Federal Deposit Insurance Corporation

sweep transaction, the customer becomes either the legal owner of identified assets subject to repurchase or obtains a perfected security interest in those assets, the FDIC will recognize, for receivership purposes, the customer's ownership interest or security interest in the assets.

(4) For deposit insurance and receivership purposes in connection with the failure of an insured depository institution, the FDIC will determine the rights of the depositor or other liability holder as of the point the Close-of-Business Account Balance is calculated.

(e) Disclosure requirements. Beginning July 1, 2009, in all new sweep account contracts, in renewals of existing sweep account contracts and within sixty days after July 1, 2009, and no less than annually thereafter, institutions must prominently disclose in writing to sweep account customers whether their swept funds are deposits within the meaning of 12 U.S.C. 1813(l). If the funds are not deposits, the institution must further disclose the status such funds would have if the institution failed—for example, general creditor status or secured creditor status. Such disclosures must be consistent with how the institution reports such funds on its quarterly Consolidated Reports of Condition and Income or Thrift Financial Reports. The disclosure requirements imposed under this provision do not apply to sweep accounts where: The transfers are within a single account, or a sub-account; or the sweep account involves only deposit-to-deposit sweeps, such as zero-balance accounts, unless the sweep results in a change in the customer's insurance coverage.

[74 FR 5806, Feb. 2, 2009]

§ 360.9 Large-bank deposit insurance determination modernization.

(a) Purpose and scope. This section is intended to allow the deposit and other operations of a large insured depository institution (defined as a “Covered Institution”) to continue functioning on the day following failure. It also is intended to permit the FDIC to fulfill its legal mandates regarding the resolution of failed insured institutions to provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different institutions and reduce the FDIC’s costs by preserving the franchise value of a failed institution.

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

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

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

(3) Sweep account arrangements consist of a deposit account linked to an interest-bearing investment vehicle whereby funds are swept to and from the deposit account according to prearranged rules, usually on a daily basis, where the sweep investment vehicle is not a deposit and is reflected on the books and records of the Covered Institution.

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

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

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

(c) Posting and removing provisional holds. (1) A covered institution shall have in place an automated process for implementing a provisional hold on deposit accounts, foreign deposit accounts and sweep and automated credit account arrangements immediately following the determination of the close-of-business account balances, as defined in §360.8(b)(3), at the failed covered institution.

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

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

(4) For deposit accounts held in domestic offices of an insured depository institution, the provisional hold algorithm must be designed to exempt accounts below a specific account balance threshold, as determined by the FDIC. The account balance threshold could be any amount, including zero. For accounts above the account balance threshold determined by the FDIC, the algorithm must be designed to calculate and place a hold equal to the dollar amount of funds in excess of the account balance threshold multiplied by the provisional hold percentage determined by the FDIC. The provisional hold percentage could be any amount, from zero to one hundred percent. The account balance threshold as well as the provisional hold percentage could vary for the following four categories, as the covered institution customarily defines consumer accounts:

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

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

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

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

(5) For deposit accounts held in foreign offices of an insured depository institution, other than those connected to a sweep or automated credit arrangement, the provisional hold algorithm will apply a provisional hold percentage to the entire account balance. For deposit accounts held in foreign offices the provisional hold percentage may differ from that applied to deposit accounts. Also, the provisional hold percentage would not vary by account category (i.e., consumer versus non-consumer and transaction versus non-transaction) as is the case with deposit accounts.

(6) For international banking facility deposits, other than those connected to a sweep or automated credit arrangements, the provisional hold algorithm will apply a provisional hold percentage to the entire account balance. For IBF deposits the provisional hold percentage may differ from that applied to deposit or foreign deposit accounts. Also, the provisional hold percentage would not vary by account category (i.e., consumer versus non-consumer, and transaction versus non-transaction) as is the case with deposit accounts.

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

(8) For the interest-bearing investment vehicle of an automated credit account arrangement, the provisional hold algorithm must be designed with the capability to place a provisional hold on the interest-bearing investment vehicle with possibly a different account balance threshold and a different hold percentage according to the type of interest-bearing investment vehicle.
(9) A covered institution may submit a request to the FDIC, using the address indicated in § 360.9(g): to develop a provisional hold process involving memo holds or alternative account mechanisms; or to exempt from the provisional hold requirements of this section those account systems servicing a relatively small number of accounts where the manual application of provisional holds is feasible. Such requests may be in the form of a letter and must include a justification for the request and address the relative effectiveness of the alternative for posting provisional holds in the event of failure. The FDIC will consider such requests on a case-by-case basis in light of the objectives of this section.

(10) The automated process for provisional holds required by paragraph (c)(1) of this section must include the capability of removing provisional holds in batch mode and, during the same processing cycle, applying debits, credits or additional holds on the deposit or other accounts from which the provisional holds were removed, as determined by the FDIC. The FDIC will provide files listing the accounts subject to: removal of provisional holds or additional holds (file format as specified in appendix A); application of debits or credits (file format as specified in appendix B); and application of additional holds (file format as specified in appendix A). In addition to the batch process used to remove provisional holds, the Covered Institution is required to have in place a mechanism for manual removal of provisional holds on a case-by-case basis.

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

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

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

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

(e) Implementation requirements. (1) A covered institution must comply with the requirements of this section no later than February 18, 2010.

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

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

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

(5) Upon the merger of one or more covered institutions with one or more non-covered institutions, the merged institution(s) must comply with the requirements of this section within eighteen months following the effective date of the merger. This provision,
§ 360.10 Resolution plans required for insured depository institutions with $50 billion or more in total assets.

(a) Scope and purpose. This section requires each insured depository institution with $50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. This section also establishes the rules and requirements regarding the submission and content of a resolution plan as well as procedures for review by the FDIC of a resolution plan. This section requires a covered insured depository institution to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution’s failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution. This rule is intended to ensure that the FDIC has access to all of the material information it needs to resolve efficiently a covered insured depository institution in the event of its failure.

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

(73 FR 41195, July 17, 2008)