

§ 360.10 Resolution plans required for insured depository institutions with \$50 billion or more in total assets.

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

(b) *Definitions*—(1) *Affiliate* has the same meaning given such term in Section 3(w)(6) of the FDI Act, 12 U.S.C. 1813(w)(6).

(2) *Company* has the same meaning given such term in § 362.2(d) of the FDIC’s Regulations, 12 CFR 362.2(d).

(3) *Core business lines* means those business lines of the covered insured depository institution (“CIDI”), including associated operations, services, functions and support, that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value.

(4) *Covered insured depository institution (“CIDI”)* means an insured depository institution with \$50 billion or more in total assets, as determined based upon the average of the institution’s four most recent Reports of Condition and Income or Thrift Financial Reports, as applicable to the insured depository institution.

(5) *Critical services* means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operations of the CIDI.

(6) *Foreign-based company* means any company that is not incorporated or organized under the laws of the United States.

(7) *Insured depository institution* shall have the meaning given such term in Section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

(8) *Material entity* means a company that is significant to the activities of a critical service or core business line.

(9) *Parent company* means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, *parent company* means the top-tier of the multi-tiered holding company only.

(10) *Parent company affiliate* means any affiliate of the parent company other than the CIDI and subsidiaries of the CIDI.

(11) *Resolution plan* means the plan described in paragraph (c) of this section for resolving the CIDI under Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

(12) *Subsidiary* has the same meaning given such term in Section 3(w)(4) of the FDI Act, 12 U.S.C. 1813(w)(4).

(13) *Total assets* are defined in the instructions for the filing of Reports of Condition and Income and Thrift Financial Reports, as applicable to the insured depository institution, for determining whether it qualifies as a CIDI.

(14) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa and the Virgin Islands.

(c) *Resolution Plans to be submitted by CIDI to FDIC.*

(1) *General.* (i) *Initial Resolution Plans Required.* Each CIDI shall submit a resolution plan to the FDIC, Attention: Office of Complex Financial Institutions, 550 17th Street NW., Washington, DC 20429, on or before the date set forth below (“Initial Submission Date”):

(A) July 1, 2012, with respect to a CIDI whose parent company, as of November 30, 2011, had \$250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets);

(B) July 1, 2013, with respect to any CIDI not described paragraph (c)(1)(i)(A) of this section whose parent company, as of November 30, 2011, had \$100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets); and

(C) December 31, 2013, with respect to any CIDI not described in of this paragraph (c)(1)(i)(A) or (B) of this section.

(ii) *Submission by New CIDs.* An insured depository institution that becomes a CIDI after April 1, 2012 shall submit its initial resolution plan no later than the next July 1 following the date the insured depository institution becomes a CIDI, provided such date occurs no earlier than 270 days after the date on which the insured depository institution became a CIDI.

(iii) After filing its initial Resolution Plan pursuant to paragraph (c)(1)(i) or (c)(1)(ii) of this section, each CIDI shall submit a Resolution Plan to the FDIC annually on or before each anniversary date of its Initial Submission Date.

(iv) Notwithstanding anything to the contrary in this paragraph (c)(1), the FDIC may determine that a CIDI shall file its initial or annual Resolution Plan by a date other than as provided in this paragraph (c). The FDIC shall provide a CIDI with written notice of a determination under this paragraph (c)(1)(iv) no later than 180 days prior to the date on which the FDIC determines to require the CIDI to submit its Resolution Plan.

(v) *Notice of Material Events.* (A) Each CIDI shall file with the FDIC a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI. Such notice shall describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan.

The CIDI shall address any event, occurrence or change with respect to which it has provided notice pursuant hereto in the following resolution plan submitted by the CIDI.

(B) A CIDI shall not be required to file a notice under paragraph (c)(1)(v)(A) of this section if the date on which the CIDI would be required to submit a notice under paragraph (c)(1)(v)(A) would be within 90 days prior to the date on which the CIDI is required to file an annual Resolution Plan under paragraph (c)(1)(iii) of this section.

(vi) *Incorporation of data and other information from a Dodd-Frank Act resolution plan.* The CIDI may incorporate data and other information from a resolution plan filed pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5365(d), by its parent company.

(2) *Content of the Resolution Plan.* The resolution plan submitted should enable the FDIC, as receiver, to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823. The resolution plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. At a minimum, the resolution plan shall:

(i) *Executive Summary.* Include an executive summary describing the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI

files its initial plan, each annual resolution plan shall also describe:

(A) Material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan;

(B) Material changes to the CIDI's resolution plan from its most recently filed plan; and

(C) Any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the resolution plan.

(ii) *Organizational Structure: Legal Entities; Core Business Lines and Branches.* Provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. Provide a mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities. Discuss the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Identify key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization.

(iii) *Critical Services.* Identify critical services and providers of critical services. Provide a mapping of critical services to material entities and core business lines. Describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services are provided by the parent company or a parent company affiliate, describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. Assess the ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure.

(iv) *Interconnectedness to Parent Company's Organization; Potential Barriers or Material Obstacles to Orderly Resolu-*

tion. Identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI. Identify potential barriers or other material obstacles to an orderly resolution of the CIDI, inter-connections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

(v) *Strategy to Separate from Parent Company's Organization.* Provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. Describe remediation or mitigating steps that could be taken to eliminate or mitigate obstacles to such separation.

(vi) *Strategy for the Sale or Disposition of Deposit Franchise, Business Lines and Assets.* Provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases.

(vii) *Least Costly Resolution Method.* Describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI.

(viii) *Asset Valuation and Sales*. Provide a detailed description of the processes the CIDI employs for:

(A) Determining the current market values and marketability of core business lines and material asset holdings;

(B) Assessing the feasibility of the CIDI's plans, under baseline, adverse and severely adverse economic condition scenarios for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the CIDI's resolution plan; and

(C) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines.

(ix) *Major Counterparties*. Identify the major counterparties of the CIDI and describe the interconnections, interdependencies and relationships with such major counterparties. Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI.

(x) *Off-balance-sheet Exposures*. Describe any material off-balance-sheet exposures (including unfunded commitments, guarantees and contractual obligations) of the CIDI and map those exposures to core business lines.

(xi) *Collateral Pledged*. Identify and describe processes used by the CIDI to:

(A) Determine to whom the CIDI has pledged collateral;

(B) Identify the person or entity that holds such collateral; and

(C) Identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

(xii) *Trading, derivatives and hedges*. Describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Identify each system on which the CIDI conducts a material number or value amount of trades. Map each trading system to the CIDI's legal entities and core business lines. Identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a

mapping to legal entity. Describe hedging strategies of the CIDI.

(xiii) *Unconsolidated Balance Sheet of CIDI; Material Entity Financial Statements*. Provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI. Provide financial statements for material entities. When available, audited financial statements should be provided.

(xiv) *Payment, clearing and settlement systems*. Identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Map membership in each such system to the CIDI's legal entities and core business lines.

(xv) *Capital Structure; Funding Sources*. Provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which shall be mapped to core business lines and critical services. Describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

(xvi) *Affiliate Funding, Transactions, Accounts, Exposures and Concentrations*. Describe material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI or any of its subsidiaries have with its parent or any parent company affiliate. Include in such description material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions. Clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI and its subsidiaries, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.

(xvii) *Systemically Important Functions*. Describe systemically important

functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role. Discuss critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

(xviii) *Cross-Border Elements*. Describe material components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. Discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures and map to legal entities and core business lines.

(xix) *Management Information Systems; Software Licenses; Intellectual Property*. Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. Identify the legal owner or licensor of the systems identified above; describe the use and function of the system or application, and provide a listing of service level agreements and any software and systems licenses or associated intellectual property related thereto. Identify and discuss any disaster recovery or other backup plans. Identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems. Describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the resolution plan to management of the CIDI and, upon request to the FDIC. Describe any deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(xx) *Corporate Governance*. Include a detailed description of:

(A) How resolution planning is integrated into the corporate governance structure and processes of the CIDI;

(B) The CIDI's policies, procedures, and internal controls governing preparation and approval of the resolution plan; and

(C) The identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, implementation, and filing of the resolution plan and for the CIDI's compliance with this section.

(xxi) *Assessment of the Resolution Plan*. Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed resolution plan to assess the viability of or improve the resolution plan.

(xxii) *Any other material factor*. Identify and discuss any other material factor that may impede the resolution of the CIDI.

(3) *Approval*. The CIDI's board of directors must approve the resolution plan. Such approval shall be noted in the Board minutes.

(4) *Review of Resolution Plan*.

(i) Each resolution plan submitted shall be credible. A resolution plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

(ii) After receiving a resolution plan, the FDIC shall determine whether the submitted plan satisfies the minimum informational requirements of paragraph (c)(2) of this section; and either acknowledge acceptance of the plan for review or return the resolution plan if the FDIC determines that it is incomplete or that substantial additional information is required to facilitate review of the resolution plan.

(iii) If the FDIC determines that a resolution plan is informationally incomplete or that additional information is necessary to facilitate review of

the plan, the FDIC shall inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required.

(iv) The CIDI shall resubmit an informationally complete resolution plan or such additional information as requested to facilitate review of the resolution plan no later than 30 days after receiving the notice described in paragraph (c)(4)(iii) of this section, or such other time period as the FDIC may determine.

(v) Upon acceptance of a resolution plan as informationally complete, the FDIC will review the resolution plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the resolution plan of a CIDI submitted is not credible, the FDIC shall notify the CIDI in writing of such determination. Any notice provided under this paragraph shall identify the aspects of the resolution plan that the FDIC determines to be deficient.

(vi) Within 90 days of receiving a notice of deficiencies issued pursuant to the preceding paragraph, or such shorter or longer period as the FDIC may determine, a CIDI shall submit a revised resolution plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

(vii) Upon its own initiative or a written request by a CIDI, the FDIC may extend any time period under this section. Each extension request shall be in writing and shall describe the basis and justification for the request.

(d) *Implementation Matters.* (1) In order to allow evaluation of the resolution plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(2) Within a reasonable period of time, as determined by the FDIC, following its Initial Submission Date, the CIDI shall demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, the information and data underlying its resolution plan. The FDIC shall consult with the appropriate Federal banking agency for the CIDI before finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.

(3) Notwithstanding the general requirements of paragraph (c)(1) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, the implementation and updating time frames for all or part of the requirements of this section.

(4) FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.

(e) *No limiting effect on FDIC.* No resolution plan provided pursuant to this section shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

(f) *Form of Resolution Plans; Confidential Treatment of Resolution Plans.* (1) Each resolution plan of a CIDI shall be divided into a Public Section and a Confidential Section. Each CIDI shall segregate and separately identify the Public Section from the Confidential Section. The Public Section shall consist of an executive summary of the resolution plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI:

- (i) The names of material entities;
- (ii) A description of core business lines;
- (iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;
- (iv) A description of derivative activities and hedging activities;
- (v) A list of memberships in material payment, clearing and settlement systems;
- (vi) A description of foreign operations;

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(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) A description, at a high level, of the CIDI’s resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

(2) The confidentiality of resolution plans shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC’s Disclosure of Information Rules (12 CFR part 309).

(3) Any CIDI submitting a resolution plan or related materials pursuant to this section that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and the FDIC’s Disclosure of Information Rules (12 CFR part 309) and related policies may file a request for confidential treatment in accordance with those rules.

(4) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(5) To the extent permitted by law, the submission of any nonpublicly available data or information under this section shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

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§ 360.11 Records of failed insured depository institutions.

(a) Definitions. For purposes of this section, the following definitions apply—

(1) Failed insured depository institution is an insured depository institution for which the FDIC has been appointed receiver pursuant to 12 U.S.C. 1821(c)(1).

(2) Insured depository institution has the same meaning as provided by 12 U.S.C. 1813(c)(2).

(3) Records means any reasonably accessible document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by an insured depository institution in the course of and necessary to its transaction of business.

(i) Examples of records include, without limitation, board or committee meeting minutes, contracts to which the insured depository institution was a party, deposit account information, employee and employee benefits information, general ledger and financial reports or data, litigation files, and loan documents.

(ii) Records do not include:

(A) Multiple copies of records; or

(B) Examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of insured depository institutions.

(b) Determination of records. In determining whether particular documentary material obtained from a failed insured depository institution is a record for purposes of 12 U.S.C. 1821(d)(15)(D), the FDIC in its discretion will consider the following factors:

(1) Whether the documentary material related to the business of the insured depository institution,

(2) Whether the documentary material was generated or maintained as records in the regular course of the business of the insured depository institution in accordance with its own recordkeeping practices and procedures or pursuant to standards established by its regulators,

(3) Whether the documentary material is needed by the FDIC to carry out its receivership function, and

(4) The expected evidentiary needs of the FDIC.

(c) The FDIC’s determination that documentary material from a failed insured depository institution constitutes records is solely for the purpose of identifying that documentary material that must be maintained pursuant to 12 U.S.C. 1821(d)(15)(D) and shall not bear on the discoverability or