

Federal Deposit Insurance Corporation

§ 360.11

(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).

[77 FR 3084, Jan. 23, 2012]

§ 360.11 Records of failed insured depository institutions.

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

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

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

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

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

(ii) Records do not include:

(A) Multiple copies of records; or

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

(b) *Determination of records.* In determining whether particular documentary material obtained from a failed

insured depository institution is a record for purposes of 12 U.S.C. 1821(d)(15)(D), the FDIC in its discretion will consider the following factors:

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

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

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

(4) The expected evidentiary needs of the FDIC.

(c) The FDIC's determination that documentary material from a failed insured depository institution constitutes records is solely for the purpose of identifying that documentary material that must be maintained pursuant to 12 U.S.C. 1821(d)(15)(D) and shall not bear on the discoverability or admissibility of such documentary material in any court, tribunal or other adjudicative proceeding, nor on whether such documentary material is subject to release under the Freedom of Information Act, the Privacy Act or other law.

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

(2) Notwithstanding paragraph (d)(1) of this section, the FDIC may destroy records of a failed insured depository institution which are at least 10 years old as of the date on which the FDIC is appointed as the receiver of such institution in accordance with paragraph (d)(1) of this section at any time after

such appointment is final, without regard to the six-year period of limitation contained in paragraph (d)(1) of this section.

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

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

[78 FR 54376, Sept. 4, 2013]

APPENDIX A TO PART 360—NON-MONETARY TRANSACTION FILE STRUCTURE

This is the structure of the data file the FDIC will provide to remove or add a FDIC hold for an individual account or sub-account. The file will be in a tab- or pipe-delimited ASCII format and provided through FDICconnect or Direct Connect. The file will be encrypted using an FDIC-supplied algorithm.

Field name	Field description	Comments	Format
1. DP_Acct_Identifier	Account Identifier The primary field used to identify the account. This field may be the Account Number.	The Account Identifier may be composed of more than one physical data element. If multiple fields are required to identify the account, data should be placed in separate fields and the FDIC instructed how these fields are combined to uniquely identify the account.	Character (25).
2. DP_Acct_Identifier—2	Account Identifier—2 If necessary, the second element used to identify the account.	.....	Character (25).
3. DP_Acct_Identifier—3	Account Identifier—3 If necessary, the third element used to identify the account.	.....	Character (25).
4. DP_Acct_Identifier—4	Account Identifier—4 If necessary, the fourth element used to identify the account.	.....	Character (25).
5. DP_Acct_Identifier—5	Account Identifier—5 If necessary, the fifth element used to identify the account.	.....	Character (25).
6. DP_Sub_Acct_Identifier	Sub-Account Identifier If available, the Sub-Account identifier for the account.	The Sub-Account Identifier may identify separate deposits tied to this account where there are different processing parameters such as interest rates or maturity dates, but all owners are the same.	Character (25).
7. PH_Hold_Action	Hold Action The requested hold action to be taken for this account or sub-account. Possible values are: • R = Remove. • A = Add.	.....	Character (1).
8. PH_Hold_Amt	Hold Amount Dollar amount of the FDIC hold to be removed or added.	.....	Decimal (14,2).
9. PH_Hold_Desc	Hold Description FDIC hold to be removed or added.	.....	Character (225).

[73 FR 41197, July 17, 2008]