The SPARK Institute, Inc.
SHAPING AMERICA'S RETIREMENT

By email: comments@fdic.gov

June 24, 2016

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: **Recordkeeping for Timely Deposit Insurance Determination**
(RIN 3064—AE33)

Dear Sir or Madam:

The SPARK Institute is pleased to submit these comments to the Federal Deposit Insurance Corporation (FDIC) in connection with the FDIC's proposal to require insured depository institutions that have two million or more deposit accounts to request detailed reporting from account holders.

The SPARK Institute represents the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third-party administrators, trade clearing firms, and benefits consultants. Collectively, our members serve approximately 85 million employer sponsored plan participants.

The SPARK Institute supports the proposal by the American Bankers Association in its comments to provide an exemption from the burdensome reporting rules for defined contribution plans and defined benefit plans. The FDIC should not effectively require a defined contribution or defined benefit plan (or its service provider) to disclose, automatically, records of the underlying participants and beneficiaries of the plan. Instead, in the event a covered bank fails and the FDIC steps in to provide deposit insurance, a plan and its service provider can provide, relatively quickly, the necessary information to obtain the deposit insurance to which the plan is entitled.

Background. When a defined contribution or defined benefit plan places deposits in an FDIC-insured account, the coverage limits (currently $250,000) are "passed through" to the participants and beneficiaries of the plans. For defined contribution plans, this coverage limit is based on "the employee's account balance as of the date of default of the insured depository institution." For defined benefit plans, the coverage limit is based on "the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution." 12 C.F.R. § 330.14.

Proposal. We understand that the FDIC is concerned that, if one of the nation's larger banks fails, the FDIC would like to ensure that it could provide insurance to account holders quickly. Accordingly, the proposal would require these largest institutions (which we understand currently represent about 30-35 banks) to ask for additional detailed information from account holders like plans that are eligible for "pass-through" coverage. The proposal would require the bank to request, for each participant in a plan, (a) the names of the plan participants invested in the account, (b) the Social Security numbers or other "unique identifier" for those plan participants, and (c) the balance of each plan participant's interest in the plan. It appears to us that the bank would also be required to ask for nearly continuous updating of this information. As we read the proposal, a plan would not be *required* to provide the information, but if this information is not provided, the bank would need to seek an exemption from the FDIC.

Use of FDIC-Insured Accounts By Plans. It is possible that a defined contribution plan may offer FDIC-insured accounts as an investment option to participants, but in our experience this is very uncommon. Surveys of defined contribution plans typically show that the plan has at least one investment option for participants that is lower risk, and in the vast majority of plans this investment option is a money market mutual fund, short-term investment fund, or stable value fund. Surveys of defined contribution plans that we have seen do not even bother to break out or report "FDIC-insured account" as an investment vehicle for the plan menu.[1]

Some investment funds, like collective investment trusts (CITs) and similar vehicles that are used by retirement plans, may hold FDIC-insured deposits as portfolio assets.

FDIC-insured accounts are used by plans as cash holding vehicles to receive incoming contributions awaiting overnight investment or as payment accounts when a participant requests a distribution from the plan. But this is generally a small percentage of overall plan assets.

Defined benefit plans do not maintain accounts for individual participants. The assets are invested as determined by the plan's investment manager consistent with the long-term funding needs of the plans. These plans, like other institutional investors, may use FDIC-insured accounts, or pooled funds that hold FDIC-insured deposits, as cash management vehicles. Defined benefit plans also make (typically) monthly annuity payments to retired participants and may use an FDIC-insured account as the payment account. In any event, it would be very unusual for the FDIC-insured account to represent a significant percentage of the plan's assets.[2]

[1] See, e.g., Vanguard, How America Saves 2015, Figure 57 (reporting, under "Cash," only "Money Market" and "Stable Value/Investment Contract"), available at https://institutional.vanguard.com/VGApp/iip/site/institutional/clientsolutions/dc/howamericasaves; see also Holden, Sarah, Jack VanDerhei, Luis, Alonso, and Steven Bass, 2016, "401(k) Plan Asset Allocation Account Balances and Loan Activity in 2014" ICI Research Perspective 22, no. 3 (April), available at www.ici.org/pdf/per22-03.pdf.

[2] According to Department of Labor data, in 2013, of the total $7.1 trillion assets held by defined contribution and defined benefit plans with 100 or more participants, only $105 billion, or about 1.5%, was held in "non-interest bearing cash" or "interest-bearing cash." See Table C4 of the Department of Labor's Private Pension Plan Bulletin, Abstract of 2013 Form 5500 Annual Reports (September 2015), available at https://www.dol.gov/ebsa/pdf/2013pensionplanbulletin.pdf.

The implication of these data is that, in the vast majority of cases, defined contribution and defined benefit plans will be well under the FDIC account limit ($250,000 per participant), and this will be easy to demonstrate if necessary upon the failure of a bank. The only exception is when the account is used to receive funds transferring from another recordkeeper and for distribution amounts awaiting presentment of the check.

Burden of Reporting. In contrast, the detailed reporting the FDIC is suggesting is simply too burdensome, especially since it seems to provide little benefit. For defined contribution plans, participant demographic data is changing on a daily basis. For SPARK members, who serve as *service providers* to the plans, and do not serve as the plan sponsor or plan fiduciary, the data that the FDIC is requesting may be restricted for privacy reasons by the plan sponsor. (It is the plan sponsor or other plan fiduciary that makes the decisions about how plan records will and will not be used.)

The burden is even more acute for defined benefit plans. Calculating the "present value" of a participant's benefit under a defined benefit plan is not simply a matter of a few numbers on a spreadsheet. Benefit calculations must be performed by a qualified actuary (and subject to multiple layers of review) at considerable expense.

For CITs and similar investment funds that hold FDIC-insured deposits as portfolio assets, we understand that the "pass through" protection for FDIC-insured deposits is generally viewed as available through the fund to the participating plans and then through each participating plan to its individual participants. But CITs and similar funds do not have participant-level data regularly available.

It is simply fantasy to think that a plan would subject itself to this expense on a regular basis solely to reduce the time to calculate FDIC insurance by a few days in the unlikely event of a failure. The plan would either refuse or seek depository services from another bank not subject to these rules. (In fact, it might be viewed as a fiduciary breach under ERISA to spend considerable plan assets for no apparent benefit.)

Need for Exemption. As explained in the comment letter filed by the American Bankers Association, it would be much more efficient for plans to provide the information that the FDIC needs to determine insurance coverage quickly upon the failure of a bank.[3] Plans maintain participant records for many purposes, and can produce them reasonably quickly. For a defined benefit plan, it would be relatively easy to show that the size of the plan's account with the bank, relative to the benefits accrued by participants, means that the entire account is protected by FDIC insurance. Similarly, service providers to defined contribution plans can produce participant level account data if necessary in relatively short order.

[3] We understand that during the normal account opening process, a bank will know that the depositor is a plan that is eligible for "pass through" treatment.

In short, this proposal is establishing a parallel and duplicative recordkeeping requirement on banks that makes no sense. The necessary information about amounts per participant is easily retrieved from the recordkeeper or trustee maintaining the account if needed.

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We would be happy to meet with you to help you better understand how retirement plans work and how they use FDIC-insured accounts. If you have any questions or would like more information regarding this letter, please contact me or the SPARK Institute's outside counsel, Michael Hadley, Davis & Harman LLP (mlhadley@davis-harman.com or 202-347-2210).

Sincerely,

Tim Rouse
Executive Director