



On September 17, 2024, the Federal Deposit Insurance Corporation (FDIC) Board of Directors unanimously approved a notice of proposed rulemaking (NPR) that would require additional recordkeeping for bank deposits received from third-party, nonbank companies that accept those deposits on behalf of consumers and businesses.¹ The focus of the proposed rule is on custodial relationships where customers of the custodian can directly conduct transactions. The NPR exempts other types of custodial relationships that do not have these types of transactions, or are otherwise regulated by federal or state agencies, which represent most of these types of custodial relationships. The NPR does not have an asset cutoff, so any institution could potentially be subject to this proposal; however, it estimates between 600 and 1,100 banks could be within scope. Public comments are due 60 days after publication in the *Federal Register*.

5 insights you should know

Scope of custodial accounts: The proposal would apply to insured depository institutions (IDIs) that hold “custodial deposit accounts with transactional features,” which would be defined as a deposit account that meets three requirements: (1) the account is established for the benefit of beneficial owners; (2) the account holds commingled deposits of multiple beneficial owners; and (3) 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. The proposal also excludes some custodial deposit accounts from the rule’s requirements even if they have transactional features.³

Recordkeeping by IDIs: IDIs would be required to maintain records that would identify, for each custodial deposit account, the beneficial owners of the custodial deposit account, the balance attributable to each beneficial owner, and the ownership category in which the beneficial owner holds the deposited funds. The proposed rule would also provide a specific electronic file format for maintenance of beneficial ownership records, regardless of whether the IDI maintains the necessary records itself or, as discussed below, through an arrangement with a third party.

Recordkeeping by third parties: While the proposal generally requires that IDIs maintain records of beneficial ownership for custodial deposit accounts, it also would permit those records to be maintained by the IDI through a third party, so long as the IDI has direct, continuous, and unrestricted access to records maintained by the third party in the rule’s standardized file format. Additionally, the IDI would be required to have continuity plans in place, including backup recordkeeping for the required beneficial ownership records.

Internal controls and compliance: IDIs would be required to maintain appropriate internal controls that include (1) maintaining accurate deposit account balances, including the respective individual beneficial ownership interests associated with the custodial deposit account, and (2) conducting reconciliations against the beneficial ownership records no less frequently than at the close of business daily. Additionally, IDIs would need to establish and maintain written policies and procedures, implement an annual certification and reporting process signed by the CEO or COO of the IDI, and submit an annual report to the FDIC and the IDI’s primary federal regulator.

Potential areas of revision: While the FDIC Board voted unanimously in favor of the proposal, Vice Chair Travis Hill issued a [statement](#) that raised some concerns of the rule as proposed and highlighted potential areas where the rule could be revised when finalized, including a potential minimum applicability threshold, qualifications to annual certification sign-offs, and changes to the requirement for written policies and procedures.

5 considerations to evaluate

1 Evaluate deposit accounts held in custodial arrangements: Most IDIs have custodial deposit relationships; however, the rule is targeted at specific types of relationships. Because of the transactional feature within the “custodial account” definition, the proposed requirements would apply 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. It will be important for banks to establish an inventory of covered accounts as they prepare for compliance with expected upcoming recordkeeping requirements.

2 Enhancing data management through technology uplift: For IDIs already covered by 12 CFR Part 370, there should be reasonable familiarity of the data format and structure requirements. However, for IDIs not subject to those rules, this proposal will likely be more challenging as there needs to be a means to capture data in a manner that can be reconciled to deposit systems of record. Impacted IDIs should evaluate data elements that are captured, with a particular focus on the data required for ownership categories of each beneficial owner, and their technology infrastructure to identify areas of potential uplift. IDIs’ technology capabilities will need to be able to process potentially many thousands of beneficial owners with strong data governance controls.

3 Review third-party contractual arrangements: For IDIs who expect to employ third-party vendors and technology service providers to maintain beneficial ownership records, since this is a new requirement, there will need to be an understanding of their capabilities and the contract between the IDI and third party will need to include certain contractual terms and risk mitigation measures. IDIs should review their existing arrangements and engage with third parties on potentially updating recordkeeping roles and responsibilities, including rights by the bank and third party to access necessary data, establish control standards, and provide for periodic validation and reconciliation.

4 Assess risk management program and internal controls: The proposed rule contains requirements regarding policies and procedures covering this capability along with annual certification of compliance. Should these requirements stay as proposed, IDIs will need make revisions to existing processes, controls and governance to comply with the rule. For example, institutions are likely going to need to update, or create new, the policies and procedures and allocate additional resources toward compliance. Additionally, risk management and governance frameworks will likely need to be updated to accommodate new certification and reporting requirements.

5 Consider engaging in public comment process: Both Vice Chair Travis Hill and Director McKernan noted in their public statements specific topics they wish the public to provide input on, including potential minimum thresholds or tiering structures. IDIs that expect to be covered by the proposed rule should consider engaging with the FDIC during the comment period to provide their feedback.

Endnotes

¹ Federal Deposit Insurance Corporation (FDIC), “[FDIC Proposes Deposit Insurance Recordkeeping Rule for Banks’ Third-Party Accounts](#),” press release, September 17, 2024.

² For purposes of this proposal, a “custodial deposit account” arrangement is a relationship where one party is responsible for opening a deposit account at a bank on behalf of others, who may own the funds but often lack a direct relationship with the bank.

³ The proposal provides a list of custodial deposit accounts that are exempt from the proposed recordkeeping requirements, including custodial accounts: (1) that hold only trust deposits; (2) are established by government depositors; (3) established by brokers or dealers under the Securities and Exchange Act of 1934, and investment advisers under the Investment Advisers Act of 1940; (4) established by attorneys or law firms on behalf of clients, commonly known as interest on lawyers trust accounts (IOLTA accounts); (5) maintained in connection with employee benefit plans and retirement plans; (6) maintained by real estate brokers, real estate agents, title companies, and qualified intermediaries under the Internal Revenue Code; (7) maintained by a mortgage servicer in a custodial or other fiduciary capacity; (8) for which federal or state law prohibits disclosure of the identities of the beneficial owners of the deposits; (9) of deposit placement networks or reciprocal networks (unless the network’s purpose is to enable clients to make payment transactions using funds in the custodial deposit account at the network IDIs); and (10) holding security deposits tied to property owners for a homeownership, condominium, or other similar housing association governed by state law, and accounts holding security deposits tied to residential or commercial leasehold interests.

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