

## § 359.6

### § 359.6 Filing instructions.

Requests to make excess nondiscriminatory severance plan payments pursuant to § 359.1(f)(2)(v) and golden parachute payments permitted by § 359.4 shall be submitted in writing to the appropriate regional director (DSC). For filing requirements, consult 12 CFR 303.244. In the event that the consent of the institution's primary federal regulator is required in addition to that of the FDIC, the requesting party shall submit a copy of its letter to the FDIC to the institution's primary federal regulator. In the case of national banks, such written requests shall be submitted to the OCC. In the case of state member banks and bank holding companies, such written requests shall be submitted to the Federal Reserve district bank where the institution or holding company, respectively, is located. In the case of savings associations and savings association holding companies, such written requests shall be submitted to the OTS regional office where the institution or holding company, respectively, is located. In cases where only the prior consent of the institution's primary federal regulator is required and that agency is not the FDIC, a written request satisfying the requirements of this section shall be submitted to the primary federal regulator as described in this section.

[63 FR 44751, Aug. 20, 1998]

### § 359.7 Applicability in the event of receivership.

The provisions of this part, or any consent or approval granted under the provisions of this part by the FDIC (in its corporate capacity), shall not in any way bind any receiver of a failed insured depository institution. Any consent or approval granted under the provisions of this part by the FDIC or any other federal banking agency shall not in any way obligate such agency or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when the FDIC is appointed as receiver for any depository institution, including any contingency for termination of em-

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ployment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IAP contrary to 12 U.S.C. 1828(k)(3).

## PART 360—RESOLUTION AND RECEIVERSHIP RULES

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AUTHORITY: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101-73, 103 Stat. 357.

### § 360.1 Least-cost resolution.

(a) *General rule.* Except as provided in section 13(c)(4)(G) of the FDI Act (12 U.S.C. 1823 (c)(4)(G)), the FDIC shall not take any action, directly or indirectly, under sections 13(c), 13(d), 13(f), 13(h) or 13(k) of the FDI Act (12 U.S.C. 1823 (c), (d), (f), (h) or (k)) with respect to any insured depository institution that would have the effect of increasing losses to any insurance fund by protecting:

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(1) Depositors for more than the insured portion of their deposits (determined without regard to whether such institution is liquidated); or

(2) Creditors other than depositors.

(b) Purchase and assumption transactions. Subject to the requirement of section 13(c)(4)(A) of the FDI Act (12 U.S.C. 1823(c)(4)(A)), paragraph (a) of this section shall not be construed as prohibiting the FDIC from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution, for which the FDIC has been appointed conservator or receiver, to acquire uninsured deposit liabilities of such institution as long as the applicable insurance fund does not incur any loss with respect to such uninsured deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

[58 FR 67664, Dec. 22, 1993, as amended at 63 FR 37761, July 14, 1998]

### § 360.2 Federal Home Loan banks as secured creditors.

(a) Notwithstanding any other provisions of federal or state law or any other provisions of these regulations, the receiver of a borrower from a Federal Home Loan Bank shall recognize the priority of any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member, whether such security interest is in specifically designated assets or a blanket interest in all assets or categories of assets, over the claims and rights of any other party (including any receiver, conservator, trustee or similar party having rights of a lien creditor) other than claims and rights that

(1) Would be entitled to priority under otherwise applicable law; and

(2) Are held by actual bona fide purchasers for value or by actual secured parties that are secured by actual perfected security interests.

(b) If the receiver rather than the Bank shall have possession of any collateral consisting of notes, securities, other instruments, chattel paper or cash securing advances of the Bank, the receiver shall, upon request by the

Bank, promptly deliver possession of such collateral to the Bank or its designee.

(c) In the event that a receiver is appointed for any member of a Federal Home Loan Bank, the following procedures shall apply:

(1) The receiver and the Bank shall immediately seek and develop a mutually agreeable plan for the payment of any advances made by the Bank to such borrower or for the servicing, foreclosure upon and liquidation of the collateral securing any such advances, taking into account the nature and amount of such collateral, the markets in which such collateral is normally traded or sold and other relevant factors.

(2) In the event that the receiver and the Bank shall not, in good faith, be able to develop such a mutually agreeable plan, or, in the interim, the Bank in good faith reasonably concludes that the value of such collateral is decreasing, because of interest rate or other market changes, at such a rate that to delay liquidation or other exercise of the Bank's rights as a secured party for the development of a mutually agreeable plan could reasonably cause the value of such collateral to decrease to an amount that is insufficient to satisfy the Bank's claim in full, the Bank may, at any time thereafter if permitted to do so by the terms of the advances or other security agreement with such borrower or otherwise by applicable law, proceed to foreclose upon, sell, lease or otherwise dispose of such collateral (or any portion thereof), or otherwise exercise its rights as a secured party, provided that the Bank acts in good faith and in a commercially reasonable manner and otherwise in accordance with applicable law.

(3) The foregoing provisions of this paragraph (c) shall not apply in the event that a purchase and assumption transaction is entered into regarding any such member.

(d) The Bank's rights pursuant to the second sentence of section 10(d) of the Federal Home Loan Bank Act shall not be affected or diminished by any provisions of state law that may be applicable to a security interest in property of the member.

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(e) The receiver for a borrower from a Federal Home Loan Bank shall allow a claim for a prepayment fee by the Bank if, and only if:

(1) The claim is made pursuant to a written contract that provides for a prepayment fee, provided, however, that such prepayment fee allowed by the receiver shall not exceed the present value of the loss attributable to the difference between the contract rate of the secured borrowing and the reinvestment rate then available to the Bank; and

(2) The indebtedness owed to the Bank by such borrower is secured by sufficient collateral in which a perfected security interest in favor of the Bank exists or as to which the Bank's security interest is entitled to priority under section 306(d) of the Competitive Equality Banking Act of 1987 (CEBA) (12 U.S.C. 1430(e), footnote (1), or otherwise so that the aggregate of the outstanding principal on the advances secured by such collateral, the accrued but unpaid interest thereon and the prepayment fee applicable to such advances can be paid in full from the amounts realized from such collateral. For purposes of this paragraph (e)(2), the adequacy of such collateral shall be determined as of the date such prepayment fees shall be due and payable under the terms of the written contract providing therefor.

[54 FR 19156, May 4, 1989. Redesignated at 54 FR 42801, Oct. 18, 1989, and further redesignated at 55 FR 46496, Nov. 5, 1990. Redesignated at 58 FR 67664, Dec. 22, 1993, as amended at 63 FR 37761, July 14, 1998]

#### § 360.3 Priorities.

(a) Unsecured claims against an association or the receiver that are proved to the satisfaction of the receiver shall have priority in the following order:

(1) Administrative expenses of the receiver, including the costs, expenses, and debts of the receiver;

(2) Administrative expenses of the association, *provided* that such expenses were incurred within thirty (30) days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or

reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association;

(3) Claims for wages and salaries, including vacation and sick leave pay and contributions to employee benefit plans, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interests of the receivership to engage or retain for a reasonable period of time;

(4) If authorized by the receiver, claims for wages and salaries, including vacation and sick leave pay and contributions to employee benefits plans, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars (\$3,000) per person, by an employee of the association not engaged or retained pursuant to a determination by the receiver pursuant to the third category above;

(5) Claims of governmental units for unpaid taxes, other than Federal income taxes, except to the extent subordinated pursuant to applicable law; but no other claim of a governmental unit shall have a priority higher than that of a general creditor under paragraph (a)(6) of this section;

(6) Claims for withdrawable accounts, including those of the Corporation as subrogee or transferee, and all other claims which have accrued and become unconditionally fixed on or before the date of default, whether liquidated or unliquidated, except as provided in paragraphs (a)(1) through (a)(5) of this section, provided, however, that if the association is chartered and was operated under the laws of a state that provided a priority for holders of withdrawable accounts over such other claims or general creditors, such priority within this paragraph (a)(6) shall be observed by the receiver; and provided further, that if deposits of a Federal association are booked or registered at an office of such association that is located in a State that provides such priority with respect to State-chartered associations, such deposits in

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a Federal association shall have priority over such other claims or general creditors, which shall be observed by the receiver;

(7) Claims other than those that have accrued and become unconditionally fixed on or before the date of default, including claims for interest after the date of default on claims under paragraph (a)(6) of this section, *Provided* that any claim based on an agreement for accelerated, stipulated, or liquidated damages, which claim did not accrue prior to the date of default, shall be considered as not having accrued and become unconditionally fixed on or before the date of default;

(8) Claims of the United States for unpaid Federal income taxes;

(9) Claims that have been subordinated in whole or in part to general creditor claims, which shall be given the priority specified in the written instruments that evidence such claims; and

(10) Claims by holders of nonwithdrawable accounts, including stock, which shall have priority within this paragraph (a)(10) in accordance with the terms of the written instruments that evidence such claims.

(b) Interest after the date of default on claims under paragraph (a)(6) of this section shall be at a rate or rates adjusted monthly to reflect the average rate for U.S. Treasury bills with maturities of not more than ninety-one (91) days during the preceding three (3) months.

(c) [Reserved]

(d) All unsecured claims of any category or class or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full, or provision made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made pro rata. Notwithstanding anything to the contrary herein, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority classes outlined in paragraphs (a)(1) through (a)(6) of this section as the receiver believes are rea-

sonably necessary to conduct the receivership,

*Provided* that the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

(e) If the association is in mutual form, and a surplus remains after making distribution in full of allowed claims as set forth in paragraphs (a) and (b) of this section, such surplus shall be distributed to the depositors in proportion to their accounts as of the date of default.

(f) Under the provisions of section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), the provisions of this § 360.3 do not apply to any receivership established and liquidation or other resolution occurring after August 10, 1993.

[53 FR 25132, July 5, 1988, as amended at 53 FR 30667, Aug. 15, 1988. Redesignated and amended at 54 FR 42801, Oct. 18, 1989, and further redesignated and amended at 55 FR 46496, Nov. 5, 1990; 58 FR 43070, Aug. 13, 1993. Redesignated at 58 FR 67664, Dec. 22, 1993; 60 FR 35488, July 10, 1995]

### § 360.4 Administrative expenses.

The priority for *administrative expenses of the receiver*, as that term is used in section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), shall include those necessary expenses incurred by the receiver in liquidating or otherwise resolving the affairs of a failed insured depository institution. Such expenses shall include pre-failure and post-failure obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the institution.

[60 FR 35488, July 10, 1995]

### § 360.5 Definition of qualified financial contracts.

(a) *Authority and purpose.* Sections 11(e) (8) through (10) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e) (8) through (10), provide special rules for the treatment of qualified financial contracts of an insured depository institution for which the FDIC is appointed conservator or receiver, including rules describing the manner in which qualified financial contracts

may be transferred or closed out. Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(8)(D)(i), grants the Corporation authority to determine by regulation whether any agreement, other than those identified within section 11(e)(8)(D), should be recognized as qualified financial contracts under the statute. The purpose of this section is to identify additional agreements which the Corporation has determined to be qualified financial contracts.

(b) *Repurchase agreements.* The following agreements shall be deemed “repurchase agreements” under section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(v)): A repurchase agreement on qualified foreign government securities is an agreement or combination of agreements (including master agreements) which provides for the transfer of securities that are direct obligations of, or that are fully guaranteed by, the central governments (as set forth at 12 CFR part 325, appendix A, section II.C, n. 17, as may be amended from time to time) of the OECD-based group of countries (as set forth at 12 CFR part 325, appendix A, section II.B.2., note 12 as may be amended from time to time) against the transfer of funds by the transferee of such securities with a simultaneous agreement by such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

(c) *Swap agreements.* The following agreements shall be deemed “swap agreements” under section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(vi)): A spot foreign exchange agreement is any agreement providing for or effecting the purchase or sale of one currency in exchange for another currency (or a unit of account established by an intergovernmental organization such as the European Currency Unit) with a maturity date of two days or less after the agreement has been entered into, and includes short-dated transactions such as tomorrow/next day and same day/tomorrow transactions.

(d) Nothing in this section shall be construed as limiting or changing a party’s obligation to comply with all reasonable trading practices and requirements, non-insolvency law requirements and any other requirements imposed by other provisions of the FDI Act. This section in no way limits the authority of the Corporation to take supervisory or enforcement actions, or to otherwise manage the affairs of a financial institution for which the Corporation has been appointed conservator or receiver.

[60 FR 66865, Dec. 27, 1995]

**§ 360.6 Treatment of financial assets transferred in connection with a securitization or participation.**

(a) *Definitions.*

(1) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(2) *Investor* means a person or entity that owns an obligation issued by an issuing entity.

(3) *Issuing entity* means an entity that owns a financial asset or financial assets transferred by the sponsor and issues obligations supported by such asset or assets. Issuing entities may include, but are not limited to, corporations, partnerships, trusts, and limited liability companies and are commonly referred to as special purpose vehicles or special purpose entities. To the extent a securitization is structured as a multi-step transfer, the term issuing entity would include both the issuer of the obligations and any intermediate entities that may be a transferee. Notwithstanding the foregoing, a Specified GSE or an entity established or guaranteed by a Specified GSE shall not constitute an issuing entity.

(4) *Monetary default* means a default in the payment of principal or interest when due following the expiration of any cure period.

(5) *Obligation* means a debt or equity (or mixed) beneficial interest or security that is primarily serviced by the cash flows of one or more financial assets or financial asset pools, either fixed or revolving, that by their terms convert into cash within a finite time period, or upon the disposition of the

underlying financial assets, and by any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders issued by an issuing entity. The term may include beneficial interests in a grantor trust, common law trust or similar issuing entity to the extent that such interests satisfy the criteria set forth in the preceding sentence, but does not include LLC interests, partnership interests, common or preferred equity, or similar instruments evidencing ownership of the issuing entity.

(6) *Participation* means the transfer or assignment of an undivided interest in all or part of a financial asset, that has all of the characteristics of a “participating interest,” from a seller, known as the “lead,” to a buyer, known as the “participant,” without recourse to the lead, pursuant to an agreement between the lead and the participant. “Without recourse” means that the participation is not subject to any agreement that requires the lead to repurchase the participant’s interest or to otherwise compensate the participant upon the borrower’s default on the underlying obligation.

(7) *Securitization* means the issuance by an issuing entity of obligations for which the investors are relying on the cash flow or market value characteristics and the credit quality of transferred financial assets (together with any external credit support permitted by this section) to repay the obligations.

(8) *Servicer* means any entity responsible for the management or collection of some or all of the financial assets on behalf of the issuing entity or making allocations or distributions to holders of the obligations, including reporting on the overall cash flow and credit characteristics of the financial assets supporting the securitization to enable the issuing entity to make payments to investors on the obligations. The term “servicer” does not include a trustee for the issuing entity or the holders of obligations that makes allocations or distributions to holders of the obligations if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

(9) *Specified GSE* means each of the following:

- (i) The Federal National Mortgage Association and any affiliate thereof;
- (ii) Federal Home Loan Mortgage Corporation and any affiliate thereof;
- (iii) The Government National Mortgage Association; and
- (iv) Any federal or state sponsored mortgage finance agency.

(10) *Sponsor* means a person or entity that organizes and initiates a securitization by transferring financial assets, either directly or indirectly, including through an affiliate, to an issuing entity, whether or not such person owns an interest in the issuing entity or owns any of the obligations issued by the issuing entity.

(11) *Transfer* means:

- (i) The conveyance of a financial asset or financial assets to an issuing entity or
- (ii) The creation of a security interest in such asset or assets for the benefit of the issuing entity.

(b) *Coverage*. This section shall apply to securitizations that meet the following criteria:

(1) *Capital Structure and Financial Assets*. The documents creating the securitization must define the payment structure and capital structure of the transaction.

(i) *Requirements applicable to all securitizations*:

(A) The securitization shall not consist of re-securitizations of obligations or collateralized debt obligations unless the documents creating the securitization require that disclosures required in paragraph (b)(2) of this section are made available to investors for the underlying assets supporting the securitization at initiation and while obligations are outstanding; and

(B) The documents creating the securitization shall require that payment of principal and interest on the securitization obligation must be primarily based on the performance of financial assets that are transferred to the issuing entity and, except for interest rate or currency mismatches between the financial assets and the obligations, shall not be contingent on market or credit events that are independent of such financial assets. The securitization may not be an unfunded

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securitization or a synthetic transaction.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) The capital structure of the securitization shall be limited to no more than six credit tranches and cannot include “sub-tranches,” grantor trusts or other structures. Notwithstanding the foregoing, the most senior credit tranche may include time-based sequential pay or planned amortization and companion sub-tranches; and

(B) The credit quality of the obligations cannot be enhanced at the issuing entity or pool level through external credit support or guarantees. However, the credit quality of the obligations may be enhanced by credit support or guarantees provided by Specified GSEs and the temporary payment of principal and/or interest may be supported by liquidity facilities, including facilities designed to permit the temporary payment of interest following appointment of the FDIC as conservator or receiver. Individual financial assets transferred into a securitization may be guaranteed, insured or otherwise benefit from credit support at the loan level through mortgage and similar insurance or guarantees, including by private companies, agencies or other governmental entities, or government-sponsored enterprises, and/or through co-signers or other guarantees.

(2) *Disclosures.* The documents shall require that the sponsor, issuing entity, and/or servicer, as appropriate, shall make available to investors, information describing the financial assets, obligations, capital structure, compensation of relevant parties, and relevant historical performance data set forth in paragraph (b)(2) of this section.

(i) *Requirements applicable to all securitizations:*

(A) The documents shall require that, on or prior to issuance of obligations and at the time of delivery of any periodic distribution report and, in any event, at least once per calendar quarter, while obligations are outstanding, information about the obligations and the securitized financial assets shall be disclosed to all potential investors at

the financial asset or pool level, as appropriate for the financial assets, and security-level to enable evaluation and analysis of the credit risk and performance of the obligations and financial assets. The documents shall require that such information and its disclosure, at a minimum, shall comply with the requirements of Securities and Exchange Commission Regulation AB, 17 CFR 229.1100 through 1123 (to the extent then in effect) or any successor disclosure requirements for public issuances, even if the obligations are issued in a private placement or are not otherwise required to be registered. Information that is unknown or not available to the sponsor or the issuer after reasonable investigation may be omitted if the issuer includes a statement in the offering documents disclosing that the specific information is otherwise unavailable;

(B) The documents shall require that, on or prior to issuance of obligations, the structure of the securitization and the credit and payment performance of the obligations shall be disclosed, including the capital or tranche structure, the priority of payments and specific subordination features; representations and warranties made with respect to the financial assets, the remedies for and the time permitted for cure of any breach of representations and warranties, including the repurchase of financial assets, if applicable; liquidity facilities and any credit enhancements permitted by this rule, any waterfall triggers or priority of payment reversal features; and policies governing delinquencies, servicer advances, loss mitigation, and write-offs of financial assets;

(C) The documents shall require that while obligations are outstanding, the issuing entity shall provide to investors information with respect to the credit performance of the obligations and the financial assets, including periodic and cumulative financial asset performance data, delinquency and modification data for the financial assets, substitutions and removal of financial assets, servicer advances, as well as losses that were allocated to such tranche and remaining balance of financial assets supporting such

tranche, if applicable, and the percentage of each tranche in relation to the securitization as a whole; and

(D) In connection with the issuance of obligations, the documents shall require that the nature and amount of compensation paid to the originator, sponsor, rating agency or third-party advisor, any mortgage or other broker, and the servicer(s), and the extent to which any risk of loss on the underlying assets is retained by any of them for such securitization be disclosed. The securitization documents shall require the issuer to provide to investors while obligations are outstanding any changes to such information and the amount and nature of payments of any deferred compensation or similar arrangements to any of the parties.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) Prior to issuance of obligations, sponsors shall disclose loan level information about the financial assets including, but not limited to, loan type, loan structure (for example, fixed or adjustable, resets, interest rate caps, balloon payments, etc.), maturity, interest rate and/or Annual Percentage Rate, and location of property; and

(B) Prior to issuance of obligations, sponsors shall affirm compliance in all material respects with applicable statutory and regulatory standards for origination of mortgage loans, including that the mortgages are underwritten at the fully indexed rate relying on documented income, and comply with supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other or additional guidance applicable at the time of loan origination. Sponsors shall disclose a third party due diligence report on compliance with such standards and the representations and warranties made with respect to the financial assets; and

(C) The documents shall require that prior to issuance of obligations and while obligations are outstanding, servicers shall disclose any ownership

interest by the servicer or an affiliate of the servicer in other whole loans secured by the same real property that secures a loan included in the financial asset pool. The ownership of an obligation, as defined in this regulation, shall not constitute an ownership interest requiring disclosure.

(3) *Documentation and recordkeeping.* The documents creating the securitization must specify the respective contractual rights and responsibilities of all parties and include the requirements described in paragraph (b)(3) of this section and use as appropriate any available standardized documentation for each different asset class.

(i) *Requirements applicable to all securitizations.* The documents shall define the contractual rights and responsibilities of the parties, including but not limited to representations and warranties and ongoing disclosure requirements, and any measures to avoid conflicts of interest; and provide authority for the parties, including but not limited to the originator, sponsor, servicer, and investors, to fulfill their respective duties and exercise their rights under the contracts and clearly distinguish between any multiple roles performed by any party.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) Servicing and other agreements must provide servicers with authority, subject to contractual oversight by any master servicer or oversight advisor, if any, to mitigate losses on financial assets consistent with maximizing the net present value of the financial asset. Servicers shall have the authority to modify assets to address reasonably foreseeable default, and to take other action to maximize the value and minimize losses on the securitized financial assets. The documents shall require that the servicers apply industry best practices for asset management and servicing. The documents shall require the servicer to act for the benefit of all investors, and not for the benefit of any particular class of investors, that the servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes

delinquent unless all delinquencies on such asset have been cured, and that the servicer maintains records of its actions to permit full review by the trustee or other representative of the investors; and

(B) The servicing agreement shall not require a primary servicer to advance delinquent payments of principal and interest for more than three payment periods, unless financing or reimbursement facilities are available, which may include, but are not limited to, the obligations of the master servicer or issuing entity to fund or reimburse the primary servicer, or alternative reimbursement facilities. Such “financing or reimbursement facilities” under this paragraph shall not be dependent for repayment on foreclosure proceeds.

(4) *Compensation.* The following requirements apply only to securitizations in which the financial assets include any residential mortgage loans. Compensation to parties involved in the securitization of such financial assets must be structured to provide incentives for sustainable credit and the long-term performance of the financial assets and securitization as follows:

(i) The documents shall require that any fees or other compensation for services payable to credit rating agencies or similar third-party evaluation companies shall be payable, in part, over the five (5) year period after the first issuance of the obligations based on the performance of surveillance services and the performance of the financial assets, with no more than sixty (60) percent of the total estimated compensation due at closing; and

(ii) The documents shall provide that compensation to servicers shall include incentives for servicing, including payment for loan restructuring or other loss mitigation activities, which maximizes the net present value of the financial assets. Such incentives may include payments for specific services, and actual expenses, to maximize the net present value or a structure of incentive fees to maximize the net present value, or any combination of the foregoing that provides such incentives.

(5) *Origination and Retention Requirements.*

(i) *Requirements applicable to all securitizations.*

(A) Prior to the effective date of regulations required under new Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.*, added by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the documents shall require that the sponsor retain an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. This retained interest may be either in the form of an interest of not less than five (5) percent in each of the credit tranches sold or transferred to the investors or in a representative sample of the securitized financial assets equal to not less than five (5) percent of the principal amount of the financial assets at transfer. This retained interest may not be sold or pledged or hedged, except for the hedging of interest rate or currency risk, during the term of the securitization.

(B) Upon the effective date of regulations required under new Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.*, added by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, such final regulations shall exclusively govern the requirement to retain an economic interest in a portion of the credit risk of the financial assets under this rule.

(ii) *Requirements applicable only to securitizations in which the financial assets include any residential mortgage loans:*

(A) The documents shall require the establishment of a reserve fund equal to at least five (5) percent of the cash proceeds of the securitization payable to the sponsor to cover the repurchase of any financial assets required for breach of representations and warranties. The balance of such fund, if any, shall be released to the sponsor one year after the date of issuance.

(B) The documents shall include a representation that the assets shall have been originated in all material respects in compliance with statutory, regulatory, and originator underwriting standards in effect at the time

of origination. The documents shall include a representation that the mortgages included in the securitization were underwritten at the fully indexed rate, based upon the borrowers' ability to repay the mortgage according to its terms, and rely on documented income and comply with all existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such other or additional regulations or guidance applicable to insured depository institutions at the time of loan origination. Residential mortgages originated prior to the issuance of such guidance shall meet all supervisory guidance governing the underwriting of residential mortgages then in effect at the time of loan origination.

(c) *Other requirements.* (1) The transaction should be an arms length, bona fide securitization transaction. The documents shall require that the obligations issued in a securitization shall not be predominantly sold to an affiliate (other than a wholly-owned subsidiary consolidated for accounting and capital purposes with the sponsor) or insider of the sponsor;

(2) The securitization agreements are in writing, approved by the board of directors of the bank or its loan committee (as reflected in the minutes of a meeting of the board of directors or committee), and have been, continuously, from the time of execution in the official record of the bank;

(3) The securitization was entered into in the ordinary course of business, not in contemplation of insolvency and with no intent to hinder, delay or defraud the bank or its creditors;

(4) The transfer was made for adequate consideration;

(5) The transfer and/or security interest was properly perfected under the UCC or applicable state law;

(6) The transfer and duties of the sponsor as transferor must be evidenced in a separate agreement from its duties, if any, as servicer, custodian, paying agent, credit support provider or in any capacity other than the transferor; and

(7) The documents shall require that the sponsor separately identify in its financial asset data bases the financial assets transferred into any securitization and maintain an electronic or paper copy of the closing documents for each securitization in a readily accessible form, a current list of all of its outstanding securitizations and issuing entities, and the most recent Form 10-K, if applicable, or other periodic financial report for each securitization and issuing entity. The documents shall provide that to the extent serving as servicer, custodian or paying agent for the securitization, the sponsor shall not commingle amounts received with respect to the financial assets with its own assets except for the time, not to exceed two business days, necessary to clear any payments received. The documents shall require that the sponsor shall make these records readily available for review by the FDIC promptly upon written request.

(d) *Safe harbor—(1) Participations.* With respect to transfers of financial assets made in connection with participations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment under generally accepted accounting principles, except for the "legal isolation" condition that is addressed by this section. The foregoing paragraph shall apply to a last-in, first-out participation, provided that the transfer of a portion of the financial asset satisfies the conditions for sale accounting treatment under generally accepted accounting principles that would have applied to such portion if it had met the definition of a "participating interest," except for the "legal isolation" condition that is addressed by this section.

(2) *Transition period safe harbor.* With respect to:

(i) Any participation or securitization for which transfers of financial assets were made on or before December 31, 2010 or

(ii) Any obligations of revolving trusts or master trusts, for which one or more obligations were issued as of the date of adoption of this rule, or

(iii) Any obligations issued under open commitments up to the maximum amount of such commitments as of the date of adoption of this rule if one or more obligations were issued under such commitments on or before December 31, 2010, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership the transferred financial assets notwithstanding that the transfer of such financial assets does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, provided that such transfer satisfied the conditions for sale accounting treatment under generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the “legal isolation” condition that is addressed by this paragraph and the transaction otherwise satisfied the provisions of § 360.6 in effect prior to the effective date of this regulation.

(3) *For securitizations meeting sale accounting requirements.* With respect to any securitization for which transfers of financial assets were made after December 31, 2010, or from a master trust or revolving trust established after adoption of this rule or from any open commitments that do not meet the requirements of paragraph (d)(2) of this section, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment under generally accepted accounting principles in effect for reporting periods after November 15, 2009, except for the “legal isolation”

condition that is addressed by this paragraph (d)(3).

(4) *For securitization not meeting sale accounting requirements.*

With respect to any securitization for which transfers of financial assets were made after December 31, 2010, or from a master trust or revolving trust established after adoption of this rule or from any open commitments that do not meet the requirements of paragraph (d)(2) or (d)(3) of this section, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, but where the transfer does not satisfy the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009:

(i) *Monetary default.* If at any time after appointment, the FDIC as conservator or receiver is in a monetary default under a securitization due to its failure to pay or apply collections from the financial assets received by it in accordance with the securitization documents, whether as servicer or otherwise, and remains in monetary default for ten (10) business days after actual delivery of a written notice to the FDIC pursuant to paragraph (f) of this section requesting the exercise of contractual rights because of such monetary default, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) to the exercise of any contractual rights in accordance with the documents governing such securitization, including but not limited to taking possession of the financial assets and exercising self-help remedies as a secured creditor under the transfer agreements, provided no involvement of the receiver or conservator is required other than such consents, waivers, or execution of transfer documents as may be reasonably requested in the ordinary course of business in order to facilitate the exercise of such contractual rights. Such consent shall not waive or otherwise deprive the FDIC or its assignees of any seller’s interest or other obligation or interest issued by the issuing entity and held by the FDIC or its assignees, but shall serve as full satisfaction of

the obligations of the insured depository institution in conservatorship or receivership and the FDIC as conservator or receiver for all amounts due.

(ii) *Repudiation.* If the FDIC as conservator or receiver provides a written notice of repudiation of the securitization agreement pursuant to which the financial assets were transferred, and the FDIC does not pay damages, defined in this paragraph, within ten (10) business days following the effective date of the notice, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) to the exercise of any contractual rights in accordance with the documents governing such securitization, including but not limited to taking possession of the financial assets and exercising self-help remedies as a secured creditor under the transfer agreements, provided no involvement of the receiver or conservator is required other than such consents, waivers, or execution of transfer documents as may be reasonably requested in the ordinary course of business in order to facilitate the exercise of such contractual rights. For purposes of this paragraph, the damages due shall be in an amount equal to the par value of the obligations outstanding on the date of appointment of the conservator or receiver, less any payments of principal received by the investors through the date of repudiation, plus unpaid, accrued interest through the date of repudiation in accordance with the contract documents to the extent actually received through payments on the financial assets received through the date of repudiation. Upon payment of such repudiation damages, all liens or claims on the financial assets created pursuant to the securitization documents shall be released. Such consent shall not waive or otherwise deprive the FDIC or its assignees of any seller's interest or other obligation or interest issued by the issuing entity and held by the FDIC or its assignees, but shall serve as full satisfaction of the obligations of the insured depository institution in conservatorship or receivership and the FDIC as conservator or receiver for all amounts due.

(iii) *Effect of repudiation.* If the FDIC repudiates or disaffirms a

securitization agreement, it shall not assert that any interest payments made to investors in accordance with the securitization documents before any such repudiation or disaffirmance remain the property of the conservatorship or receivership.

(e) *Consent to certain actions.* Prior to repudiation or, in the case of a monetary default referred to in paragraph (d)(4)(i) of this section, prior to the effectiveness of the consent referred to therein, the FDIC as conservator or receiver consents pursuant to 12 U.S.C. 1821(e)(13)(C) to the making of, or if serving as servicer, shall make, the payments to the investors to the extent actually received through payments on the financial assets (but in the case of repudiation, only to the extent supported by payments on the financial assets received through the date of the giving of notice of repudiation) in accordance with the securitization documents, and, subject to the FDIC's rights to repudiate such agreements, consents to any servicing activity required in furtherance of the securitization or, if acting as servicer the FDIC as receiver or conservator shall perform such servicing activities in accordance with the terms of the applicable servicing agreements, with respect to the financial assets included in securitizations that meet the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section.

(f) *Notice for consent.* Any party requesting the FDIC's consent as conservator or receiver under 12 U.S.C. 1821(e)(13)(C) and 12 U.S.C. 1825(b)(2) pursuant to paragraph (d)(4)(i) of this section shall provide notice to the Deputy Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW., F-7076, Washington, DC 20429-0002, and a statement of the basis upon which such request is made, and copies of all documentation supporting such request, including without limitation a copy of the applicable agreements and of any applicable notices under the contract.

(g) *Contemporaneous requirement.* The FDIC will not seek to avoid an otherwise legally enforceable agreement

that is executed by an insured depository institution in connection with a securitization or in the form of a participation solely because the agreement does not meet the “contemporaneous” requirement of 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), or 1823(e).

(h) *Limitations.* The consents set forth in this section do not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract except as specifically set forth herein. Nothing contained in this section alters the claims priority of the securitized obligations.

(i) *No waiver.* Except as specifically set forth herein, this section does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. Nor shall this section be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers or other conveyances taken in contemplation of the institution’s insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(j) *No assignment.* The right to consent under 12 U.S.C. 1821(e)(13)(C) or 12 U.S.C. 1825(b)(2), may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank.

(k) *Repeal.* This section may be repealed by the FDIC upon 30 days notice provided in the FEDERAL REGISTER, but any repeal shall not apply to any issuance made in accordance with this section before such repeal.

[75 FR 60297, Sept. 30, 2010]

**§ 360.7 Post-insolvency interest.**

(a) *Purpose and scope.* This section establishes rules governing the calculation and distribution of post-insol-

veny interest to creditors with proven claims in all FDIC-administered receiverships established after June 13, 2002.

(b) *Definitions*—(1) *Equityholder.* The owner of an equity interest in a failed depository institution, whether such ownership is represented by stock, membership in a mutual association, or otherwise.

(2) *Post-insolvency interest.* Interest calculated from the date the receivership is established on proven creditor claims in receiverships with surplus funds.

(3) *Post-insolvency interest rate.* For any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter, and adjusted each quarter thereafter.

(4) *Principal amount.* The proven claim amount and any interest accrued thereon as of the date the receivership is established.

(5) *Proven claim.* A claim that is allowed by a receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

(c) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction by the receiver of the principal amount of all creditor claims.

(2) The receiver shall distribute post-insolvency interest at the post-insolvency interest rate prior to making any distribution to equityholders. Post-insolvency interest distributions shall be made in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A).

(3) Post-insolvency interest distributions shall be made at such time as the receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be calculated on the outstanding balance of a proven claim, as reduced from time to time by any interim dividend distributions, from the date the receivership is established until the principal amount of a proven claim has

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been fully distributed but not thereafter. Post-insolvency interest shall be calculated on a contingent claim from the date such claim becomes proven.

(4) Post-insolvency interest shall be determined using a simple interest method of calculation.

[67 FR 34386, May 14, 2002]

### § 360.8 Method for determining deposit and other liability account balances at a failed insured depository institution.

(a) *Purpose.* The purpose of this section is to describe the process the FDIC will use to determine deposit and other liability account balances for insurance coverage and receivership purposes at a failed insured depository institution.

(b) *Definitions*—(1) The *FDIC Cutoff Point* means the point in time the FDIC establishes after it has been appointed receiver of a failed insured depository institution and takes control of the failed institution.

(2) The *Applicable Cutoff Time* for a specific type of deposit account transaction means the *earlier* of either the failed institution's normal cutoff time for that specific type of transaction or the *FDIC Cutoff Point*.

(3) *Close-of-Business Account Balance* means the closing end-of-day ledger balance of a deposit or other liability account on the day of failure of an insured depository institution determined by using the *Applicable Cutoff Times*. This balance may be adjusted to reflect steps taken by the receiver to ensure that funds are not received by or removed from the institution after the *FDIC Cutoff Point*.

(4) A *sweep account* is an account held pursuant to a contract between an insured depository institution and its customer involving the pre-arranged, automated transfer of funds from a deposit account to either another account or investment vehicle located within the depository institution (*internal sweep account*), or an investment vehicle located outside the depository institution (*external sweep account*).

(c) *Principles*—(1) In making deposit insurance determinations and in determining the value and nature of claims against the receivership on the institu-

tion's date of failure, the FDIC, as insurer and receiver, will treat deposits and other liabilities of the failed institution according to the ownership and nature of the underlying obligations based on end-of-day ledger balances for each account using, except as expressly provided otherwise in this section, the depository institution's normal posting procedures.

(2) In its role as receiver of a failed insured depository institution, in order to ensure the proper distribution of the failed institution's assets under the FDI Act (12 U.S.C. 1821(d)(11)) as of the FDIC Cutoff Point, the FDIC will use its best efforts to take all steps necessary to stop the generation, via transactions or transfers coming from or going outside the institution, of new liabilities or extinguishing existing liabilities for the depository institution.

(3) End-of-day ledger balances are subject to corrections for posted transactions that are inconsistent with the above principles.

(d) *Determining closing day balances*—(1) In determining account balances for insurance coverage and receivership purposes at a failed insured depository institution, the FDIC will use *Close-of-Business Account Balances*.

(2) A check posted to the *Close-of-Business Account Balance* but not collected by the depository institution will be included as part of the balance, subject to the correction of errors and omissions and adjustments for uncollectible items that the FDIC may make in its role as receiver of the failed depository institution.

(3) In determining *Close-of-Business Account Balances* involving sweep accounts:

(i) For internal sweep accounts, the FDIC will determine the ownership of the funds and the nature of the receivership claim based on the records established and maintained by the institution for that specific account or investment vehicle as of the closing day end-of-day ledger balance. (For example, if a sweep account entails the daily transfer of funds from a demand deposit account to a Eurodollar account at a foreign branch of the insured depository institution, if the institution should fail on that day, the FDIC would treat the funds swept to the

Eurodollar account, as reflected on the institution's end-of-day records, as an unsecured general creditor's claim against the receivership.);

(ii) For external sweep accounts, the FDIC will treat swept funds consistent with their status in the end-of-day ledger balances of the depository institution and the external entity, as long as the transfer of funds is completed prior to the Applicable Cutoff Time. (For example, if funds held in connection with a money market sweep account are wired from a customer's deposit account at the insured depository institution to the mutual fund prior to the Applicable Cutoff Time, if the institution should fail on that day, the FDIC would recognize that sweep transaction as completed for claims and receivership purposes.);

(iii) For repurchase agreement sweep accounts, where, as a result of the 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(1). 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 provi-

sion 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,

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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 addi-

tional 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, however, does not supplant any preexisting implementation date requirement for the individual covered institution(s) involved in the merger.

(6) Notwithstanding the general requirements of this paragraph (e), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation timeframe of all or part of the requirements of this section for a covered institution that: Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating; is undercapitalized, as defined under the prompt corrective action provisions of 12 CFR part 325; or is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination. In implementing this paragraph (e)(6), the FDIC must consult with the covered institution's primary federal regulator and consider the: Complexity of the institution's deposit systems and operations, extent of the institution's asset quality difficulties, volatility of the institution's funding sources, expected near-

term changes in the institution's capital levels, and other relevant factors appropriate for the FDIC to consider in its roles as insurer and possible receiver of the institution.

(7) Notwithstanding the general requirements of this paragraph (e), a covered institution may request, by letter, that the FDIC extend the deadline for complying with the requirements of this section. A request for such an extension is subject to the FDIC's rules of general applicability under 12 CFR 303.251.

(f) A covered institution may apply to the FDIC for an exemption from the requirements of this §360.9 if it has a high concentration of deposits incidental to credit card operations. The FDIC will consider such applications on a case-by-case basis in light of the objectives of this section.

(g) Requests for exemptions from the requirements of this section, for flexibility in the use of provisional holds or for extensions of the implementation requirements of this section and the submission of point-of-contact information should be submitted in writing to: Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429-0002.

(h) *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]

#### APPENDIX A TO PART 360—NON-MONETARY TRANSACTION FILE STRUCTURE

This is the structure of the data file the FDIC will provide to remove or add a FDIC hold for an individual account or sub-account. The file will be in a tab- or pipe-delimited ASCII format and provided through FDICconnect or Direct Connect. The file will be encrypted using an FDIC-supplied algorithm.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier—2 .....	Account Identifier—2 ..... If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier—3 .....	Account Identifier—3 ..... If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier—4 .....	Account Identifier—4 ..... If necessary, the fourth element used to identify the account.		Character (25).
5. DP_Acct_Identifier—5 .....	Account Identifier—5 ..... If necessary, the fifth element used to identify the account.		Character (25).
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the Sub-Account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. PH_Hold_Action .....	Hold Action ..... The requested hold action to be taken for this account or sub-account. Possible values are: • R = Remove. • A = Add.		Character (1).
8. PH_Hold_Amt .....	Hold Amount ..... Dollar amount of the FDIC hold to be removed or added.		Decimal (14,2).
9. PH_Hold_Desc .....	Hold Description ..... FDIC hold to be removed or added.		Character (225).

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APPENDIX B TO PART 360—DEBIT/CREDIT FILE STRUCTURE

This is the structure of the data file the FDIC will provide to apply debits and credits to an individual account or sub-account after

the removal of FDIC holds. The file will be in a tab- or pipe-delimited ASCII format and provided through FDICconnect or Direct Connect. The file will be encrypted using an FDIC-supplied algorithm.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier—2 .....	Account Identifier—2 ..... If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier—3 .....	Account Identifier—3 ..... If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier—4 .....	Account Identifier—4 ..... If necessary, the fourth element used to identify the account.		Character (25).

Field name	Field description	Comments	Format
5. DP_Acct_Identifier—5 .....	If necessary, the fourth element used to identify the account. Account Identifier—5 .....	.....	Character (25).
6. DP_Sub_Acct_Identifier .....	If necessary, the fifth element used to identify the account. Sub-Account Identifier .....	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. DC_Debit_Amt .....	Debit Amount .....	.....	Decimal (14,2).
8. DC_Credit_Amt .....	Dollar amount of the debit to be applied to the account or sub-account. Credit Amount .....	.....	Decimal (14,2).
9. DC_Transaction_Desc .....	Dollar amount of the credit to be applied to the account or sub-account. Debit/Credit Description .....	.....	Character (225).
	FDIC message associated with the debit or credit transaction.		

[73 FR 41197, July 17, 2008]

APPENDIX C TO PART 360—DEPOSIT FILE STRUCTURE

This is the structure for the data file to provide deposit data to the FDIC. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a deposit file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit to the covered institution the encryption algorithm over *FDICconnect*.

The total deposit balances and the number of deposit accounts in each deposit file must be reconciled to the subsidiary system control totals.

The FDIC intends to fully utilize a covered institution's understanding of its customers and the data maintained around deposit accounts. Should additional information be available to the covered institution to help the FDIC more quickly complete its insurance determination process, it may add this information to the end of this data file. Should additional data elements be provided, a complete data dictionary for these elements must be supplied along with a descrip-

tion of how this information could be best used to establish account ownership or insurance category.

The deposit data elements provide information specific to deposit account balances and account data. The sequencing of these elements, their physical data structures and the field data format and field length must be provided to the FDIC along with the data structures identified below.

A header record will also be required at the beginning of this file. This record will contain the number of accounts to be included in this file, the maximum number of characters contained in largest account title field maintained within the deposit file and the maximum number of characters contained in largest address field maintained within the deposit file.

NOTE: Each record must contain the account title/name and current account statement mailing address. Fields 17–33 relate to the account name and address information. Some systems provide for separate fields for account title/name, street address, city, state, ZIP, and country, all of which are parsed out. Others systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. Populate fields that best fit the system's data, either fields 17–27 or fields 28–33.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier—2 .....	Account Identifier—2 ..... If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier—3 .....	Account Identifier—3 ..... If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier—4 .....	Account Identifier—4 ..... If necessary, the fourth element used to identify the account.		Character (25).
5. DP_Acct_Identifier—5 .....	Account Identifier—5 ..... If necessary, the fifth element used to identify the account.		Character (25).
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. DP_Bank_No .....	Bank Number ..... The bank number assigned to the deposit account.		Character (15).
8. DP_Tax_ID .....	Tax ID ..... The tax identification number maintained on the account.	For consumer accounts, typically, this would be the primary account holder's social security number ("SSN"). For business accounts it would be the federal tax identification number ("TIN"). Hyphens are optional in this field.	Character (15).
9. DP_Tax_Code .....	Tax ID Code ..... The type of the tax identification number. Possible values are: • S = Social Security Number. • T = Federal Tax Identification Number. • O = Other.	Generally deposit systems have flags or indicators set to indicate whether the number is an SSN or TIN.	Character (1).
10. DP_Branch .....	Branch Number ..... The branch or office associated with the account.	In lieu of a branch number this field may represent a specialty department or division.	Character (15).
11. DP_Cost_Center .....	Cost Center or G/L Code ..... The identifier used for organization reporting or ownership of the account. Insert null value if the cost center is not carried in the deposit record.	This field ties to the general ledger accounts.	Character (20).
12. DP_Dep_Type .....	Deposit Type Indicator ..... The type of deposit by office location. Possible values are: • D = Deposit (Domestic). • F = Foreign Deposit.	A deposit—also called a "domestic deposit"—includes only deposit liabilities payable in the United States, typically those deposits maintained in a domestic office of an insured depository institution, as defined in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)). A foreign deposit is a deposit liability in a foreign branch payable solely at a foreign branch or branches.	Character (1).
13. DP_Currency_Type .....	Currency Type ..... The ISO 4217 currency code.		Character (3).

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Field name	Field description	Comments	Format
14. DP_Ownership_Ind .....	<p>Customer Ownership Indicator ... The type of ownership at the account level. Possible values are:</p> <ul style="list-style-type: none"> <li>• S = Single.</li> <li>• J = Joint Account.</li> <li>• P = Partnership account.</li> <li>• C = Corporation.</li> <li>• B = Brokered Deposits.</li> <li>• I = IRA Accounts.</li> <li>• U = Unincorporated Association.</li> <li>• R = Revocable Trust.</li> <li>• IR = Irrevocable Trust.</li> <li>• G = Government Accounts.</li> <li>• E = Employee Benefit Plan Accounts.</li> <li>• O = Other.</li> </ul>	<p><i>Single:</i> Accounts owned by an individual and those accounts held as Minor Accounts, Estate Accounts, Non-Minor Custodian/Guardian Accounts, Attorney in Fact Accounts and Sole Proprietorships.</p> <p><i>Joint Account:</i> Accounts owned by two or more individuals, but does not include the ownership of a Payable on Death Account or Trust Account.</p> <p><i>Partnership Account:</i> Accounts owned by a Partnership.</p> <p><i>Corporation:</i> Accounts owned by a Corporation (e.g. Inc., L.L.C., or P.C.).</p> <p><i>Brokered Deposits:</i> Accounts placed by a deposit broker who acts as an intermediary for the actual owner or sub-broker.</p> <p><i>IRA Accounts:</i> Accounts for which the owner has the right to direct how the funds are invested including Keoghs and other Self-Directed Retirement Accounts.</p> <p><i>Unincorporated Association:</i> An account owned by an association of two or more persons formed for some religious, educational, charitable, social or other non-commercial purpose.</p> <p><i>Revocable Trusts:</i> Including PODs and formal revocable trusts (e.g. Living Trusts, Intervivos Trusts or Family Trusts).</p> <p><i>Irrevocable Trusts:</i> Accounts held by a trust established by statute or written trust in which the grantor relinquishes all power to revoke the trust.</p> <p><i>Government Accounts:</i> Accounts owned by a government entity (e.g. City, State, County or Federal government entities and their sub-divisions).</p> <p><i>Employee Benefit Plan:</i> Accounts established by the administrator of an Employee Benefit Plan including defined contribution, defined benefit and employee welfare plans.</p> <p><i>Other Accounts:</i> Accounts owned by an entity not described above.</p>	Character (2).
15. DP_Prod_Cat .....	<p>Product Category .....</p> <p>The product classification. Possible values are:</p> <ul style="list-style-type: none"> <li>• DDA = Non-Interest Bearing Checking accounts.</li> <li>• NOW = Interest Bearing Checking accounts.</li> <li>• MMA = Money Market Deposit Accounts.</li> <li>• SAV = Other savings accounts.</li> </ul>	Product Category is sometimes referred to as "application type" or "system type".	Character (3).

Field name	Field description	Comments	Format
16. DP_Stat_Code .....	<ul style="list-style-type: none"> <li>• CDS = Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.</li> </ul> Status Code ..... Status or condition of the account. Possible values are: <ul style="list-style-type: none"> <li>• O = Open.</li> <li>• D = Dormant.</li> <li>• I = Inactive.</li> <li>• E = Escheatment.</li> <li>• A = Abandoned.</li> <li>• C = Closing.</li> <li>• R = Restricted/Frozen/Blocked.</li> </ul>		Character (1).
17. DP_Acct_Title—1 .....	Account Title Line 1 .....	These data will be used to identify the owners and beneficiaries of the account.	Character (100).
18. DP_Acct_Title—2 .....	Account Title Line 2 ..... If available, the second account title line.		Character (100).
19. DP_Acct_Title—3 .....	Account Title Line 3 ..... If available, the third account title line.		Character (100).
20. DP_Acct_Title—4 .....	Account Title Line 4 ..... If available, the fourth account title line.		Character (100).
21. DP_Street_Add_Ln—1 .....	Street Address Line 1 ..... The current account statement mailing address of record.		Character (100).
22. DP_Street_Add_Ln—2 .....	Street Address Line 2 ..... If available, the second mailing address line.		Character (100).
23. DP_Street_Add_Ln—3 .....	Street Address Line 3 ..... If available, the third mailing address line.		Character (100).
24. DP_City .....	City ..... The city associated with the mailing address.		Character (50).
25. DP_State .....	State ..... The state abbreviation associated with the mailing address.	Use a two-character state code (official U.S. Postal Service abbreviations).	Character (2).
26. DP_ZIP .....	ZIP ..... The ZIP + 4 code associated with the mailing address.	If the "+4" code is not available provide only the 5-digit ZIP code. Hyphens are optional in this field.	Character (10).
27. DP_Country .....	Country ..... The country associated with the mailing address.	Provide the country name or the standard IRS country code.	Character (10).
28. DP_NA_Line—1 .....	Name/Address Line 1 ..... Alternate name/address format for the current account statement mailing address of record, first line.	Fields 28–33 are to be used if address data are not parsed to populate Fields 17–27.	Character (100).
29. DP_NA_Line—2 .....	Name/Address Line 2 ..... Alternate name/address format, second line.		Character (100).
30. DP_NA_Line—3 .....	Name/Address Line 3 ..... Alternate name/address format, third line.		Character (100).
31. DP_NA_Line—4 .....	Name/Address Line 4 ..... Alternate name/address format, fourth line.		Character (100).
32. DP_NA_Line—5 .....	Name/Address Line 5 ..... Alternate name/address format, fifth line.		Character (100).
33. DP_NA_Line—6 .....	Name/Address Line 6 ..... Alternate name/address format, sixth line.		Character (100).

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Field name	Field description	Comments	Format
34. DP_Cur_Bal .....	Current Balance ..... The current balance in the account at the end of business on the effective date of this file.	This balance should not be reduced by float or holds. For CDs and time deposits, the balance should reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest). The total of all current balances in this file should reconcile to the total deposit trial balance totals or other summary reconciliation of deposits performed by the institution.	Decimal (14,2).
35. DP_Int_Rate .....	Interest Rate ..... The current interest rate in effect for interest bearing accounts.	Interest rate should be expressed in decimal format, i.e., 2.0% should be represented as 0.020000000.	Decimal (10,9).
36. DP_Acc_Int .....	Accrued Interest ..... The amount of interest that has been earned but not yet paid to the account as of the date of the file.		Decimal (14,2).
37. DP_Lst_Int_Pd .....	Date Last Interest Paid ..... The date through which interest was last paid to the account.		Date (YYYYMMDD).
38. DP_Lst_Deposit .....	Date Last Deposit ..... The date of the last deposit transaction posted to the account.	For example, a deposit that included checks and/or cash.	Date (YYYYMMDD).
39. DP_Int_Term_No .....	Interest Term Number ..... The number of months in the current interest term.		Decimal (3,0).
40. DP_Nxt_Mat .....	Date of Next Maturity ..... For CD and time deposit accounts, the next date the account is to mature.	For non-renewing CDs that have matured and are waiting to be redeemed this date may be in the past.	Date (YYYYMMDD).
41. DP_Open_DT .....	Account Open Date ..... The date the account was opened.	If the account had previously been closed and re-opened, this should reflect the most recent re-opened date.	Date (YYYYMMDD).
42. DP_Sweep_Code .....	Sweep Code ..... Indicates if the account is a sweep account. Possible values are: • Y = Yes. • N = No.		Character (1).
43. DP_Hold_To_Post .....	Full Hold on the account: Indicator if all postings to this account are restricted. Possible values are: • Y = Yes. • N = No.		Character (1).
44. DP_Issue_Val_Amt .....	Issued Value Amount ..... The value of the current CD when issued.	For CDs only.	Decimal (14,2).
45. DP_Int_CD_Cde .....	Type of Interest for CD ..... Possible values are: • C = Rate Change Allowed. • N = Rate Change Not Allowed. • R = Change Rate to Default at Renewal. • T = Rate Change Allowed Only During the Term.	For CDs only.	Character (1).

Field name	Field description	Comments	Format
46. DP_IRA_Cde .....	IRA Code ..... The type of IRA. Possible values are: <ul style="list-style-type: none"> <li>• C = Corporate Retirement</li> <li>• E = Educational IRA.</li> <li>• I = IRA Account.</li> <li>• K = Keogh Account.</li> <li>• R = Roth IRA Account.</li> <li>• S = SEP Account.</li> <li>• T = Transitional Roth IRA.</li> <li>• V = Versa Account.</li> <li>• H = Health Savings Account.</li> </ul>	Optional code field to be used if available to help further identify the types of IRA accounts.	Character (1).
47. DP_Deposit_Class_Type ....	Deposit Class Type ..... The deposit class. Possible values are: <ul style="list-style-type: none"> <li>• RTL = Retail.</li> <li>• FED = Federal government.</li> <li>• STATE = State government.</li> <li>• COMM = Commercial.</li> <li>• CORP = Corporate.</li> <li>• BANK = Bank Owned.</li> <li>• DUE TO = Other Banks.</li> </ul>	The institution may also use more or fewer class types.	Character (10).
48. DP_Product_Class_Cde .....	Deposit Class Codes ..... The deposit class codes. Possible values are: RTL <ul style="list-style-type: none"> <li>• 1 = Payable on Death.</li> <li>• 2 = Individual.</li> <li>• 3 = Living Trust—Intervivos or Family.</li> <li>• 4 = Irrevocable Trust (includes Educational IRAs).</li> <li>• 5 = Estate.</li> <li>• 6 = Attorney in Fact.</li> <li>• 7 = Minor—(includes all variations of Uniform Gifts to Minor Accounts).</li> <li>• 8 = Bankruptcy Personal.</li> <li>• 9 = Pre-Need Burial.</li> <li>• 10 = Escrow.</li> <li>• 11 = Representative Payee/Beneficiary.</li> <li>• 12 = Sole Proprietorship.</li> <li>• 13 = Joint.</li> <li>• 14 = Non-Minor Custodian/Guardian.</li> <li>• 15 = Other Retail.</li> </ul>	These Product Class codes are used in conjunction with the Deposit Class Types in field 51. This field is to be used in concert with fields 12 and 13 identified above to enable the financial institution to capture more detailed information concerning account types. It is the intent of the FDIC to have the financial institution map its detailed account types to the codes identified in this field. The institution may also use additional codes, but in this event the institution must supply the detailed description and code value for each additional code used. If no additional account product type detail is available then this field should be left blank.	Character (2).

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Field name	Field description	Comments	Format
	<p>FED</p> <ul style="list-style-type: none"> <li>• 16 = FHA.</li> <li>• 17 = Federal Government.</li> </ul> <p>STATE</p> <ul style="list-style-type: none"> <li>• 18 = City.</li> <li>• 19 = State.</li> <li>• 20 = County, Clerk of Court.</li> <li>• 21 = Other State.</li> </ul> <p>COMMERCIAL</p> <ul style="list-style-type: none"> <li>• 22 = Business Escrow.</li> <li>• 23 = Bankruptcy.</li> <li>• 24 = Club.</li> <li>• 25 = Church.</li> <li>• 26 = Unincorporated Association.</li> <li>• 27 = Unincorporated Non-Profit.</li> <li>• 28 = Other Commercial.</li> </ul> <p>CORPORATION</p> <ul style="list-style-type: none"> <li>• 29 = Business Trust.</li> <li>• 30 = Business Agent.</li> <li>• 31 = Business Guardian.</li> <li>• 32 = Incorporated Association.</li> <li>• 33 = Incorporated Non-Profit.</li> <li>• 33 = Incorporated Non-Profit.</li> <li>• 34 = Corporation.</li> <li>• 35 = Corporate Partnership.</li> <li>• 36 = Corporate Partnership Trust.</li> <li>• 37 = Corporate Agent.</li> <li>• 38 = Corporate Guardian.</li> <li>• 39 = Pre-Need Funeral Trust.</li> <li>• 40 = Limited Liability Incorporation.</li> <li>• 41 = LLC partnership.</li> <li>• 42 = Lawyer Trust.</li> <li>• 43 = Realtor Trust.</li> <li>• 44 = Other Corporation.</li> </ul> <p>BANK</p> <ul style="list-style-type: none"> <li>• 45 = Certified &amp; Official Checks, Money Orders, Loan Disbursements Checks, and Expense Checks.</li> <li>• 46 = ATM Settlement.</li> <li>• 47 = Other Bank Owned Accounts.</li> </ul> <p>DUE TO (Other Banks)</p> <ul style="list-style-type: none"> <li>• 48 = Due to U.S. Banks.</li> <li>• 49 = Due to U.S. Branches of Foreign Banks.</li> <li>• 50 = Due to Other Depository Institutions.</li> <li>• 51 = Due to Foreign Banks.</li> <li>• 52 = Due to Foreign Branches of U.S. banks.</li> <li>• 53 = Due to Foreign Governments and Official Institutions.</li> </ul>		

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APPENDIX D TO PART 360—SWEEP/AUTOMATED CREDIT ACCOUNT FILE STRUCTURE

This is the structure of the data file to provide information to the FDIC on funds residing in investment vehicles linked to each non-closed deposit account or sub-account:  
 (1) Involved in sweep activity where the

sweep investment vehicle is not a deposit and is reflected on the books and records of the covered institution or (2) which accepts automated credits. A single record should be used for each instance where funds affiliated with the deposit account are held in an alternative investment vehicle. For any alternative investment vehicle, a separate account may or may not exist. If an account

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exists for the investment vehicle, it should be noted in the record. If no account exists, then a null value for the Sweep/Automated Credit Account Identifiers should be provided, but the remainder of the data fields defined below should be populated.

For data provided in the Sweep/Automated Credit Account File, the total account bal-

ances and the number of accounts must be reconciled to subsidiary system control totals. The file will be in a tab- or pipe-delimited ASCII format. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over *FDICconnect*.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account from which funds are swept or debited. The field may be the Account number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier—2 .....	Account Identifier—2 ..... If necessary, the second element used to identify the account from which funds are swept or debited.	.....	Character (25).
3. DP_Acct_Identifier—3 .....	Account Identifier—3 ..... If necessary, the third element used to identify the account from which funds are swept or debited.	.....	Character (25).
4. DP_Acct_Identifier—4 .....	Account Identifier—4 ..... If necessary, the fourth element used to identify the account from which funds are swept or debited.	.....	Character (25).
5. DP_Acct_Identifier—5 .....	Account Identifier—5 ..... If necessary, the fifth element used to identify the account from which funds are swept or debited.	.....	Character (25).
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. SW_Acct_Identifier .....	Sweep/Automated Credit Account Identifier. The primary field used to identify the account into which funds are swept or credited. This field may be the Account Number.	Funds may be swept into an investment vehicle not represented as an account. In this case this field should be a null value. The Sweep/Automated Credit Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
8. SW_Acct_Identifier—2 .....	Sweep/Automated Credit Account Identifier—2. If necessary, the second element of the account identifier used to identify the account into which funds are swept or credited.	.....	Character (25).
9. SW_Acct_Identifier—3 .....	Sweep/Automated Credit Account Identifier—3. If necessary, the third element of the account identifier used to identify the account into which funds are swept or credited.	.....	Character (25).

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Field name	Field description	Comments	Format
10. SW_Acct_Identifier—4 .....	Sweep/Automated Credit Account Identifier—4. If necessary, the fourth element of the account identifier used to identify the account into which funds are swept or credited.	.....	Character (25).
11. SW_Acct_Identifier—5 .....	Sweep/Automated Credit Account Identifier—5. If necessary, the fifth element of the account identifier used to identify the account into which funds are swept or credited.	.....	Character (25).
12. SW_Sub_Acct_Identifier .....	Sweep/Automated Credit Sub-Account Identifier. If available, the sub-account identifier for the account.	.....	Character (25).
13. SW_Type .....	Sweep/Automated Credit Type ...	The investment vehicle. Possible values are: • RE = Repurchase Agreement. • DD = Deposit Held in a Domestic Office. • DF = Deposit Held in a Foreign Office. • IBF = Deposit Held in an International Banking Facility. • AI = Deposit Held in an affiliated depository institution. • FF = Federal Funds. • CP = Commercial Paper. • OT = Other.	Character (3).
14. SW_Inv_Amount .....	Fund Balance in Sweep/Automated Credit Investment Vehicle. Dollar amount residing in the investment vehicle.	.....	Decimal (14,2).
15. SW_Currency_Type .....	Currency Type .....	.....	Character (3).
16. SW_Hold_Amount .....	FDIC Hold Amount .....	.....	Decimal (14,2).
17. SW_Sweep_Interval .....	Sweep/Investment Frequency .....	.....	Character (2).

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APPENDIX E TO PART 360—HOLD FILE STRUCTURE

This is the structure of the data file to provide information to the FDIC for each legal or collateral hold placed on a deposit account or sub-account. If data or information are not maintained or do not apply, a null value in the appropriate field should be indi-

cated. The file will be in a tab-or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a hold data file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over *FDICconnect*.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier .....	Account Identifier ..... The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier—2 .....	Account Identifier—2 ..... If necessary, the second element used to identify the account.		Character (25).
3. DP_Acct_Identifier—3 .....	Account Identifier—3 ..... If necessary, the third element used to identify the account.		Character (25).
4. DP_Acct_Identifier—4 .....	Account Identifier—4 ..... If necessary, the fourth element used to identify the account.		Character (25).
5. DP_Acct_Identifier—5 .....	Account Identifier—5 ..... If necessary, the fifth element used to identify the account.		Character (25).
6. DP_Sub_Acct_Identifier .....	Sub-Account Identifier ..... If available, the sub-account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. HD_Hold_Amt .....	Hold Amount ..... Dollar amount of the hold.		Decimal (14,2).
8. HD_Hold_Reason .....	Hold Reason ..... Reason for the hold. Possible values are: • LN = Loan Collateral Hold. • LG = Court Order Hold. • FD = FDIC hold. • OT = Other (do not include daily operational type holds).		Character (2).
9. HD_Hold_Desc .....	Hold Description ..... Description of the hold available on the system.		Character (255).
10. HD_Hold_Start_Dt .....	Hold Start Date ..... The date the hold was initiated.		Date (YYYYMMDD).
11. HD_Hold_Exp_Dt .....	Hold Expiration Date ..... The date the hold is to expire.		Date (YYYYMMDD)

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APPENDIX F TO PART 360—CUSTOMER FILE STRUCTURE

This is the structure of the data file to provide to the FDIC information related to each customer who has an account or sub-account reported in the deposit data or sweep/automated credit account file. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab-or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a customer file type and the date of the extract. The files will be encrypted using an FDIC-sup-

plied algorithm. The FDIC will transmit the encryption algorithm over *FDICconnect*.

NOTE: Each record must contain the customer's name and permanent legal address. Fields 4–12 relate to the customer name for individuals only. Fields 13–14 relate to the customer name for entities other than individuals. Some systems provide for separate fields for name, street address, city, state, ZIP, and country, all of which are parsed out. Others systems may simply provide multiple lines for name, street address, city, state, ZIP, with no distinction. In this case, certain name and address data elements must be parsed and provided in the appropriate fields.

Field name	Field description	Comments	Format
1. CS_Cust_Identifier .....	Customer Identifier .....		Character (25).

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Field name	Field description	Comments	Format
2. CS_Tax_ID .....	The unique field used by the institution to identify the customer. Customer Tax ID Number .....	Hyphens are optional in this field	Character (11).
3. CS_Tax_Code .....	The tax identification number on record for the customer. Customer Tax ID Code .....		
4. CS_Name_Line—1 .....	The type of the tax identification number of the customer. Possible values are: • S = Social Security Number. • T = Federal Tax Identification Number. • O = Other. Individual Customer Name Line 1 .....		Character (1).
5. CS_Name_Line—2 .....	If available, the free-form name narrative of the customer, first line. Individual Customer Name Line 2 .....		Character (100).
6. CS_Last_Name .....	If available, the free-form name narrative of the customer, second line. Individual Customer Last Name .....	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).
7. CS_First_Name .....	For individuals, the customer's last name. Individual Customer First Name .....	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).
8. CS_Middle_Name .....	For individuals, the customer's middle name. Individual Customer Middle Name .....	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (50).
9. CS_Suffix .....	For individuals, the suffix designating customer's academic, professional or honorary status, such as Esq., Ph.D., M.D., and D.D.S. Individual Professional Suffix .....	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (20).
10. CS_Generation .....	For individuals, the suffix designating the customer's generational status, such as Jr., Sr. or III. Individual Generational Suffix .....	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (10).
11. CS_Prefix .....	For individuals, the prefix of the customer, such as Rev., Dr., Mrs., Mr. or Ms. Individual Customer Prefix .....	This field is required if the data element is in the institution's records. If necessary, data should be parsed from fields 4 or 5 to obtain this element.	Character (10).
12. CS_Birth_Dt .....	Individual Customer Birth Date .....		Date (YYYYMMDD).
13. CS_Ent_Name_Line—1.	For individuals, the customer's birth date. Entity Name Line 1 .....		Character (100).
14. CS_Ent_Name_Line—2.	For entities other than individuals, the free-form name narrative of the customer, first line. Entity Name Line 2 .....		Character (100).
15. CS_Nar_Addr_Line—1.	If available for entities other than individuals, the free-form name narrative of the customer, second line. Customer Address Line 1 .....		Character (100).
16. CS_Nar_Addr_Line—2.	If available, the free-form permanent legal address narrative for the customer, line one. Customer Address Line 2 .....		Character (100).
	If available, the free-form permanent legal address narrative of the customer, line two.		

Field name	Field description	Comments	Format
17. CS_Nar_Addr_Line—3.	Customer Address Line 3 ..... If available, the free-form permanent legal address narrative of the customer, line three.	.....	Character (100).
18. CS_Street_Address—1	Street Address Line 1 ..... The permanent legal address of the customer, line one.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (100).
19. CS_Street_Address—2	Street Address Line 2 ..... The permanent legal address of the customer, line two.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (100).
20. CS_City .....	City ..... The city associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element.	Character (25).
21. CS_State .....	State ..... The state abbreviation associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Use a two-character state code (official U.S. Postal Service abbreviations).	Character (2).
22. CS_ZIP .....	ZIP ..... The ZIP + 4 code associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. If the “+4” code is not available, provide only the 5-digit ZIP code. Hyphens are optional in this field.	Character (10).
23. CS_Country .....	Country ..... The country associated with the permanent legal address.	This field is required. If necessary, data should be parsed from fields 16 or 17 to obtain this element. Provide the name of the country or the standard IRS country code.	Character (10).
24. CS_Telephone .....	Customer Telephone Number ..... The telephone number on record for the customer.	.....	Character (20).
25. CS_Email .....	Customer Email Address ..... The e-mail address on record for the customer.	.....	Character (150).

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APPENDIX G TO PART 360—DEPOSIT-CUSTOMER JOIN FILE STRUCTURE

This is the structure of the data file to provide to the FDIC information necessary to link the records in the deposit and customer files. If data or information are not maintained or do not apply, a null value in the appropriate field should be indicated. The file will be in a tab- or pipe-delimited ASCII format. Each file name will contain the institution's FDIC Certificate Number, an indication that it is a join file type and the date of the extract. The files will be encrypted using an FDIC-supplied algorithm. The FDIC will transmit the encryption algorithm over FDICconnect.

The deposit-customer join file will have one or more records for each deposit account, depending on the number of relationships to each account. A simple individual account, for example, will be associated with only one record in the deposit-customer join file indicating the owner of the account. A joint account with two owners will be associated with two records in the deposit-customer join file, one for each owner. The deposit-customer join file will contain other records associated with a deposit account to designate, among other things, beneficiaries, custodians, trustees and agents. This methodology allows the FDIC to know all of the possible relationships for an individual account and also whether a single customer is involved in many accounts.

Field name	FDIC field description	Comments	Format
1. CS_Cust_Identifier .....	Customer Identifier .....	.....	Character (25).

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Field name	FDIC field description	Comments	Format
2. DP_Acct_Identifier .....	The unique field used by the institution to identify the customer. Account Identifier .....	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, the data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
3. DP_Acct_Identifier—2 .....	The primary field used to identify the account. This field may be the Account Number. Account Identifier—2 .....		
4. DP_Acct_Identifier—3 .....	If necessary, the second element used to identify the account. Account Identifier—3 .....		
5. DP_Acct_Identifier—4 .....	If necessary, the third element used to identify the account. Account Identifier—4 .....		
6. DP_Acct_Identifier—5 .....	If necessary, the fourth element used to identify the account. Account Identifier—5 .....		
7. DP_Sub_Acct_Identifier ....	If necessary, the fifth element used to identify the account. Sub-Account Identifier .....		
8. CS_Rel_Code .....	If available, the sub-account identifier for the account. Relationship Code .....		
9. CS_Bene_Code .....	The code indicating how the customer is related to the account. Possible values are: <ul style="list-style-type: none"> <li>• ADM = Administrator.</li> <li>• AGT = Agent/Representative.</li> <li>• ATF = Attorney For.</li> <li>• AUT = Authorized Signer.</li> <li>• BNF = Beneficiary.</li> <li>• CSV = Conservator.</li> <li>• CUS = Custodian.</li> <li>• DBA = Doing Business As.</li> <li>• EXC = Executor.</li> <li>• GDN = Guardian.</li> <li>• MIN = Minor.</li> <li>• PRI = Primary Owner.</li> <li>• SEC = Secondary Owner(s).</li> <li>• TTE = Trustee.</li> </ul>		
	Beneficiary Type Code .....	Institutions must map their relationship codes to the codes in the list to the left. If the institution maintains more relationships they must supply the additional relationship codes being utilized along with the code definition.	Character (5).
	If the customer is considered a beneficiary, the type of account associated with this customer. Possible values are: <ul style="list-style-type: none"> <li>• I = IRA.</li> <li>• T = Trust—Irrevocable.</li> <li>• R = Trust—Revocable.</li> <li>• M = Uniform Gift to Minor.</li> <li>• P = Payable on Death.</li> <li>• O = Other.</li> </ul>		

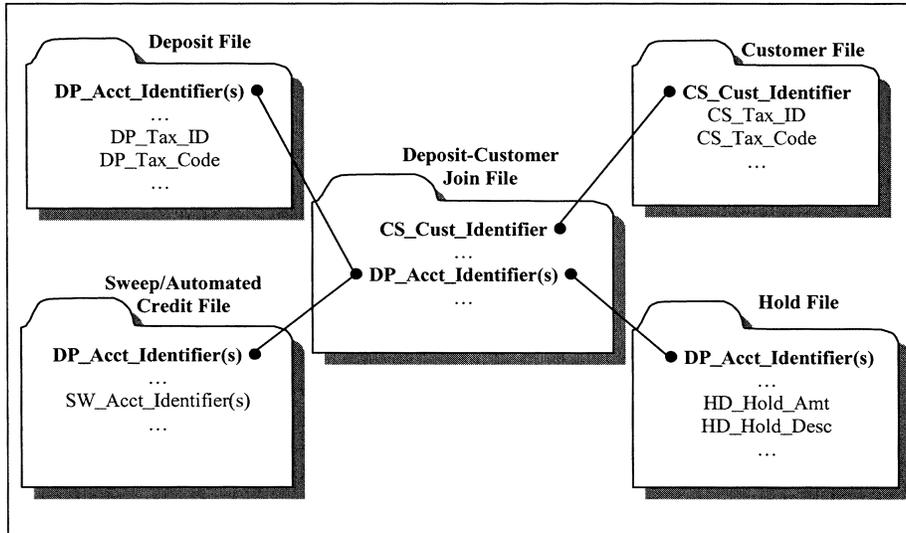
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APPENDIX H TO PART 360—POSSIBLE FILE COMBINATIONS FOR DEPOSIT DATA

A covered institution must provide deposit data using separate deposit, sweep/automated credit, hold, customer, and deposit-customer join files. The simplest file struc-

ture involves providing one of each file. This basic file format is shown in Figure 1.

Figure 1. Basic File Structure.



Multiple combinations of deposit, sweep/automated credit, hold, customer, and deposit-customer join files are permissible, but only in the following circumstances:

1. Each separate deposit file must have companion sweep/automated credit and hold files covering the same deposit accounts.

2. A single customer file may be submitted covering customers affiliated with deposit accounts in one or more deposit files as long as the customer file contains information on all of the customers affiliated with the deposit files.

3. Several customer files may be submitted as long as each separate customer file contains information on all of the customers affiliated with the associated deposit files.

Figure 2 shows a permissible file configuration using a single Customer File affiliated with Deposit File A and Deposit File B. As required, Deposit File A has a companion Sweep/Automated Credit File A and Hold File A. The same is true for Deposit File B.

Another permissible combination of files is shown in Figure 3, which is a variation of the basic data file structure shown in Figure 1.

Figure 2. Multiple Deposit Files, Single Customer File.

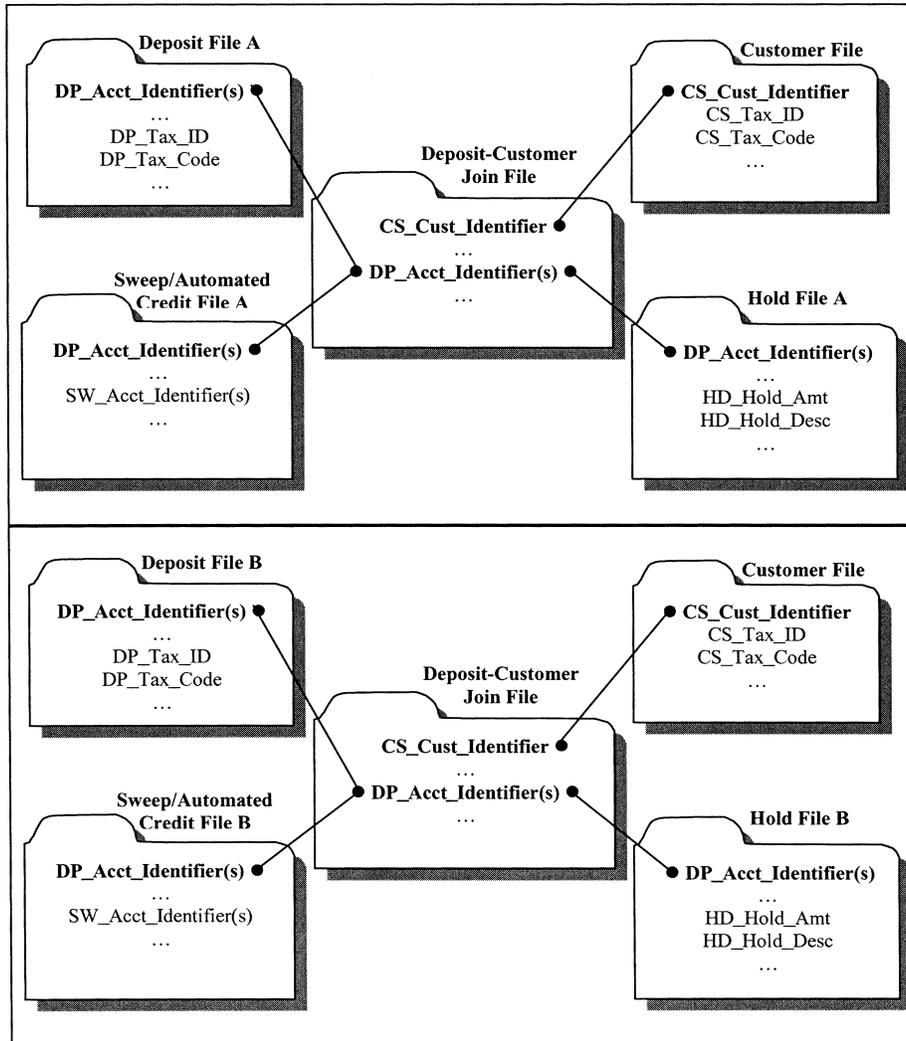
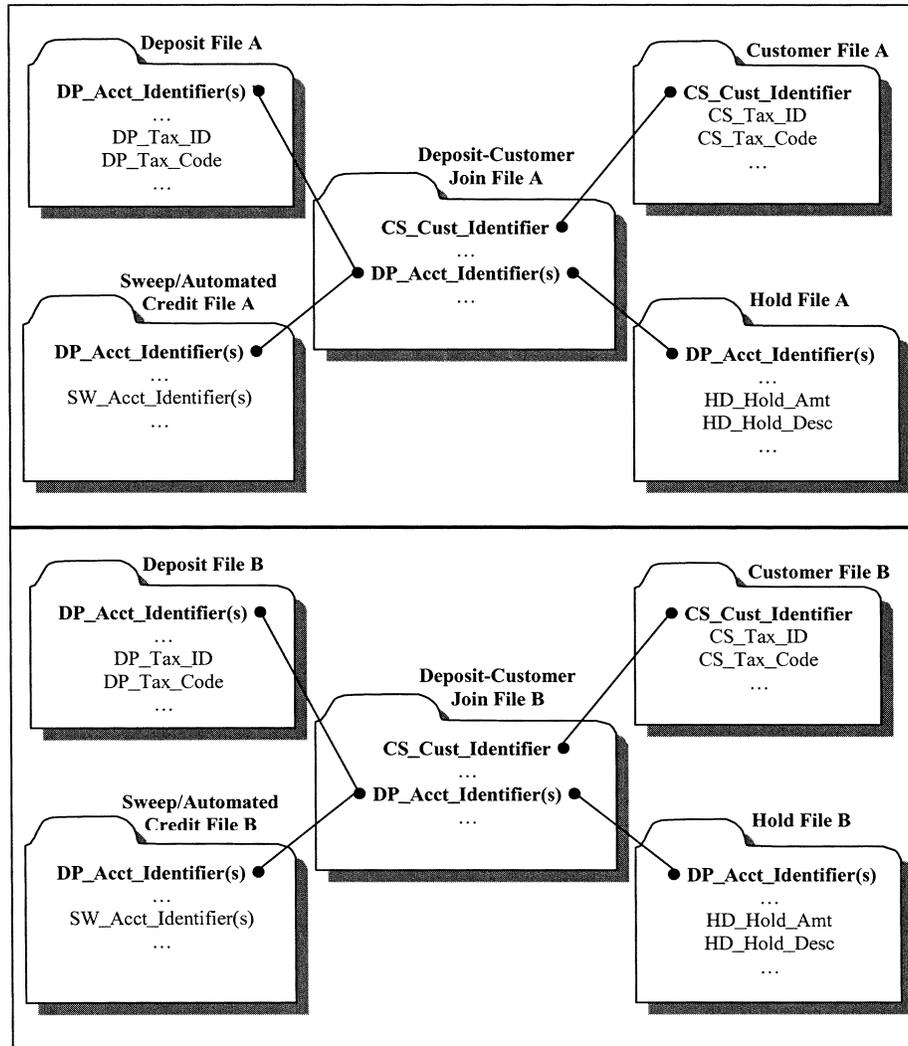


Figure 3. Multiple File Sets.



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**PART 361—MINORITY AND WOMEN  
OUTREACH PROGRAM CON-  
TRACTING**

Sec.

361.1 Why do minority- and women-owned businesses need this outreach regulation?

361.2 Why does the FDIC have this outreach program?

361.3 Who may participate in this outreach program?

361.4 What contracts are eligible for this outreach program?

361.5 What are the FDIC's oversight and monitoring responsibilities in administering this program?