

THE FINANCIAL SERVICES ROUNDTABLE



1001 PENNSYLVANIA AVE., NW
SUITE 500 SOUTH
WASHINGTON, DC 20004
TEL 202-289-4322
FAX 202-628-2507

E-Mail rich@fsround.org
www.fsround.org

RICHARD M. WHITING
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL

March 10, 2006

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corp.
550 17th Street, N.W.
Washington, DC 20429

Re: Advance Notice of Proposed Rulemaking: Large-Bank Deposit Insurance
Determination Modernization Proposal, RIN 3064-AC98

Dear Sir:

The Financial Services Roundtable¹ (the “Roundtable”) appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking (ANPR) published on December 13, 2005.² The ANPR was issued by the FDIC as the first step in the process of developing new rules for determining the insurance status of deposits held by larger depository institutions. As proposed, the approximately 145 institutions with over 250,000 deposit accounts and \$2 billion in deposits would be covered.

Background

The ANPR explained that the recent consolidation within the banking industry has resulted in some very large and complex institutions, each holding a large number of insured accounts. The FDIC is concerned that its current procedures for determining the insurance status of each account in the event of a failure might result in unacceptable delays in the case of one of these very large institutions. The ANPR suggests three approaches to deal with this concern.

Under the first approach (“Option 1”), covered institutions are required to have a system in place, on an ongoing daily basis, to identify the owner of each deposit account through a unique identifier, the ownership category, and deposit data including product type, interest rate, and current balance. This deposit data would have to be *linked* to certain data from the bank’s Customer Information Files (“CIF”) such as the depositor’s name and address and social security

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, investment products and services to the American consumer. Roundtable member companies provide fuel for America’s economic engine accounting directly for \$40.7 trillion in managed assets, \$960 billion in revenue, and 2.3 million jobs.

² 70 *Federal Register* 73652 (Dec. 13, 2005).

number. Bank-owned accounts must be identified as such. In the event an institution is in danger of failing, the data would have to be quickly transmitted to the FDIC.

If an institution is to be resolved, the bank would be required to place a provisional hold on a portion of large deposits, as prescribed by an FDIC formula. The formula would determine the amount of the provisional hold based on the FDIC's estimate of potential losses if the institution were to fail. The provisional hold would remain in place until the FDIC makes an insurance determination, at which point the agency will direct that the provisional hold is to be removed, and automatically be replaced by debits and bank holds *en masse*, so that the depositor will have access to *only* the estimated insured portion of his or her deposits.

The second alternative ("Option 2") is essentially the same as Option 1, except it does not require the bank to create unique customer information identifiers or to identify the insurance category for each deposit.

The third proposal ("Option 3") relates only to the 10 to 20 insured institutions with the largest number of deposit accounts. These institutions would be required to know the insurance status of their deposit accounts at any given time. Upon failure, the institution must be able to automatically place holds on or debit uninsured deposits in amounts specified by the FDIC.

Comments

The Financial Services Roundtable appreciates the concerns raised by the ANPR and the FDIC with respect to the difficulty of quickly and accurately determining the insurance status of deposit accounts in large institutions. Public confidence in the safety of their funds and ability to access their insured deposits quickly in the event of a failure is extremely important, both to the individual depositors and for the banking system systemically. However, it is also important to balance any proposal to address this concern with the costs to implement that proposal. Unfortunately, we believe that the implementation costs under the options proposed in the ANPR would be unacceptably high. We are also concerned that some of the data required is not available to depository institutions and cannot be simply obtained, or may in fact be impossible to ascertain. We also note that the proposals implicate important issues regarding the financial privacy of our customers, and the importance of the public perception that depository institutions maintain financial data in strict confidence. Finally, we would urge that any proposal that would require the development of new information systems be delayed as long as possible, in light of the other new information and intensive requirements that are currently being implemented or suggested. We will discuss each of these points in further detail below, and then address some of the particular questions for which you solicited comments.

Excessive Costs

Our members estimate that there would be over 250 million covered deposit accounts under the definition of a covered institution proposed in the ANPR. Current bank and thrift information systems simply do not code these accounts as would be required under the proposal, and new systems would have to be developed. In some cases, entirely new information systems would be required. The cost to the industry to make these changes would be huge. On the other

hand, the FDIC and the other bank regulatory agencies have increasingly sophisticated tools to prevent large bank failures, including the prompt corrective action authority, capital directives, safety and soundness standards, and the development and use of modern risk management techniques by our larger institutions. Thus, the probability of a failure and deposit insurance payout for our largest banking institutions has diminished considerably, thereby making it even more difficult to justify the large expense required under this proposal. If the FDIC nevertheless decides to proceed with this proposal, consideration should be given to offset the costs through a deposit assessment credit for those institutions covered by the new mandate.

Availability of Data

It is simply impossible for banking organizations to know for certain the current owner of all deposit accounts. For example, with respect to living trust accounts, payable on death accounts, and other accounts in which beneficiaries of the accounts may change without the knowledge of the bank, it would be impossible for the depository institution to make an accurate determination of insurance coverage. Similar problems are presented by employee benefit plan accounts in which insurance is provided on a per participant pass through basis. Additionally, we believe that similar difficulties may exist with regard to obtaining information on brokered deposits.

Privacy

The ANPR acknowledges that this proposal could implicate privacy concerns, and attempts to address this issue by utilizing on-site testing of the data. However, privacy concerns may nevertheless be perceived by the public, especially in light of the fact that highly personal financial information will be coupled with the depositors name and address. Further, for many citizens, the fact that this information will be available to a Governmental agency, even on an on-site basis, will not be comforting. Even if the potential for abuse of this information is extremely low, the public's concern about their own financial privacy could have significant negative ramifications for the banking industry.

Timing

To the extent that the FDIC determines to continue forward with this proposal, we urge that a sufficiently long lead-in time to permit the development of new systems and technology. At a minimum, a lead-in time of at least one year is absolutely necessary. This is particularly important in light of the plethora of recent regulatory changes and proposals that require significant changes in bank information systems. For example, under both Basel II and Basel I-A as proposed, banks will be required to develop new and costly information technologies. Likewise, regulatory proposals regarding commercial real estate lending may require banks to develop systems to track loans by source of repayment, type of commercial real estate collateral, and purpose of the loan. This is simply not the time to layer on additional and extensive information system modifications.

Particular Questions

The ANPR asked if the definition of a “covered institution” should include institutions with more than \$20 billion in deposits regardless of the number of deposit accounts. We strongly oppose that suggestion. There are a number of institutions that easily exceed the \$20 billion in deposit level, yet have relatively few accounts. The resolution of such an institution is no more complicated than resolving a mid-sized bank, and thus no purpose would be served by sweeping such an institution into this proposal.

Another question asked by the ANPR is whether all insured institutions in a multi-bank holding company should be covered if any bank in the system meets the definition of a covered institution. We believe that such a policy cannot be justified under the rationale for the ANPR. If a smaller bank fails, the fact that it is affiliated with a larger institution does not make the resolution of the smaller bank more complicated. This would be true even if the larger institution also fails. Each bank is a separate entity; deposits in the affiliated institutions are not combined for deposit insurance purposes. If the FDIC insists on sweeping in smaller affiliated banks, the agency should logically cover all depository institutions, whether affiliated with a large bank or not.

Conclusion

The Financial Services Roundtable understands the concerns that led the FDIC to propose this ANPR, and appreciates the importance to the financial system of the ability of the agency to determine quickly the insurance status of all accounts at a failed institution. However, we believe that the proposed solutions outlined in the ANPR would be excessively costly and burdensome to the industry, raise implementation and feasibility questions, and could trigger public concerns about privacy. We would welcome the opportunity to work with the FDIC to develop alternative solutions to this problem. If you have any questions, please contact me.

Sincerely,

Richard M. Whiting

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