> Additional time would be needed for the FDIC to test the system changes.

The FDIC is concerned that a Covered Institution could fail prior to reaching problem status (with a CAMELS rating of "3", for example), or relatively shortly after attaining problem status. If the one-year implementation time estimate is generally accurate, the FDIC risks not meeting its objectives should a Covered Institution fail more quickly than one year after being designated a problem institution. Further, a period of financial or operational stress is not the opportune time to make the proposed system enhancements.

#### New Deposit Accounts

The 2006 ANPR solicited comments on whether Covered Institutions should be encouraged or required to know the insurance status of each new deposit account and/or notify customers of this status when a new account is opened. The American Bankers Association noted that the "training and compliance costs associated with any modifications to banks" account opening procedures would be enormous. Perhaps of greater significance, any modification has the potential to affect customer relations negatively. This is especially so if the account opening process is lengthened and the customer, after hearing a discussion about insurance status, is left with the impression that the bank at which he or she has just entrusted his or her money is a candidate for failure. It is not in anyone's best interest to require regulatory disclosures that in their language could have the effect of undermining confidence in the banking system."<sup>67</sup>

#### Addendum 3—Non-Monetary Transaction File Structure

This is the structure of the data file the FDIC will provide to remove or add a FDIC hold for an individual account or sub-account. The file will be in a tab- or pipe-delimited format and provided through FDICconnect or Direct Connect. The file will be encrypted using a FDIC-supplied algorithm.

<sup>65</sup> See, for example, the American Bankers Association, America's Community Bankers and The Financial Services Roundtable letter in response to the 2005 ANPR, page 3.

<sup>66</sup> The Clearing House, page 3.

<sup>67</sup> Comment letter provided by the American Bankers Association dated March 13, 2007 in response to the 2006 ANPR, page 7.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier-2 .....	Account Identifier-2 ..... If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier-3 .....	Account Identifier-3 ..... If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier-4 .....	Account Identifier-4 ..... If necessary, the fourth element used to identify the account.		Character (25).
5. DP_Acct_Identifier-5 .....	Account Identifier-5 ..... If necessary, the fifth element used to identify the account.		Character (25).
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. PH_Hold_Action .....	Hold Action ..... The requested hold action to be taken for this account or sub-account. Possible values are: • R = Remove. • A = Add.		Character (1).
8. PH_Hold_Amt .....	Hold Amount ..... Dollar amount of the FDIC hold to be removed or added.		Decimal (14,2).
9. PD_Hold_Desc .....	Hold Description ..... FDIC hold to be removed or added.		Character (225).

**Addendum 4—Debit/Credit File Structure**

This is the structure of the data file the FDIC will provide to apply debits and credits to an individual account or sub-account after the removal of FDIC

holds. The file will be in a tab-or pipe-delimited format and provided through FDICconnect or Direct Connect. The file will be encrypted using a FDIC-supplied algorithm. The FDIC also is considering using ACH transactions to apply monetary transactions to accounts being

held by the FDIC. Further analysis is required to determine how non-monetary and monetary transactions can be synchronized while ensuring that account funds are properly maintained in order for FDIC transactions to be applied.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier-2 .....	Account Identifier-2 ..... If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier-3 .....	Account Identifier-3 ..... If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier-4 .....	Account Identifier-4 ..... If necessary, the fourth element used to identify the account.		Character (25).
5. DP_Acct_Identifier-5 .....	Account Identifier-5 ..... If necessary, the fifth element used to identify the account.		Character (25).

Field name	Field description	Comments	Format
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. DC_Debit_Amt .....	Debit Amount ..... Dollar amount of the debit to be applied to the account or sub-account.		Decimal (14,2).
8. DC_Credit_Amt .....	Credit Amount ..... Dollar amount of the credit to be applied to the account or sub-account.		Decimal (14,2).
9. DC_Transaction_Desc .....	Debit/Credit Description ..... FDIC message associated with the debit or credit transaction.		Character (225).

**List of Subjects in 12 CFR Part 360**

Banks, banking, savings associations.  
For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 360 of title 12 of the Code of Federal Regulations as follows:

**PART 360—RESOLUTION AND RECEIVERSHIP RULES**

1. The authority citation for part 360 continues to read as follows:

**Authority:** 12 U.S.C. 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L 101–73, 103 Stat. 357.

2. Add new §§ 360.8 and 360.9 to read as follows:

**§ 360.8. Method for determining deposit account balances at a failed insured depository institution.**

(a) *Purpose.* The purpose of this section is to describe the process the FDIC will use to determine deposit account balances for insurance coverage and receivership purposes at a failed insured depository institution.

(b) *Definitions*—(1) The *FDIC cutoff point* means the point in time established by the FDIC after it has been appointed receiver of a failed insured depository institution and takes control of the failed institution.

(2) The *Applicable cutoff time* for a specific type of deposit account transaction means the earlier of either the failed institution’s normal cutoff time for that specific type of transaction or the FDIC cutoff point. In a depository institution failure where deposit operations are not transferred to a successor institution, the Applicable cutoff time for a particular type of deposit account transaction is the FDIC cutoff point.

(3) *Close-of-business deposit account balance* means the closing ledger

balance of a deposit account on the day of failure of an insured depository institution determined by using the applicable cutoff time. This balance may be adjusted to reflect steps taken by the receiver to ensure that funds are not received by or removed from the institution after the FDIC cutoff point.

(c) *Determining closing day balances.*  
(1) In determining deposit account balances for insurance coverage and receivership purposes at a failed insured depository institution, the FDIC will use close-of-business deposit account balances as may be adjusted for funds that are received by or removed from the institution after the FDIC cutoff point.

(2) A check posted to the close-of-business deposit account balance but not collected by the depository institution will be included as part of the balance, subject to the correction of errors and omissions and adjustments for uncollectible items that the FDIC may make in its role as receiver of the failed depository institution.

(3) For deposit insurance and receivership purposes in connection with the failure of an insured depository institution, a depositor’s rights will be determined as of the point the close-of-business deposit account balance is calculated, irrespective of the continuation of the institution’s computer and other systems after this point. These rights may be adjusted as necessary to account for funds that are received by or removed from the institution after the FDIC cutoff point.

**§ 360.9. Large-bank deposit insurance determination modernization.**

(a) *Purpose and scope.* This section is intended to allow the deposit and other operations of a large insured depository institution (defined as a “Covered Institution”) to continue functioning on the day following failure. It also is intended to permit the FDIC to fulfill its

legal mandates regarding the resolution of failed insured institutions to provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different institutions and reduce the FDIC’s costs by preserving the franchise value of a failed institution.

(b) *Definitions*—(1) A *covered institution* means an insured depository institution which, based on items as defined in Reports of Income and Condition or Thrift Financial Reports filed with the applicable federal regulator, has at least \$2 billion in domestic deposits and at least either:

- (i) 250,000 deposit accounts; or
- (ii) \$20 billion in total assets, regardless of the number of deposit accounts.

(2) *Domestic deposits, number of deposit accounts and total assets* are as defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports, as applicable to the insured depository institution for determining whether it qualifies as a Covered Institution. A *foreign deposit* means an uninsured deposit liability maintained in a foreign branch of an insured depository institution. An *international banking facility deposit* is as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)). A *demand deposit account, NOW account, money market deposit account, savings deposit account and time deposit account* are as defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports.

(3) *Sweep account arrangements* consist of a deposit account linked to an interest-bearing investment vehicle whereby funds are swept to and from the deposit account according to prearranged rules, usually on a daily basis. *Class A sweep account*



*arrangements* are those where: The interest-bearing investment vehicle is another domestic deposit account in an office of the Covered Institution; or for the purposes of the movement of funds to the interest-bearing investment vehicle, funds are wired from the insured depository institution to a separate legal entity other than the Covered Institution. *Class B sweep account arrangements* are all other *sweep account arrangements*.

(4) *Automated credit account arrangements* consist of a deposit account into which funds are automatically credited from an interest-bearing investment vehicle where the funds in the interest-bearing investment vehicle were not invested by prearranged rules.

(5) *Non-covered institution* means an insured depository institution that does not meet the definition of a covered institution.

(6) *Provisional hold* means an effective restriction on access to some or all of a deposit or other liability account after the failure of an insured depository institution.

(c) *Posting and removing provisional holds.* (1) A covered institution shall have in place an automated process for implementing a provisional hold on domestic deposit accounts, foreign deposit accounts and Class B sweep and automated credit account arrangements immediately following the determination of the close-of-business deposit account balances, as prescribed in section 360.8, at the failed covered institution.

(2) The system requirements under paragraph (c)(1) of this section must have the capability of placing the provisional holds prescribed under that provision no later than 9 a.m. local time the day following the FDIC Cutoff Point, as defined in § 360.8(b)(3).

(3) Pursuant to instructions to be provided by the FDIC, a *Covered Institution* must notify the FDIC of the person(s) responsible for producing the standard data download and administering provisional holds, both while the functionality is being constructed and on an on-going basis.

(4) For deposit accounts held in domestic offices of an insured depository institution, the provisional hold algorithm must be designed to exempt accounts below a specific account balance threshold, as determined by the FDIC. The account balance threshold could be any amount, including zero. For accounts above the account balance threshold determined by the FDIC, the algorithm must be designed to calculate and place a hold equal to the dollar amount of funds in

excess of the account balance threshold multiplied by the provisional hold percentage determined by the FDIC. The provisional hold percentage could be any amount, from zero to one hundred percent. The account balance threshold as well as the provisional hold percentage could vary for the following four categories, as the *Covered Institution* customarily defines consumer accounts:

(i) Consumer demand deposit, NOW and money market deposit accounts;

(ii) Other consumer deposit accounts (time deposit and savings accounts, excluding NOW and money market deposit accounts);

(iii) Non-consumer demand deposit, NOW and money market deposit accounts; and

(iv) Other non-consumer deposit accounts (time deposit and savings accounts, excluding NOW and money market deposit accounts).

(5) For deposit accounts held in foreign offices of an insured depository institution, other than those connected to a Class B sweep or automated credit arrangements, the provisional hold algorithm will be the same as for deposit accounts, except that the account balance threshold and the hold percentage may vary based on the country in which the account is located.

(6) For international banking facility deposits, other than those connected to a Class B sweep or automated credit arrangements, the provisional hold algorithm will be the same as for deposit accounts, except that the account balance threshold and the hold percentage may differ.

(7) For the interest-bearing investment vehicle of a Class B sweep arrangement, the provisional hold algorithm must be designed with the capability to place a provisional hold on the interest-bearing investment vehicle with possibly a different account balance threshold and a different hold percentage according to the type of interest-bearing investment vehicle.

(8) For the interest-bearing investment vehicle of an automated credit account arrangement, the provisional hold algorithm must be designed with the capability to place a provisional hold on the interest-bearing investment vehicle with possibly a different account balance threshold and a different hold percentage according to the type of interest-bearing investment vehicle.

(9) The automated process for provisional holds required by paragraph (c)(1) of this section must include the capability of removing provisional holds in batch mode and, during the same processing cycle, applying debits, credits or additional holds on the

deposit accounts from which the provisional holds were removed, as determined by the FDIC.

(d) *Providing a standard data format for generating deposit account and customer data.* (1) A covered institution must have in place practices and procedures for providing the FDIC in a standard format upon the close of any day's business with required account and customer data, for all deposit accounts held in domestic and foreign offices and interest-bearing investment accounts connected with Class B sweep and automated credit arrangements. Such standard data files are to be created through a mapping of pre-existing data elements and internal institution codes into standard data formats.

(2) The requirements of paragraph (d)(1) of this section shall be provided in five separate files, as indicated in the appendices to this Part 360.

(3) Upon request by the FDIC, a covered institution must submit the data required by paragraph (d)(1) of this section to the FDIC, in a manner prescribed by the FDIC.

(4) In providing the data required under paragraph (d)(1) of this section to the FDIC, the *Covered Institution* must be able to reconcile the total deposit balances and the number of deposit accounts to the institution's subsidiary system control totals.

(e) *Implementation requirements.* (1) A covered institution must comply with the requirements of this section no later than eighteen months after the effective date of this section.

(2) An insured depository institution not within the definition of a covered institution on the effective date of this section must comply with the requirements of this section no later than eighteen months following the end of the second calendar quarter for which it meets the criteria for a covered institution.

(3) Upon the merger of two or more non-covered institutions, if the resulting institution meets the criteria for a covered institution, that covered institution must comply with the requirements of this section no later than eighteen months after the effective date of the merger.

(4) Upon the merger of two or more covered institutions, the merged institution must comply with the requirements of this section within eighteen months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement, in place prior to the date of the merger, for the individual covered institution(s) involved in the merger.

(5) Upon the merger of one or more covered institutions with one or more non-covered institutions, the merged institution must comply with the requirements of this section within eighteen months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement for the individual covered institution(s) involved in the merger.

(6) Notwithstanding the general requirements of this paragraph (e), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation timeframe of all or part of the requirements of this section for a covered institution that either: Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System; or is undercapitalized as defined under the prompt corrective action provisions of 12 CFR part 325. In implementing this paragraph (e)(6), the FDIC must consult with the covered institution's primary federal regulator and consider the:

- (i) Complexity of the institution's deposit systems and operations;
- (ii) Extent of the institution's asset quality difficulties;
- (iii) Volatility of the institution's funding sources;
- (iv) Expected near-term changes in the institution's capital levels; and
- (v) Other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution.

(7) Notwithstanding the general requirements of this paragraph (e), a covered institution may request, by letter, that the FDIC extend the deadline for complying with the requirements of this section. A request for such an extension is subject to the FDIC's rules of general applicability under 12 CFR 303.251.

(f) *Testing requirements.* Covered institutions must provide appropriate assistance to the FDIC in its testing of the systems required by this section. The FDIC will provide testing details to covered institutions through the issuance of subsequent procedures and/or guidelines.

3. Add new Appendices A through F to Part 630 to read as follows:

**Appendix A to Part 630—Deposit File Structure**

A. This is the structure for the data file to provide deposit data to the FDIC. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a deposit file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit to the *Covered Institution* the encryption algorithm over *FDICconnect*.

B. The total deposit balances and the number of deposit accounts in each deposit file must be reconciled to the subsidiary system control totals.

C. The FDIC intends to fully utilize a *Covered Institution's* understanding of its

customers and the data maintained around deposit accounts. Should additional information be available to the *Covered Institution* to help the FDIC more quickly complete its insurance determination process, it may add this information to the end of this data file. Should additional data elements be provided, a complete data dictionary for these elements must be supplied along with a description of how this information could be best used to establish account ownership or insurance category.

D. The deposit data elements provide information specific to deposit account balances and account data. The sequencing of these elements, their physical data structures and the field data format and field length must be provided to the FDIC along with the data structures identified below.

E. A header record will also be required at the beginning of this file. This record will contain the number of accounts to be included in this file, the maximum number of characters contained in largest account title field maintained within the deposit file and the maximum number of characters contained in largest address field maintained within the deposit file.

**Note:** Each record must contain the account title/name and current account statement mailing address. Fields 16–32 relate to the account name and address information. Some systems provide for separate fields for account title/name, street address, city, state, ZIP, and country, all of which are parsed out. Others systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. Populate fields that best fit the system's data, either fields 16–26 or fields 27–32.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier-2 .....	Account Identifier-2 ..... If necessary, the second element used to identify the account.	.....	Character (25).
3. DP_Acct_Identifier-3 .....	Account Identifier-3 ..... If necessary, the third element used to identify the account.	.....	Character (25).
4. DP_Acct_Identifier-4 .....	Account Identifier-4 ..... If necessary, the fourth element used to identify the account.	.....	Character (25).
5. DP_Acct_Identifier-5 .....	Account Identifier-5 ..... If necessary, the fifth element used to identify the account.	.....	Character (25).
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. DP_Bank_No .....	Bank Number ..... The bank number assigned to the deposit account.	.....	Character (15).

Field name	Field description	Comments	Format
8. DP_Tax_ID .....	Tax ID ..... The tax identification number maintained on the account.	For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN"). Hyphens are optional in this field.	Character (15).
9. DP_Tax_Code .....	Tax ID Code ..... The type of the tax identification number. Possible values are: • S = Social Security Number. • T = Federal Tax Identification Number. • O = Other.	Generally deposit systems have flags or indicators set to indicate whether the number is an SSN or TIN.	Character (1).
10. DP_Branch .....	Branch Number ..... The branch or office associated with the account.	In lieu of a branch number this field may represent a specialty department or division.	Character (15).
11. DP_Cost_Center .....	Cost Center or G/L Code ..... The identifier used for organization reporting or ownership of the account. Insert null value if the cost center is not carried in the deposit record.	This field ties to the general ledger accounts.	Character (20).
12. DP_Dep_Type .....	Deposit Type Indicator ..... The type of deposit by office location. Possible values are: • D = Deposit (Domestic). • F = Foreign Deposit.	A deposit—also called a "domestic deposit"—includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution, as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)). A foreign deposit is a deposit liability in a foreign branch payable solely at a foreign branch or branches.	Character (1).
13. DP_Currency_Type .....	Currency Type ..... The ISO 4217 currency code		Character (3).
14. DP_Ownership_Ind .....	Customer Ownership Indicator ..... The type of ownership at the account level. Possible values are: • S = Single. • J = Joint Account. • P = Partnership account. • C = Corporation. • B = Brokered Deposits. • I = IRA Accounts. • U = Unincorporated Association. • R = Revocable Trust. • IR = Irrevocable Trust. • G = Government Accounts. • E = Employee Benefit Plan Accounts. • O = Other.	<i>Single:</i> Accounts owned by an individual and those accounts held as Minor Accounts, Estate Accounts, Non-Minor Custodian/Guardian Accounts, Attorney in Fact Accounts and Sole Proprietorships. <i>Joint Account:</i> Accounts owned by two or more individuals, but does not include the ownership of a Payable on Death Account or Trust Account. <i>Partnership Account:</i> Accounts owned by a Partnership. <i>Corporation:</i> Accounts owned by a Corporation (e.g. Inc., L.L.C., or P.C.). <i>Brokered Deposits:</i> Accounts placed by a deposit broker who acts as an intermediary for the actual owner or sub-broker. <i>IRA Accounts:</i> Accounts for which the owner has the right to direct how the funds are invested including Keoghs and other Self-Directed Retirement Accounts. <i>Unincorporated Association:</i> An account owned by an association of two or more persons formed for some religious, educational, charitable, social or other non-commercial purpose. <i>Revocable Trusts:</i> Including PODs and formal revocable trusts (e.g. Living Trusts, Intervivos Trusts or Family Trusts).	Character (2).

Field name	Field description	Comments	Format
15. DP_Prod_Cat .....	Product Category ..... The product classification. Possible values are: <ul style="list-style-type: none"> <li>• DDA = Non-Interest Bearing Checking accounts.</li> <li>• NOW = Interest Bearing Checking accounts.</li> <li>• MMA = Money Market Deposit Accounts.</li> <li>• SAV = Other savings accounts.</li> <li>• CDS = Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.</li> </ul>	<i>Irrevocable Trusts:</i> Accounts held by a trust established by statute or written trust in which the grantor relinquishes all power to revoke the trust. <i>Government Accounts:</i> Accounts owned by a government entity (e.g. City, State, County or Federal government entities and their sub-divisions). <i>Employee Benefit Plan:</i> Accounts established by the administrator of an Employee Benefit Plan including defined contribution, defined benefit and employee welfare plans. <i>Other Accounts:</i> Accounts owned by an entity not described above. Product Category is sometimes referred to as "application type" or "system type".	Character (3).
16. DP_Stat_Code .....	Status Code ..... Status or condition of the account. Possible values are: <ul style="list-style-type: none"> <li>• O = Open.</li> <li>• D = Dormant.</li> <li>• I = Inactive.</li> <li>• E = Escheatment.</li> <li>• A = Abandoned.</li> <li>• C = Closing.</li> <li>• R = Restricted/Frozen/Blocked.</li> </ul>		Character (1).
17. DP_Acct_Title_1 .....	Account Title Line 1 ..... Account styling or titling of the account.	These data will be used to identify the owners of the account.	Character (100).
18. DP_Acct_Title_2 .....	Account Title Line 2 ..... If available, the second account title line.		Character (100).
19. DP_Acct_Title_3 .....	Account Title Line 3 ..... If available, the third account title line.		Character (100).
20. DP_Acct_Title_4 .....	Account Title Line 4 ..... If available, the fourth account title line.		Character (100).
21. DP_Street_Add_Ln_1 .....	Street Address Line 1 ..... The current account statement mailing address of record.		Character (100).
22. DP_Street_Add_Ln_2 .....	Street Address Line 2 ..... If available, the second mailing address line.		Character (100).
23. DP_Street_Add_Ln_3 .....	Street Address Line 3 ..... If available, the third mailing address line.		Character (100).
24. DP_City .....	City ..... The city associated with the mailing address.		Character (50).
25. DP_State .....	State ..... The state abbreviation associated with the mailing address.	Use a two-character state code (official U.S. Postal Service abbreviations).	Character (2).
26. DP_ZIP .....	ZIP ..... The ZIP + 4 code associated with the mailing address.	If the "+4" code is not available provide only the 5-digit ZIP code. Hyphens are optional in this field.	Character (10).

Field name	Field description	Comments	Format
27. DP_Country .....	Country ..... The country associated with the mailing address.	Provide the country name or the standard IRS country code.	Character (10).
28. DP_NA_Line_1 .....	Name/Address Line 1 ..... Alternate name/address format for the current account statement mailing address of record, first line.	Fields 27–32 are to be used if address data are not parsed to populated Fields 16–26.	Character (100).
29. DP_NA_Line_2 .....	Name/Address Line 2 ..... Alternate name/address format, second line.	.....	Character (100).
30. DP_NA_Line_3 .....	Name/Address Line 3 ..... Alternate name/address format, third line.	.....	Character (100).
31. DP_NA_Line_4 .....	Name/Address Line 4 ..... Alternate name/address format, fourth line.	.....	Character (100).
32. DP_NA_Line_5 .....	Name/Address Line 5 ..... Alternate name/address format, fifth line.	.....	Character (100).
33. DP_NA_Line_6 .....	Name/Address Line 6 ..... Alternate name/address format, sixth line.	.....	Character (100).
34. DP_Cur_Bal .....	Current Balance ..... The current balance in the account at the end of business on the effective date of this file.	This balance should not be reduced by float or holds. For CDs and time deposits, the balance should reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest). The total of all current balances in this file should reconcile to the total deposit trial balance totals or other summary reconciliation of deposits performed by the institution.	Decimal (14,2).
35. DP_Int_Rate .....	Interest Rate ..... The current interest rate in effect for interest bearing accounts.	Interest rate should be expressed in decimal format, <i>i.e.</i> , 2.0% should be represented as 0.020000000.	Decimal (10,9).
36. DP_Bas_Days .....	Basis Days ..... Basis on which interest is to be paid. Possible values are: • 1 = 30/360. • 2 = 30/365. • 3 = 365/365 (actual/actual). • 4 = 365/366.	.....	Character (1).
37. DP_Int_Type .....	Interest Type ..... Type of interest to be paid. Possible values are: • S = Simple. • D = Daily Compounding. • C = Continuous Compounding.	.....	Character (1).
38. DP_Int_Factor .....	Interest Rate Daily Factor ..... The daily interest rate factor used for generating interest.	Interest rate should be expressed in decimal format, <i>i.e.</i> , 2.0% should be represented as 0.020000000.	Decimal (10,9).
39. DP_Acc_Int .....	Accrued Interest ..... The amount of interest that has been earned but not yet paid to the account as of the date of the file.	.....	Decimal (14,2).
40. DP_Lst_Int_Pd .....	Date Last Interest Paid ..... The date through which interest was last paid to the account.	.....	Date (YYYYMMDD).
41. DP_Lst_Deposit .....	Date Last Deposit ..... The date of the last deposit transaction posted to the account.	For example, a deposit that included checks and/or cash.	Date (YYYYMMDD).
42. DP_Int_Mon_Base .....	Interest Month Base ..... The basis for determining calculations to the account. Possible values are: • A = Actual number of days in the month. • M = 30-day month.	.....	Character (1).
43. DP_Int_Term_No .....	Interest Term Number ..... The number of months in the current interest term.	.....	Decimal (3,0).

Field name	Field description	Comments	Format
44. DP_Nxt_Mat .....	Date of Next Maturity ..... For CD and time deposit accounts, the next date the account is to mature.	For non-renewing CDs that have matured and are waiting to be redeemed, this date may be in the past.	Date (YYYYMMDD).
45. DP_Open_DT .....	Account Open Date ..... The date the account was opened.	If the account had previously been closed and re-opened, this should reflect the most recent re-opened date.	Date (YYYYMMDD).
46. DP_Sweep_Code .....	Sweep Code ..... Indicates if the account is a sweep account. Possible values are: • Y = Yes. • N = No.	.....	Character (1).
47. DP_Hold_To_Post .....	Full Hold on the account: ..... Indicator if all postings to this account are restricted. Possible values are: • Y = Yes. • N = No.	.....	Character (1).
48. DP_Issue_Val_Amt .....	Issued Value Amount ..... The value of the current CD when issued.	For CDs only .....	Decimal (14,2).
49. DP_Int_CD_Cde .....	Type of Interest for CD ..... Possible values are: • C = Rate Change Allowed. • N = Rate Change Not Allowed. • R = Change Rate to Default at Renewal. • T = Rate Change Allowed Only During the Term.	For CDs only .....	Character (1).
50. DP_IRA_Cde .....	IRA Code ..... The type of IRA. Possible values are: • C = Corporate Retirement. • E = Educational IRA. • I = IRA Account. • K = Keogh Account. • R = Roth IRA Account. • S = SEP Account. • T = Transitional Roth IRA. • V = Versa Account. • H = Health Savings Account.	Optional code field to be used if available to help further identify the types of IRA accounts.	Character (1).
51. Deposit_Class_Type .....	Deposit Class Type ..... The deposit class. Possible values are: • RTL = Retail. • FED = Federal government. • STATE = State government. • COMM = Commercial. • CORP = Corporate. • BANK = Bank Owned. • DUE TO = Other Banks.	The institution may also use more or fewer class types.	Character (10).
52. DP_Product_Class_Cde .....	Deposit Class Codes ..... The deposit class codes. Possible values are: RTL • 1 = Payable on Death. • 2 = Individual. • 3 = Living Trust—Intervivos or Family. • 4 = Irrevocable Trust (includes Educational IRAs). • 5 = Estate. • 6 = Attorney in Fact. • 7 = Minor—(includes all variations of Uniform Gifts to Minor Accounts). • 8 = Bankruptcy Personal. • 9 = Pre-Need Burial. • 10 = Escrow. • 11 = Representative Payee/Beneficiary.	These Product Class codes are used in conjunction with the Deposit Class Types in field 51. This field is to be used in concert with fields 12 and 13 identified above to enable the financial institution to capture more detailed information concerning account types. It is the intent of the FDIC to have the financial institution map their detailed account type to the codes identified in this field. The institution may also use additional codes, but in this event the institution must supply the detailed description and code value for each additional code used. If no additional account product type detail is available, then this field should be left blank.	Character (2).

Field name	Field description	Comments	Format
	<ul style="list-style-type: none"> <li>• 12 = Sole Proprietorship.</li> <li>• 13 = Joint.</li> <li>• 14 = Non-Minor Custodian/Guardian.</li> <li>• 15 = Other Retail.</li> </ul> <p>FED</p> <ul style="list-style-type: none"> <li>• 16 = FHA.</li> <li>• 17 = Federal Government.</li> </ul> <p>STATE</p> <ul style="list-style-type: none"> <li>• 18 = City.</li> <li>• 19 = State.</li> <li>• 20 = County, Clerk of Court.</li> <li>• 21 = Other State.</li> </ul> <p>COMMERCIAL</p> <ul style="list-style-type: none"> <li>• 22 = Business Escrow.</li> <li>• 23 = Bankruptcy.</li> <li>• 24 = Club.</li> <li>• 25 = Church.</li> <li>• 26 = Unincorporated Association.</li> <li>• 27 = Unincorporated Non Profit.</li> <li>• 28 = Other Commercial.</li> </ul> <p>CORPORATION</p> <ul style="list-style-type: none"> <li>• 29 = Business Trust.</li> <li>• 30 = Business Agent.</li> <li>• 31 = Business Guardian.</li> <li>• 32 = Incorporated Association.</li> <li>• 33 = Incorporated Non Profit.</li> <li>• 34 = Corporation.</li> <li>• 35 = Corporate Partnership.</li> <li>• 36 = Corporate Partnership Trust.</li> <li>• 37 = Corporate Agent.</li> <li>• 38 = Corporate Guardian.</li> <li>• 39 = Pre-Need Funeral Trust.</li> <li>• 40 = Limited Liability Incorporation.</li> <li>• 41 = LLC partnership.</li> <li>• 42 = Lawyer Trust.</li> <li>• 43 = Realtor Trust.</li> <li>• 44 = Other Corporation.</li> </ul> <p>BANK</p> <ul style="list-style-type: none"> <li>• 45 = Certified &amp; Official Checks, Money Orders, Loan Disbursements Checks, and Expense Checks.</li> <li>• 46 = ATM Settlement.</li> <li>• 47 = Other Bank Owned Accounts.</li> </ul> <p>DUE TO (Other Banks)</p> <ul style="list-style-type: none"> <li>• 48 = Due to U.S. Banks.</li> <li>• 49 = Due to U.S. Branches of Foreign Banks.</li> <li>• 50 = Due to Other Depository Institutions.</li> <li>• 51 = Due to Foreign Banks.</li> <li>• 52 = Due to Foreign Branches of U.S. banks.</li> <li>• 53 = Due to Foreign Governments and Official Institutions.</li> </ul>		
53. DP_Routing_No .....	Bank Routing Number ..... The routing/transit number.	This field is identifier information for ACH transactions generated by the FDIC.	Character (15).

**Appendix B to Part 630—Class B Sweep/Automated Credit Account File Structure**

A. This is the structure of the data file to provide information to the FDIC on funds residing in investment vehicles linked to each non-closed deposit account or sub-

account: Involved in Class B sweep activity; or which accepts automated credits. A single record should be used for each instance where funds affiliated with the deposit account are held in an alternative investment vehicle. For any alternative investment vehicle, a separate account may or may not exist. If an account exists for the investment

vehicle it should be noted in the record. If no account exists then a null value for the Class B Sweep/Automated Credit Account Identifiers should be provided, but the remainder of the data fields defined below should be populated.

B. For data provided in the Class B Sweep/Automated Credit Account File the total

account balances and the number of accounts must be reconciled to subsidiary system control totals.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account from which funds are swept or debited. The field may be the Account number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier-2 .....	Account Identifier-2 ..... If necessary, the second element used to identify the account from which funds are swept or debited.		Character (25).
3. DP_Acct_Identifier-3 .....	Account Identifier-3 ..... If necessary, the third element used to identify the account from which funds are swept or debited.		Character (25).
4. DP_Acct_Identifier-4 .....	Account Identifier-4 ..... If necessary, the fourth element used to identify the account from which funds are swept or debited.		Character (25).
5. DP_Acct_Identifier-5 .....	Account Identifier-5 ..... If necessary, the fifth element used to identify the account from which funds are swept or debited.		Character (25).
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. SW_Acct_Identifier .....	Class B Sweep/Automated Credit Account Identifier. The primary field used to identify the account into which funds are swept or credited. This field may be the Account Number.	Funds may be swept into an investment vehicle not represented as an account. In this case this field should be a null value. The Class B Sweep/Automated Credit Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
8. SW_Acct_Identifier-2 .....	Class B Sweep/Automated Credit Account Identifier-2. If necessary, the second element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).
9. SW_Acct_Identifier-3 .....	Class B Sweep/Automated Credit Account Identifier-3. If necessary, the third element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).
10. SW_Acct_Identifier-4 .....	Class B Sweep/Automated Credit Account Identifier-4. If necessary, the fourth element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).
11. SW_Acct_Identifier-5 .....	Class B Sweep/Automated Credit Account Identifier-5. If necessary, the fifth element of the account identifier used to identify the account into which funds are swept or credited.		Character (25).



Field name	Field description	Comments	Format
12. SW_Sub_Acct_Identifier .....	Class B Sweep/Automated Credit Sub-Account Identifier. If available, the sub-account identifier for the account.		Character (25).
13. SW_Type .....	Class B Sweep/Automated Credit Type. The investment vehicle. Possible values are: <ul style="list-style-type: none"> <li>• RE = Repurchase Agreement ..</li> <li>• DD = Deposit Held in a Domestic Office.</li> <li>• DF = Deposit Held in a Foreign Office.</li> <li>• IBF = Deposit Held in an International Banking Facility.</li> <li>• AI = Deposit Held in an Affiliated Depository Institution.</li> <li>• FF = Federal Funds.</li> <li>• CP = Commercial Paper.</li> <li>• OT = Other.</li> </ul>		Character (3).
14. SW_Inv_Amount .....	Fund Balance in Class B Sweep/Automated Credit Investment Vehicle. Dollar amount residing in the investment vehicle.		Decimal (14,2).
15. DP_Currency_Type .....	Currency Type .....		Character (3).
16. SW_Hold_Amount .....	FDIC Hold Amount .....		Decimal (14,2).
17. SW_Sweep_Interval .....	Sweep/Investment Frequency .....		Character (2).

**Appendix C to Part 630—Hold File Structure**

This is the structure of the data file to provide information to the FDIC for each legal or collateral hold placed on a deposit

account or sub-account. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate

Number, an indication that it is a hold data file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDICconnect.

Field name	Field Description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier .....	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier-2 .....	Account Identifier-2 .....		Character (25).
3. DP_Acct_Identifier-3 .....	Account Identifier-3 .....		Character (25).
4. DP_Acct_Identifier-4 .....	Account Identifier-4 .....		Character (25).

Field name	Field Description	Comments	Format
5. DP_Acct_Identifier-5 .....	Account Identifier-5 ..... If necessary, the fifth element used to identify the account.	.....	Character (25).
6. DP_Sub_Acct_Identifier	Sub-Account Identifier If available, the sub-account identifier for the account. If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. HD_Hold_Amt .....	Hold Amount ..... Dollar amount of the hold.	.....	Decimal (14,2).
8. HD_Hold_Reason .....	Hold Reason ..... Reason for the hold. Possible values are: • LN = Loan Collateral Hold. • LG = Court Order Hold. • FD = FDIC hold. • OT = Other (do not include daily operational type holds).	.....	Character (2).
9. HD_Hold_Desc .....	Hold Description ..... Description of the hold available on the system.	.....	Character (255).
10. HD_Hold_Start_Dt .....	Hold Start Date ..... The date the hold was initiated.	.....	Date (YYYYMMDD).
11. HD_Hold_Exp_Dt .....	Hold Expiration Date ..... The date the hold is to expire.	.....	Date (YYYYMMDD).

**Appendix D to Part 630—Customer File Structure**

This is the structure of the data file to provide to the FDIC information related to each customer who has an account or sub-account reported in the deposit data or Class B sweep/automated credit account file. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in

a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a customer file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over *FDICconnect*.  
**Note:** Each record must contain the customer's name and permanent legal address. Fields 4–12 relate to the customer name for individuals only. Fields 13–14

relate to the customer name for entities other than individuals. Some systems provide for separate fields for name, street address, city, state, ZIP, and country, all of which are parsed out. Other systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. In this case, certain name and address data elements must be parsed and provided in the appropriate fields.

Field name	Field description	Comments	Format
1. CS_Cust_Identifier .....	Customer Identifier ..... The unique field used by the institution to identify the customer.	.....	Character (25).
2. CS_Tax_ID .....	Customer Tax ID Number ..... The tax identification number on record for the customer.	Hyphens are optional in this field .....	Character (11).
3. CS_Tax_Code .....	Customer Tax ID Code ..... The type of the tax identification number of the customer. Possible values are: • S = Social Security Number. • T = Federal Tax Identification Number. • O = Other.	.....	Character (1).
4. CS_Name_Line_1 .....	Individual Customer Name Line 1 ..... If available, the free-form name narrative of the customer, first line.	.....	Character (100).
5. CS_Name_Line_2 .....	Individual Customer Name Line 2 ..... If available, the free-form name narrative of the customer, second line.	.....	Character (100).
6. CS_Last_Name .....	Individual Customer Last Name ..... For individuals, the customer's last name.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).

Field name	Field description	Comments	Format
7. CS_First_Name .....	Individual Customer First Name ..... For individuals, the customer's first name.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).
8. CS_Middle_Name .....	Individual Customer Middle Name ..... For individuals, the customer's middle name.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).
9. CS_Suffix .....	Individual Professional Suffix ..... For individuals, the suffix designating customer's academic, professional or honorary status, such as Esq., PhD., M.D., and D.D.S.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (20).
10. CS_Generation .....	Individual Generational Suffix ..... For individuals, the suffix designating the customer's generational status, such as Jr., Sr. or III.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (10).
11. CS_Prefix .....	Individual Customer Prefix ..... For individuals, the prefix of the customer, such as Rev., Dr., Mrs., Mr. or Ms.	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (10).
12. CS_Birth_Dt .....	Individual Customer Birth Date ..... For individuals, the customer's birth date.		Date (YYYYMMDD).
13. CS_Ent_Name_Line_1 .....	Entity Name Line 1 ..... For entities other than individuals, the free-form name narrative of the customer, first line.		Character (100).
14. CS_Ent_Name_Line_2 .....	Entity Name Line 2 ..... If available for entities other than individuals, the free-form name narrative of the customer, second line.		Character (100).
15. CS_Nar_Addr_Line_1 .....	Customer Address Line 1 ..... If available, the free-form permanent legal address narrative for the customer, line one.		Character (100).
16. CS_Nar_Addr_Line_2 .....	Customer Address Line 2 ..... If available, the free-form permanent legal address narrative of the customer, line two.		Character (100).
17. CS_Nar_Addr_Line_3 .....	Customer Address Line 3 ..... If available, the free-form permanent legal address narrative of the customer, line three.		Character (100).
18. CS_Street_Address_1 .....	Street Address Line 1 ..... The permanent legal address of the customer, line one.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (100).
19. CS_Street_Address_2 .....	Street Address Line 2 ..... The permanent legal address of the customer, line two.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (100).
20. CS_City .....	City ..... The city associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (25).
21. CS_State .....	State ..... The state abbreviation associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Use a two-character state code (official U.S. Postal Service abbreviations).	Character (2).
22. CS_ZIP .....	ZIP ..... The ZIP + 4 code associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. If the "+4" code is not available provide only the 5-digit ZIP code. Hyphens are optional in this field.	Character (10).
23. CS_Country .....	Country ..... The country associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Provide the name of the country or the standard IRS country code.	Character (10).

Field name	Field description	Comments	Format
24. CS_Telephone .....	Customer Telephone Number ..... The telephone number on record for the customer.	.....	Character (20).
25. CS_Email .....	Customer Email Address ..... The e-mail address on record for the customer.	.....	Character (150).

**Appendix E to Part 630—Deposit-Customer Join File Structure**

A. This is the structure of the data file to provide to the FDIC information necessary to link the records in the deposit and customer files. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited format. Each file name will contain the institution's FDIC Certificate Number, an

indication that it is a join file type, and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDICconnect.

B. The deposit-customer join file will have one or more records for each deposit account, depending on the number of relationships to each account. A simple individual account, for example, will be associated with only one record in the deposit-customer join file indicating the owner of the account. A joint

account with two owners will be associated with two records in the deposit-customer join file, one for each owner. The deposit-customer join file will contain other records associated with a deposit account to designate, among other things, beneficiaries, custodians, trustees, and agents. This methodology allows the FDIC to know all of the possible relationships for an individual account and also whether a single customer is involved in many accounts.

Field name	FDIC field description	Comments	Format
1. CS_Cust_Identifier .....	Customer Identifier ..... The unique field used by the institution to identify the customer.	.....	Character (25).
2. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, the data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
3. DP_Acct_Identifier-2 .....	Account Identifier-2 ..... If necessary, the second element used to identify the account.	.....	Character (25).
4. DP_Acct_Identifier-3 .....	Account Identifier-3 ..... If necessary, the third element used to identify the account.	.....	Character (25).
5. DP_Acct_Identifier-4 .....	Account Identifier-4 ..... If necessary, the fourth element used to identify the account.	.....	Character (25).
6. DP_Acct_Identifier-5 .....	Account Identifier-5 ..... If necessary, the fifth element used to identify the account.	.....	Character (25).
7. CS_Rel_Code .....	Relationship Code ..... The code indicating how the customer is related to the account. Possible values are: <ul style="list-style-type: none"> <li>• ADM = Administrator.</li> <li>• AGT = Agent/ Representative.</li> <li>• ATF = Attorney For.</li> <li>• AUT = Authorized Signer.</li> <li>• BNF = Beneficiary.</li> <li>• CSV = Conservator.</li> <li>• CUS = Custodian.</li> <li>• DBA = Doing Business As.</li> <li>• EXC = Executor.</li> <li>• GDN = Guardian.</li> <li>• MIN = Minor.</li> <li>• PRI = Primary Owner.</li> <li>• SEC = Secondary Owner(s).</li> <li>• TTE = Trustee.</li> </ul>	Institutions must map their relationship codes to the codes in the list to the right. If the institution maintains more than one relationship they must supply the additional relationship codes being utilized along with the code definition.	Character (5).
8. CS_Bene_Code .....	Beneficiary Type Code ..... If the customer is considered a beneficiary, the type of account associated with this customer. Possible values are: <ul style="list-style-type: none"> <li>• I = IRA.</li> <li>• T = Trust—Irrevocable.</li> <li>• R = Trust—Revocable.</li> <li>• M = Uniform Gift to Minor.</li> </ul>	This includes beneficiaries on retirement accounts, trust accounts, minor accounts, and payable-on-death accounts.	Character (1).

Field name	FDIC field description	Comments	Format
	<ul style="list-style-type: none"> <li>• P = Payable on Death.</li> <li>• O = Other.</li> </ul>		

### Appendix F to Part 360—Possible File Combinations for Deposit Data

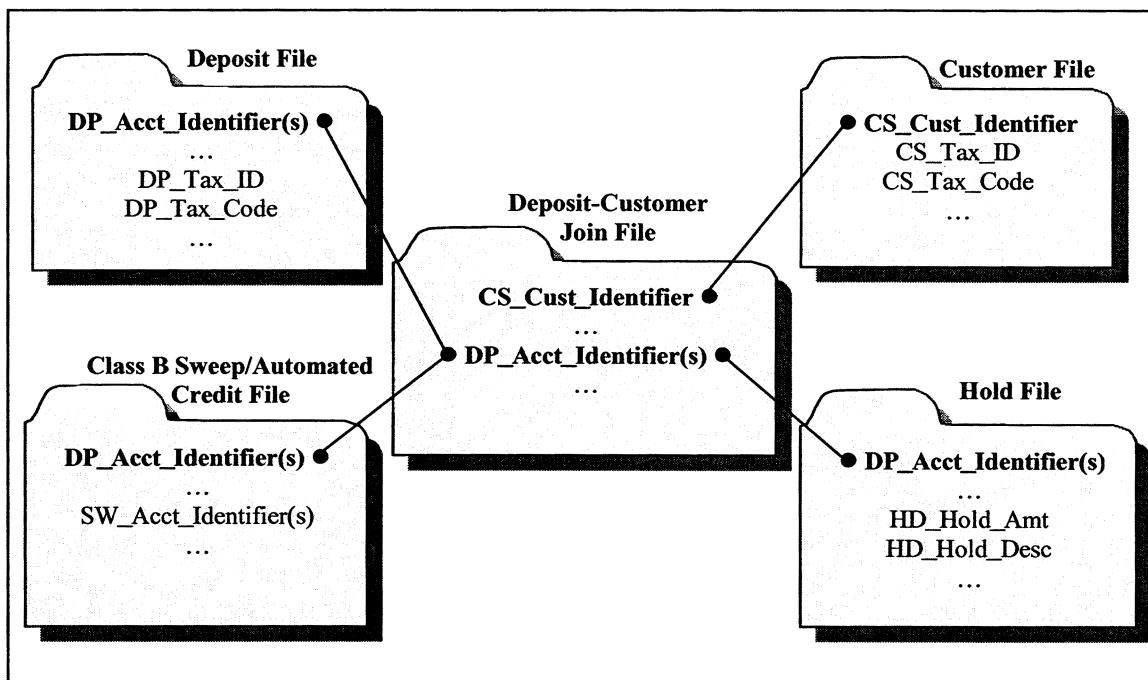
A *Covered Institution* must provide deposit data using separate deposit, sweep, hold,

customer, customer address and deposit-customer join files. The simplest file

structure involves providing one of each file. This basic file format is shown in Figure 2.

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**Figure 2. Basic File Structure.**



Multiple combinations of deposit, sweep, hold, customer, customer address and deposit-customer join files are permissible, but only in the following circumstances:

1. Each separate deposit file must have companion hold and deposit-customer join files covering the same deposit accounts.
2. Each separate customer file must have a companion customer address file covering the same customers.

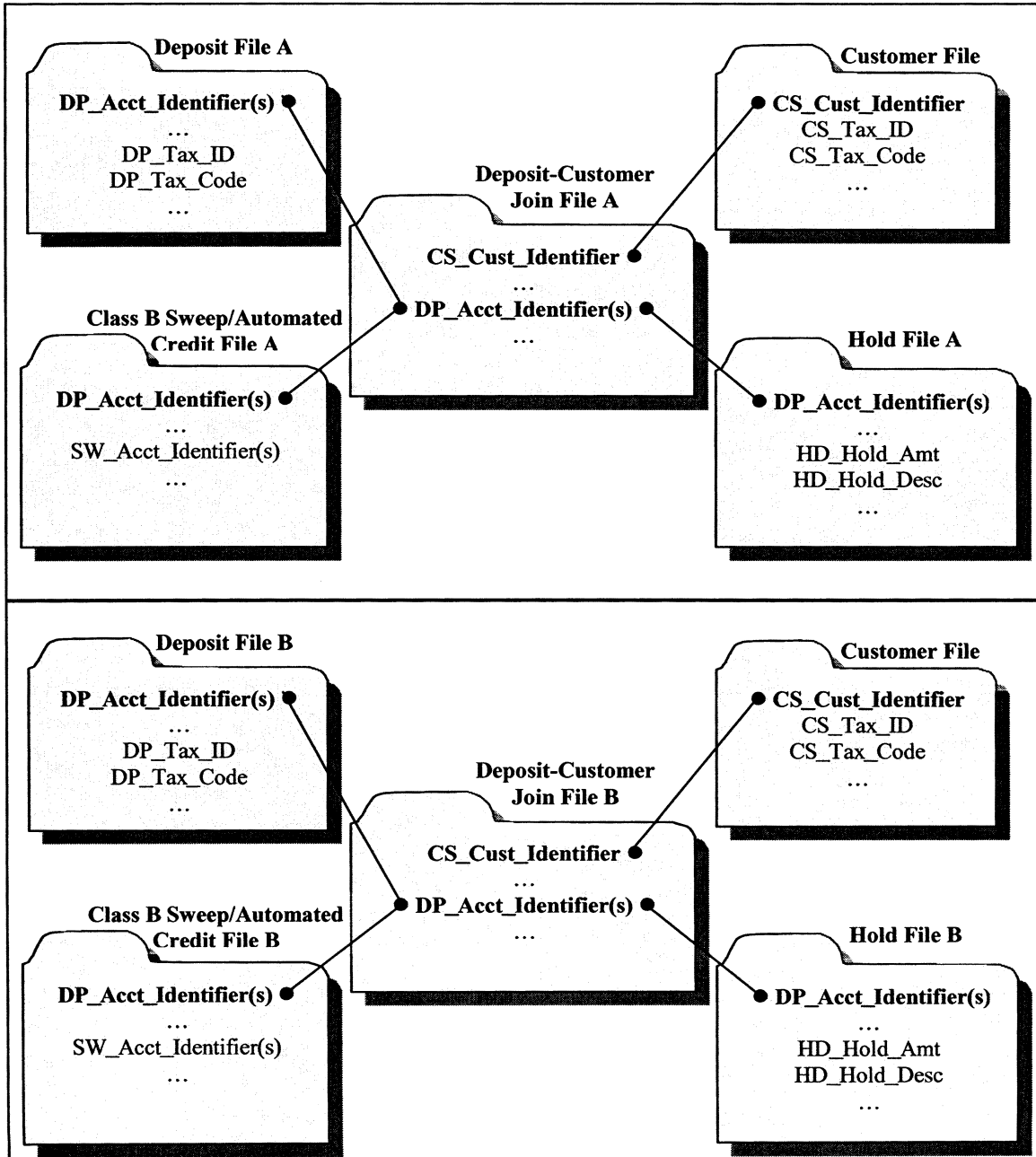
3. A single customer file may be submitted covering customers affiliated with deposit accounts in one or more deposit files as long as the customer file contains information on all of the customers affiliated with the deposit files.

4. Several customer files may be submitted as long as each separate customer file contains information on all of the customers affiliated with the associated deposit files.

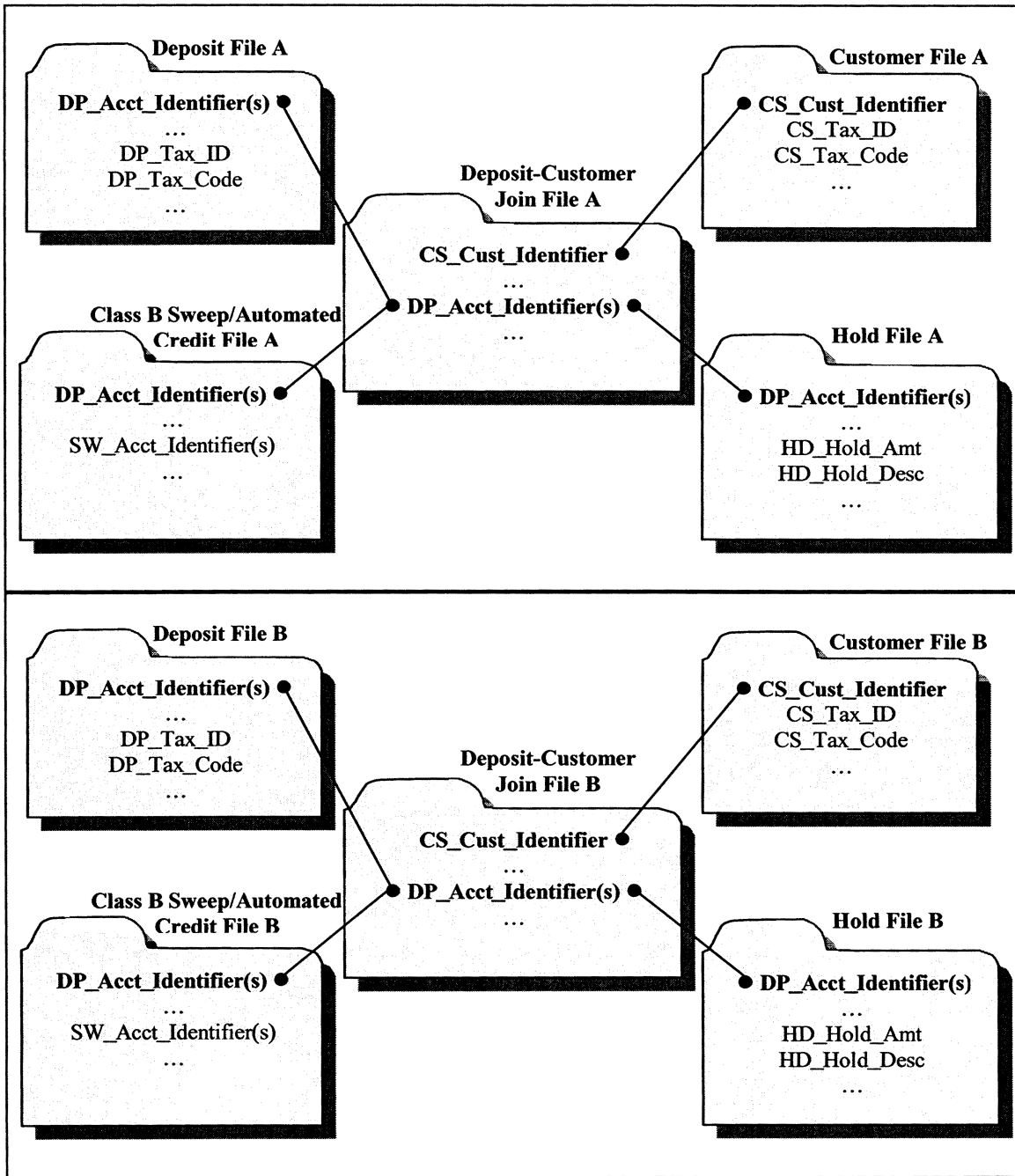
Figure 3 shows a permissible file configuration using a single Customer File affiliated with Deposit File A and Deposit File B. As required, Deposit File A has a companion Hold File A and Deposit-Customer Join File A. The same is true for Deposit File B.

Another permissible combination of files is shown in Figure 4, which is a variation of the basic data file structure shown in Figure 2.

Figure 3. Multiple Deposit Files, Single Customer File.



**Figure 4. Multiple File Sets.**



By order of the Board of Directors.  
 Dated at Washington, DC, this 19th day of  
 December, 2007.

Federal Deposit Insurance Corporation.  
**Valerie J. Best,**  
*Assistant Executive Secretary.*  
 [FR Doc. E8-273 Filed 1-11-08; 8:45 am]  
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