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June 24, 2016

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

Re: Recordkeeping for Timely Deposit Insurance Determination

Dear Mr. Feldman:

The FDIC is seeking comment on a proposed rule that would require insured depository institutions that have two million or more deposit accounts (“covered institutions”) to maintain comprehensive data on each depositor’s ownership interest so that the FDIC can make prompt insurance determinations in the event of the insured depository institution’s failure. Each covered institution would also be required to (i) collect the information needed to allow the FDIC to determine promptly the deposit insurance coverage for each owner of funds on deposit at the covered institution, and (ii) ensure that its IT system is capable of calculating the deposit insurance available to each owner of funds on deposit in accordance with the FDIC’s deposit insurance rules. The proposal would only apply to the largest 36 banks in the country as measured by the number of deposit accounts. The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on this proposal.

ICBA’s Position

As we stated in our letter of July 24, 2015 in response to the FDIC’s ANPR on this issue, ICBA agrees that the FDIC must be able to quickly make fair and accurate insurance determinations when a large bank fails. Under the Federal Deposit

¹ The Independent Community Bankers of America®, the nation’s voice for more than 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 52,000 locations nationwide, community banks employ 700,000 Americans, hold \$3.6 trillion in assets, \$2.9 trillion in deposits, and \$2.4 trillion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA’s website at www.icba.org.

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Insurance Act, the FDIC is responsible for paying deposit insurance “as soon as possible” following the failure of an insured depository institution or IDI. To make a prompt insurance determination, the FDIC must rely on the failed institution’s deposit account records to identify deposit owners and the right and capacity in which deposits are owned. The FDIC also must implement the resolution of a failed IDI at the least possible cost to the Deposit Insurance Fund.

By requiring institutions with two million or more deposit account to maintain complete and accurate data regarding deposit ownership and to have IT systems that can be used by the FDIC to calculate deposit insurance coverage in the event of failure, the FDIC will be able to promptly pay those account holders that are insured and will preserve the FDIC’s ability to implement the least costly resolution of such an institution. This will not only facilitate the orderly resolution of these large banks but will also promote stability in the banking system, trust and confidence in the deposit insurance, and access to credit for the economy.

ICBA agrees that the current regulations are inadequate and that additional measures are needed beyond those set out in Section 12 CFR 360.9 to provide assurance that a deposit insurance determination could be made promptly and accurately. While provisional holds on accounts, which are authorized by 12 CFR 360.9, might help resolve one large bank failure, they would not be sufficient to mitigate the complexities of a number of large bank failures that occurred at one time.

The FDIC also correctly points out that 12 CFR 360.9 has two significant deficiencies. First, it does not currently require institutions to maintain accurate and complete deposit account data. This is a particular problem with many of the largest institutions because of the complexity of their deposit systems and platforms. Second, deposit insurance determination under 12 CFR 360.9 necessitates a secure bulk download of deposit data that introduces additional delays in making that determination. As we noted in our last letter, the recent crisis has proven that large bank failures can happen with little notice and time for the FDIC to prepare. For instance, both Washington Mutual Bank and Wachovia deteriorated very quickly, leaving the FDIC little time to prepare.

ICBA also agrees that the size and complexity of the banks affected by this rule justify imposing more specific data requirements on them. As noted in the proposal, from 2004 to 2014, the deposit accounts at the ten banks having the most deposit accounts increased 106 percent. Because of consolidation, these megabanks are generally more complex, have more deposit accounts, greater geographic dispersion, multiple deposit systems, and more issues with data accuracy and completeness. In some instances, these megabanks have been through so many mergers that they are now subject to numerous “legacy” software systems that keep track of their deposits.

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Because delays in insurance determinations can lead to bank runs or other systemic problems, we agree with the FDIC that more needs to be done to ensure prompt deposit insurance determinations at failures of banks with a large number of deposit accounts. For these reasons, ICBA supports the proposal which would require insured depository institutions that have two million or more deposits accounts to (1) collect the information needed to allow the FDIC to determine promptly the deposit insurance coverage for each owner of funds on deposits at the covered institution, and (2) ensure that the covered institution's IT system is capable of calculating the deposit insurance available to each owner of funds on deposit in accordance with the FDIC's deposit insurance rules.

The Proposed Rule and Pass-through Accounts

ICBA realizes that if the proposed rules were enacted, in the case of pass-through accounts, covered institutions would be required to obtain the requisite deposit ownership information and maintain it on-site. ICBA has been concerned about the use of pass-through FDIC deposit insurance in connection with the national distribution of cards by certain large businesses, such as Wal-Mart, that function as checking and debit alternatives. Often the agent or custodian of these programs holds the necessary information about the actual owners of these accounts making it almost impossible for the FDIC to make a prompt deposit insurance determination based on data held by the bank. The need to obtain information from the agents or custodians not only delays the calculation of deposit insurance but also makes it likely that the FDIC would be forced to overpay the insured accounts in an attempt to resolve the bank in a timely manner, resulting in numerous erroneous overpayments.

However, ICBA is concerned about the impact that the proposed rule would have on community banks that participate in deposit placement networks. Specifically, when funds of a community bank's customer were placed at a covered institution, the covered institution would be required to obtain beneficial owner data from the community bank every business day. This could force some community banks to share confidential data about some of their large-dollar depositors, and therefore best customers. with a competitor bank.

While Section 370.4 of the proposed rule would allow the recipient covered institution to apply to the FDIC for an exception if the non-covered institution refused to provide information concerning its best customers, the granting of the exception would be entirely at the FDIC's discretion. We recommend that the exception provided in Section 370.4(c) be broadened to say that, in the case of deposit placed at the covered institution by a non-covered institution pursuant to a deposit placement network, the exception would be automatically approved by the FDIC upon an assertion by the non-covered institution that such information was confidential and could impair the non-covered institution's ability to compete for large-dollar depositors. Such a change would assure

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community banks that they would not be penalized by the rule if they participated in a deposit placement network.

The FDIC recognizes that substantial time may be needed to implement the requirements described in the proposal and has proposed a two-year implementation timetable. ICBA supports this implementation schedule. We also support the FDIC's proposal to allow covered institutions to apply for an extension of the deadlines if it could not meet them based on a well-justified exigency.

In conclusion, ICBA supports the proposed rule that would impose new requirements on these large and complex banks to ensure that depositors have prompt access to insured funds in the event of a failure. ICBA believes it is necessary to the safety and soundness of the banking system that these changes be implemented.

ICBA appreciates the opportunity to comment on this FDIC proposal. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

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