

the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(d) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

§ 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 employment, 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. 1811 *et seq.*, 1817(a)(2)(B), 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Eighth, Ninth, and Tenth, 1820(b)(3) and (4), 1820(g), 1821(d)(1), (4), (10)(C), and (11), 1821(e)(1) and (8)(D)(i), 1821(f)(1), 1823(c)(4), and 1823(e)(2).

§ 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:

(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

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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.

(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

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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 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 in-

struments 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 reasonably 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

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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 agree-

ment 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 324.2 (definition of sovereign exposure), as may be amended from time to time) of the OECD-based group of countries (as generally discussed in 12 CFR 324.32) 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, as amended at 78 FR 55595, Sept. 10, 2013; 83 FR 17741, Apr. 24, 2018]

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

(a) *Definitions*—

(1) *Applicable compliance date* means, with respect to a securitization, the date on which compliance with 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 is required with respect to that securitization.

(2) *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.

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

(4) *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.

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

(6) *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.

(7) *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.

(8) *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.

(9) *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.

(10) *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;

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(iii) The Government National Mortgage Association; and

(iv) Any federal or state sponsored mortgage finance agency.

(11) *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.

(12) *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 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) In the case of an issuance of obligations that is subject to 17 CFR part 229, subpart 229.1100 (Regulation AB of the Securities and Exchange Commission (Regulation AB)), 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 Regulation AB. 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 maintain records of its actions to permit full review by the trustee or other representative of the investors and that the servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies have been cured, *provided* that this requirement shall not be deemed to require that the documents include any provision con-

cerning loss mitigation that requires any action that may conflict with the requirements of Regulation X (12 CFR part 1024), as Regulation X may be amended or modified from time to time.

(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 applicable compliance date for regulations required under 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 creating the securitization 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, pledged or hedged, except for the hedging of interest rate or currency risk, during the term of the securitization.

(B) For any securitization that closes upon or following the applicable compliance date for regulations required under 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 creating the securitization shall instead require retention of an economic interest in the credit risk of the financial assets in accordance with such regulations, including the restrictions on sale, pledging and hedging set forth therein.

(C) Notwithstanding paragraph (b)(5)(i)(A) of this section, for any securitization that closes following November 24, 2015 and prior to the applicable compliance date for regulations required under 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, at the option of the sponsor, the requirements of paragraph (b)(5)(i)(B) of this section may be satisfied if (in lieu of the requirement set forth in paragraph (b)(5)(i)(A) of this section) the documents creating the securitization require retention of an economic interest in the credit risk of the financial assets in accordance with the requirements of the Section 15G regulations as

though such regulations were then in effect.

(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;

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(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 insti-

tution 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 mone-

tary 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 such 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 require-

ments 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

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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, as amended at 80 FR 73089, Nov. 24, 2015; 81 FR 41423, June 27, 2016; 85 FR 12731, Mar. 4, 2020]

§ 360.7 Post-insolvency interest.

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

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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 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 institution'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 provision do not apply to sweep accounts where: The transfers are within a single account, or a sub-account; or the sweep account involves only deposit-to-deposit sweeps, such as zero-balance accounts, unless the sweep results in a change in the customer's insurance coverage.

[74 FR 5806, Feb. 2, 2009]

§ 360.9 Large-bank deposit insurance determination modernization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) A covered institution may submit a request to the FDIC, using the address indicated in §360.9(g): to develop

a provisional hold process involving memo holds or alternative account mechanisms; or to exempt from the provisional hold requirements of this section those account systems servicing a relatively small number of accounts where the manual application of provisional holds is feasible. Such requests may be in the form of a letter and must include a justification for the request and address the relative effectiveness of the alternative for posting provisional holds in the event of failure. The FDIC will consider such requests on a case-by-case basis in light of the objectives of this section.

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

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

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

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

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

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

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

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

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

(5) Upon the merger of one or more covered institutions with one or more non-covered institutions, the merged institution(s) must comply with the requirements of this section within eighteen months following the effective date of the merger. This provision,

however, does not supplant any pre-existing 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 324; 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, as amended at 78 FR 55595, Sept. 10, 2013; 83 FR 17741, Apr. 24, 2018]

§ 360.10 Resolution plans required for insured depository institutions with \$100 billion or more in total assets; informational filings required for insured depository institutions with at least \$50 billion but less than \$100 billion in total assets.

(a) *Scope and purpose.* This section applies to insured depository institutions with \$50 billion or more in total assets. It requires a covered insured depository institution with \$100 billion or more in total assets (a group A CIDI, as defined in paragraph (b) of this section) to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under 12 U.S.C. 1821 and 1823 in a manner that provides depositors timely access to their insured deposits, maximizes the net present value return from the sale or disposition of assets and minimizes the amount of any loss realized by the creditors in the resolution, and addresses risks of adverse effects on U.S. economic conditions or economic stability. Other covered insured depository institutions (group B CIDs, as defined in paragraph (b) of this section) are required under this section to submit to the FDIC an informational filing containing information relevant to the group B CIDI's resolution that will support the development of strategic options for resolution of the CIDI by the FDIC. This section also establishes the requirements regarding the submission of resolution

plans and informational filings and their contents, as well as procedures for their review by the FDIC. This rule is intended to ensure that each group A CIDI develops a credible strategy to facilitate the FDIC's resolution of the institution across a range of possible scenarios and, with respect to each group A CIDI and each group B CIDI, the FDIC has access to all of the material information and analysis it needs to resolve efficiently the covered insured depository institution in the event of its failure.

(b) *Definitions.*

Affiliate has the same meaning as in 12 U.S.C. 1813(w)(6).

Appropriate Federal banking agency has the same meaning as in 12 U.S.C. 1813(q).

Biennial filer is defined in paragraph (c)(1) of this section.

Bridge depository institution has the same meaning as in 12 U.S.C. 1813(i)(2).

Capabilities testing is defined in paragraph (f)(7) of this section.

CIDI or covered insured depository institution means a group A CIDI or a group B CIDI.

Company has the same meaning as in 12 CFR 362.2(d).

Control has the same meaning as in 12 U.S.C. 1813(w)(5).

Core business lines means those business lines of the 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 of the CIDI.

Critical services means services and operations, including shared and outsourced services, that are necessary to continue the day-to-day operations of the CIDI, and, in the case of a group A CIDI, to support the execution of the identified strategy, and includes all services and operations that are necessary to continue any critical operation conducted by the CIDI that has been included in the most recent DFA resolution plan of the CIDI's parent company.

Critical services support means resources, including shared and outsourced resources, that are necessary to support the provision of critical services, including systems, technology infrastructure, data, key per-

sonnel, intellectual property, and facilities.

DFA resolution plan means a resolution plan filed by a CIDI's parent company under 12 U.S.C. 5365(d).

DIF means the deposit insurance fund established by 11 U.S.C. 1821(a)(4).

Engagement is defined in paragraph (f)(6) of this section.

Failure scenario means a scenario as described in paragraph (d)(2) of this section.

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

Franchise component means a business segment, regional branch network, major asset, material asset portfolio, or other key component of a CIDI's franchise that can be separated and sold or divested.

Full resolution submission means a resolution plan for a group A CIDI, and an informational filing for a group B CIDI.

Group A CIDI means an insured depository institution with \$100 billion or more in total assets, as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. An insured depository institution that is a group A CIDI remains a group A CIDI until it has less than \$100 billion in total assets for each of the institution's four most recent Consolidated Reports of Condition and Income. In the event of a merger, acquisition of assets, combination, or similar transaction by an insured depository institution that causes it to exceed \$100 billion in total assets, the FDIC may alternatively consider, in its discretion, to the extent and in the manner the FDIC considers to be appropriate, one or more of the four most recent Consolidated Reports of Condition and Income of the insured depository institutions that will become a group A CIDI effective as of the date of the consummation of such merger, acquisition, combination, or other transaction.

Group B CIDI means an insured depository institution with at least \$50 billion but less than \$100 billion in total assets, as determined based upon the average of the institution's four most recent Consolidated Reports of

Condition and Income. An insured depository institution that is a group B CIDI remains a group B CIDI until it is a group A CIDI or has less than \$50 billion in total assets, in either case, for each of the institution's four most recent Consolidated Reports of Condition and Income. In the event of a merger, acquisition of assets, combination, or similar transaction by an insured depository institution that causes it to have at least \$50 billion but less than \$100 billion in total assets, the FDIC may alternatively consider, in its discretion, to the extent and in the manner the FDIC considers to be appropriate, one or more of the four most recent Consolidated Reports of Condition and Income of the insured depository institutions that will become a group B CIDI effective as of the date of the consummation of such merger, acquisition, combination, or other transaction.

Identified strategy means the strategy chosen by a group A CIDI for its resolution plan as required pursuant to paragraph (d)(1) of this section, covering the time period from the point of failure to disposition of substantially all of the assets and operations of the group A CIDI through wind-down, liquidation, divestiture, or other return to the private sector.

IDI franchise means all core business lines and all other business segments, branches, and assets that constitute the CIDI and its businesses as a whole.

Informational filing means the full resolution submission submitted by a group B CIDI pursuant to this section.

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

Key depositors is defined in paragraph (d)(7)(v) of this section.

Key personnel means personnel tasked with an essential role in support of a core business line, franchise component, or critical service, or having a function, responsibility, or knowledge that may be significant to the FDIC's resolution of the CIDI. Key personnel may be employed by the CIDI, a CIDI subsidiary, the parent company, a parent company affiliate, or a third party.

Least-cost test means the process for determining the resolution strategy that is least costly to the DIF, as required under 12 U.S.C. 1823(c).

Material asset portfolio means a pool or portfolio of assets, such as loans, securities, or other assets that may be sold in resolution by the bridge depository institution or the receivership and is significant in terms of income or value to the CIDI.

Material change means a change in organization, operations, or strategic direction of the CIDI that results from an extraordinary event or other circumstance that could reasonably be foreseen to have a material effect on the resolvability of the CIDI. Such changes include, but are not limited to:

- (i) The identification of a new core business line;
- (ii) The identification of a new material entity or the de-identification of a material entity;
- (iii) Legal or functional organizational structure;
- (iv) Overall deposit structure;
- (v) Critical services or critical services support;
- (vi) The identification or de-identification of a franchise component;
- (vii) The acquisition or disposition of a material asset portfolio; or
- (viii) Cross-border elements.

Material entity means a company, a domestic branch, or a foreign branch as defined in 12 U.S.C. 1813(o) that is significant to the activities of a critical service or core business line, and includes all IDIs that are subsidiaries or affiliates of the CIDI.

Multiple-acquirer exit means an exit from a bridge depository institution through the sale of all or nearly all of the CIDI's IDI franchise to multiple acquirers, such as a regional breakup of the CIDI's IDI franchise or a sale of business segments to multiple acquirers, and may also include the wind-down or other disposition of franchise components, or material asset portfolios incidental to the divestitures of going concern elements, as applicable.

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.

Parent company affiliate means any affiliate of the parent company other

than the CIDI and the CIDI's subsidiaries.

Payment, clearing, and settlement service provider (PCS service provider) is defined in paragraph (d)(16) of this section.

Qualified financial contract has the same meaning as in 12 U.S.C. 1821(e)(8).

Regulated subsidiary is defined in paragraph (d)(4)(v) of this section.

Resolution plan means the full resolution submission submitted by a group A CIDI pursuant to this section.

Subsidiary has the same meaning as in 12 U.S.C. 1813(w)(4).

Total assets has the meaning given in the instructions for the filing of Reports of Condition and Income.

Triennial filer is defined in paragraph (c)(2) of this section.

United States has the same meaning as the term State as defined in 12 U.S.C. 1813(a)(3).

Virtual data room means an online repository where information pertinent to a sale or disposition of a CIDI or its franchise components is maintained in a secure and confidential manner to facilitate, whether by the CIDI or the FDIC, such sale or disposition to one or more third party acquirers.

(c) *Full resolution submissions required*—(1) *Biennial filers*—(i) *Definition*. Biennial filer means a CIDI affiliate of a biennial filer, as defined in § 381.4(a)(1) of this chapter.

(ii) *Submission date*. Each biennial filer must provide a full resolution submission to the FDIC on or before the date that is two years after the date of its most recent full resolution submission (or first business day thereafter), unless it has received written notice of a different date from the FDIC. All biennial filers will receive a written notice specifying the date on which their initial full resolution submission or interim supplement is due, which will be at least 270 days after October 1, 2024.

(2) *Triennial filers*—(i) *Definition*. Triennial filer means all CIDs that are not biennial filers.

(ii) *Submission date*. Each triennial filer must provide a full resolution submission to the FDIC on or before the date that is three years after the date of its most recent full resolution submission (or first business day thereafter), unless it has received written

notice of a different date from the FDIC. All triennial filers will receive a written notice specifying the date on which their initial full resolution submission or interim supplement is due, which will be at least 270 days after October 1, 2024.

(3) *Full resolution submission by new CIDs*. An insured depository institution that becomes a CIDI after October 1, 2024, must submit its initial full resolution submission on or before the date specified in writing by the FDIC. Such date will occur no earlier than 270 days after the date on which the insured depository institution became a CIDI. A CIDI that transitions between groups will file a full resolution submission or interim supplement, as applicable, pursuant to the requirements applicable to its new filing group on or before the date that its next full resolution submission or interim supplement is due, unless it receives written notice of a different date from the FDIC.

(4) *Notice of extraordinary event*. (i) *Requirements*. Each CIDI must provide the FDIC with a notice no later than 45 days after any material merger, acquisition or disposition of assets, or similar transaction or fundamental change to the CIDI's organizational structure, core business lines, size, or complexity. Such notice must describe the extraordinary event and explain how the event impacts the resolvability of the CIDI. The CIDI must address any material changes resulting from the extraordinary event with respect to which it has provided notice pursuant to this paragraph (c)(4)(i) in the subsequent full resolution submission or interim supplement submitted by the CIDI.

(ii) *Exception*. A CIDI is not required to submit a notice under paragraph (c)(4)(i) of this section if the date by which the CIDI would be required to submit the notice under paragraph (c)(4)(i) of this section would be within 90 days before the date on which the CIDI is required to make a full resolution submission under this section.

(5) *Approval by the CIDI board of directors*. The CIDI's board of directors or, in the case of an insured branch only, a delegatee acting under the express authority of the CIDI's board of directors,

must approve the full resolution submission. That approval or delegation of express authority must be noted in the minutes of the board of directors.

(6) *Incorporation from other sources—*

(i) *Sources.* A CIDI may incorporate information or analysis into the confidential section of its full resolution submission or its interim supplement from one or more of the following without seeking the authorization for disclosure of FDIC confidential information required under 12 CFR part 309:

(A) The most recent full resolution submission submitted by the CIDI or an affiliate of the CIDI.

(B) The most recent DFA resolution plan of a company that is a CIDI affiliate.

(C) Any other regulatory filing by the CIDI or a CIDI affiliate with the FDIC.

(ii) *Requirements for incorporation from other sources.* A CIDI may incorporate information from other sources only if:

(A) The full resolution submission seeking to incorporate information or analysis from other sources clearly indicates the source and as-of date of the information or analysis the CIDI is incorporating, and the information or analysis required by this section is readily distinguishable from any extraneous parent company (or parent company affiliate) information or analysis, with a description of any material differences.

(B) The CIDI certifies that the information or analysis the CIDI is incorporating from other sources remains accurate in all respects that are material to the CIDI's full resolution submission.

(d) *Content of the full resolution submissions for CIDs.* Each group A CIDI must submit a resolution plan that includes all content specified in this paragraph (d). Each group B CIDI must submit an informational filing that includes the content specified in paragraphs (d)(4) through (9), (d)(10)(i) through (iii) and (vii) through (viii), (d)(11), and (d)(13) through (27) of this section, inclusive; a description of each material change since the submission of its prior informational filing or, where relevant, interim supplement (or affirmation that no such material change has occurred); and a discussion

of the changes to the CIDI's previously submitted informational filing resulting from any change in law or regulation, guidance, or feedback from the FDIC, or material change.

(1) *Identified strategy.* (i) Each resolution plan must include an identified strategy for the resolution of the CIDI in the event of its failure that meets the credibility criteria in paragraph (f)(1) of this section.

(ii) A CIDI must utilize as its identified strategy the formation and stabilization of a bridge depository institution that continues operation through the completion of the resolution and exit from the bridge depository institution unless the CIDI determines and demonstrates in its resolution plan why another strategy:

(A) Would be more appropriate for the size, complexity, and risk profile of the CIDI;

(B) Reasonably could be executed by the FDIC across a range of likely failure scenarios; and

(C) Best addresses the credibility criteria described in paragraph (f)(1) of this section.

(iii) The identified strategy must include meaningful optionality for execution across a range of scenarios. The exit from the bridge depository institution may be through a multiple acquirer exit, or any other exit strategy following the stabilization of the operations of the bridge depository institution. The identified strategy may not be based upon a sale or other disposition to one or more acquirers over resolution weekend.

(2) *Failure scenario.* For the identified strategy, the CIDI must use a failure scenario that demonstrates that the CIDI is experiencing material financial distress, such that the quality of the CIDI's asset base has deteriorated and high-quality liquid assets have been depleted or pledged in the stress period before failure due to high, unexpected outflows of deposits and increased liquidity requirements from counterparties that would impact the CIDI's ability to pay its obligations in the normal course of business before the FDIC's appointment as receiver. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial

condition of the CIDI before the final recognition of losses, the identified strategy must also consider the depletion of capital before and at the time of the appointment of the FDIC as receiver. The CIDI may not assume any regulatory waivers in connection with the actions proposed to be taken before or in resolution. To the extent that the CIDI assumes that DIF funding is used during the resolution by a bridge depository institution, it must demonstrate the capacity for such borrowing on a fully secured basis and the source of repayment. The identified strategy must take into account that failure of the CIDI will occur under 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), and must assume that the U.S. parent company (if any) is in resolution under 11 U.S.C. 101 *et seq.* or another applicable insolvency regime. The FDIC may provide a CIDI additional or alternative parameters for the failure scenario detailed in this paragraph (d)(2). The FDIC will endeavor to provide a CIDI notice of such additional or alternative parameters for the failure scenario at least one year before the applicable resolution plan is due. Any such additional or alternative parameters:

(i) May be applicable to all CIDs or only specific individual CIDs; and

(ii) May include additional conditions, such as different macroeconomic stress scenario information or assumptions with respect to the cause of failure. If the FDIC provides such additional or alternative parameters, the CIDI must use the additional or alternative parameters rather than the conditions specified in paragraph (d)(2) of this section, to the extent inconsistent with the conditions specified in paragraph (d)(2) of this section.

(3) *Executive summary.* A resolution plan must include an executive summary providing:

(i) A description of the key elements of the identified strategy;

(ii) An overview of the CIDI's core business lines and franchise components;

(iii) A description of each material change since the prior resolution plan addressing the changed element (or af-

firmation that no such material change has occurred);

(iv) A discussion of the changes to the CIDI's previously submitted resolution plan resulting from any change in law or regulation, guidance, or feedback from the FDIC, or material change; and

(v) A discussion of any actions taken by the CIDI since the submission of its prior resolution plan to further develop the quality or comprehensiveness of the information and analysis included in the resolution plan, including the identified strategy, or to improve its capabilities to develop and timely deliver that information and analysis.

(4) *Organizational structure: legal entities; core business lines; and branches.* A full resolution submission must:

(i) Identify and describe the CIDI's, the parent company's, and the parent company affiliates' legal and functional structures, including all material entities.

(ii) Identify and describe each of the CIDI's core business lines, including whether any core business line draws additional value from, or relies on the operations of, the parent company or a parent company affiliate, and identify any such operations that are cross-border. Provide information about the assets and annual revenue for each core business line, clearly identifying revenue to the CIDI.

(iii) Map franchise components to core business lines, and franchise components and core business lines to material entities and regulated subsidiaries.

(iv) Describe the CIDI's branch organization, both domestic and foreign, including the address and total domestic and foreign deposits of each branch.

(v) Identify each CIDI subsidiary that is one of the following legal entities (each a "regulated subsidiary"), and provide the address and asset size of each regulated subsidiary:

(A) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(B) A registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities

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of such investment adviser and activities incidental to such investment advisory activities;

(C) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);

(D) An insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator;

(E) A legal entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities;

(F) A corporation organized under 12 U.S.C. 611 *et seq.* or a corporation having an agreement or undertaking with the Federal Reserve Board under 12 U.S.C. 601 *et seq.*; or

(G) Any legal entity that is organized under the law of any jurisdiction other than the United States and that is authorized or supervised by a regulatory authority of such jurisdiction in a manner generally comparable to the U.S. legal entities and authorities described in paragraphs (d)(4)(v)(A) through (E) of this section, and includes any subsidiary that takes deposits or conducts the business of banking under the laws of such jurisdiction.

(vi) Identify all of the CIDI's subsidiaries, offices, and agencies with cross-border operations associated with the operations of any core business line or franchise component. For each such subsidiary, office, or agency, provide metrics that appropriately depict its size and significance, and the location of each such subsidiary, office, and agency.

(5) *Methodology for material entity designation.* A full resolution submission must describe the CIDI's methodology for identifying material entities. The methodology must be appropriate to the nature, size, complexity, and scope of the CIDI's operations.

(6) *Separation from parent; potential barriers or material obstacles to orderly resolution.* The full resolution submission must address the CIDI's ability to operate separately from the parent company's organization, and any impact on maintaining economic viability and preservation of franchise value in a bridge depository institution, with the assumption that the parent company and parent company affiliates are in resolution under 11 U.S.C. 101 *et seq.* or another applicable insolvency regime. The full resolution submission must describe the actions necessary to separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The full resolution submission must identify potential barriers or other material obstacles to an orderly resolution of the CIDI that may occur upon the CIDI's separation from the parent company's organization, as well as risks to the identified strategy (if required), and inter-connections and inter-dependencies that may 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.

(7) *Overall deposit activities.* A full resolution submission must:

(i) Describe the CIDI's overall deposit activities, including, insured and uninsured deposits, and particular deposit concentrations or other aspects of the deposit base or underlying systems that may create operational complexity for the FDIC. Describe how any types or groups of deposits are related to a core business line, business segment, or franchise component, and if so, how those types or groups of deposits are identified on the records or systems of the CIDI.

(ii) Identify the total amount of foreign deposits by jurisdiction and what percentage of foreign deposits is dually payable in the United States. Describe any relationship between foreign deposits and core business lines and any deposit sweep arrangements with foreign branches, subsidiaries, and affiliates.

(iii) Identify and describe deposit sweep arrangements, if any, that the CIDI has with the parent company,

parent company affiliates, or third parties, and identify contracts governing such deposit sweep arrangements. Describe the CIDI's reporting capabilities on sweep deposits, including whether such reporting is automated and any data lag that affects the accuracy of such reports. If the CIDI receives significant amounts of deposits through such deposit sweep arrangements with the parent company or parent company affiliates, include a detailed discussion of such relationships and the business objectives of such deposit sweep arrangements.

(iv) Identify all omnibus, deposit sweep, and pass-through accounts, and identify the accountholder, the location of relevant contracts, and the system on which the accounts are maintained. Provide a detailed discussion of the capabilities and timeliness of deposit reporting systems and capabilities to generate accurate and timely contact information with respect to any omnibus, deposit sweep, or pass-through accounts.

(v) Provide a report regarding the CIDI's depositors that hold or control the largest deposits (whether in one account or multiple accounts) that collectively are material to one or more business segments ("key depositors"). The report must identify key depositors by name and business segment and the amount of deposit of each key depositor, and for each key depositor must identify other services provided by the CIDI to that depositor, such as lending, wealth management, brokerage services, or custody services. The full resolution submission must describe the CIDI's approach to identifying these key depositors and must describe how long it would take the CIDI to generate such a report and the timeliness of the information provided.

(8) *Critical services.* A CIDI must be able to demonstrate capabilities necessary to ensure continuity of critical services in resolution. In order to support these capabilities, a full resolution submission must:

(i) Identify and describe the CIDI's critical services and critical services support, including whether they are provided, in whole or in part, by or through:

(A) The CIDI or a CIDI subsidiary or branch (and further indicate whether those critical services or critical services support are ultimately provided by a third party), or

(B) The parent company or a parent company affiliate (and further indicate whether those critical services or critical services support are ultimately provided by a third party).

(ii) Describe the CIDI's process for identifying critical services and critical services support. Describe the CIDI's process for collecting and monitoring the terms of contracts governing critical services and critical services support, and whether services provided pursuant to such contracts and associated costs can be segmented by the material entity, core business line, or franchise component that receives the critical service or critical service support.

(iii) Map critical services support to the legal entities that own, contract for, or employ them, and map critical services to the material entities, core business lines, and franchise components that they support.

(iv) Identify the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States.

(v) Identify the critical services and critical services support that may be at risk of interruption in the event of the CIDI's failure and describe the process used to make this determination. Describe the CIDI's approach for continuing critical services in the event of the CIDI's failure. Identify contracts for critical services that contain provisions that, upon the insolvency of the CIDI or the FDIC being appointed receiver of the CIDI, purport to permit the service provider to stop providing services, to alter pricing, or to alter other terms of service. Discuss potential obstacles to maintaining critical services that could occur in the event of the CIDI's failure and steps that could be taken to remediate or otherwise mitigate the risk of interruption, to include those critical services and critical services support provided by the parent company or a parent company affiliate and addressing:

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(A) Whether the CIDI and the parent company or parent company affiliate have entered into a written agreement and whether the written agreement has a cost plus or arms' length pricing rate, and the processes used by the CIDI to identify and project liquidity needs associated with those costs; and

(B) The impact on continuity of critical services or critical services support provided by the parent company or a parent company affiliate if the parent company or parent company affiliate is in resolution under 11 U.S.C. 101 *et seq.* or other applicable insolvency regime.

(9) *Key personnel.* A full resolution submission must:

(i) Identify all key personnel by title, function, location, core business line, and employing legal entity.

(ii) Describe the CIDI's methodology for identifying key personnel.

(iii) Provide a recommended approach for retaining key personnel during the CIDI's resolution.

(iv) Identify all employee benefit programs provided to key personnel, including health insurance, defined contribution and defined benefit retirement programs, and any other employee wellness programs, as well as any collective bargaining agreements or other similar arrangements. Identify the legal entity sponsor of each employee benefit program, and provide a description of and points of contact (by title) for such programs.

(10) *Franchise components.* A CIDI must be able to demonstrate the capabilities necessary to ensure that franchise components and the IDI franchise are marketable in resolution. A full resolution submission must:

(i) Identify franchise components that are currently separable, and are marketable in a timely manner in resolution. For a resolution plan of a group A CIDI, the franchise components identified must be sufficient to implement the identified strategy.

(ii) Provide metrics that depict the size and significance of each franchise component.

(iii) Identify by position the senior management officials of the CIDI who are primarily responsible for overseeing the business activities underlying the franchise component.

(iv) Describe the CIDI's current capabilities and process to initiate marketing of franchise components to potential third party acquirers, and describe the process by which the CIDI would identify prospective bidders for such franchise components.

(v) Describe the key assumptions (such as market conditions, available time to market assets, and anticipated client behaviors) underpinning each franchise component divestiture.

(vi) Describe any significant impediments and obstacles to execution, including significant legal, regulatory, cross-border or operational challenges to the divestiture of each franchise component. This description must also address impediments and obstacles to maintaining internal operations (for example, shared services, information technology requirements, and human resources) and to maintaining access to financial market utilities. Identify the material actions that would be needed to facilitate the sale or disposition of each franchise component and, based on the CIDI's current capabilities, describe the projected time frame to prepare for and execute the disposition of each franchise component.

(vii) If a CIDI subsidiary or a parent company affiliate is a broker-dealer that provides services to the CIDI or customers of the CIDI, describe such services and the integration of the broker-dealer with the CIDI's business and operations. Provide an analysis discussing the challenges that could arise upon the discontinuation of services if the CIDI were separated from the broker-dealer, and actions to mitigate such challenges.

(viii) Describe the CIDI's current capabilities and processes to establish a virtual data room promptly in the run-up to or upon failure of the CIDI that could be used to carry out sale of the IDI franchise as well as any or all of the CIDI's franchise components, including a description of the organizational structure of information within the virtual data room. Information in the virtual data room must support the ability of the FDIC to market and execute a timely sale or disposition of the IDI franchise or the CIDI's franchise components, be appropriate for a buyer to conduct due diligence for a timely

sale or disposition of the IDI franchise or the CIDI's franchise components, and be sufficient to permit a bidder to provide a competitive bid on the IDI franchise or the CIDI's franchise components. A full resolution submission must also describe expected access protocols and requirements for the FDIC to use the virtual data room in order to carry out the sale of the IDI franchise or the CIDI's franchise components, including the FDIC's ability to facilitate bidder due diligence, and describe how information populated within the virtual data room could be transferred to a virtual data room hosted by the FDIC. The full resolution submission should identify the time required to capture all elements of information in the virtual data room, indicating number of days it would take to populate each category of information described below, and the process for each, including any potential obstacles or impediments in producing accurate, timely, and complete information in a useful format. The content of the virtual data room must include the following elements, or those that are applicable in the case of a sale of a franchise component:

(A) Financial information, including annual and interim financial statements, including carve-out financial statements for franchise components, general ledger, and relevant financial information;

(B) Deposit data and information;

(C) Loan and lending operations information;

(D) Securities information, including relevant information describing the CIDI's securities and investment portfolio;

(E) Corporate organization information, including current organizational chart;

(F) Employee information, including organization charts, compensation, and benefits;

(G) Material contracts and critical services information, including key critical services agreements, leases, and bond indentures; and

(H) Other information necessary to facilitate a rapid and effective due diligence process for the sale of the IDI franchise or the CIDI's franchise components.

(11) *Material asset portfolios.* A full resolution submission must identify each material asset portfolio by size, and by category and classes of assets within such material asset portfolio, and include a breakdown of those assets within a material asset portfolio that are held by a foreign branch or regulated subsidiary. For each material asset portfolio, describe how the assets within the portfolio are valued and how they are maintained on the books and records of the CIDI. Identify and discuss impediments to the sale of each material asset portfolio identified and provide a timeline for such sale.

(12) *Valuation to facilitate FDIC's assessment of least-costly resolution method.* A CIDI must be able to demonstrate the capabilities necessary to produce valuations needed in assessing the least-cost test. A resolution plan must:

(i) Provide a detailed description of the approaches the CIDI would employ for determining the values of the franchise components and the IDI franchise as a whole, including the underlying assumptions and rationale. Describe the CIDI's approach to the development of the information needed to support valuation analysis, including a description of the CIDI's current ability to produce updated projections, timely if necessary, to support the FDIC's analysis to determine whether a resolution strategy would be the least costly to the Deposit Insurance Fund in the event of failure.

(ii) Provide the following valuation analysis based upon the failure scenario assumed in the development of the identified strategy, with such adjustments to the scenario as may be necessary to demonstrate the analysis required under paragraph (d)(12)(ii)(B) of this section:

(A) Valuation estimates of the IDI franchise, and where a multiple acquirer exit strategy is incorporated in the identified strategy, a sum-of-the-parts analysis. In determining these valuation estimates, the CIDI must consider appropriate valuation approaches, such as the income-based approach, asset-based approach, and market-based approach. In deriving a range of estimates of value, the CIDI must assess and provide a reasoned quantitative or qualitative analysis in

support of whether the conclusion of value should reflect the results of one valuation approach and method, or a combination of the results of more than one valuation approach and method; as appropriate, the resolution plan must discuss the relevance and weight given to the different valuation approaches and methods used.

(B) A qualitative analysis of the impact on franchise value that may result from not transferring any uninsured deposits to the bridge depository institution, including a narrative describing any options to mitigate franchise value destruction where there is not a transfer of all deposits to a bridge depository institution such as, an advance dividend payment to depositors that takes into account the expected loss to depositors, and the impact of such an advance dividend on depositor behavior and preservation of franchise value at different levels of loss. Such qualitative analysis should reflect reasonable assumptions of customer behavior based upon the CIDI's range of services provided to, and interconnections with, depositors.

(iii) Provide all content responsive to paragraph (d)(12)(ii) of this section as an appendix to the resolution plan, including any analysis of liquidity and deposit runoff assumptions and factors underlying such runoff estimates.

(13) *Off-balance-sheet exposures.* A full resolution submission must describe any material off-balance-sheet exposures (including the amount and nature of unfunded commitments, guarantees, and contractual obligations) of the CIDI and map those exposures to core business lines, franchise components, and material asset portfolios.

(14) *Qualified financial contracts.* A full resolution submission must:

(i) Describe the types of qualified financial contract transactions the CIDI is involved with in respect of its customers and business activities, the core business lines and franchise components with which such transactions are associated, and how the CIDI offsets position risk from such transactions. Identify customers of the CIDI that are counterparties to qualified financial contracts transactions with the CIDI that are significant in terms of gross

notional amounts or volumes of transactions.

(ii) Describe the booking models for risk from derivative transactions, including whether customer-facing risk or other dealer-facing risk resides in the CIDI while the position risk hedging is performed by a parent company affiliate. Describe the CIDI's use of any "global risk book," "remote bookings," or "back-to-backs" booking model, identify the challenges these booking models present to the transfer or unwind of such related derivatives, and analyze approaches for addressing those challenges.

(iii) Describe how the CIDI uses qualified financial contracts to manage its hedging or liquidity needs, including specifying the hedged items (including underlying risk, cash flow, assets or liability being hedged) and the applicable core business line, as well as the approach used to mitigate such risks.

(iv) For each of paragraphs (d)(14)(i) through (iii) of this section, identify hedges that receive hedge accounting treatment, core business line-specific hedges, and reporting capabilities and practices for hedge accounting information and other end-user hedges.

(15) *Unconsolidated balance sheet; material entity and regulated subsidiary financial statements.* A full resolution submission must provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities and regulated subsidiaries that are subject to consolidation with the CIDI. Amounts attributed to legal entities that are not material entities or regulated subsidiaries may be aggregated on the consolidating schedule. Provide financial statements for each material entity and regulated subsidiary. When available, audited financial statements should be provided.

(16) *Payment, clearing, and settlement.* A full resolution submission must identify each provider of payment, clearing, and settlement services, and agent banks, and other financial market utilities (each, a "PCS service provider"), of which the CIDI directly is a member or has a direct relationship that is a critical service or a critical service support. For each such PCS service provider:

(i) Map those PCS service providers to the CIDI's legal entities, core business lines, and franchise components;

(ii) Describe the PCS services provided by such PCS service providers, including the value and volume of activities on a per-provider basis; and

(iii) Describe the CIDI's role as a PCS service provider that is material in terms of revenue to, or value of, any franchise component or core business line.

(17) *Capital structure; funding sources.* A full resolution submission must:

(i) Provide descriptions of the current processes used by the CIDI to identify the funding, liquidity, and capital needs of and resources available to each material entity that is a CIDI subsidiary or foreign branch. Describe the current capabilities of the CIDI to project and report its funding and liquidity needs (*e.g.*, next day, cumulative next five days, cumulative next 30 days).

(ii) Identify the composition of the liabilities of the CIDI including the types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities, and subordinated liabilities. Such information must include whether such liabilities are held by affiliates, whether they are publicly issued, their maturity, any call rights provided, and, where applicable, the identity of their indenture trustees.

(iii) Identify the material funding relationships and material inter-affiliate exposures between the CIDI and any CIDI subsidiary or foreign branch that is a material entity, including material inter-affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, deposits, and derivatives transactions.

(18) *Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations.* A full resolution submission must:

(i) Identify material affiliate funding relationships, and material inter-affiliate exposures, including terms, purpose, and duration, that the CIDI or any CIDI subsidiary has with the parent company or any parent company affiliate. Such information must include material affiliate financial exposures, claims or liens, lending or bor-

rowing lines and relationships, guaranties, deposits, and derivatives transactions.

(ii) Identify the nature and extent to which the parent company or any parent company affiliate serves as a source of funding to the CIDI and CIDI 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 are transferred from the parent company or any parent company affiliate to the CIDI and CIDI subsidiaries.

(19) *Economic effects of resolution.* A full resolution submission must identify any activities of the CIDI that provide a service or function that is material:

(i) To a geographic area or region of the United States;

(ii) To a business sector or product line in that geographic area or region, or nationally; or

(iii) To other financial institutions. The full resolution submission must include a discussion of mitigants to the potential impact of termination of those activities in the event of failure of the CIDI, including whether the activity is readily substitutable.

(20) *Non-deposit claims.* A full resolution submission must identify and describe the CIDI's systems and processes used to identify the unsecured creditors of the CIDI that are not depositors, as well as the unsecured creditors of each CIDI subsidiary that is a material entity. Such description must identify the location of the CIDI's records and recordkeeping practices regarding unsecured debt issued by the CIDI and any inter-creditor agreements for unsecured debt. The description must include a description of the CIDI's capabilities to identify each such unsecured creditor by name, address, nature of the liability, and amount owed by the CIDI and each CIDI subsidiary or, in the case of indentured securities, the identity of the indenture trustee.

(21) *Cross-border elements.* A full resolution submission must describe all components of the parent company's and parent company affiliates' operations that are based or located outside the United States, including regulated

subsidiaries, and foreign branches and offices that contribute to the value, revenues, or operations of the CIDI. A full resolution submission must also identify all authorities with regulatory or supervisory authority over these operations, and identify regulatory or other impediments to divestiture, transfer, or continuation of any of the CIDI's foreign branches, subsidiaries, and offices in resolution, including with respect to retention or termination of personnel and transfer or continuation of licenses or authorizations.

(22) *Management information systems; software licenses; intellectual property.* A full resolution submission must:

(i) 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, as well as those used to provide the information required to be provided in the full resolution submission, used by or for the benefit of the CIDI and CIDI subsidiaries. For each system or application the description must identify the legal owner or licensor, the key personnel needed to support and operate the system or application, the system or application's use and function, any core business line that uses the system or application, its physical location (if any), any related third party contracts or service-level agreements, any related software or systems licenses, and any other related intellectual property.

(ii) For any key management information system or application for which the CIDI or CIDI subsidiary is not the owner or licensor, describe both any obstacles to maintaining access to such system or application when the CIDI is in resolution, and approaches for maintaining access to such system or application when the CIDI is in resolution, including the projected costs of maintaining access when the CIDI is in resolution.

(iii) Describe the capabilities of the CIDI's processes and systems to collect, maintain, and produce the information and other data underlying the full resolution submission. Identify all relevant management information sys-

tems and applications, and describe how the information is managed and maintained. Describe any deficiencies, gaps, or weaknesses in such capabilities and the actions the CIDI intends to take to address promptly any such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(23) *Digital services and electronic platforms.* A full resolution submission must:

(i) Describe all digital services and electronic platforms offered to customers to support banking transactions for retail or business customers.

(ii) Identify whether such services and platforms are provided by the CIDI, a CIDI subsidiary, a parent company affiliate, or a third party, and which of them owns the related intellectual property or is the licensee.

(iii) Discuss how these services or platforms are significant to the operations or customer relationships of the CIDI, and their impact on franchise value and depositor behavior.

(24) *Communications playbook.* A full resolution submission must include a communications playbook that describes the CIDI's current communication capabilities, including capabilities to communicate with personnel, customers, and counterparties, and how those capabilities could be used from the point of the CIDI's failure through the CIDI's resolution. The description must:

(i) Identify categories of key stakeholders addressed in the CIDI's communications plans including, counterparties, domestic and foreign regulatory authorities, customers, and personnel.

(ii) Identify communication channels for each key stakeholder category and describe the logistics and limitations of the use of each communication channel.

(iii) Describe the procedures to generate contact lists for each key stakeholder category and estimate the time required to generate each list.

(iv) Describe procedures for coordinating communications across key stakeholder categories and communication channels, including cross-border communications, if any.

(v) Identify key personnel that are responsible for the CIDI's crisis communications across key stakeholder categories and communications channels and the functional and legal entity organization of relevant communications activities.

(25) *Corporate governance.* A full resolution submission must include a detailed description of: how resolution planning is integrated into the corporate governance structure and processes of the CIDI; the CIDI's policies, procedures, and internal controls governing preparation and approval of the full resolution submission; and the identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, and filing of the full resolution submission, and for the CIDI's compliance with this section.

(26) *CIDI's assessment of the full resolution submission.* A full resolution submission must 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 full resolution submission to assess the viability of the identified strategy (if required) or improve any capabilities described in the full resolution submission.

(27) *Any other material factor.* A full resolution submission must identify and discuss any other material factor that may impede the resolution of the CIDI.

(e) *Interim supplement.* Each CIDI must submit interim supplements containing current and accurate information regarding the specified full resolution submission content items in accordance with this paragraph (e).

(1) *Submission date.* (i) Each interim supplement must be submitted to the FDIC on or before the anniversary date (or first business day thereafter) of its most recent full resolution submission, or its most recent interim supplement, unless the CIDI has received written notice of a different date from the FDIC.

(ii) Notwithstanding paragraph (e)(1)(i) of this section, with respect to all CIDs, no interim supplement is required in the calendar year in which a full resolution submission is made and,

with respect to a biennial filer, no interim supplement is required in the calendar year in which it submits a DFA resolution plan.

(2) *Content items for interim supplement.* Each CIDI must submit interim supplements that address each of the following content items:

(i) A description of all material changes resulting from an extraordinary event;

(ii) A description of each material change applicable to interim supplement content items since the submission of its prior full resolution submission (or affirmation that no such material change has occurred);

(iii) The content required under paragraph (d)(4) of this section;

(iv) From paragraph (d)(7) of this section, the content required under paragraph (d)(7)(i), the first sentence of paragraph (d)(7)(ii), the first sentence of paragraph (d)(7)(iii), the first sentence of paragraph (d)(7)(iv), and the first two sentences of paragraph (d)(7)(v) of this section;

(v) From paragraph (d)(8) of this section, the content required under paragraphs (d)(8)(i) and (iv) of this section;

(vi) From paragraph (d)(9) of this section, the content required under paragraph (d)(9)(i) of this section;

(vii) From paragraph (d)(10) of this section, the content required under paragraphs (d)(10)(i) through (iii) of this section;

(viii) From paragraph (d)(11) of this section, the content required under the first sentence of paragraph (d)(11) of this section;

(ix) The content required under paragraph (d)(13) of this section, excluding the requirement to "map those exposures to core business lines, franchise components and material asset portfolios";

(x) The content required under paragraph (d)(15) of this section;

(xi) From paragraph (d)(16) of this section, the content required under the first sentence of paragraph (d)(16) of this section;

(xii) From paragraph (d)(17) of this section, the content required under the first sentence of paragraph (d)(17)(ii) of this section;

(xiii) The content required under paragraph (d)(21) of this section;

(xiv) From paragraph (d)(22) of this section, the content required under paragraph (d)(22)(i) of this section; and

(xv) Any other content element expressly identified for the next interim supplement by the FDIC.

(f) *Credibility; review of full resolution submissions; engagement; capabilities testing*—(1) *Credibility criteria*. Each full resolution submission must be credible. The FDIC may, at its sole discretion, determine that the full resolution submission is not credible if:

(i) The identified strategy would not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the CIDI in resolution, and address potential risk of adverse effects on U.S. economic conditions or financial stability; or

(ii) The information and analysis in the full resolution submission is not supported with observable and verifiable capabilities and data and reasonable projections or the CIDI fails to comply in any material respect with the requirements of paragraph (d) or (e) of this section.

(2) *Resolution submission review and credibility determination*. The FDIC will review the full resolution submission 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 full resolution submission of a CIDI is not credible pursuant to paragraph (f)(1) of this section, the FDIC must notify the CIDI in writing of such determination. Any notice provided under this paragraph (f)(2) must include a description of the material weaknesses in the full resolution submission identified by the FDIC that resulted in the determination that the full resolution submission is not credible. A material weakness is an aspect of a CIDI's full resolution submission that individually or in conjunction with other aspects fails to meet the credibility criteria described in paragraph (f)(1).

(3) *Resubmission of a full resolution submission*. Within 90 days of receiving a notice issued by the FDIC pursuant to paragraph (f)(2) of this section that

the full resolution submission is not credible based on identified material weaknesses, or such shorter or longer period as the FDIC may determine, a CIDI must submit a revised full resolution submission, or such other information or material specified by the FDIC, to the FDIC that addresses any material weaknesses identified by the FDIC and discusses in detail the revisions made to address such material weaknesses.

(4) *Failure regarding resubmission*. If the CIDI fails to submit the revised full resolution submission within the required time-period under paragraph (f)(3) of this section or the FDIC determines that the revised full resolution submission fails to address adequately the material weaknesses identified in the notice issued by the FDIC, the FDIC may take enforcement action against the CIDI in accordance with paragraph (j) of this section.

(5) *Significant findings*. The FDIC may also identify significant findings and other observations after review of a full resolution submission. A significant finding is a weakness or gap that raises questions about the credibility of a CIDI's full resolution submission but does not rise to the level of a material weakness. If a significant finding is not satisfactorily explained or addressed before or in the CIDI's next full resolution submission, it may be found to be a material weakness in the CIDI's next full resolution submission. The FDIC may require a project plan with identified milestones to assure that the significant finding is timely addressed. The FDIC may identify an aspect of a CIDI's full resolution submission as a material weakness even if such aspect was not identified as a significant finding in an earlier full resolution submission. The FDIC must notify the CIDI in writing of any significant findings that are identified in the full resolution submission.

(6) *Engagement*. Each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC in its discretion determines is relevant to any of the provisions of this section ("engagement"). Personnel made available must have sufficient expertise and responsibility to address

the informational and data requirements of the engagement. Engagement between the CIDI and the FDIC may be required at any time. This engagement may include the FDIC requiring the CIDI to provide information or data to support the content items required by paragraph (d) or (e) of this section, other information related to a group A CIDI's identified strategy, or, for any CIDI, other resolution options being considered by the FDIC. The FDIC will provide the CIDI with timely notification of the scope of any engagement before such engagement begins and will notify the CIDI on the conclusion of the engagement.

(7) *Capabilities testing.* At the discretion of the FDIC, the FDIC may require any CIDI to demonstrate the CIDI's capabilities described, or required to be described, in the full resolution submission, including the ability to provide the information, data and analysis underlying the full resolution submission ("capabilities testing"). The CIDI must perform such capabilities testing promptly, and provide the results in a time frame and format acceptable to the FDIC. Capabilities testing may be included in connection with full resolution submission review under paragraph (f)(2) of this section or any engagement under paragraph (f)(6) of this section. The FDIC will provide the CIDI with timely notification of the scope of any capabilities testing before such capabilities testing begins and will notify the CIDI on the conclusion of the capabilities testing.

(g) *No limiting effect on FDIC.* No full resolution submission or interim supplement provided pursuant to this section will 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 full resolution submission or interim supplement.

(1) *Financial information.* The full resolution submission or interim supplement must, to the greatest extent possible, use financial information as of the most recent fiscal year-end for which the CIDI has financial statements or, if the use of financial information as of a more recent date as of which the CIDI has financial statements would more accurately reflect

the operations of the CIDI on the date of the submission, financial information as of that more recent date.

(2) *Indexing of information and analysis to full resolution submission and interim supplement content requirements.* A full resolution submission or interim supplement must include an index of each content requirement in paragraph (d) or (e)(2) of this section, as applicable, required to be included in that full resolution submission or interim supplement, as applicable, to every instance of its location in the full resolution submission, or interim supplement, as applicable.

(3) *Combined full resolution submission or interim supplements by affiliated CIDs.* CIDs that are affiliates may submit a single, combined full resolution submission or interim supplement, but only if all affiliated CIDs submitting the combined full resolution submission or interim supplement are within the same CIDI group, whether group A or group B. The combined full resolution submission or interim supplement must satisfy the content requirements for each CIDI's full resolution submission or interim supplement, as applicable, and the FDIC must be able to readily identify the portions of a combined full resolution submission or interim supplement that comprise each CIDI's full resolution submission or interim supplement.

(h) *Form of full resolution submissions; confidential treatment of full resolution submissions and interim supplements.* (1) Each full resolution submission must be divided into a Public Section and a Confidential Section. Each CIDI must segregate and separately identify the Public Section from the Confidential Section. The Public Section must consist of a summary overview of the full resolution submission that describes the business of the CIDI. For each CIDI, the Public Section must include, to the extent material to the CIDI's full resolution submission:

- (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;

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- (v) A list of PCS service providers;
- (vi) A description of foreign operations;
- (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) For group A CIDs only, a description, at a high level, of the CID's identified strategy.

(2) The confidentiality of full resolution submissions and interim supplements must 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 CID submitting a full resolution submission, interim supplement, 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 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 full resolution submission and the information comprising an interim supplement will be treated as confidential.

(5) To the extent permitted by law, the submission of any non-publicly available data or information under this section will 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 full resolution submissions and related materials are protected pursuant to 12 U.S.C. 1828(x).

(i) *Extensions and exemptions*—(1) *Extension*. Notwithstanding the general requirements of paragraph (c) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, any time frame or deadline of this section.

(2) *Waiver*. The FDIC may, on its own initiative or upon written request, ex-

empt a CID from one or more of the requirements of this section.

(j) *Enforcement*. Violating any provision of this section constitutes a violation of a regulation and may subject the CID to enforcement actions under 12 U.S.C. 1818, including paragraph (t) thereunder.

[89 FR 56648, July 9, 2024]

§ 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 admissibility of such documentary material in any court, tribunal or other adjudicative proceeding, nor on whether such documentary material is subject to release under the Freedom of Information Act, the Privacy Act or other law.

(d) *Destruction of records.* (1) Except as provided in paragraph (d)(2) of this section, after the end of the six-year period beginning on the date the FDIC is appointed as receiver of a failed insured depository institution, the FDIC may destroy any records of an institution which the FDIC, in its discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, prohibited by law, or subject to a legal hold imposed by the FDIC.

(2) Notwithstanding paragraph (d)(1) of this section, the FDIC may destroy records of a failed insured depository

institution which are at least 10 years old as of the date on which the FDIC is appointed as the receiver of such institution in accordance with paragraph (d)(1) of this section at any time after such appointment is final, without regard to the six-year period of limitation contained in paragraph (d)(1) of this section.

(e) *Transfer of records.* If the FDIC transfers records to a third party in connection with a transaction involving the purchase and assumption of assets and liabilities of an insured depository institution, the recordkeeping requirements of 12 U.S.C. 1821(d)(15)(D), and paragraph (d) of this section shall be satisfied if the transferee agrees that it will not destroy such records for at least six years from the date the FDIC was appointed as receiver of such failed insured depository institution unless otherwise notified in writing by the FDIC.

(f) *Policies and procedures.* The FDIC may establish policies and procedures with respect to the retention and destruction of records that are consistent with this section.

[78 FR 54376, Sept. 4, 2013]

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	Character (25).

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Field name	Field description	Comments	Format
6. DP_Sub_Acct_Identifier	If necessary, the fifth element used to identify the account. 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).

[73 FR 41197, July 17, 2008]

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 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. DC_Debit_Amt	Debit Amount Dollar amount of the debit to be applied to the account or sub-account.		Decimal (14,2).
8. DC_Credit_Amt	Credit Amount Dollar amount of the credit to be applied to the account or sub-account.		Decimal (14,2).

Field name	Field description	Comments	Format
9. DC_Transaction_Desc	Debit/Credit Description FDIC message associated with the debit or credit transaction.	.....	Character (225).

[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).

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Field name	Field description	Comments	Format
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).

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"> • S = Single. • J = Joint Account. • P = Partnership account. • C = Corporation. • B = Brokered Deposits. • I = IRA Accounts. • U = Unincorporated Association. • R = Revocable Trust. • IR = Irrevocable Trust. • G = Government Accounts. • E = Employee Benefit Plan Accounts. • O = Other. 	<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"> • DDA = Non-Interest Bearing Checking accounts. • NOW = Interest Bearing Checking accounts. • MMA = Money Market Deposit Accounts. • SAV = Other savings accounts. 	<p>Product Category is sometimes referred to as "application type" or "system type".</p>	Character (3).

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Field name	Field description	Comments	Format
16. DP_Stat_Code	<ul style="list-style-type: none"> • CDS = Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable. Status Code Status or condition of the account. Possible values are: <ul style="list-style-type: none"> • O = Open. • D = Dormant. • I = Inactive. • E = Escheatment. • A = Abandoned. • C = Closing. • R = Restricted/Frozen/Blocked. 		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).

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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"> • C = Corporate Retirement • E = Educational IRA. • I = IRA Account. • K = Keogh Account. • R = Roth IRA Account. • S = SEP Account. • T = Transitional Roth IRA. • V = Versa Account. • H = Health Savings Account. 	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"> • RTL = Retail. • FED = Federal government. • STATE = State government. • COMM = Commercial. • CORP = Corporate. • BANK = Bank Owned. • DUE TO = Other Banks. 	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"> • 1 = Payable on Death. • 2 = Individual. • 3 = Living Trust—Intervivos or Family. • 4 = Irrevocable Trust (includes Educational IRAs). • 5 = Estate. • 6 = Attorney in Fact. • 7 = Minor—(includes all variations of Uniform Gifts to Minor Accounts). • 8 = Bankruptcy Personal. • 9 = Pre-Need Burial. • 10 = Escrow. • 11 = Representative Payee/Beneficiary. • 12 = Sole Proprietorship. • 13 = Joint. • 14 = Non-Minor Custodian/Guardian. • 15 = Other Retail. 	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).

Field name	Field description	Comments	Format
	FED • 16 = FHA. • 17 = Federal Government. STATE • 18 = City. • 19 = State. • 20 = County, Clerk of Court. • 21 = Other State. COMMERCIAL • 22 = Business Escrow. • 23 = Bankruptcy. • 24 = Club. • 25 = Church. • 26 = Unincorporated Association. • 27 = Unincorporated Non-Profit. • • 28 = Other Commercial. CORPORATION • 29 = Business Trust. • 30 = Business Agent. • 31 = Business Guardian. • 32 = Incorporated Association. • 33 = Incorporated Non-Profit. • 33 = Incorporated Non-Profit. • 34 = Corporation. • 35 = Corporate Partnership. • 36 = Corporate Partnership Trust. • 37 = Corporate Agent. • 38 = Corporate Guardian. • 39 = Pre-Need Funeral Trust. • 40 = Limited Liability Incorporation. • 41 = LLC partnership. • 42 = Lawyer Trust. • 43 = Realtor Trust. • 44 = Other Corporation. BANK • 45 = Certified & Official Checks, Money Orders, Loan Disbursements Checks, and Expense Checks. • 46 = ATM Settlement. • 47 = Other Bank Owned Accounts. DUE TO (Other Banks) • 48 = Due to U.S. Banks. • 49 = Due to U.S. Branches of Foreign Banks. • 50 = Due to Other Depository Institutions. • 51 = Due to Foreign Banks. • 52 = Due to Foreign Branches of U.S. banks. • 53 = Due to Foreign Governments and Official Institutions.		

[73 FR 41197, July 17, 2008]

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).

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).

[73 FR 41197, July 17, 2008]

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)

[73 FR 41197, July 17, 2008]

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).

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		Character (1).
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 (100).
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 first 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 customer's middle name. 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 customer's academic, professional or honorary status, such as Esq., Ph.D., M.D., and D.D.S. 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 suffix designating the customer's generational status, such as Jr., Sr. or III. 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	For individuals, the prefix of the customer, such as Rev., Dr., Mrs., Mr. or Ms. 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).
17. CS_Nar_Addr_Line—3 ...	If available, the free-form permanent legal address narrative of the customer, line two. Customer Address Line 3		Character (100).

Field name	Field description	Comments	Format
18. CS_Street_Address—1	If available, the free-form permanent legal address narrative of the customer, line three. 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).

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			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).
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: • ADM = Administrator. • AGT = Agent/Representative. • ATF = Attorney For. • AUT = Authorized Signer. • BNF = Beneficiary. • CSV = Conservator. • CUS = Custodian. • DBA = Doing Business As. • EXC = Executor. • GDN = Guardian. • MIN = Minor. • PRI = Primary Owner. • SEC = Secondary Owner(s). • TTE = Trustee. 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 (1).
	If the customer is considered a beneficiary, the type of account associated with this customer. Possible values are: • I = IRA. • T = Trust—Irrevocable. • R = Trust—Revocable. • M = Uniform Gift to Minor. • P = Payable on Death. • O = Other.			This includes beneficiaries on retirement accounts, trust accounts, minor accounts, and payable-on-death accounts.	

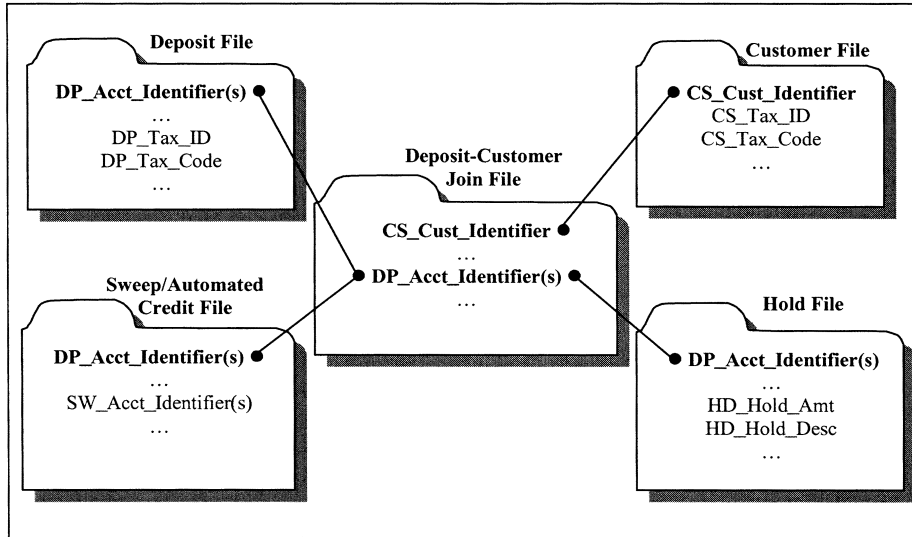
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APPENDIX H TO PART 360—POSSIBLE FILE COMBINATIONS FOR DEPOSIT DATA

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.

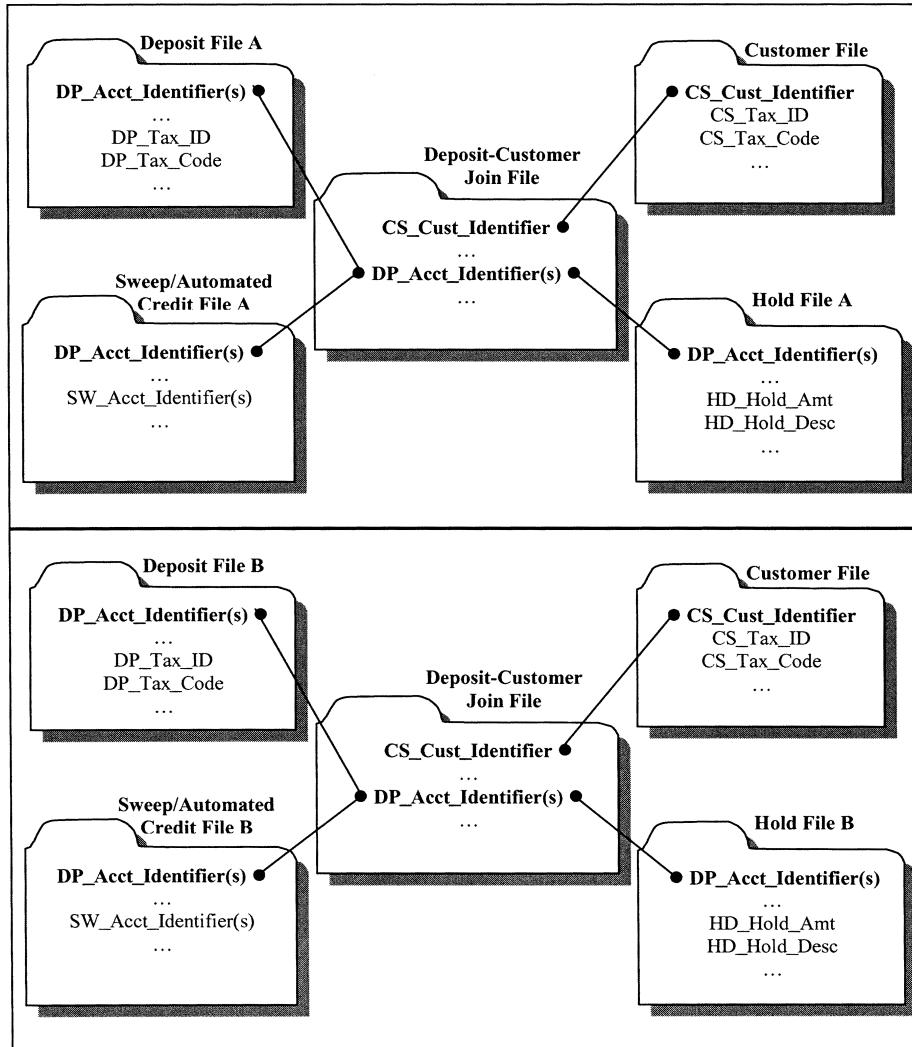
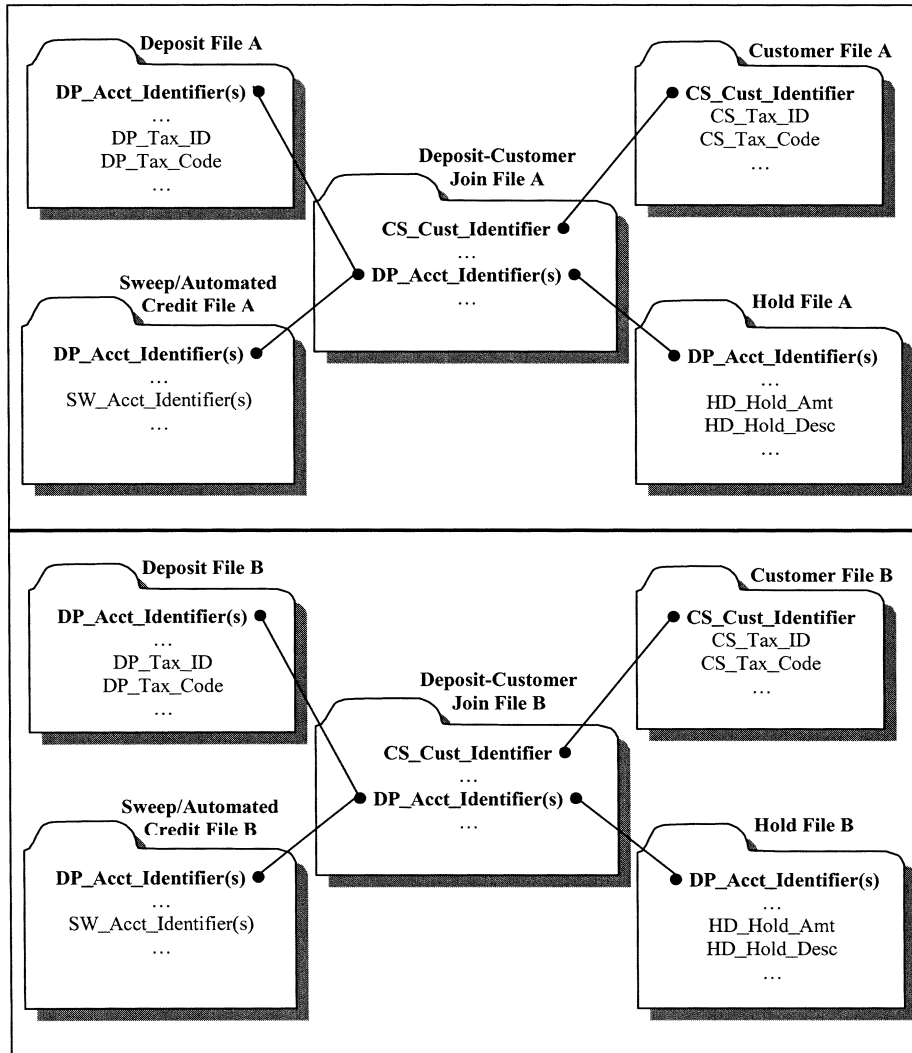


Figure 3. Multiple File Sets.



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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?