

# Rules and Regulations

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 360

RIN 3064-AD59

#### Resolution Plans Required for Insured Depository Institutions With \$50 Billion or More in Total Assets

**AGENCY:** Federal Deposit Insurance Corporation ("FDIC").

**ACTION:** Interim final rule.

**SUMMARY:** The FDIC is adopting an interim final rule ("Rule"), with request for comments, requiring an insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution of such institution in the event of its failure ("Resolution Plan"). The Rule establishes the requirements for submission and content of a Resolution Plan, as well as procedures for review by the FDIC. The Rule requires a covered insured depository institution ("CIDI") to submit a Resolution Plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution's creditors. The FDIC finds that there is good cause and it is in the public interest to adopt the Rule. Resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution. The Rule is intended to address the continuing exposure of the banking industry to the risks of

insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning. The Rule enables the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails.

**DATES:** The Rule is effective January 1, 2012. Written comments on the Rule must be received by the FDIC no later than November 21, 2011.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for Submitting comments on the Agency Web Site.
- *E-mail:* [Comments@FDIC.gov](mailto:Comments@FDIC.gov).

Include "Resolution plans required for insured depository institutions with \$50 billion or more in total assets" in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Public Inspection:** All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### I. Background and Authority for the Rule

The FDIC is charged by Congress with the responsibility for insuring the deposits of banks and thrifts in the United States, and with serving as receiver of such institutions if they should fail. As of December 31, 2010, the FDIC insured approximately \$6.2 trillion in deposits in more than 7,650 depository institutions. To evaluate potential loss severity and to enable it to perform its resolution functions most efficiently, the FDIC is requiring each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a Resolution Plan. Currently, 37 insured depository institutions are covered by the Rule. Those institutions held approximately \$3.6 trillion in insured deposits or nearly 60 percent of all insured deposits as of December 31, 2010.

In implementing the deposit insurance program and in efficiently and effectively resolving failed depository institutions, the FDIC strengthens the stability of, and helps maintain public confidence in, the banking system in the United States. In its efforts to achieve this objective and to implement its insurance and resolution functions, the FDIC requires a comprehensive understanding of the organization, operation and business practices of insured depository institutions in the United States, with particular attention to the nation's largest and most complex insured depository institutions.

To ensure that the FDIC can effectively carry out these core responsibilities, the Rule requires a limited number of the largest insured depository institutions to provide the FDIC with essential information concerning their structure, operations, business practices, financial responsibilities and risk exposures. The Rule requires these institutions to develop and submit detailed plans demonstrating how such insured depository institutions could be resolved in an orderly and timely manner in the event of receivership. The Rule also makes a critically important contribution to the FDIC's

implementation of its statutory receivership responsibilities by providing the FDIC as receiver with the information it needs to make orderly and cost-effective resolutions much more feasible. Based upon its experience resolving failed insured depository institutions (and in particular, large and complex insured depository institutions), the FDIC has concluded that resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution and the development of such plans should begin promptly.

Since the recent financial crisis began in late 2008, financial authorities throughout the world have recognized and agreed that advance planning for the resolution of large, complex financial institutions is critical to minimizing the disruption that a failure of such an institution may have as well as the costs of its resolution. At the 2009 Pittsburgh Summit, and in response to the crisis, the G20 Leaders called on the Financial Stability Board (“FSB”) to propose possible measures to address the “too big to fail” and moral hazard concerns associated with systemically important financial institutions. Specifically, the G20 Leaders called for the development of “internationally-consistent firm-specific contingency and resolution plans.” The FSB continues its efforts to develop the international standards for contingency and resolution plans and to evaluate how to improve the capacity of national authorities to implement orderly resolutions of large and interconnected financial firms and periodically reports its progress to the G20 Leaders.<sup>1</sup>

The FSB’s program has built on work undertaken by the Basel Committee on Banking Supervision’s Cross-border Bank Resolution Group, co-chaired by the FDIC, since 2007. In its final *Report and Recommendations of the Cross-border Bank Resolution Group*, issued on March 18, 2010, the Basel Committee emphasized the importance of pre-planning and the development of practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. In its review of the financial crisis, the Report found that one of the main lessons was that the complexity and interconnectedness of large financial conglomerates made crisis management

and resolutions more difficult and unpredictable.

Similarly, the FSB’s Principles for Cross-Border Cooperation on Crisis Management commit national authorities to ensure that firms develop adequate contingency plans, including information regarding group structure, and legal, financial and operational intra-group dependencies; the interlinkages between the firms and financial system (e.g., in markets and infrastructures) in each jurisdiction in which they operate; and potential impediments to a coordinated solution stemming from the legal frameworks and bank resolution procedures of the countries in which the firm operates. The FSB Crisis Management Working Group has recommended that supervisors ensure that firms are capable of supplying in a timely fashion the information that may be required by the authorities in managing a financial crisis. The FSB recommendations strongly encourage firms to maintain contingency plans and procedures for use in a resolution situation (e.g., factsheets that could easily be used by insolvency practitioners), and to review them regularly to ensure that they remain accurate and adequate. On July 19, 2011, the FSB issued a public consultation on proposed measures to address systemic risk and moral hazard posed by systemically important financial institutions, which includes proposed measures for improved resolution planning by firms and authorities.<sup>2</sup> The Rule supports and complements these international efforts.

In addition, Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), 12 U.S.C. 5365(d), adopted July 21, 2010, mandates that each covered company periodically submit to the Board of Governors of the Federal Reserve System (“FRB”), the Financial Stability Oversight Council, and the FDIC the plan of such company for rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure (“DFA Resolution Plan”). This requirement applies to each nonbank financial company subjected to

supervision by the Federal Reserve Board under Title I of the Dodd-Frank Act and each bank holding company with assets of \$50 billion or more, including foreign bank holding companies with U.S. financial operations.

The Rule, originally proposed on May 17, 2010, is intended to complement the resolution plan requirements of the Dodd-Frank Act. The Rule requires each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution by the FDIC, as receiver, of such institution under the Federal Deposit Insurance Act (“FDI Act”) in the event of the institution’s failure. Currently, with the exception of three thrifts covered by the Rule, holding companies of each insured depository institution covered by the Rule are expected to file a DFA Resolution Plan. While a DFA Resolution Plan will describe the plan to resolve each parent holding company under the Bankruptcy Code, the Rule is focused on planning the resolution of the subsidiary insured depository institution, a resolution that will not be conducted under the Bankruptcy Code, but rather will be conducted under the receivership and liquidation provisions of the FDI Act.<sup>3</sup> The Rule sets forth the elements that are expected to be included in an insured depository institution’s Resolution Plan. The requirements for DFA Resolution Plans are provided in FRB and FDIC regulations relating thereto (“Section 165(d) rule”).<sup>4</sup>

The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the Rule. The FDIC’s roles as insurer and receiver require a distinct focus on potential loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the Deposit Insurance Fund and the ability of the FDIC to conduct an orderly resolution. The authority to issue the Rule is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a) Tenth, which authorizes the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or

<sup>2</sup> See Financial Stability Board, “Consultative Document: Effective Resolution of Systemically Important Financial Institutions—Recommendations and Timelines,” 17 (July 19, 2011), available at [http://www.financialstabilityboard.org/publications/r\\_110719.pdf](http://www.financialstabilityboard.org/publications/r_110719.pdf) (“An adequate, credible [recovery and resolution plan] should be required for any firm that is assessed by its home authority to have a potential impact on financial stability.”) Annex 5 of the Consultative Document sets out a comprehensive proposed framework and content for such plans.

<sup>3</sup> Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

<sup>4</sup> See FRB and FDIC Notice of Proposed Rulemaking: *Resolution Plans and Credit Exposure Reports Required*, 76 FR 22648 (April 22, 2011). The Final Rule regarding Resolution Plans under Section 165(d) of the Dodd-Frank Act is being issued concurrently with the Rule.

<sup>1</sup> See “Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability” Reports of the Financial Stability Board to G20 Finance Ministers and Central Bank Governors dated February 15, 2011, and April 10, 2011.

enforcing. The FDIC also has authority to adopt regulations governing the operations of its receiverships pursuant to Section 11(d)(1) of the FDI Act, 12 U.S.C. 1821(d)(1). Collection of the information required by the Rule is also supported by the FDIC's broad authority to conduct examinations of depository institutions to determine the condition of the IDI, including special examinations, 12 U.S.C 1820(b)(3).

## II. The Notice of Proposed Rulemaking: Comment Summary

On May 17, 2010, the FDIC caused to be published in the **Federal Register** a Notice of Proposed Rulemaking ("NPR") requiring Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Depository Institutions (the "Proposed Rule").<sup>5</sup> The Proposed Rule would have required each insured depository institution with greater than \$10 billion in total assets that is owned or controlled by a holding company with more than \$100 billion in total assets to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the insured depository institution's ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion.

The NPR solicited public comment on all aspects of the Proposed Rule. The comment period ended on July 16, 2010, and eight comments were received. Most of the commenters suggested that the FDIC withdraw, or delay the implementation of, the Proposed Rule in anticipation of Section 165(d) of the Dodd-Frank Act, which was signed into law on July 21, 2010, as well as ongoing international efforts related to contingent resolution planning. Commenters were concerned that the FDIC's separate rulemaking would result in significant additional costs, duplicated efforts and excessive burdens on covered institutions. Commenters felt that the FDIC should coordinate with other regulators, both domestically and internationally. Some commenters felt that the resolution plan requirements of the Dodd-Frank Act would be sufficient and there was no need for the preparation a specific resolution plan by an insured depository institution owned by a bank holding company that was required to prepare a resolution plan under the Dodd-Frank Act.

In response to the comments related to passage of the Dodd-Frank Act, the FDIC delayed issuance of the Rule until such time as the FRB and the FDIC issued separate rulemaking

implementing Section 165(d) and setting forth the resolution plan requirements in detail. During this period, the FDIC sought to make the two rules complementary and avoid duplication of costs, efforts and burdens on the covered institutions. In that regard, the Resolution Plan required by the Rule is different from the DFA Resolution Plan the insured depository institution's holding company is required to prepare under Section 165(d). The Rule requires a plan to resolve the insured depository institution under the FDI Act with the FDIC acting as receiver. The Section 165(d) rule requires the covered company to submit a plan for it to be resolved in an orderly manner under the Bankruptcy Code. The Rule is focused on ensuring depositors receive access to their insured deposits rapidly, minimizing the costs to the Deposit Insurance Fund and maximizing recovery for creditors in the resolution of insured depository institutions. The Section 165(d) rule is focused on minimizing systemic risk in the resolution of the covered company in order to protect the financial stability of the United States while maximizing recovery for creditors. To avoid duplication in the production of information, the Rule specifically provides that the CIDI may incorporate data and other information from its holding company's DFA Resolution Plan. The FDIC requests comments on additional steps that can be taken to allow a CIDI to integrate the resolution planning that takes place under the Rule with its holding company's DFA Resolution Plan.

Several commenters felt the informational requirements of the Proposed Rule were unclear and requested clarification or made suggestions for improvement. Some commenters suggested that the FDIC provide a template for the Resolution Plan. In response to these comments, the Rule provides more detailed descriptions of the elements and the elements were reorganized so that the Rule lists each element that must be included in the Resolution Plan. While each CIDI may organize its plan in a manner that it feels best communicates the requested information, the list of elements was prepared in an order that the FDIC felt would work well for the plans of most institutions.

Several commenters were concerned that the Proposed Rule favored resolution over recovery and was biased in favor of separation of the insured depository institution from the parent organization rather than looking to maintain enterprise value. By issuing

the Rule, the FDIC does not intend to substitute resolution planning for recovery planning. Both are very important and serve complementary purposes. The Rule, however, focuses on resolution planning.

One commenter suggested that the FDIC take a risk-based approach to the plan requirements, *i.e.*, the scope and timing of the requirements and degree of planning and reporting should not be as high for well-managed and well-capitalized institutions. Another commenter suggested an exemption for institutions that are not interconnected with affiliates in operations and contracts. Several commenters requested that multiple insured depository institutions within a holding company group be permitted to file a single plan. Several commenters requested clarification of the Proposed Rule's application to an institution owned by foreign parent. In light of these concerns, as well as to align the Rule more closely with the Section 165(d) rule with respect to institutional groups filing plans, the FDIC raised the minimum asset size for a CIDI from \$10 billion to \$50 billion and eliminated the requirement that the CIDI be owned or controlled by a holding company with \$100 billion in assets or more. This change means that insured depository institutions between \$10 billion and \$50 billion in total assets do not need to file Resolution Plans. The FDIC believes that change reduces the burden of the Rule on certain multiple bank holding companies because their insured depository institutions with assets under \$50 billion will not need to file plans under the Rule. While this change means that some insured depository institutions not previously covered are now required to file Resolution Plans, the FDIC felt that obtaining Resolution Plans under the Rule from such institutions would be consistent with its desire to coordinate the efforts under the Rule with the Section 165(d) planning process and would also assist the FDIC in meeting its objectives and goals in issuing the Rule.<sup>6</sup>

A few commenters believed that much of the information requested was already provided to other regulatory agencies and that the FDIC should reduce the informational requirements by leveraging existing reporting. One

<sup>6</sup> Three of the newly covered institutions currently will not be covered by DFA Resolution Plans because their holding companies are thrift holding companies, not bank holding companies. Nevertheless, the FDIC believes that the \$50 billion asset threshold used in the Dodd-Frank Act is also an appropriate threshold to apply to these thrifts to enable the FDIC to meet its objectives and goals in issuing the Rule.

<sup>5</sup> 75 FR 27464.

commenter felt that the Proposed Rule should only request information that had not been previously submitted by the institution or its parent to one of the bank regulatory agencies. In addition, one commenter suggested that, with respect to funding and liquidity requirements, the FDIC leverage the funding and liquidity planning that the institutions were doing to comply with the Interagency Policy Statement on Funding and Liquidity Risk Management, which was effective May 21, 2010. Several commenters felt that the burden of the informational requirements could be significantly reduced by using materiality standards or thresholds in the Proposed Rule. Similarly, one commenter suggested that information on subsidiaries be limited to key operating subsidiaries. To address many of these concerns, materiality thresholds have been incorporated in several provisions of the Rule. In addition, an institution may incorporate information provided in its DFA Resolution Plan. The FDIC invites comments on additional ways that the informational requirements can be revised to reduce the burden on the covered institutions.

Several commenters were concerned that the Proposed Rule would require ongoing reporting of day-to-day operational and fiscal challenges. One commenter suggested requiring the reporting of material events only when the event related to fulfillment of, or had an impact on, the Resolution Plan. In response to these comments, the FDIC clarified in the Rule when and how material events should be addressed.

A number of commenters had questions related to the proposed gap analysis. Requests were made to clarify the purpose and effect of the gap analysis. Requests were made that the Proposed Rule state that the gap analysis is intended for planning purposes only and does not require reorganizing the institution's operations. In light of these comments, the term "gap analysis" is not used in the Rule and the analysis sought is requested in different ways. To the extent, however, that a plan identifies obstacles to the CIDI's resolution that have a bearing on potential loss severity, such as the inability to make quick deposit insurance determinations and depositor payments or the inability to provide sufficient information on qualified financial contracts to allow the FDIC to make timely and correct determinations on these contracts in the event of failure, the FDIC does expect the plans also to provide strategies that could be

taken to remove those obstacles or mitigate the effects thereof.

Several commenters were concerned about the provision in the Proposed Rule requiring the production of audited financial statements. These commenters sought clarification that the FDIC did not intend to require institutions to prepare additional audited financial statements for subsidiaries not already preparing such statements. In light of these comments, the Rule reflects that the FDIC is not requiring institutions to prepare additional audited financial statements for subsidiaries not already preparing such statements.

A number of commenters read the Proposed Rule provisions regarding the confidentiality of information submitted as suggesting that confidentiality would only be afforded to information which, if disclosed, would endanger the institution's safety and soundness. These commenters suggested that such a standard for obtaining confidentiality for material submitted was incorrect and should be revised to reflect requirements of existing law. Furthermore, commenters felt that, in all cases, the resolution plan and related analysis and information submitted should be treated as confidential supervisory or examination information exempt from public disclosure. Given the comments on confidentiality, the confidentiality provision has been revised to provide that the Resolution Plan be divided into a public section and a confidential section. In addition, the Rule provides that, to the extent permitted by law, the information comprising the confidential section of a Resolution Plan will be treated as confidential.

Commenters also believed the Proposed Rule's requirement that the insured depository institution's board of directors attest that a resolution plan is accurate and the information is current is inconsistent with corporate governance principles regarding the board's role and imposes too great a burden on the institution's board. The commenters suggested that the final rule simply require the institution's board to approve the resolution plan. The Rule requires a Resolution Plan to be approved by the CIDI's board of directors and requires that a Resolution Plan include certain specified information about the CIDI's corporate governance structure and processes.

A number of commenters questioned the regulatory burden analysis and felt that the estimated time to respond was significantly below the time that would be actually required to respond. In addition, most commenters felt that six months was too short a time to prepare

the initial Resolution Plan. Several suggested allowing institutions to obtain extensions for good cause. Given these comments, the FDIC reevaluated its estimates of the regulatory burden and made adjustments thereto. The initial filings will be staggered. This change provides most CIDs with much more time to prepare their initial Resolution Plans. In order to reduce the burden on CIDs by allowing them to utilize information and data compiled for their parent company's DFA Resolution Plan, the groupings and timing of the filings are the same as the groupings and timing of filings to be utilized for DFA Resolution Plans. The order utilized also allows the FDIC to focus on the most complex or largest institutions first. The Rule requires the first filing group, which consists of each CIDI whose parent company, as of the effective date of the Rule, had \$250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets), to file their initial Resolution Plans on July 1, 2012. The Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of the effective date of the Rule, had \$100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets) to file their initial Resolution Plans on or before July 1, 2013. The Rule requires the third filing group, which consists of the remaining CIDs, to file their initial Resolution Plans on or before December 31, 2013. The Rule also provides that, on a case-by-case basis, the FDIC may change a CIDI's scheduled filing date and extend the implementation and updating time frames of the Rule.

Several commenters felt that enforcement action should not be taken except in very limited situations where noncompliance was willful and continuous. The commenters felt that termination of insurance was too draconian a remedy to use except in extraordinary circumstances. Several commenters requested that an appeals process be provided in the Proposed Rule as well as a clarification of what standards will be used to evaluate compliance with the Proposed Rule. The FDIC intends to use its enforcement powers only in appropriate circumstances. The Rule now provides for a multi-step review process that affords the covered institutions the opportunity to correct deficiencies in their Resolution Plans before the FDIC would use its enforcement powers. The

FDIC desires to work closely with CIDs in the development of their Resolution Plans and is dedicating staff for that purpose. The FDIC expects the review process to evolve as CIDs gain more experience in preparing their Resolution Plans. The FDIC recognizes that Resolution Plans will vary by company and, in its evaluation of plans, will take into account variances among companies in their core business lines, critical operations, domestic and foreign operations, capital structure, risk, legal structure, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. Because each Resolution Plan is expected to be unique, the FDIC encourages CIDs to ask questions and, if so desired, to arrange a meeting with the FDIC. There is no expectation by the FDIC that initial Resolution Plans will be found to be deficient, but rather the initial Resolution Plans will provide the foundation for developing more robust annual Resolution Plans. The Rule also allows the FDIC to extend deadlines on its own initiative or upon request.

As noted above, the FDIC made a number of revisions to the Proposed Rule as a result of the comments received. The FDIC believes that additional comments would be helpful in refining certain aspects of the Rule and therefore is issuing the Rule as an interim final rule, with request for comments. This action will avoid a delay in the implementation of the important resolution planning process, while allowing the FDIC to solicit and obtain additional comments that may serve as the basis for further clarification of the requirements of the Rule, if necessary.

### III. Section-by-Section Analysis of the Rule

**Definitions.** Section 360.10(b) defines certain terms, including “core business lines,” “critical services,” “covered insured depository institution,” “parent company,” “parent company affiliate” and “material entity,” which are key definitions in the Rule.

“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. The core business lines of the CIDI are valuable assets of the CIDI. The Resolution Plan should provide a strategy for the sale of the core business lines. The Section 165(d) rule contains a similar definition but, for the Section 165(d) rule the core business lines are determined from the

perspective of the covered company rather than the CIDI. For example, the CIDI may be providing services to its holding company, such as payment services, that support a business line of its holding company, such as a brokerage service, that is not a core business line of the CIDI. In such example, payment services may be identified as a core business line of the CIDI, while its holding company identifies brokerage services as a business line in its DFA Resolution Plan.

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

“Critical Services” means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operation of the CIDI. The Resolution Plan should provide for the continuation and funding of critical services. For clarity and to avoid confusion, the term “critical services” differs substantially from the term “critical operations” as used in the Section 165(d) rule. The term “critical operations” is used to designate operations of a covered company the discontinuation of which would pose a threat to the financial stability of the United States. In contrast, the term “critical services” is used in the Rule to mean those functions that must be kept operational during the resolution process to allow the receiver to conduct the resolution in an orderly and efficient manner.

“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 subsidiaries of the CIDI. The term is used in identifying the exposures or reliance that the CIDI has on entities in its affiliated group that are not owned or otherwise controlled by the CIDI. In a multi-tier holding company structure, the term includes all holding companies of the CIDI (except the top-tier holding company) and their affiliates (other than the top-tier holding company, the CIDI and subsidiaries of the CIDI).

“Material entity” means a company that is significant to the activities of a critical service or core business line. For example, the legal entity utilized by the CIDI as the contracting entity for a core business line would be a material entity. Also, a subsidiary of the CIDI that provides a critical service would be a material entity.

**Resolution Plans to be submitted by the CIDI to the FDIC.** Pursuant to Section 360.10(c), the initial filings will be staggered to correspond to the schedule of filings by parent companies under the Section 165(d) rule. This schedule also allows the FDIC to focus on the most complex or largest institutions first. The Rule requires the first filing group, which consists of each CIDI whose parent company, as of the effective date of the Rule, had \$250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company’s total U.S. nonbank assets), to file their initial Resolution Plans on July 1, 2012. The Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of the effective date of the Rule, had \$100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company’s total U.S. nonbank assets) to file their initial Resolution Plans on or before July 1, 2013. The Rule requires the third filing group, which consists of the remaining CIDs, to file their initial Resolution Plans on or before December 31, 2013. The Rule also provides that, on a case-by-case basis, the FDIC may extend, upon request, the implementation and updating time frames of the Rule.

After the initial resolution plan is submitted, each CIDI is required to submit a new Resolution Plan annually on or before the anniversary date of the date for the submission of its initial plan. An insured depository institution that becomes a CIDI after the effective date of the Rule shall submit its initial resolution plan no later than July 1 of the following calendar year.

A CIDI is required to file a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or change which results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI. The FDIC desires a notice only when an event results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI such that the Resolution Plan would be ineffective or require material amendment to be effective. A notice is not required if an event does not result in, or could not reasonably be foreseen

to have, a material effect on the Resolution Plan of the CIDI. In regard to what constitutes a material effect on the Resolution Plan, the effect on the Resolution Plan should be of such significance as to render the Resolution Plan ineffective, in whole or in part, until an update is made to the plan. A notice should describe the event, describe any material effects that the event may have on the Resolution Plan and summarize the changes that are required in the Resolution Plan.

*Incorporation of data and other information from a Dodd-Frank Act resolution plan.* The CIDI may incorporate data and other information from a DFA Resolution Plan filed by its parent company.

*Content of the Resolution Plan.*

Section 360.10(c)(2) requires each CIDI to submit a Resolution Plan that should enable the FDIC to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823, and specifies the minimum content of the Resolution Plan. The Resolution Plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the FRB pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial Resolution Plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI.

The Resolution Plan should include an executive summary that summarizes the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual Resolution Plan should also describe material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan, material changes to the CIDI's Resolution Plan from its most recently filed plan, and any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its Resolution Plan or remediate or otherwise mitigate any material weaknesses or impediments to the

effective and timely execution of the Resolution Plan.

The Resolution Plan should provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. A mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities should be provided that identifies which legal entities are utilized in the conduct of such business line. The Resolution Plan should include a discussion of the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization should be identified.

The Resolution Plan should identify critical services and providers of critical services. A mapping of critical services to material entities and core business lines should be provided that identifies which legal entities are providing the critical services and which business lines are utilizing the critical services. The Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services are provided by the parent company or a parent company affiliate, the Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. The ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure should be assessed.

The Resolution Plan should identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI.

The Resolution Plan should provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The Resolution Plan should also describe remediation or mitigating

steps that can be taken to eliminate or mitigate obstacles to such separation.

The Resolution Plan should provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases. The Resolution Plan should also describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI as required by Section 13(c)(4)(A) of the FDI Act, 12 U.S.C. 1823(c)(4)(A).

Among potential strategies for the payment of depositors that should be considered are: (a) A cash payment of insured deposits,<sup>7</sup> (b) a purchase and assumption transaction with an insured depository institution to assume insured deposits, (c) a purchase and assumption transaction with an insured depository institution to assume all deposits, (d) a purchase and assumption transaction with multiple insured depository institutions in which branches are broken up and sold separately in order to maximize franchise value, and (e) transfer of insured deposits to a bridge institution chartered to assume such deposits, as an interim step prior to the purchase of the deposit franchise and assumption of such deposits by one or more insured depository institutions.<sup>8</sup>

Among potential strategies for the sale of core business lines and assets that should be considered are: (a) Retention of some or all of the assets in receivership, to be marketed broadly to eligible purchasers, including insured depository institutions as well as other interested purchasers, (b) sale of all or a portion of the core business lines and assets in a purchase and assumption agreement, to one or more insured

<sup>7</sup> This task could be accomplished through the exercise of FDIC's authority to temporarily operate a new depository institution under Section 11(m) of the FDI Act, 12 U.S.C. 1821(m).

<sup>8</sup> A bridge depository institution is a new, temporary, full-service insured depository institution controlled by the FDIC. It is designed to "bridge" the gap between the failure of an insured depository institution and the time when the FDIC can implement a satisfactory acquisition by a third party. Section 11(n) of the FDI Act, 12 U.S.C. 1821(n).

depository institutions, and (c) transfer of all or a portion of the core business lines and assets to a bridge institution chartered to continue operating the core business lines and service the assets transferred to it, as an interim step prior to the sale of such core business lines and assets through appropriate marketing strategies.<sup>9</sup>

In developing a resolution strategy, each CIDI may utilize one or more of the methods described above, but is not limited to these methods. The resolution strategy should be tailored to the size, complexity and risk profile of the institution.

In addition to the strategic analyses described above, the Resolution Plan should provide a detailed description of the processes the CIDI employs for determining the current market values and marketability of core business lines and material asset holdings, assessing the feasibility of the CIDI's plans, under idiosyncratic and industry-wide stress scenarios (including time frames), for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the Resolution Plan, and assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines. This information will allow the FDIC to understand the basis for the valuations included in the Resolution Plan and to consider how those processes could be utilized in a resolution.

Major counterparties should be identified. The CIDI should describe the interconnections, interdependencies and relationships with such major counterparties and analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI. The Resolution Plan should describe any material off-balance-sheet exposures (including guarantees and contractual obligations) of the CIDI and those exposures should be mapped to core business lines.

The Resolution Plan should identify and describe processes used by the CIDI

to determine to whom the CIDI has pledged collateral, identify the person or entity that holds such collateral, and identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

The Resolution Plan should describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Each system on which the CIDI conducts a material number or value amount of trades should be identified. Each trading system should be mapped to the CIDI's legal entities and core business lines. The Resolution Plan should identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a mapping to legal entity. Hedging strategies of the CIDI should be described.

An unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI should be provided. Amounts attributed to entities that are not material may be aggregated on the consolidating schedule. Financial statements for material entities should be provided. When available, audited financial statements should be provided.

The Resolution Plan should identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Membership in each such system should be mapped to the CIDI's legal entities and core business lines. Systems that are immaterial in resolution planning, such as a local check clearing house, do not need to be identified.

The Resolution Plan should provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which should be mapped to core business lines and critical services. The Resolution Plan should also describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

The Resolution Plan should describe any material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI and any of its subsidiaries have with its parent or any parent company affiliate. All material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts,

deposits, or derivatives transactions should be described. The description should clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.

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

The Resolution Plan should describe individual components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Details should be provided on the location and amount of foreign deposits and assets. The Resolution Plan should discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures which should be mapped to legal entities and core business lines.

The Resolution Plan should provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. The legal owner or licensor of the systems should be identified. The use and function of the system or application should be described. A listing of service level agreements and any software and systems licenses or associated intellectual property related thereto should be provided. Any disaster recovery or other backup plans should be identified and described. The Resolution Plan should identify common or shared personnel, facilities, or systems. The Resolution Plan should also describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the resolution plan to management of the CIDI and, upon request to the FDIC. Furthermore, the Resolution Plan should describe any

<sup>9</sup> One significant benefit of using the bridge insured depository institution relates to qualified financial contracts. Qualified financial contracts are not subject to either the ipso facto rule or the 90-day stay on enforcement of contracts in default. However, the FDI Act precludes a counterparty from terminating a qualified financial contract solely by reason of the appointment of a receiver for an insured depository institution (a) until 5 pm (Eastern time) on the business day following the date of appointment; or (b) after the counterparty has received notice that the contract has been transferred to a solvent financial institution, including a bridge insured depository institution.

deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

The Resolution Plan should 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 Resolution Plan, and the identity and position of the senior management official of the CIDI that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with this section.

The Resolution Plan should describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed Resolution Plan to assess the viability of or improve the Resolution Plan.

The Resolution Plan should identify and discuss any other material factor that may impede the resolution of the CIDI.

*Approval by CIDI's Board of Directors.* The CIDI's board of directors must approve the Resolution Plan. Such approval shall be noted in the Board minutes.

*Review of Resolution Plan.* The FDIC desires to work closely with CIDs in the development of their Resolution Plans and is dedicating staff for that purpose. The FDIC expects the review process to evolve as CIDs gain more experience in preparing their Resolution Plans. The FDIC recognizes that plans will vary by institution and, in their evaluation of plans, will take into account variances among institutions in their core business lines, critical operations, foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. Each Resolution Plan, however, must be credible. A Resolution Plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

Because each Resolution Plan is expected to be unique, the FDIC encourages CIDs to ask questions and, if so desired, to arrange a meeting with the FDIC. The FDIC expects the initial

Resolution Plan will provide the foundation for developing more robust annual Resolution Plans.

After receiving a Resolution Plan, the FDIC will determine whether the submitted plan satisfies the minimum informational requirements of this section. If the FDIC determines that a Resolution Plan is informationally incomplete or that additional information is necessary to facilitate review of the Resolution Plan, the FDIC will return the Resolution Plan to the CIDI and inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required. The CIDI must resubmit an informationally complete Resolution Plan or such additional information as requested to facilitate review of the Resolution Plan no later than 30 days after receiving the notice described in preceding sentence, or such other time period as the FDIC may determine.

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

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

Upon a written request by a CIDI, the FDIC may extend any time period under the Rule. Each extension request shall be in writing and describe the basis and justification for the request.

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

The CIDI's ability to produce the information and data underlying its resolution rapidly and on demand is a

vital element in a credible Resolution Plan. Without up-to-date information on the CIDI, the FDIC, as receiver, would be hampered in implementing the Resolution Plan. Therefore, within a reasonable period of time, as determined by the FDIC, after the filing of its initial Resolution Plan, the CIDI must demonstrate its capability to produce promptly, in a format acceptable to the FDIC, accurate and verifiable data underlying the key aspects of Resolution Plan. The FDIC understands that the capability to produce the data underlying the key aspects of the Resolution Plan will vary by CIDI and, therefore, intends to review and discuss the CIDI's plans to remedy deficiencies as part of their review of a CIDI's initial Resolution Plan.

Notwithstanding the general requirements of this section, on a case-by-case basis, the FDIC may extend, upon notice, the implementation and updating time frames for all or part of the requirements of this section. The FDIC may also, upon application of a CIDI, exempt a CIDI from one or more of the requirements of this section.

*No limiting effect on the FDIC as receiver.* No Resolution Plan provided pursuant to the Rule shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

*Confidentiality of Information Submitted Pursuant to this Section.* Several commenters requested that the Resolution Plans be treated as exempt from disclosure under the Freedom of Information Act ("FOIA"). The FDIC is aware of and sensitive to the significant concerns regarding confidentiality of Resolution Plans. The Rule contemplates and requires the submission of highly detailed, internal proprietary information of CIDs. This is the type of information that CIDs would not customarily make available to the public and that an agency typically would have access to and could review as part of the supervisory process in assessing, for example, the safety and soundness of a regulated institution. In the FDIC's view, release of this information would impede the quality and extent of information provided by CIDs and could significantly impact the FDIC's efforts to encourage effective and orderly resolution of the CIDs in a crisis.

Under the Rule, the confidentiality of Resolution Plans is to be assessed in accordance with the applicable exemptions under the FOIA, 5 U.S.C. 552(b), and the FDIC's Disclosure of Information Rule, 12 CFR 309. The FDIC certainly expects that large portions of



the submissions will contain or consist of “trade secrets and commercial or financial information obtained from a person and privileged or confidential” and information that is “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.” This information is subject to withholding under exemptions 4 and 8 of the FOIA, 5 U.S.C. 552(b)(4) and (8).

The FDIC also recognizes, however, that the regulation calls for the submission of details regarding CIDs that are publicly available or otherwise are not sensitive and should be made public. Unless inextricably intertwined with exempt information, these details would be releasable under the FOIA. The FDIC is concerned that it and the courts could reach inconsistent conclusions regarding which portions of the Resolution Plans contain or consist of reasonably segregable nonexempt information. This uncertainty, in turn, could impact the quality and content of the information provided by CIDs.

In order to reduce this uncertainty, the Rule requires Resolution Plans to be divided into two sections: a public section and a confidential section. The Rule further specifies the scope and content of the information that is to comprise each section. In the FDIC’s view, the details required to be contained in the public section are or should be publicly available. The public section of the resolution plan should be segregated and separately identified from the confidential section. The public section will be made available to the public in accordance with the FDIC’s Disclosure of Information Rule, 12 CFR part 309.

The FDIC also intends and will presume that the confidential section of a resolution plan contains and consists of information that is subject to withholding in full under one or more of the FOIA exemptions. That said, a CIDI should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are subject to withholding under exemption 4 of the FOIA. In addition, the FDIC will have to make formal exemption and segregability determinations if and when a plan is requested under the FOIA.

The public section of the Resolution Plan consists of an executive summary of the Resolution Plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI: (1) The names of material entities; (2) a description of core

business lines; (3) consolidated financial information regarding assets, liabilities, capital and major funding sources; (4) a description of derivative activities and hedging activities; (5) a list of memberships in material payment, clearing and settlement systems; (6) a description of foreign operations; (7) the identities of material supervisory authorities; (8) the identities of the principal officers; (9) a description of the corporate governance structure and processes related to resolution planning; (10) a description of material management information systems; and (11) a description, at a high level, of the CIDI’s resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

#### **IV. Interim Final Rule; Request for Comments**

The FDIC finds that there is good cause and it is in the public interest to adopt the Rule as an interim final rule. The Rule is intended to address the continuing exposure of the banking industry to the risks of insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning. The Rule enables the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails.

Resolution plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution. The FDIC believes good cause exists for issuing the Rule as an interim final rule and that its issuance is in the public interest. While the FDIC issued the NPR on the Proposed Rule last year, many commenters recommended that the FDIC defer final action until the companion Section 165(d) rule was finalized. Concurrent with the issuance of the Rule, the FDIC and the FRB are issuing a final rule requiring the preparation of resolution plans pursuant to Section 165(d) of the Dodd-Frank Act, 12 U.S.C. 5365(d). It is imperative that the two companion rules incorporate coordinated requirements and for CIDs to initiate preparatory work for their resolution plans in concert with the related plans of their holding companies. With limited exception, the parent company of each insured depository institution covered by the Rule is expected to file a DFA Resolution Plan required by Section 165(d). The issuance of the Rule as an interim final rule outlining the requirements for an insured depository

institution subsidiary Resolution Plan enables a holding company to consider these requirements in preparing its DFA Resolution Plan.

The Rule will support the FDIC’s ongoing resolution planning activities as those insured depository institutions will be best positioned to understand the most effective and efficient manner for their resolution under their existing holding company structure. The initiation of the CIDI resolution planning processes under the Rule along with the related holding company resolution planning process under the Section 165(d) rule will facilitate more effective planning, reduce the risks of inconsistent plan development, and materially assist the FDIC’s planning efforts and evaluation of the development of the companion resolution plans under the Section 165(d) rule. Finally, it is in the public interest to issue the Rule as an interim final rule in order to coordinate with the finalization of the Section 165(d) rule, which is subject to a Congressional deadline. The issuance of the Rule as an interim final rule outlining the requirements for a CIDI’s Resolution Plan enables a holding company to consider these requirements in preparing its DFA Resolution Plan.

Issuance of the resolution plan requirements for CIDs through the Rule also will facilitate the development of such plans at an earlier date and provide adequate time for the institutions covered by the Rule to prepare their first Resolution Plans for submission on their initial submission date, as well as to prepare their DFA Resolution Plans for submission in accordance with the Section 165(d) rule.

The FDIC realizes that the Rule imposes additional regulatory and financial burdens on the industry. The FDIC is seeking to minimize the burden while carrying out its mandates as insurer and as receiver. The FDIC seeks comments on all aspects of the Rule. Comments will be considered by the FDIC and appropriate revisions will be made to the Rule, if necessary, before a Final Rule is issued. Comments are specifically requested on the following:

#### *Scope*

Should a CIDI be defined differently? Should the asset threshold for inclusion be lower or higher than \$50 billion?

#### *Definitions*

1. What terms defined by the Rule require further clarification and how should they be defined?

2. What other terms used in the Rule should the FDIC define?

### Strategic Analysis

1. What additional elements of strategic analysis should be included in the CIDI's Resolution Plan? Are there any elements listed in the Rule that create an unnecessary burden or that should not be included in the CIDI's Resolution Plan?

2. How can the requirements regarding the strategic analysis be improved to provide additional clarity?

### Governance

1. What additional resolution planning governance and oversight requirements should the Rule include?

2. What alternative governance requirements might exist that would ensure that a CIDI places adequate importance and attention on resolution planning?

### Informational Elements

1. What additional informational elements should the Rule require as part of a Resolution Plan? What impediments attend collection and production of the informational elements identified by the Rule? What impediments apply to collection and production of additional informational elements you have identified?

2. Do the informational elements described in the Rule capture the correct types of information for resolution planning? Are any of the informational elements identified in the Rule not necessary?

3. Which of the information elements described in the Rule could be clarified?

4. To the extent any of the informational elements identified in the Rule are not readily available, identify the burden of or impediment to (e.g., technology limits, confidentiality concerns, etc.) obtaining and reporting such information? What changes could the FDIC make to the Rule to reduce burdens and impediments?

5. Should any informational elements be required to be available on an "on demand" or "real time" basis? What impediments apply to making such information available on demand?

6. What is the burden related to producing an unconsolidated balance sheet and providing consolidating schedules? What alternatives could the FDIC include in the Rule to reduce that burden?

### Process

1. Are the proposed timelines for Resolution Plan submission (i.e., initial, annual and notice of material change) adequate for the CIDI to develop and submit the information required by the Rule? If not, what timelines would be appropriate?

2. With regard to the provision of the Rule that would require a CIDI to file a notice of material change upon a material event, occurrence, or change, should the Rule provide greater specificity (e.g., in terms of a dollar amount or percentage of assets acquired or disposed of in a significant transaction)?

3. Are there explicit factors the FDIC should consider in determining whether a Resolution Plan is not credible?

4. What additional steps could be taken to allow a CIDI to integrate the resolution planning that takes place under the Rule with its parent company's DFA Resolution Plan?

### V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) ("PRA"), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

*Title:* Resolution plans required for insured depository institutions with \$50 billion or more in total assets.

*OMB Number:* 3064–New Collection.

*Affected Public:* Insured depository institutions with \$50 billion or more in total assets.

*A. Estimated Number of Respondents for Contingent Resolution Plan:* 37.

*Frequency of Response:* Once.

*Estimated Time per Response:* 7,200 hours per respondent.

*Estimated Total Initial Burden:* 266,400 hours.

*B. Estimated Number of Respondents for Annual Update of Resolution Plan:* 37.

*Frequency of Response:* Annual.

*Estimated Time per Response:* 452 hours per respondent.

*Estimated Total Initial Burden:* 16,724 hours.

*C. Estimated Number of Respondents for Notice of Material Change Affecting Resolution Plan:* 37.

*Frequency of Response:* Zero to two times annually.

*Estimated Time per Response:* 226 hours per respondent.

*Estimated Total Initial Burden:* 8,362 hours.

*Background/General Description of Collection:* Section 360.10 contains collections of information pursuant to the PRA. In particular, the following requirements of the Rule constitute collections of information as defined by the PRA: all CIDIs are required to submit to the FDIC a Resolution Plan

that contains certain required information and meets certain described standards; updates to the analysis and plan are required to be submitted annually, with certain notices to be filed more frequently as a result of material changes. The collections of information contained in the Rule are being submitted to OMB for review.

*Comments:* In addition to the questions raised elsewhere in this Preamble, comment is solicited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

*Addresses:* Interested parties are invited to submit written comments to the FDIC concerning the PRA implications of the Rule. Such comments should refer to "Resolution plans required for insured depository institutions with \$50 billion or more in total assets" Comments may be submitted by any of the following methods:

- *Agency Web Site:* <http://www.FDIC.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web Site.

- *E-mail:* [comments@FDIC.gov](mailto:comments@FDIC.gov). Include "Resolution plans required for insured depository institutions with \$50 billion or more in total assets" in the subject line of the message.

- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Attention: Comments, FDIC, 550 17th Street, NW., Room F-1072, Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).

- A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

*Public Inspection:* All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided.

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* (RFA) requires each Federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.<sup>10</sup> Under regulations issued by the Small Business Administration (“SBA”), a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7 million or less in assets to \$175 million or less in assets.<sup>11</sup> Therefore, insured depository institutions with assets sizes of \$175 million or less are considered small entities for purposes of the RFA.

The Rule would apply only to insured depository institutions with \$50 billion or more in total assets. The Rule would apply to 37 insured depository institutions upon its effective date. Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Rule will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis under the RFA is not required.

## VII. Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the Rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

## VIII. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Rule in a simple and straightforward manner.

## IX. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Rule is not a

“major rule” within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Rule may be reviewed.

## X. Riegle Community Development and Regulatory Improvement Act

Section 302 of Riegle Community Development and Regulatory Improvement Act (RCDRIA)<sup>12</sup> generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless an agency finds good cause that the regulations should become effective sooner. The effective date of the Rule is January 1, 2012, which is the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form, as required by RCDRIA.

### List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 360 of title 12 of the Code of Federal Regulations as follows:

### PART 360—RESOLUTION AND RECEIVERSHIP

■ 1. The authority citation for part 360 is revised to read as follows:

**Authority:** 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Add new § 360.10 to read as follows:

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

(a) *Scope and purpose.* This section requires each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. This section also establishes the rules

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

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

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

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

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

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

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

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

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

<sup>10</sup> See 5 U.S.C. 603, 604 and 605.

<sup>11</sup> 13 CFR 121.201.

<sup>12</sup> 12 U.S.C. 4802.

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

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

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

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

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

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

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

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

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

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

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

(ii) *Submission by new CIDs.* An insured depository institution that becomes a CIDI after the effective date of this section shall submit its initial resolution plan no later than July 1 of the following calendar year.

(iii) After filing its initial Resolution Plan pursuant to paragraph (c)(1)(i) or

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

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

(v) *Notice of material events.* (A) Each CIDI shall file with the FDIC a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI. Such notice shall describe the event, occurrence or change, describe any material effects that the event, occurrence or change may have on the resolution plan and summarize the changes that are required in the resolution plan. The CIDI shall address any event, occurrence or change with respect to which it has provided notice pursuant hereto in the following resolution plan submitted by the CIDI.

(B) A CIDI shall not be required to file a notice under paragraph (c)(1)(v)(A) of this section if the date on which the CIDI would be required to submit a notice under paragraph (c)(1)(v)(A) would be within 45 days prior to the date on which the CIDI is required to file an annual Resolution Plan under paragraph (c)(1)(iii) of this section.

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

(2) *Content of the resolution plan.* The resolution plan submitted should enable the FDIC, as receiver, to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823. The resolution plan strategies should take into account

that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. At a minimum, the resolution plan shall:

(i) *Executive summary.* Include an executive summary describing the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual resolution plan shall also describe:

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

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

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

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

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

ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure.

(iv) *Interconnectedness to parent company's organization.* Identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI.

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

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

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

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

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

(B) Assessing the feasibility of the CIDI's plans, under idiosyncratic and industry-wide stress scenarios (including timeframes), for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the CIDI's resolution plan; and

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

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

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

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

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

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

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

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

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

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

(xv) *Capital structure; funding sources.* Provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI

and its material entities, which shall be mapped to core business lines and critical services. Describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

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

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

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

(xix) *Management information systems; software licenses; intellectual property.* Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. Identify

the legal owner or licensor of the systems identified above; describe the use and function of the system or application, and provide a listing of service level agreements and any software and systems licenses or associated intellectual property related thereto. Identify and discuss any disaster recovery or other backup plans. Identify common or shared personnel, facilities, or systems. Describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the resolution plan to management of the CIDI and, upon request to the FDIC. Describe any deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

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

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

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

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

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

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

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

(4) *Review of resolution plan.*

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

(ii) After receiving a resolution plan, the FDIC shall determine whether the submitted plan satisfies the minimum

informational requirements of paragraph (c)(2) of this section; and either acknowledge acceptance of the plan for review or return the resolution plan if the FDIC determines that it is incomplete or that substantial additional information is required to facilitate review of the resolution plan.

(iii) If the FDIC determines that a resolution plan is informationally incomplete or that additional information is necessary to facilitate review of the plan, the FDIC shall inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required.

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

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

(vi) Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (c)(4)(v) of this section, or such shorter or longer period as the FDIC may determine, a CIDI shall submit a revised resolution plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

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

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

(2) Within a reasonable period of time, as determined by the FDIC,

following its Initial Submission Date, the CIDI shall demonstrate its capability to produce promptly, in a format acceptable to the FDIC, the information and data underlying its resolution plan.

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

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

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

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

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing and settlement systems;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

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

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

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

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

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

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

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

By order of the Board of Directors.

Dated at Washington, DC, this 13th day of September, 2011.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011-24179 Filed 9-20-11; 8:45 am]

BILLING CODE 6714-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 93

[Docket No. FAA-2011-1024]

#### High Density Traffic Airports; Notice of Determination Regarding Low Demand Periods at Ronald Reagan Washington National Airport

**AGENCY:** Department of Transportation, Federal Aviation Administration (FAA).

**ACTION:** Notice of agency determination.

**SUMMARY:** This action announces an FAA determination that 6 a.m. to 6:59 a.m. no longer is a low demand period at Ronald Reagan Washington National Airport (DCA). As a result of this determination, the FAA will allocate available slots in that period on a temporary basis subject to recall, and the FAA may conduct a lottery in the future to allocate available slots in that period.

**DATES:** September 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone number: 202-267-7143; fax number: 202-267-7971; e-mail: [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA issued the High Density Traffic Airports Rule (HDR), 14 CFR part 93 subpart K, in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, Ronald Reagan Washington National Airport (DCA), and Newark Liberty International Airport.<sup>1</sup> Currently, the HDR applies only to DCA. The regulation limits the number of operations during certain hours of the day and requires a slot, which the FAA allocates for a specific 60-minute period, for each scheduled operation.

In 1985, the FAA issued part 93 subpart S (the "Buy/Sell Rule").<sup>2</sup> As part of the Buy/Sell Rule, § 93.226 permits the administrative allocation of slots during low demand periods, which are 6 a.m. to 6:59 a.m. (the 0600 hour) and 10 p.m. to 11:59 p.m. (the 2200 and 2300 hours), on a first come, first served basis. Section 93.226(d) permits the FAA to determine those periods are no longer low demand periods and allocate any available slots by lottery under § 93.225. The FAA may make this determination when it becomes apparent that demand for slots is increasing to the point where a first come, first served allocation procedure is inappropriate.

##### FAA Determination

Currently, the FAA has allocated all commuter and all but three air carrier slots in the 0600 hour. The FAA has allocated five daily commuter slots and two daily air carrier slots in the 0600 hour on a temporary basis subject to recall.

Because of the relatively small number of available slots in the 0600 hour, the FAA now determines that hour no longer is a low demand period. Further, permanent allocation of slots in that time period would undermine the new entrant and limited incumbent allocation priority under § 93.225. The FAA no longer will allocate slots during that time period on a permanent first come, first served basis.

The FAA further determines the present demand for available slots does not justify conducting a lottery at this time. Accordingly, the FAA will allocate slots in the 0600 hour on a temporary basis subject to recall by the FAA under

§ 93.226(e). However, if the FAA cannot accommodate future requests for slots, especially requests by new entrants or limited incumbents, through temporary allocations, the FAA may recall any temporarily allocated slots and conduct a lottery at that time.

Slots currently allocated are unaffected by this determination, and the HDR continues to apply to all allocated slots.

Issued in Washington, DC on September 15, 2011.

**Rebecca B. MacPherson,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 2011-24262 Filed 9-20-11; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**15 CFR Parts 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 747, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, and 774**

[Docket No. 110804473-1484-01]

RIN 0694-AF34

#### Updated Statements of Legal Authority for the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the Code of Federal Regulations legal authority citations for the Export Administration Regulations (EAR) to include the citation to the President's Notice of August 12, 2011—Continuation of Emergency Regarding Export Control Regulations.

**DATES:** The rule is effective September 21, 2011. Comments may be submitted at any time.

**ADDRESSES:** Comments concerning this rule should be sent to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov), fax (202) 482-3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2899B, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694-AF34 in all comments, and in the subject line of e-mail comments.

**FOR FURTHER INFORMATION CONTACT:** William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482-2440.

**SUPPLEMENTARY INFORMATION:**

<sup>1</sup> 33 FR 17896 (Dec. 3, 1968).

<sup>2</sup> 50 FR 52195 (Dec. 20, 1985).