

**The Impact of Banking as a Service in a Post Synapse World
Materials**

2025 UNC Banking Law Institute

FDIC
Notice of Proposed Rulemaking
Recordkeeping for Custodial Accounts

Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 375

RIN 3064-AG07

Recordkeeping for Custodial Accounts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing requirements that would strengthen FDIC-insured depository institutions' (IDI) recordkeeping for custodial deposit accounts with transactional features and preserve beneficial owners' and depositors' entitlement to the protections afforded by Federal deposit insurance. The proposal is intended to promote the FDIC's ability to promptly make deposit insurance determinations and, if necessary, pay deposit insurance claims "as soon as possible" in the event of the failure of an IDI holding custodial accounts with transactional features. The proposed requirements also are expected to result in depositor and consumer protection benefits, such as promoting timely access by consumers to their funds, even in the absence of the failure of an IDI. The requirements described in this document would only apply to IDIs offering custodial accounts with transactional features and that are not specifically exempted as provided in this document.

DATES: Comments must be received on or before December 2, 2024.

ADDRESSES: You may submit comments, identified by RIN 3064-AG07, by any of the following methods:

- **FDIC Website:** <https://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.

- **Email:** Comments@fdic.gov. Include RIN 3064-AG07 in the subject line of the message.

- **Mail:** James P. Sheesley, Assistant Executive Secretary, Attention:

Comments—RIN 3064-AG07, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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

- **Public Inspection:** Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the proposed rule will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

This proposal, all comments received, and a summary of not more than 100 words of the proposed rule pursuant to the Providing Accountability Through Transparency Act of 2023 are available at <https://www.fdic.gov/resources/regulations/federal-register-publications/>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Introduction

The business of deposit taking in the digital age has evolved, creating new opportunities for IDIs to gain access to deposits through third parties in increasingly complex relationships. This evolution has included the widespread use of digital channels, including websites and mobile applications, which created new opportunities and options to deliver financial products and services to consumers. However, it has also created risks for consumers, including confusion regarding the applicability and availability of deposit insurance to protect their money from loss.

Recent events have underscored issues that can be associated with some IDI arrangements with third parties to deliver IDI deposit products and services. For example, the bankruptcy of Synapse Financial Technologies, Inc. (Synapse), a technology company that worked with several IDIs and numerous financial technology (fintech) companies, has affected the ability of consumers to access funds placed at IDIs for a number of months, resulting in significant and ongoing harm to those consumers. In many cases, it was advertised that the funds were FDIC-insured, and consumers may have believed that their funds would remain safe and accessible due to representations made regarding placement of those funds in IDIs. Consumers have been unable to access their funds at IDIs for an extended period of time while the IDIs attempt to determine ownership of the funds deposited by fintechs. Since May 2024, the FDIC National Center for Consumer and Depositor Assistance has received more than a thousand inquiries, complaints, and concerns from consumers regarding the Synapse bankruptcy. Published reports further suggest that some of those consumers affected by the Synapse bankruptcy had placed the funds in accounts through a fintech that they used for day-to-day living expenses thereby intensifying the effect of their loss of access.

In the wake of Synapse's bankruptcy, including the fact that IDIs encountered significant difficulties in obtaining, reviewing, and reconciling Synapse's

4,500 IDIs in the United States. Since 1933, the FDIC has taken action in accordance with its mission to restore public confidence in the banking system in times of financial turmoil. The FDIC has proactively sought to protect depositors and promote public confidence in insured deposits.

The FDIC only insures deposits of IDIs, and deposit insurance is only paid in the event of the failure of an IDI. Importantly, the FDIC's deposit insurance coverage does not provide consumers and businesses with general protection against the default, insolvency, or bankruptcy of any non-bank entities with which IDIs might do business, even if a non-bank entity has a relationship with, or deposits funds at, an IDI.³

The FDIC has long recognized the significance of custodial deposit accounts in the banking system, and specifically accommodates these types of accounts in its deposit insurance regulations through the concept of pass-through deposit insurance. This concept, which dates back to the 1930s, provides a mechanism for recognizing the owners of deposited funds and insuring their interests in the deposit to the same extent as if the owners had deposited the funds directly at the bank, provided certain conditions are met.⁴ Under the pass-through insurance rules, the FDIC may rely on records of those other than a failed IDI to identify depositors and their insured deposits, if such records are maintained in good faith and in the regular course of business. If the regulatory pass-through insurance requirements are satisfied, each owner's interest in the deposit at the IDI is separately insured up to the statutory deposit insurance limit, currently \$250,000 for deposits held in each deposit ownership category. If the pass-through insurance requirements are not satisfied, the deposit is insured to the person named on the IDI's records and aggregated with any other deposits that person holds at the same IDI in the same ownership category. The FDIC makes determinations with respect to pass-through deposit insurance coverage at the time an IDI fails.⁵

³ FDIC deposit insurance also does not protect against losses due to theft or fraud, which are addressed by other laws.

⁴ The FDIC is statutorily required to aggregate, for purposes of the deposit insurance limit, deposits maintained by a depositor "either in the name of the depositor or in the name of any other person. . . ." 12 U.S.C. 1821(a)(1)(C). The FDIC's pass-through insurance rules initially applied only to deposits maintained by specific types of non-bank entities, though this limitation was subsequently removed.

⁵ By statute, the FDIC is required to pay deposit insurance "as soon as possible" following the

Custodial Deposit Accounts and Technology Developments

Custodial deposit accounts have been a fixture of the U.S. banking system for decades. A "custodial deposit account" arrangement, for purposes of this proposal, is a relationship where one party is responsible for opening a deposit account at an IDI on behalf of others, who may own the funds but often lack a direct relationship with the bank. The term "custodial deposit account" may have different meanings in other banking contexts, and the FDIC does not intend to address or affect, through this rulemaking, any requirements that might apply in other contexts in which the term "custodial deposit account" is used.

Coupled with technology innovations and advancements, custodial deposit account arrangements have transformed the industry in many respects over the years, resulting in new business models for providing banking and financial services. For example, companies have been formed to meet the desire of investors to deposit their money at IDIs paying the highest interest rates on deposits. Other firms have been formed to meet the need of organizations and individuals to divide large deposits exceeding the statutory deposit insurance limit across multiple IDIs for the purpose of ensuring that the total is fully insured by the FDIC.

Custodial deposit accounts have also, in some cases, been utilized in the development of products intended to meet the needs of consumers. For example, prepaid cards and other similar products were developed to offer consumers new ways of accessing and spending money without maintaining a traditional deposit account at an IDI.⁶ Based on a national survey conducted by the FDIC in 2021, 6.9 percent of all households were using prepaid cards.⁷ The FDIC's experience is that prepaid cards generally utilize custodial deposit accounts at IDIs to hold consumers' funds until they are spent.

More recently, this evolution of banking and financial services has increasingly included non-bank fintech companies offering consumers new options and alternatives for accessing banking products and services. Increasingly many consumers are choosing to open deposit accounts indirectly through fintech companies,

liquidation, closing, or winding up of any IDI. 12 U.S.C. 1821(f)(1).

⁶ See FDIC National Survey of Unbanked and Underbanked Households (October 2022), available at <https://www.fdic.gov/analysis/household-survey/2021report.pdf>.

⁷ FDIC, 2021 FDIC National Survey of Unbanked and Underbanked Households.

typically online or through mobile apps. FDIC survey results indicate that a significant number of consumers use non-bank (e.g., fintech) online payment services to make purchases online and to send or receive money. Households also reported relying on this method to pay bills, make purchases in person, receive income or save or "keep money safe." Nearly half of all households, or 46.4 percent, were using non-bank online payment services at the time of the survey.⁸ These fintech companies' accounts at IDIs frequently, though not always, depend upon custodial deposit accounts.

Alternatively, some IDIs are entering into and expanding business arrangements with fintech companies to deliver the IDI's deposit products and services. These arrangements can take many different forms, and they continue to evolve. For example, an IDI and a fintech company might enter into an arrangement where the fintech company offers the IDI's deposit products and services to the fintech company's customers. In other instances, fintech companies might simply deposit their customers' funds at an IDI. In such cases, the fintech company may open a custodial deposit account at an IDI as an agent or custodian. Fintech companies have sometimes represented to their customers that the customers' funds are FDIC-insured, or that they are insured by the FDIC on a "pass-through" basis.

Many custodial deposit account arrangements also increasingly rely on third parties that, depending on the context, might be referred to as, for example, "processors," "middleware providers," or "program managers," to perform a range of critical functions. These third parties' functions have included accepting deposits, maintaining a transaction system of record, processing payments, performing regulatory compliance functions, providing customer-facing technology applications, servicing accounts, and directly interacting with customers. In this context, a customer may be a consumer or a business. Relationships between IDIs and these third parties can be quite complex. While this complexity can contribute to the development of novel and innovative products, in the absence of reliable recordkeeping this complexity adds to the operational challenges faced by the FDIC in the event of an IDI's failure, in particular when the FDIC is required to make deposit insurance determinations. Complex custodial deposit account arrangements also

⁸ FDIC, 2021 FDIC National Survey of Unbanked and Underbanked Households.

bank makes a statement regarding deposit insurance coverage, it is a material omission by the non-bank to fail to clearly and conspicuously disclose that it is not an IDI, and that FDIC insurance only covers the failure of the IDI. The FDIC has continued to engage with IDIs and others to help them understand their obligations under the FDIC Signs and Misrepresentation Rule.¹²

The FDIC maintains public facing portals on its website where the public can submit questions or complaints to the FDIC about a number of topics. One portal, the FDIC Information and Support Center, allows the public to submit inquiries about deposit insurance coverage as well as complaints and inquiries about IDIs. A second portal, the FDIC Deposit Insurance Misrepresentation Form, provides an opportunity for the public to submit a complaint or concern regarding potential false statements about an entity or product claiming to be FDIC-insured or casting doubt on whether FDIC insurance applies and is therefore paid in the event of an IDI failure.

In addition to communicating with IDIs and third parties regarding their FDIC Signs and Misrepresentation Rule obligations, the FDIC also conducts public outreach and education initiatives to promote public awareness of deposit insurance, including the launch of a national campaign entitled “Know Your Risk. Protect Your Money.” This consumer-focused campaign informs consumers on how deposit insurance protects their deposits in the event of an IDI’s failure and features a piggy bank known as “Penny the Pig,” aimed at reaching people who have lower confidence in the U.S. banking system, the unbanked, and consumers who use mobile payment systems, alternative banking services and financial products that may appear to be FDIC-insured, but are not.¹³

Another public education initiative is conducted through a publication entitled FDIC Consumer News, which is a series of monthly newsletters directed to the general public that provides practical guidance on how to become a smarter, safer user of financial services including helpful tips and common-sense strategies to protect consumer

money. Through the various consumer news articles, the FDIC addresses consumer confusion related to digital banking, including regarding the emergence and use of third-party, non-bank apps. Some recent examples of the relevant articles include “Banking with Third Party Apps” (May 2024), which warns consumers of the risks in using non-bank companies for financial services; “Is My Money Insured by the FDIC?” (July 2023), which reminds consumers that FDIC deposit insurance does not apply if a non-bank company fails; “The Importance of Deposit Insurance and Understanding Your Coverage” (August 2022), which lists the top five things to know about deposit insurance coverage; “Banking with Apps” (November 2022), which provides an overview of the differences in deposit products offered by IDIs and non-bank companies; and “Is Digital Banking for Me?” (April 2020), which offers key considerations of using online and mobile banking technology. The FDIC will continue to consider further measures to address consumer confusion about deposit insurance coverage.

In addition, the FDIC and the other Federal banking agencies have recently published a number of issuances to IDIs concerning the risks involved in arrangements with non-bank third parties, including fintech companies. As recently explained in the Federal banking agencies’ *Joint Statement on Banks’ Arrangements with Third Parties to Deliver Bank Deposit Products and Services*, “the agencies have observed an evolution and expansion of these arrangements to include more complex arrangements that involve the reliance on third parties to deliver deposit products and services.”¹⁴ It also indicated that “[d]epending on the structure, third-party arrangements for the delivery of deposit products and services can involve elevated risk.” The Federal banking agencies also recently published a Request for Information soliciting input on the nature of bank-fintech arrangements, effective risk management practices regarding bank-fintech arrangements, and the implications of such arrangements, including whether enhancements to existing supervisory guidance might be helpful in addressing risk.¹⁵

An IDI’s use of a non-bank third party to perform activities related to its deposit-taking function does not diminish its responsibility to conduct those activities in a manner consistent with safe and sound practices and in

compliance with applicable laws and regulations, including, but not limited to, those designed to protect consumers. As such, IDIs have also been subject to a number of consent orders and other actions by the Federal banking agencies related to these types of arrangements.

Need for Rulemaking

The FDIC neither prohibits nor discourages IDIs from providing banking services to customers of any specific class or type, as permitted by law or regulation. It has become apparent from the events described above that IDIs’ recordkeeping practices should be enhanced with respect to certain custodial deposit account arrangements. The FDIC believes it would be beneficial to address these issues in a consistent manner across the industry through rulemaking, rather than rely solely on the supervisory and enforcement processes.

The events that occurred following Synapse’s bankruptcy demonstrate the importance of strong recordkeeping practices in certain custodial account relationships. The trustee and IDIs encountered significant difficulties in obtaining, reviewing, and reconciling Synapse’s records against the IDIs’ records. While none of the IDIs that had business arrangements with Synapse have failed, the difficulties encountered by the parties obtaining, reviewing, and reconciling Synapse’s records against the IDIs’ records would likely also have hindered the FDIC’s ability to make a prompt and accurate deposit insurance determination in the event one of the IDIs had failed. Depositors could have been affected by delays in obtaining their insured deposits, depending on the accuracy and completeness of account records and how long it would have taken to gather and review records.

Looking beyond the case of Synapse, these types of arrangements between IDIs and fintechs are becoming more prevalent in the market, and the FDIC believes the increased complexity of certain custodial deposit account arrangements warrants strengthened recordkeeping to support a prompt payment of deposit insurance in the event of an IDI’s failure. Accurate and complete custodial deposit account records are absolutely critical in the event of an IDI’s failure to ensure that the FDIC is able to make prompt and accurate payment of deposit insurance for all insured depositors. Prompt payment of deposit insurance is especially important where custodial deposit account arrangements are used to support day-to-day financial needs. For example, many consumers are increasingly choosing to open deposit

¹² For example, the FDIC has held seminars for bankers on the Sign and Misrepresentation Rule and has issued questions and answers relating to the rule online. See <https://www.fdic.gov/resources/deposit-insurance/questions-and-answers-related-to-the-fdics-part-328-final-rule.html>.

¹³ See press release, “FDIC Launches Public Campaign to Raise Awareness About Deposit Insurance” (Oct. 11, 2023).

¹⁴ See FRL-45-2024 (July 25, 2024).

¹⁵ *Id.*

as “the person or entity who opens or establishes a custodial deposit account with transactional features with an insured depository institution.” This definition does not require that the “account holder” is the titled owner of the account. For example, some businesses establish accounts at IDIs for the benefit of their customers, but the account is titled in the name of the IDI itself for benefit of the business’s customers. In such instances, the FDIC would interpret the “account holder” under the proposed rule to be the business that contracted with the IDI to establish the custodial deposit account.

The proposed rule’s scope is limited to custodial deposit accounts with transactional features that hold deposits, meaning that other types of custodial accounts, such as those holding non-deposit securities, would be excluded.²³ The proposed rule would apply to custodial deposit accounts with transactional features, regardless of the date a particular custodial deposit account was established. Custodial deposit accounts with transactional features already in existence would be subject to the proposed rule’s requirements.

As noted above, the definition of “custodial deposit account with transactional features” includes, as one of its criteria, that a beneficial owner may authorize or direct a transfer through the account holder from the account to a party other than the account holder or beneficial owner. By including this prong, the FDIC intends to apply the proposed recordkeeping requirements only to custodial deposit accounts that are established and used in a manner that allows beneficial owners to direct a transfer of funds from the account to another party—for example, to make purchases or pay bills.

The FDIC believes that, in some custodial deposit account arrangements, IDIs allow the account holder to submit payment instructions from beneficial owners to the IDI in order to make funds transfers. Such custodial deposit accounts would fall within the scope of the proposed rule and would be subject to its recordkeeping requirements.²⁴ If, on the other hand, the IDI only returns the funds held in the custodial deposit account to the account holder or

beneficial owner, the account activity would not be “transactional” in the sense that term is used under the proposed rule.

Exemptions

Where the FDIC believes its policy objectives would not be advanced by the additional recordkeeping requirements, the proposal would expressly exempt certain custodial deposit accounts from the new recordkeeping requirements even if they have transaction features. The proposal would accomplish this through a list of specific exemptions. As discussed below, given the FDIC’s experience in managing these relationships, additional recordkeeping requirements for a number of custodial deposit accounts would not be required even if they have transactional features.

The proposed rule exempts from its scope custodial deposit accounts that hold only trust deposits, as described in the FDIC’s deposit insurance regulations for trust accounts set forth at 12 CFR 330.10 and 330.12. These custodial deposit accounts are established in many cases by a trustee that already has a duty under State law to maintain records regarding the beneficial owners of the funds.

The proposal exempts from its recordkeeping requirements custodial deposit accounts established at an IDI by government depositors. There are a variety of circumstances in which government depositors establish deposit accounts that hold funds for others, such as accounts maintained for the payment of government benefits. In these cases, the FDIC believes that the safeguards and controls imposed by statute and regulation will generally be sufficient to ensure that accurate records are available on a regular basis, including in the event of an IDI’s failure.

The proposal also would exempt custodial deposit accounts established by brokers or dealers under the Securities and Exchange Act of 1934, and investment advisers under the Investment Advisers Act of 1940. These entities are already subject to recordkeeping requirements under Federal and State laws in addition to regulatory supervision, and the FDIC believes these measures should generally mitigate the issues addressed through this proposal.

The proposed rule exempts custodial deposit accounts established by attorneys or law firms on behalf of clients, commonly known as interest on lawyers trust accounts (IOLTA accounts). The FDIC recognizes that attorneys and law firms maintaining IOLTA accounts are subject to independent recordkeeping

requirements under State law, and IOLTA accounts generally would not be used for the sort of day-to-day transactions that introduce significant complexity into a potential deposit insurance determination in the event of an IDI’s failure.

The proposal exempts custodial deposit accounts maintained in connection with employee benefit plans and retirement plans, as described in 12 CFR 330.14. These accounts could be maintained in the name of a trustee or plan administrator and used for defined benefit plans, defined contribution plans, and other employee benefit plans. The FDIC believes that these accounts are subject to independent recordkeeping requirements under Federal and State laws, and the accounts are not used for transactions in a manner that would add to the complexity of a potential deposit insurance determination.

The proposal would exempt accounts maintained by real estate brokers, real estate agents, title companies, and qualified intermediaries under the Internal Revenue Code. The FDIC believes these accounts generally hold an owner’s funds for a limited period of time for the purposes of completing a specific real estate transaction. Historically, these types of accounts have not presented significant difficulty to the FDIC in making deposit insurance determinations in the event of an IDI’s failure.

The proposal exempts custodial deposit accounts maintained by a mortgage servicer in a custodial or other fiduciary capacity. Mortgage servicers are subject to recordkeeping requirements by other laws and regulations, and funds are transferred from these deposit accounts on predictable dates corresponding to contractual deadlines. For this reason, the FDIC believes that the additional recordkeeping requirements imposed by the proposed rule are unnecessary to achieve its policy objectives.

The proposal exempts custodial deposit accounts where Federal or State law prohibits the disclosure of the identities of the beneficial owners of the deposits. The FDIC believes that such cases will be relatively rare but does not intend to impose any recordkeeping requirements through this proposal that directly conflict with other legal requirements.

The proposal exempts from its scope accounts maintained pursuant to an agreement to allocate or distribute deposits among participating IDIs in a network for purposes other than payment transactions of customers of the IDI or participating IDIs. Such

²³ The proposal defines “deposit” by reference to section 3(j) of the FDI Act, 12 U.S.C. 1813(j).

²⁴ The proposed rule’s definition is not limited to situations where the transfer takes place directly from the custodial account. If, for example, funds are routinely accomplished by transferring funds from the custodial account to another account, and the transfers to third parties are made from the second account, the FDIC believes the first account would fall within the proposed rule’s scope.

reconcile and establish accurate records for ownership interests in the custodial deposit account, in the event the third party is disrupted. Like other risk management practices, contingency plans for different IDIs would vary according to the scope and complexity of the businesses and the nature of the third-party relationships.²⁶

In addition, records of beneficial ownership maintained by a third party could only be used to satisfy the proposed rule's requirements if the IDI implements appropriate internal controls to (1) accurately determine the respective beneficial ownership interests associated with the custodial deposit account with transactional features, and (2) conduct reconciliations against the beneficial ownership records no less frequently than as of the close of business daily, with the understanding that reconciling variances due to unposted transactions and timing of transactions occurs and should be addressed based on standard banking practices, which are sufficient to manage and resolve such variances. Appropriate internal controls should be designed to consider multi-layer relationships, where applicable, and the associated risks these relationships may present related to recordkeeping. For example, such controls may be appropriate where an account holder, such as an intermediary, collects and places deposits on behalf of other firms, which themselves collect deposits from individual depositors. This requirement is intended to address the completeness and accuracy of transaction processing data maintained by the third party.

Contractual Requirements

Where records are maintained by a third party, the IDI would be required to have a direct contractual relationship with the third party that includes certain risk mitigation measures. For example, the contract between the IDI and the third party would need to clearly define roles and responsibilities for recordkeeping, including assigning to the IDI rights of the third party that are necessary to access data held by other parties. The contract would need to include an explicit provision requiring the third party to implement appropriate internal controls to be able to accurately determine the beneficial ownership interests represented in the custodial deposit account and to conduct reconciliations against the beneficial ownership records no less

frequently than as of the close of business daily, with the understanding that reconciling variances due to unposted transactions and timing of transactions occurs and should be addressed based on standard banking practices, which are sufficient to manage and resolve such variances. Appropriate internal controls should be designed to consider multi-layer relationships, where applicable, and the associated risks these relationships may present related to recordkeeping. For example, such controls may be appropriate where an account holder, such as an intermediary, collects and places deposits on behalf of other firms, which themselves collect deposits from individual depositors.

In addition, the contract would need to provide for periodic validations, by a person independent of the third party, to verify that the third party is maintaining accurate and complete records and that reconciliations are being performed consistent with the proposed rule's recordkeeping requirement for beneficial ownership interests. If the validation is performed by a party other than the IDI, the results must be provided to the IDI. The proposed rule's approach of requiring an independent, unbiased opinion or assessment and validation of a third party's system of internal controls, operations, and compliance risk management framework for maintaining accurate and complete records is intended to proactively identify and address weaknesses. The independent validation could be performed by the IDI itself. The validation activities should be commensurate with the size, complexity, and risk profile of the third party.

An IDI would not be permitted, through any contract or agreement, to shift its responsibility for ensuring that the requirements of the proposed rule are satisfied. The proposed rule also would not limit, in any way, an IDI's ability to include further risk mitigation measures in contracts with third parties, and IDIs would be encouraged to include additional measures as they deem appropriate.

Effect on Other Recordkeeping Requirements

The proposed rule would not supersede or modify any requirements imposed by statute or regulation. For example, where IDIs are required to gather and maintain specific information about their customers under the Bank Secrecy Act and its implementing regulations, satisfying the proposed rule's recordkeeping requirements would not necessarily

satisfy the IDI's obligation under the Bank Secrecy Act. Similarly, the fact that a custodial deposit account with transactional features qualifies for an exemption from the proposed rule's recordkeeping requirements would not exempt the account or the IDI from any other recordkeeping requirements imposed by law or regulation. Nothing in the proposed rule would prohibit or limit additional recordkeeping or reconciliation efforts by IDIs with respect to particular custodial deposit accounts with transactional features, and IDIs would be encouraged to consider such measures as they deem appropriate.

Compliance Measures

An IDI that holds custodial deposit accounts within the scope of the proposed rule would be required to establish and maintain written policies and procedures to achieve compliance with the proposed rule's requirements. To the extent an IDI maintains the relevant records through a third party, these policies and procedures would also need to address achieving compliance with the requirements specific to maintaining records through a third party. The policies and procedures requirement is intended to promote an appropriate level of due diligence on the part of IDIs that maintain custodial deposit accounts with transactional features within the scope of the rule.

The proposed rule would enhance compliance by implementing an annual certification and reporting process for IDIs holding custodial deposit accounts with transactional features that are subject to the rule's requirements. The chief executive officer, chief operating officer, or the highest ranking official of an IDI would be required to annually certify that the IDI (1) implemented the proposed recordkeeping requirements for the covered custodian accounts; (2) tested the implementation of the recordkeeping requirements within the preceding 12 months; and (3) is in compliance with all requirements of the proposed rule at the time of the annual certification. The certification would be required regardless of whether the records are maintained by the IDI itself or through a third party. The certification would be required within 1 year of the effective date of the final rule and annually thereafter, and submitted to both the FDIC and the IDI's primary Federal regulator.

In addition to the annual certification of compliance, an IDI would be required to prepare an annual report containing (1) a description of any material changes to the IDI's information technology

²⁶ For more discussion regarding risk management and contingency planning in the context of third-party relationships, see FDIC FIL-29-2023 "Interagency Guidance on Third-Party Relationships: Risk Management" (June 6, 2023).

change the costs and benefits of accepting and maintaining custodial deposit account relationships with non-bank companies, which may affect the number of IDIs entering into such relationships in future periods.

IDIs with custodial deposit accounts covered by the proposed rule would be required to maintain records of beneficial ownership for each custodial deposit account. The FDIC does not have the data to accurately estimate the number of these IDIs. To assess the number of IDIs potentially affected the FDIC identified the number of IDIs who reported positive or non-zero values for non-managed custody and safekeeping accounts or brokered deposits, excluding brokered reciprocal deposits.²⁹ The FDIC acknowledges that deposits obtained through third-party partnerships may or may not be reported in these items. According to a 2023 analyst report, as many as 24 percent of IDIs during the fourth quarter of 2022 indicated that they are either currently in a partnership with one or more non-bank companies, or may potentially form such a partnership in the near future, that could involve custodial deposit accounts covered by the proposal.³⁰ The FDIC acknowledges that the prevalence of IDI-non-bank company partnerships that involve custodial deposit accounts subject to the proposed rule may be higher or lower than this information indicates. However, the FDIC believes that the information on the prevalence of IDI-non-bank company partnerships, coupled with the data on the volume of relevant deposit types, implies a range that likely captures the volume of covered IDIs. For purposes of this analysis, the FDIC estimates that between 600 and 1,100 IDIs (or between 13 and 24 percent of the current population of 4,577 IDIs) would have custodial deposit accounts covered by the proposed rule and therefore would be directly and immediately affected.³¹ The FDIC notes that the number of affected IDIs may be reduced by the ten

account driven exemptions included in the proposed rule. The FDIC does not have data to estimate how many IDIs would be excluded due to these exemptions.

As previously discussed, the proposed rule may affect account holders or other non-bank entities, who may have to keep records or provide information to partner IDIs. In particular, these non-bank entities may have to provide information on beneficial owners and their interests in the deposited funds held in custodial deposit accounts. Further, to the extent that covered IDIs elect to comply with the proposed rule by maintaining the records through a contractual relationship with a third party, non-bank entities may be required to keep additional records to ensure that the IDI has continued access to the records. The FDIC does not have data on the exact number of non-bank entities that would be affected. Some data suggest that most IDIs partner with two fintechs.³²

In addition, the proposed rule would impact consumers whose deposits are held in custodial deposit accounts that are not exempt from the proposed rule. The remainder of the Expected Effects section of this document discusses the proposed rule's effects on covered IDIs, consumers, and non-bank entities.

Costs

As mentioned above, the FDIC estimates that between 600 and 1,100 IDIs would be directly and immediately affected by the proposed rule, if it were adopted. Specifically, IDIs with custodial deposit accounts that are not exempt from the proposed rule would be required, themselves or through a third party, to maintain records of beneficial ownership in the data format and layout specified in 12 CFR part 375, appendices A and B, for each custodial deposit account. In addition, these IDIs would be required to reconcile records for their custodial deposit accounts as of the end of each day in order to determine the respective individual beneficial ownership interests associated with the custodial deposit account and the reconciliation of such interests to the funds on deposit in the custodial deposit account. The FDIC believes it is likely that many IDIs currently engage in some form of reconciliation and maintain certain amounts of records in order to maintain custodial accounts. However, the FDIC believes it is unlikely that IDIs currently have all the records necessary to meet all the proposed rule's requirements. As such, IDIs would have to arrange to have

the data transmitted to them from account holders and develop a recordkeeping system for maintaining those data. These arrangements may include revisions to IDIs' existing platform or core processing systems, as well as the development of data interface systems. Further, the proposed rule would require covered entities to incur costs associated with conducting, testing, and validating the daily reconciliation of records at the IDI. The FDIC also recognizes that the costs of these actions will vary by IDI based on the size, scope, and complexity of the IDI's custodial deposit accounts, as well as the capability and efficiency of the IDI's current system for managing deposit account data. The FDIC does not have data on the costs of these actions. For purposes of this analysis, the FDIC assumes that it would take IDIs and partner non-bank entities approximately 2,200 hours, on average, per IDI to set up, and approximately 1,100 hours, on average, per IDI per year to maintain, such a system.³³ At an assumed labor compensation rate of \$100 per hour,³⁴ the FDIC estimates that these tasks would cost each IDI, on average, approximately \$220,000 for the first year and \$110,000 for each subsequent year after the proposed rule is enacted. The proposed rule would allow IDIs to arrange to have the data maintained through a third party—this analysis assumes that each IDI would choose the latter if it were more cost effective.³⁵ For purposes of estimating the total cost to the industry, this analysis assumes all affected IDIs would incur the estimated average cost of developing an internal recordkeeping system. Assuming up to

²⁹ These labor cost estimates are assumed to cover the labor costs for both the IDI and its partner non-bank entities. The FDIC does not have the data to estimate the proportion of labor costs borne by the IDI or its partner non-bank entity(ies).

³⁴ Compensation rates for the applicable labor categories range from \$39 per hour for clerical workers to \$181 per hour for lawyers, based on the 75th percentile hourly wages reported by the Bureau of Labor Statistics and adjusted for non-wage compensation and inflation to March 2024. Source: Bureau of Labor Statistics: "National Industry-Specific Occupational Employment and Wage Estimates: Industry: Credit Intermediation and Related Activities (5221 And 5223 only)" (May 2023), Employer Cost of Employee Compensation (March 2023), and Employment Cost Index (March 2023 and March 2024).

³⁵ Proposed 12 CFR 375.3(c) would allow IDIs to arrange for a third party to assist the IDI in its recordkeeping, as long as this arrangement meets additional requirements to ensure that the IDI is able to comply with the proposed rule. The FDIC acknowledges that the cost of such an arrangement would vary across IDIs and may depend on the size, scope, and complexity of the IDI's custodial accounts as well as the capability and efficiency of the third party's information management system. For purposes of this analysis, the FDIC assumes that the IDI would form such an arrangement if it were more cost effective.

²⁹ Over 2,000 IDIs report a non-zero amount of brokered deposits and reciprocal deposits from Call Reports for the period ending March 31, 2024. Over 600 IDIs report a positive number of non-managed custody and safekeeping accounts from Call Report Schedule RC-T, Fiduciary and Related Services, line item 11 for the period ending December 31, 2023. Not all institutions are required to report fiduciary and related assets held in custody and safekeeping accounts in this line item, and some are required to report for the December reporting period only. Only accounts for which the IDI serves as the fiduciary are generally reported in this item.

³⁰ Shevlin, Ron. "What's going on in Banking 2023," Cornerstone Advisors, <https://www.cnrstone.com/whats-going-on-in-banking-2023>, as accessed August 1, 2024.

³¹ 1,100 IDIs = 24 percent * 4577 IDIs.

³² Ibid, page 41.

customer base of certain affected non-bank companies, as well as the amount of funds consumers feel comfortable depositing with IDIs through such entities. Finally, to the extent that an IDI affected by the bankruptcy or operational disruption of a non-bank company cannot determine beneficial ownership in a timely manner, it might reduce confidence among owners of all deposit classes at the IDI. This loss in confidence could lead to the rapid withdrawal of demand deposits or short-term funding. The proposed rule would reduce the likelihood, and mitigate the effects, of such a crisis of confidence by providing consumers continued access to their funds. While the FDIC does not have the data to quantify these benefits, they could potentially be material for covered IDIs and account holders.

The FDIC believes another indirect benefit of the proposal would result from the proposed rule's standardization of enhanced recordkeeping requirements for custodial deposit accounts. This benefit could affect both IDIs with covered custodial deposit accounts and IDIs that may wish to form partnerships with non-bank companies where such partnerships may lead to the creation of custodial deposit accounts. Adoption of standardized recordkeeping would reduce the IDI's costs of partnering with additional non-banks, and vice versa, since such a partnership would not require the development of a bespoke information management system for affected custodial deposit accounts. Once the IDI implements the deposit information management system required by the proposed rule, that system could potentially be used to manage custodial deposit accounts from multiple account holders, thereby reducing the average cost for the IDI.

Distributional Effects

Under the proposed rule, all IDIs that hold or plan to hold custodial deposit accounts with transactional features will be subject to the proposed requirements. To the extent that smaller IDIs are more likely to have accounts subject to the proposed rule, or have larger volumes of transactions move through such accounts relative to their assets, smaller IDIs will bear higher costs as a share of their assets than larger IDIs. In addition, smaller IDIs' existing recordkeeping systems may be less sophisticated than the systems at larger IDIs. Thus, the fixed costs of setting up new internal recordkeeping systems or enhancing existing systems in order to comply with the proposed rule may also be higher as a share of their assets for

smaller IDIs. To the extent that these smaller IDIs are more likely to contract with third-party service providers to manage their deposit information system and/or general ledgers, these smaller IDIs would be more likely to increase the scope of their existing contracts, rather than build a system from scratch, to comply with the proposed rule. For these reasons, the FDIC expects smaller IDIs would more likely opt for third-party arrangements and pass those costs onto their account holders.

While smaller IDIs may bear a higher burden, relative to their assets, to comply with the proposed rule, they would also receive a disproportionately higher share of the benefits. Smaller IDIs, with their smaller capital or liquidity reserves, would not have as much capacity as larger IDIs to withstand the operational stress or reputational damage caused by an event such as the Synapse failure, as well as the deposit flight that may follow. As such, a mitigation or prevention of such an event would greatly benefit those smaller IDIs.

Summary

The FDIC does not have sufficient information available to quantify the potential benefits of the proposed rule because the benefits depend on the probability, breadth, and severity of future failures of an IDI or account holder. The FDIC also lacks sufficient data on the number of IDIs and non-bank entities affected, the scope of custodial deposit accounts covered, and the current capabilities of affected IDI's data information management systems to accurately estimate the costs of the proposed rule. These data limitations notwithstanding, the discussion above describes the clear, material, and prudential benefits that the prevention or mitigation of an event similar to the recent failure of Synapse would provide to IDIs that partner with fintechs and other third parties, as well as the financial industry as a whole.

V. Alternatives

The FDIC considered three alternatives to the proposed rule. First, the FDIC considered the status quo alternative. Second, the FDIC considered issuing a proposal in which certain custodial deposit accounts would be covered based on whether activity in the account met or exceeded certain thresholds, such as transaction volume. Third, the FDIC considered a proposal covering all custodial deposit accounts. However, the FDIC believes the proposed rule is preferable to each

of the alternatives for the reasons discussed below.

One alternative the FDIC considered was the status quo. However, as discussed above, the recent bankruptcy of Synapse left many businesses and customers without access to millions of dollars of their funds. Such disruptions caused some customers of Synapse's fintech partners to question the insured status of their funds that were advertised as FDIC-insured. Some of the effects of this event have yet to be resolved, even months after Synapse's bankruptcy. The disruption of account access in the aftermath of Synapse's bankruptcy has shown that IDIs currently do not have the necessary data to provide access to funds in the status quo. The FDIC believes that the proposed rule would provide data to enable IDIs to provide ready access to funds. In addition, the proposed rule's recordkeeping requirements would enhance the FDIC's ability to achieve its statutory obligation to pay deposit insurance as soon as possible in the event an IDI fails by having information about the beneficial owners of custodial deposit accounts in the banks' records.

The second alternative the FDIC considered was to propose recordkeeping requirements be applied only to those custodial deposit accounts where the transaction volume and/or dollar volume of activity over a certain period met particular thresholds. However, the FDIC believes that, by using thresholds, the FDIC could potentially treat otherwise similarly situated depositors differently in the event of an IDI failure if one depositor's funds were in a custodial deposit account that did not meet the thresholds to be covered by the proposal while another's did meet the thresholds. For example, some financial technology products or intermediaries working on behalf of financial technology companies may deposit end-user funds across multiple custodial deposit accounts at a single IDI, while others may deposit funds from multiple end-users into a single custodial deposit account, and others may spread funds across more than one IDI. The FDIC felt that the straightforward approach, as provided in the proposed rule, would be to apply the requirements to all custodial deposit accounts, and exempt accounts that are not necessary to further the policy objectives of the proposed rule.

Finally, the FDIC considered an alternative with fewer exemptions that would have applied, if adopted, to many arrangements involving custodial deposit accounts. Although this alternative would have had exemptions

- Given the proposal's annual certification and reporting requirements, please provide any feedback on what the potential format, structure, or content of materials should be for the purposes of complying with these requirements.

- What system, process or mechanism should be used to transmit such information to the FDIC and the appropriate federal banking agency?

- Given the recordkeeping, internal control, and compliance requirements addressed in the proposal, how long would it take to revise systems, processes, and contracts for the purposes of complying with a rule? What would be a reasonable amount of time to achieve compliance with the rule, and why?

Expected Effects

- Would the proposed rule have any costs, benefits, or other effects that the FDIC has not identified?

Alternatives

- Are there other recordkeeping requirements or approaches that are not reflected in the proposal that could be considered in ensuring the accuracy and availability of beneficial ownership records with respect to custodial deposit accounts with transactional features?

VII. Administrative Law Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.³⁸ However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to \$850 million.³⁹

³⁸ 5 U.S.C. 601 *et seq.*

³⁹ The SBA defines a small banking organization as having \$850 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is "small" for the purposes of the RFA.

Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-insured institutions.

For the reasons described below, the FDIC believes that the proposed rule would, if promulgated, have a significant effect on the substantial number of FDIC-insured institutions that are small entities under the RFA (small IDIs). As such, the FDIC has prepared and is making available for public comment the following initial regulatory flexibility analysis.

(1) A description of the reasons why action by the agency is being considered.

As discussed in detail in section I of this document, Background and Need for Rulemaking, the recent events surrounding the bankruptcy of Synapse raised questions about the completeness, accuracy, and integrity of custodial deposit account records underlying arrangements with third parties at certain IDI. These events highlight substantial risks with respect to the prompt access to customers funds held in custodial deposit accounts. These issues create uncertainty that undermines the public confidence that underpins banks and our nation's broader financial system.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

As discussed in detail in section III of this document, The Proposed Rule, the FDIC is proposing requirements that would strengthen IDIs' recordkeeping for custodial deposit accounts with transactional features and preserve beneficial owners' and depositors' entitlement to the protections afforded by Federal deposit insurance. The proposed rule is authorized by the FDI Act, which requires the FDIC to determine the net amount due to any depositor in the event of the failure of an IDI⁴⁰ and authorizes the FDIC to prescribe rules and regulations as it may deem necessary to carry out these responsibilities.⁴¹

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

⁴⁰ 12 U.S.C. 1821(a)(1)(C) and (E).

⁴¹ 12 U.S.C. 1819(a)(Tenth), 1820(g), and 1821(d)(4)(B)(iv).

The FDIC insures 4,577 IDIs as of March 31, 2024,⁴² and the proposed rule would apply to all IDIs with custodial deposit accounts that are not explicitly exempt from the rule.⁴³ Of these 4,577 IDIs, the FDIC estimates that 3,259 (71 percent of) IDIs are small IDIs. The FDIC does not have the data available to estimate the number of small IDIs that currently have or would potentially have custodial deposit accounts subject to the rule. As discussed in detail in section IV of this document, Expected Effects, the FDIC estimates, based on Call Report data and analyst reports, that between 600 and 1,100 IDIs would be immediately and directly affected by the proposed rule. Applying the 71 percent proportion of small IDIs in the population of all IDIs, the FDIC estimates that between 426 and 781 small IDIs would be immediately and directly affected by the proposed rule.⁴⁴

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

As discussed in section IV of this document, Expected Effects, IDIs with custodial deposit accounts that are not exempt from the proposed rule would be required, themselves or through a third party, to maintain records of beneficial ownership in the data format and layout specified in proposed 12 CFR part 375, appendices A and B, for each custodial deposit account. In addition, these IDIs would be required to reconcile records for their custodial deposit accounts as of the end of each day in order to determine the respective individual beneficial ownership interests associated with the custodial deposit account and the reconciliation of such interests to the funds on deposit in the custodial deposit account. The FDIC believes it is unlikely that IDIs currently have these records. As such, IDIs would have to arrange to have the data transmitted to them from account holders and develop a recordkeeping system for maintaining those data. These arrangements may include revisions to IDIs' existing platform or core processing systems, as well as the development of data interface systems.

⁴² Call Report for the period ending March 31, 2024.

⁴³ Exemptions are listed at proposed 12 CFR 375.3(e).

⁴⁴ These estimates may undercount the number of small entities affected, given that entities with less than \$10 billion in assets are more likely to partner with fintechs than entities with more than \$10 billion.

Affected Public: Businesses or other for-profit, all IDIs.

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–NEW]

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (hours)
1. Recordkeeping Requirements for Custodial Deposit Accounts 12 CFR Part 375 Implementation (Mandatory).	Recordkeeping (Annual)	1,100	.33	900:00	326,700
2. Recordkeeping Requirements for Custodial Deposit Accounts 12 CFR Part 375 Ongoing (Mandatory).	Recordkeeping (Annual)	1,100	.67	500:00	368,500
3. Filing Annually 12 CFR 375.4(b) and (c) Ongoing (Mandatory).	Reporting (Annual)	1,100	1	50:00	55,000
Total Annual Burden (Hours)	750,200

Source: FDIC.

Note: The estimated annual IC time burden is the product, rounded to the nearest hour, of the estimated annual number of responses and the estimated time per response for a given IC. The estimated annual number of responses is the product, rounded to the nearest whole number, of the estimated annual number of respondents and the estimated annual number of responses per respondent. This methodology ensures the estimated annual burdens in the table are consistent with the values recorded in OMB's consolidated information system.

Comments are invited on the following:

(a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on the collection of information should be sent to the address listed in the **ADDRESSES** section of this document. Written comments and recommendations for this information collection also should be sent within 30 days of publication of this document to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA)

requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.⁴⁷ Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.⁴⁸ The requirements of RCDRIA will be considered as part of the overall rulemaking process, and the FDIC invites comments that will further inform its consideration of RCDRIA.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act⁴⁹ requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the *Federal Register* after January 1, 2000. The FDIC sought to present the proposed rule in a simple and straightforward manner. The FDIC

invites your comments on how to make this proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?

- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?

- Does the proposed regulation contain language or jargon that is unclear? 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?

List of Subjects in 12 CFR Part 375

Reporting and recordkeeping requirements, Custodial deposit accounts.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to add part 375 to title 12 of the *Code of Federal Regulations* as follows:

■ 1. Add part 375 to read as follows:

PART 375—REQUIREMENTS FOR ACCURATE CUSTODIAL DEPOSIT ACCOUNTS WITH TRANSACTIONAL FEATURES AND PROMPT PAYMENT OF DEPOSIT INSURANCE TO DEPOSITORS

Sec.

§ 375.1 Purposes.

§ 375.2 Definitions.

§ 375.3 Recordkeeping and internal control requirements.

⁴⁷ 12 U.S.C. 4802(a).

⁴⁸ 12 U.S.C. 4802(b).

⁴⁹ Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999).

owners for a homeownership, condominium, or other similar housing association governed by State law, or holding security deposits tied to residential or commercial leasehold interests.

§ 375.4 Compliance.

(a) *Policies and procedures.* An insured depository institution holding custodial deposit accounts with transactional features that are not specifically exempt from the requirements of this part must establish and maintain written policies and procedures to achieve compliance with this part.

(b) *Certification.* An insured depository institution holding custodial deposit accounts with transactional features that are not specifically exempt from the requirements of this part must, within 1 year of the effective date of this part and annually thereafter complete a certification that includes:

(1) Confirmation that the insured depository institution has implemented the recordkeeping requirements described in this part, and tested its implementation of such requirements during the preceding 12 months;

(2) Confirmation that the insured depository institution is in compliance with this part; and

(3) The signature of the chief executive officer, chief operating officer,

or the highest-ranking official of the institution attesting to the accuracy of the certification, made after due inquiry.

(4) The insured depository institution must file this certification with the appropriate FDIC Regional or Area Office and the appropriate Federal banking agency.

(c) *Report.* An insured depository institution holding custodial deposit accounts with transactional features that are not specifically exempt from the requirements of this part must, within 1 year of the effective date of this part and annually thereafter, generate a report that contains the following:

(1) A description of any material changes to the institution's information technology systems since the prior annual report that are relevant to compliance with this part;

(2) A list of the account holders that maintain custodial deposit accounts with transactional features that are not exempt from the recordkeeping requirements of the rule, the total balance of those custodial deposit accounts, and the total number of beneficial owners;

(3) Results of the institution's periodic testing of its compliance with the recordkeeping requirements set forth in this part; and

(4) Results of the independent validation of any records maintained by

third parties required by paragraph (c)(4)(iii) of this section.

(5) The insured depository institution shall file this report with the appropriate FDIC Regional or Area Office and the appropriate Federal banking agency.

(d) *Frequency of certification and report.* If an insured depository institution experiences a significant change in its deposit-taking operations, or the FDIC or the appropriate Federal banking agency identifies aspects of the institution's operations that pose elevated risks of compliance with this part, the FDIC or the appropriate Federal banking agency may require that the institution update and file the certification and report more frequently than annually, as requested.

§ 375.5 Enforcement.

Notwithstanding existing regulations, violating the requirements set forth in this part constitutes a violation of a regulation and may subject the insured depository institution to enforcement actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

Appendix A to Part 375—Data Format and Structure

This appendix provides the pipe-delimited data file format for electronic file records of the beneficial owners for each custodial deposit account, as required by § 375.3(a).

Field name	Description	Format	Null value allowed?
Account Number	Account number at Insured Depository Institution	Variable Character [50]	No.
Account Holder	Full name of person(s) or entity who opened or established the custodial deposit account with the insured depository institution.	Variable Character [100]	No.
Beneficial Owner Account Number.	Custodian assigned account number for the beneficial owner	Variable Character [50]	No.
First Name 1	First name of beneficial owner 1 as it appears on the custodian's records	Variable Character [50]	No.
Middle Name 1	Middle Name of beneficial owner 1 as it appears on the custodian's records	Variable Character [50]	Yes.
Last Name 1	Last Name of beneficial owner 1 as it appears on the custodian's records	Variable Character [50]	No.
Name Suffix 1	Name suffix following a beneficial owner 1's surname adding distinction in generational sequence as it appears on the custodian's records.	Variable Character [50]	Yes.
Entity Name	The registered name of the entity as it appears on the custodian's records. This field can be null where the beneficial owner is an individual.	Variable Character [100]	Yes.
Tax ID 1	Beneficial owner 1 taxpayer identification number	Numeric [9]	No.
Tax ID Code 1	Beneficial owner 1 code indicates corporate "T" (EIN), personal tax identification number "S" (SSN, ITIN), or other "O" (foreign identification number).	Character [1]	No.
Alternate Identifier 1	If account was opened without a United States issued tax identification number, provide alternative government issued identification number.	Variable [20]	Yes.
First Name 2	First name of beneficial owner 2 (if any) as it appears on the custodian's records	Variable Character [50]	Yes.
Middle Name 2	Middle Name of beneficial owner 2 (if any) as it appears on the custodian's records	Variable Character [50]	Yes.
Last Name 2	Last Name of beneficial owner 2 (if any) as it appears on the custodian's records	Variable Character [50]	Yes.
Name Suffix 2	Name suffix following a beneficial owner 2 (if any)'s surname adding distinction in generational sequence as it appears on the custodian's records.	Variable Character [50]	Yes.
Tax ID 2	Beneficial owner 2 (if any) taxpayer identification number	Numeric [9]	Yes.
Tax ID Code 2	Beneficial owner 2 (if any) code indicates corporate "T" (EIN), personal tax identification number "S" (SSN, ITIN), or other "O" (foreign identification number).	Character [1]	Yes.
Alternate Identifier 2	If beneficial owner 2 does not have a United States issued tax identification number, provide alternative government issued identification number.	Variable [20]	Yes.
Name 3	Where more than 2 beneficial owners are present, additional beneficial owners will be reflected in this field with tab spacing between the first, middle, last name, and suffix (if any), followed by a semicolon between each additional beneficial owner. There will be no tab spacing preceding the first character in the first name and the last character in the last name or suffix (whichever is last identified).	Variable Character [255]	Yes.
Street Address 1	Street address line 1 is beneficial owner address of record	Variable Character [100]	Yes.
Street Address 2	Street address line 2 is beneficial owner address of record, if available	Variable Character [100]	Yes.
Street Address 3	Street address line 3 is beneficial owner address of record, if available	Variable Character [100]	Yes.
City	City associated with the street address	Variable Character [50]	Yes.
State	State associated with the street address	Variable Character [2]	Yes.