

IDI Resolution Plans – FAQs

The following answers to frequently asked questions are provided by FDIC staff and are not formal opinions of, and are not binding on, the FDIC Board.

Published August 08, 2022

Should the IDI resolution plan continue to include content from the 2017 guidance not explicitly waived in writing by the FDIC?

Answer: The Statement on Resolution Plans for Insured Depository Institutions (the “Statement”) supersedes all prior guidance and feedback. Any content required by 12 CFR § 360.10 (the “Rule”), and not exempted, should be included in the next IDI resolution plan submission.

If a specified CIDI received an exemption from content requirements for the next IDI resolution plan submissions, is this considered to be a one-time exemption?

Answer: Any exemption from content requirements granted to a specified CIDI for its next IDI resolution plan submission is a one-time exemption.

Are there specific areas related to QFCs that are of interest to the FDIC that could be covered in the next IDI resolution plan submission?

Answer: The information of most interest is described in the Rule and the Statement. In connection with the request for a narrative description of hedging practices and how those products and asset classes are associated with key elements of a specified CIDI’s core business lines, we are particularly interested in the purpose of the QFCs and how they relate to the business lines and franchise components, and how decisions to transfer or not transfer QFCs to a bridge depository institution or acquirer might impact value or the divestiture approaches discussed in the IDI resolution plan.

Would it be acceptable to incorporate information from a recently filed section 165(d) plan into a specified CIDI’s next IDI resolution plan submission?

Answer: As referenced in Section (c)(1)(vi) of the Rule and section I.E. of the Statement, a specified CIDI may incorporate directly (or by reference) information contained in its most recent section 165(d) plan provided the incorporated information meets the content requirements of the Rule. The information required by the Rule pertaining to the specified CIDI must be readily distinguishable from any extraneous parent company (or parent company affiliate) information and the IDI resolution plan should describe any material differences. As an example, incorporated financial information with dates differing from the prescribed IDI resolution plan financial date would be acceptable if the dates are clearly reflected and the differences are not material. All references to incorporated information should provide a sufficient description of the information’s location (e.g., document name, chapter/section, pages) within the section 165(d) plan submission.

Does an understanding of which key employees are dual-hatted remain an area of interest for the FDIC for the next IDI resolution plan submission?

Answer: Yes. The discussions in the Statement are not exhaustive or all-inclusive. Given space constraints, not every example could be included. The Rule encompasses identification of inter-connections and inter-dependencies that would impact the continuation of critical services and the effective resolution of the specified CIDI generally, including complexities, barriers, and obstacles to resolution. See 12 CFR § 360.10(c)(2)(iv).

Additionally, the Rule requires an IDI resolution plan to identify key personnel tasked with managing core business lines and deposit activities and the specified CIDI's branch organization (12 CFR § 360.10(c)(2)(ii)) and to identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems (12 CFR § 360.10(c)(2)(xix)). While “dual-hatted” employees are not specifically mentioned in the Statement or the Rule, the identification of key employees and the discussion of mitigation of impediments to continuity of critical services may require identification of dual-hatted employees and plans for the continuity of employment of those employees where it is relevant to that discussion.

What information regarding identifying key personnel, “common or shared facilities and systems as well as personnel necessary to operate such facilities and systems”, as mentioned in section (c)(2)(xix) of the Rule, would be the most valuable to the FDIC as part of the next IDI resolution plan submission?

Answer: The Statement discusses provision of a description of the specified CIDI's process for identifying key personnel that play an essential role in supporting a core business line, franchise component, or critical service, or that have a function, responsibility, or knowledge that could be important for the FDIC's resolution of the specified CIDI. In developing its process, the specified CIDI may consider how key personnel align with those identified in internal recovery and resiliency plans and the substitutability of other employees or contractors.

The important point of emphasis is the relationship to critical services. Not every system is essential to a critical service and not every employee is a key employee. If an employee or system is easily replaceable, or is not necessary to a critical service, it might not need a detailed discussion. In its IDI resolution plan, a specified CIDI should provide the information necessary to identify the IT systems and key personnel important to continuity of its operations and continuation of its critical services.

For example, the FDIC would not need the name or title of every on-site facilities manager. Rather, we would consider as key personnel any manager, within a centralized real estate function, who oversees and can communicate with personnel within facilities where critical services are supported. We would expect your plan to identify and describe personnel involved in a unique and material activity (e.g., data center manager) within a facility owned or leased by the specified CIDI.

The Statement states that "the FDIC also expects a resolution plan to present the approach to resolution that, in the view of the specified CIDI, would maximize the net present value return from the sale or disposition of its assets and minimize the amount of loss realized by the creditors in the resolution of the CIDI by presenting a sequence and process to sell or dispose of one or more combinations of franchise components that maximizes return through their sale or disposition." Can the FDIC please clarify expectations with respect to this portion of the Statement?

Answer: To provide maximum optionality across a range of possible scenarios, the FDIC presently is focused on understanding divestiture options at an individual franchise component and a value maximizing, combinative franchise component level. Understanding the drivers of value and the processes of determining value, as well as how different scenarios or strategic options might impact value is valuable to the FDIC in any scenario and under different strategies. Accordingly, as explained in the Statement, the FDIC expects a resolution plan to describe the drivers of value of each franchise component on a going-concern basis, key factors and considerations in assessing the impact on value of the disaggregation and sale of these components.

The FDIC also expects an IDI resolution plan to present the approach to resolution that, in the view of the specified CIDI, would maximize the net present value return from the sale or disposition of its assets and minimize the amount of loss realized by the depositors and creditors in the resolution of the specified CIDI.

Should the IDI resolution plan consider independent contractors as prospective "key personnel?" If so, where the Rule requires a retention framework, does "key personnel" only include employees and not contractors?

Answer: The Rule and the Statement address key personnel and discuss the process for identifying key personnel. Loss of key personnel is a factor to consider in addressing continuity of critical services, which can be provided by third-party contractors, affiliates, or the specified CIDI itself. The Statement recognizes that in some cases, contractors can be considered "key personnel."

The intent of the Rule and Statement is that the specified CIDI should have a process to identify the key personnel necessary to continue critical services. The scope of individuals identified should be broad enough to include operational personnel as well as management and should include individuals who have specialized knowledge as well as key relationships with customers, clients, service providers, and counterparties. Examples in the Statement include, "personnel involved in trading, booking, liquidity risk management, information technology and support services, operations, and asset and liability management functions." Key personnel should include personnel tasked with "managing core business lines and deposit activities and the CIDI's branch activities." See 12 CFR § 360.10(c)(2)(ii).

In addition, the FDIC expects an IDI resolution plan to include a framework for establishing retention compensation to incentivize the continued employment of key personnel during resolution, or another effective framework for facilitating employee retention, as described in the Rule and the Statement.

Lastly, the retention framework only applies to employees identified as key personnel, not contractors (even if they are identified as key personnel).

Please clarify the FDIC's expectations around the virtual data room ("VDR") for potential buyers referenced in the Statement.

Answer: As referenced in Section II.A.3 of the Statement, the FDIC is seeking to understand the specified CIDI’s capabilities to establish VDRs (referred to as a “digital data room(s)” in the Statement) that would house due diligence material for potential purchasers. The FDIC does not have expectations regarding maintaining a VDR on an ongoing basis. The FDIC expects the IDI resolution plan to describe the specified CIDI’s current capabilities to assemble and make available information sufficient for a potential buyer to prepare a well-informed initial bid. This discussion may include, but is not limited to, the key categories of information and data to be contained in the VDRs; the time needed by the specified CIDI to setup the VDRs and populate them with appropriate information and data for a franchise sale (whole bank sale). The FDIC would find it helpful for the specified CIDI to provide information relevant to divestiture options described in the resolution plan other than a resolution weekend purchase and assumption transaction.

Does the Statement supersede all prior guidance and feedback provided by the FDIC to specified CIDs, except certain aspects of previous guidance and feedback incorporated into Part II.A of the Statement?

Answer: The Statement supersedes all prior guidance and feedback. Any content required by the Rule but not exempted should be included in the next IDI Plan resolution plan submission.

Published January 26, 2022

Does a CIDI need to provide public section content if it has been granted exemptions for similar content in the confidential section of its plan submission?

Answer: The public section of the resolution plan is required to comprise 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, certain information set forth in 12 CFR § 360.10(f)(1). In a number of cases, CIDs have been granted exemptions from content in the confidential sections of their resolution plans that is substantially similar to certain requirements in 12 CFR § 360.10(f)(1). CIDs will not be expected to provide information in the executive summary of the resolution plan to the extent that the CIDI is exempted from providing identical information in the confidential section. For example, certain CIDs were granted exemptions from the requirement to identify each payment, clearing and settlement (PCS) system of which the CIDI, directly or indirectly, is a member. Such CIDs would not be expected to include in the executive summary a list of memberships in material PCS systems.

What is the FDIC’s process for addressing non-exemption related questions on the IDI Statement?

Answer: FDIC staff expects that firms may have questions as they prepare their plans. It is helpful to consider related questions together to develop a consistent and thorough response. FDIC staff’s intention is to engage on these questions beginning in the first quarter of 2022.