



## **FDIC FINAL RULE FREQUENTLY ASKED QUESTIONS**

1. **Q:** *What is a “covered insured depository institution (CIDI)?”*

**A:** A CIDI is an FDIC insured depository institution with \$50 billion or more in total assets, as determined based upon the average of the institution’s four most recent Call Reports or Thrift Financial Reports.

2. **Q:** *What currency should be used when reporting the value of assets and individual components of the CIDI’s structure including foreign branches, subsidiaries, and offices?*

**A:** U.S. Dollars.

3. **Q:** *What potential sale strategies should the CIDI consider when developing the Resolution Plan?*

**A:** Among potential strategies for the payment of depositors that should be considered are: (a) A cash payment of insured deposits, (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.

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 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.

The CIDI’s chosen strategy should be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI.

4. **Q.** *The potential strategy discussed in the Resolution Plan should enable the FDIC to resolve the institution in a manner that ensures depositors receive access to their insured deposits within one business day of the institution’s*

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*failure. Must the strategy ensure access to brokered deposits within one day as well?*

**A:** No. The CIDI may address brokered deposits separately from core deposits and is not required to plan for access to brokered deposits within one day.

5. **Q:** *What is meant by the term “material”?*

**A:** There are materiality thresholds in several provisions of the Final Rule. There is not a single, objective definition of the word “material” that could be applied to each threshold. The meaning ultimately depends on the context and the institution that is making the determination.

6. **Q:** *The regulation states that the IDI resolution plan may incorporate data and other information from its holding company’s §165(d) resolution plan. Does this mean the CIDI may incorporate the data, etc., by reference to specified sections of the BHC’s §165(d) resolution plan, or must it repeat the data, etc., without reconfiguring or recalculating (so long as it provides the information required in the IDI Resolution Plan)? Very similar to Question 26*

**A:** The IDI should repeat the information obtained from the parent company’s §165(d) resolution plan in the IDI resolution plan rather than incorporate the information solely by reference. The repetition of the material will facilitate review of the IDI resolution plan. If the parent company has presented information in its §165(d) Resolution Plan in a format that does not exactly fit the requirements of the IDI Resolution Plan rule and it would be burdensome to change the format, the IDI should discuss its concerns with FDIC staff to determine if the format of the BHC information will be satisfactory.

7. **Q:** *How does the resolution plan rule address confidentiality?*

**A:** The resolution plan rule requires the covered company to separate the resolution plan into a public section and a confidential section. The rule specifies the minimum content that is to be included in the public section. The resolution plan rule provides that the FDIC will treat the confidential section as confidential “to the extent permitted by law.”

8. **Q:** *When is the initial resolution plan due?*

**A:** The Final Rule requires the first filing group, which consists of each CIDI whose parent company, as of November 30, 2011, had \$250 billion or more in total nonbank assets, to file their initial Resolution Plans on July 1, 2012. The Final Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of November 30, 2011, had \$100 billion or more in total nonbank assets, to file their initial Resolution Plans

on or before July 1, 2013. The Final Rule requires the third filing group, which consists of the remaining CIDs, to file their initial Resolution Plans on or before December 31, 2013.

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

**9. Q:** *How is the Resolution Plan required under the Final Rule (12 CFR 360.10) different from the DFA Resolution Plan required under Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“DFA”), 12 U.S.C. 5365(d), adopted July 21, 2010?*

**A:** The Resolution Plan under Final Rule is separate from, but intended to complement, the DFA Resolution Plan required under DFA. This Resolution Plan focuses on resolution of the insured depository institution under the Federal Deposit Insurance Act, whereas a DFA Resolution Plan addresses resolution of “covered companies” under the Bankruptcy Code.

**10. Q:** *What companies must submit resolution plans under this Final Rule?*

**A:** Each CIDI must submit a Resolution Plan. A CIDI is an FDIC insured depository institution with \$50 billion or more in total assets, as determined based upon the average of the institution’s four most recent Call Reports or Thrift Financial Reports.

**11. Q:** *If a CIDI’s holding company parent submits a DFA Resolution Plan, must the CIDI submit a Resolution Plan under this Final Rule?*

**A:** Each CIDI must submit a Resolution Plan with the FDIC. This requirement is independent of its parent’s requirement to submit a DFA Resolution Plan.

**12. Q:** *If a bank holding company has multiple insured depository institution subsidiaries that in aggregate have assets of \$50 billion or more, how many Resolution Plans will be required?*

**A:** The total number of required Resolution Plans depends upon the assets of each CIDI. A Resolution Plan is required for each CIDI, without regard to the bank holding company’s aggregate assets. Each insured depository institution subsidiary that is a CIDI must submit a Resolution Plan; any insured depository institution subsidiaries that are not CIDs do not need to submit Resolution Plans.

**13. Q:** *If a bank holding company has multiple insured depository institution subsidiaries but none of them has assets over \$50 billion, are Resolution Plans required for any of the insured depository institutions?*

**A:** No. Any insured depository institution with under \$50 billion in assets does not need to submit a separate Resolution Plan.

**14. Q:** *If a bank holding company is a Foreign Banking Organization (“FBO”) and has CIDI subsidiaries, are Resolution Plans required?*

**A:** Yes, each CIDI must submit a Resolution Plan, even if owned by an FBO.

**15. Q:** *How often are CIDI Resolution Plans required to be submitted?*

**A:** Initial Resolution Plans must be submitted under a staggered schedule based on the nonbank assets of its parent holding company. This staggered schedule for submission corresponds to the dates for filing DFA Resolution Plans, with the first group’s Resolution Plans due on July 1, 2012. 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.

**16. Q:** *Is the CIDI required to file a new plan if there are changes to the organizational structure?*

**A:** A CIDI is required to file a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or change that results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI. However, if the required notice would be due within 90 days before the CIDI is required to file an annual Resolution Plan, no notice is required.

**17. Q:** *How will the FDIC review the Resolution Plan, and when will the FDIC notify the CIDI if its Resolution Plan is acceptable?*

**A:** There are two stages to the FDIC’s review of a submitted Resolution Plan. For the first stage, after it receives a Resolution Plan, the FDIC will determine if the submitted Resolution Plan contains the minimum information required under the Final Rule. The Rule does not require the FDIC to complete its first stage review within a particular time. After this initial review, the FDIC will 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. The CIDI must provide this required additional information no later than 30 days after it receives the notice.

After the FDIC accepts the submission of the Resolution Plan as complete, it then will review the Resolution Plan (in consultation with the appropriate Federal banking agency for the CIDI and its parent company) for credibility. If the FDIC finds the Resolution Plan not credible, it will notify the CIDI in writing, identifying the deficient aspects. The CIDI then has 90 days (or such shorter or longer time as the FDIC may determine) to submit a revised Resolution Plan correcting the deficiencies.

**18. Q.** *What makes a Resolution Plan credible?*

**A:** A Resolution Plan is credible if its strategies for resolving the CIDI, and the detailed information required by the Final Rule, 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.

**19. Q.** *What if the FDIC is dissatisfied with the Resolution Plan?*

**A:** 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. Within 90 days of receiving a notice of deficiencies, 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.

**20. Q:** *If the FDIC approves a Resolution Plan, is it required to follow that Resolution Plan if it is appointed receiver for the CIDI?*

**A:** The FDIC will not issue an approval of a Resolution Plan. 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. A Resolution Plan does not bind FDIC acting in any capacity (including as supervisor, deposit insurer, or receiver), and the FDIC is not required to act in conformance with the Resolution Plan.

**21. Q:** *Will the FDIC be working with the CIDI's Primary Federal Regulator?*

**A:** The FDIC will review the Resolution Plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company for credibility. The FDIC will also consult with the appropriate Federal banking agency for the CIDI before finding the CIDI's capability to produce the information and data underlying its Resolution Plan is unacceptable.

**22. Q:** *Will the Confidential Section of the Resolution Plan be subject to a Freedom of Information Act ("FOIA") request?*

**A:** The confidential section of a Resolution Plan should consist of information subject to withholding under one or more FOIA exemptions. Each CIDI should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are exempt from disclosure under FOIA.

**23. Q:** *Must a CIDI reorganize its operations to facilitate resolution under its Resolution Plan?*

**A:** The Resolution Plan should identify potential barriers or other material obstacles to an orderly resolution of the CIDI, inter-connections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

**24. Q:** *Is there a specific format to each Resolution Plan?*

**A:** The Final Rule requires that each Resolution Plan include an executive summary and all information required in Section 360.10 (c)(2). In addition, the Resolution Plan should be divided into public and confidential sections.

**25. Q:** *May the Resolution Plan include information prepared for other purposes or previously provided in filings with the SEC or other regulatory body?*

**A:** So long as the information is complete, accurate, and provides the information required in the Resolution Plan, the CIDI may repeat the information prepared for other purposes, but it should not merely incorporate the information by reference.

**26. Q:** *What if the data or other information required in the CIDI Resolution Plan is the same as that required for the CIDI's parent's DFA Resolution Plan?*

**Similar to Q 6**

**A:** If the same information is required for each plan, the CIDI may repeat the information obtained from its parent's DFA Resolution Plan in its CIDI Resolution Plan, but it should not merely incorporate the information by reference.

**27. Q:** *Are the Board of Directors responsible for the content of the Resolution Plan?*

**A:** The CIDI's board of directors must approve the initial and each annual Resolution Plan. Such approval should be noted in the Board minutes.

**28. Q:** *Does the Resolution Plan require baseline, adverse, and severely adverse economic conditions?*

**A:** Yes, 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. Subsequent submissions of the Resolution Plan must address scenarios in which adverse and severely adverse economic conditions exist.

For purposes of the initial Resolution Plan, a baseline scenario assumes:

- a. an idiosyncratic problem with the CIDI;
- b. no disruption to the market prior to the failure of the CIDI;
- c. the CIDI's access to unsecured credit is limited; and
- d. in sales of its assets, the CIDI will encounter stress as markets react to its failure.

**29. Q:** *Are the names of personnel required to be included in the Resolution Plan?*

**A:** Key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization should be identified.

**30. Q:** *Is there a materiality threshold for "core" business lines?*

**A:** "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.

**31. Q:** *Should operational functions performed by contractors be included in the Resolution Plan?*

**A:** Yes, if those functions are necessary to continue the day-to-day operations of core business lines or critical services. Such contractors would be "material entities" as defined in the Rule.

**32. Q:** *What is the difference between critical operations and critical services?*

**A:** The term "critical operations" is used in the DFA Resolution Plan rule 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" as used in the Final Rule 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.

33. **Q:** *Are components outside the United States included in the Resolution Plan if they are not “core business lines”?*

**A:** The Resolution Plan must describe material components of the CIDI's structure that are based or located outside the United States.

34. **Q:** *Must the Resolution Plan provide audited financial statements?*

**A:** The CIDI is required to provide financial statements for material entities. When available, audited financial statements should be provided.

35. If an institution becomes a CIDI after April 1, 2012, when is its initial resolution plan due?

**A:** If an institution becomes a CIDI after April 1, 2012, such institution is required to file its initial resolution plan on the next July 1 that is no earlier than 270 days after the institution becomes a CIDI.