

# Regulatory Alert

Regulatory Insights for Financial Services

August 2023

## Resolution & Living Wills: FDIC and Joint (FDIC/FRB) proposals

### KPMG Insights:

- *Strengthening of resolution planning, strategy, and reporting for at \$50B, \$100B, and \$250B+ bank/BHC levels*
- *Heightened expectations regarding resolution strategy capabilities*
- *All supervised banks (regardless of size) should enhance resolution and liquidity risk strategy, management and governance*

The Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB) issue rule proposals to large insured depository institutions (IDIs) and certain large bank holding companies (BHC) for resolution planning. As outlined below, the proposals include:

- **IDIs:** FDIC proposed rule for IDIs with \$50 billion or more in total assets to periodically submit resolution plans. FDIC to use its authority under the Federal Deposit Insurance Act (FDI Act) to resolve the IDI in the event of insolvency. Intent is to allow insured depositors access to funds quickly and orderly (with least cost to the Deposit Insurance Fund).
- **Category II & III:** Joint FDIC and FRB proposed guidance to domestic and foreign Category II and III banking organizations (over \$250B, not Category I banking organizations, GSIBs). The proposed guidance sets expectations for the development of resolution plans, or “living wills”. Required by the Dodd-Frank Act (and to help mitigate systemic risk), this guidance is to allow for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure.

### FDIC IDI Resolution Plan Proposal

The [proposed rule](#) would amend the FDIC’s existing rule governing resolution plans for IDIs with \$50 billion or more in total assets with regard to the content and timing of

resolution submissions and related interim supplements to those submissions as well as how the credibility of resolution submissions will be assessed. The resolution submissions are intended to support the FDIC’s readiness in the event of material distress and failure of a large IDI.

**Application and Submissions.** The proposed rule would apply to all IDIs with \$50 billion or more in total assets (“covered IDIs” or “CIDIs”) and classify them as follows:

- **“Group A CIDIs”** - CIDIs with \$100 billion or more in total assets. These CIDIs would be required to submit a resolution plan every two (2) years and an interim supplement every other year covering select items as outlined in the rule. *Note: To adequately manage the volume of reviews in a given year, the proposal would create two cohorts within Group A that submit complete resolution plans in alternating years.*
- **“Group B CIDIs”** - CIDIs with between \$50 billion and \$100 billion in total assets. Group B CIDIs would be required to submit an “informational filing” (as defined in the rule) every two (2) years and an interim supplement every other year covering select items as outlined in the rule.

The asset size of CIDIs would be determined based on the average of the institution’s four most recent Consolidated Reports of Condition and Income. However, if an institution

crosses either the \$50 billion or \$100 billion total asset threshold as the result of “a merger, acquisition of assets, combination or similar transaction”, it will become a Group B CIDI or Group A CIDI, respectively, as of the consummation date of the transaction.

**Notifications of Material Change.** CIDs would be required to provide notice and explanation within forty-five (45) days after a “material change” to the CIDs organizational

structure, core business, size or complexity; identification of material entities; or capabilities described in the resolution submission, except in cases where the notice would fall within ninety (90) days before a regular submission. *Note: The proposal would change the trigger for notice and explanation from ‘material event’ to ‘material change’, which the proposal states is broader and includes certain changes that may impact resolution strategies.*

**Resolution Submission Contents.** The proposed rule would require Group A CIDI resolution plans and Group B CIDI informational filings and their respective interim supplements to address the following contents categories.

Resolution Submission Contents		Group A CIDI >\$100B		Group B CIDI \$50-100B	
		Plan	Interim	Filing	Interim
1	<b>Identified strategy.</b> An identified strategy for the resolution of the CIDI in the event of its failure that meets the credibility criteria (see below). Must utilize the formation and stabilization of a bridge depository institution (BDI) that continues operation through completion of the resolution unless the CIDI determines and demonstrates in its plan why another strategy would be better. The strategy may not be based on sale or other disposition over a resolution weekend.	•			
2	<b>Failure scenario.</b> The identified strategy must utilize a failure scenario that demonstrates material financial distress including depletion of capital; must support	•			
3	<b>Executive summary,</b> describing key elements of the resolution plan, strategy, and actions and changes since last submission	•			
4	<b>Organization structure,</b> including legal entities, core business lines, and branches, as well as regulated subsidiaries and any value drawn from parent companies or affiliates	•	•	•	•
5	<b>Methodology</b> for material entity identification and designation	•		•	
6	<b>Separation from parent and potential barriers</b> or material obstacles to orderly resolution.	•		•	
7	<b>Overall deposit structure and activities,</b> including foreign deposits, deposit sweep arrangements with affiliates and unaffiliated parties, key depositors, and relationships of deposit segments to core business lines and franchise components.	•	•	•	•
8	<b>Critical services,</b> including the criteria for identifying them, support and resources, critical services provided by parent company or affiliates, and processes for collecting and monitoring contracts governing critical services	•	•	•	•
9	<b>Key personnel</b> tasked with essential roles in support of core business lines, franchise components, or critical services.	•	•	•	•
10	<b>Franchise components,</b> including identification and description of marketable and identification of components that are separable and marketable in resolution.	•	•	•	•
11	<b>Asset portfolios,</b> including material assets, their valuation, and identification and discussion of impediments to their sale and timeline for disposition.	•	•	•	•
12	<b>Valuation</b> to facilitate FDIC’s assessment of least-costly resolution method (demonstrable capabilities).	•			
13	<b>Off-balance sheet exposures,</b> such as unfunded commitments, guarantees, and contractual obligations, including qualified financial contracts (QFCs).	•	•	•	•

14	<b>Qualified financial contracts</b> , including identification of customers that are counterparties and core business lines and franchise components associated with the transactions	•		•	
15	<b>Unconsolidated balance sheet</b> and consolidating schedule for material entities.	•	•	•	•
16	<b>Payment, clearing, and settlement systems</b>	•	•	•	•
17	<b>Capital structure and funding sources</b>	•	•	•	•
18	<b>Parent and parent company affiliate</b> funding, transactions, accounts, exposures, and concentrations.	•		•	
19	<b>Economic effects</b> of resolution, including activities or business lines providing a service/function material to a geographic area or other financial institutions.	•		•	
20	<b>Non-deposit claims</b> (unsecured creditors)	•		•	
21	<b>Cross-border elements</b> , including all components of the parent and parent affiliates that contribute to the CIDI value, revenue, operations outside of the U.S.	•	•	•	•
22	<b>Management information systems, software licenses, and intellectual property</b> (detailed inventory, including legal owner/licensor and third-party contracts).	•	•	•	•
23	<b>Digital services and electronic platforms</b> offered to depositors to support banking transactions and platform provider (e.g., CIDI, subsidiary, parent, third-party).	•		•	
24	<b>Communications</b> playbook, including capabilities and channels to reach personnel, customers, and counterparties.	•		•	
25	<b>Corporate governance</b> for resolution planning and senior management designee responsible.	•		•	
26	<b>Assessment of the resolution submission</b> , including the viability of the identified strategy (if required) or improvements to any capabilities since last submission.	•		•	
27	<b>Any other material factors</b>	•		•	

**Credibility & Review.** The proposed rule would incorporate both an assessment of the credibility of a Group A CIDI’s resolution plan and the ability of the CIDI to implement the plan. The FDIC may determine that a resolution submission is not credible if:

- Prong 1: The identified strategy would not provide timely access to insured deposits, maximize value from sale or disposition of assets, minimize any losses realized by creditors, and address potential economic or financial stability risks.
- Prong 2: Information and analysis in the resolution submission is not supported with observable and verifiable capabilities and data and reasonable projections, or the CIDI fails to comply in any material respects with the requirements of the rule.

**Engagement & Capabilities Testing.** The proposed rule also amends existing rules to expand direct engagement (information and access to personnel) and capabilities testing (demonstration of capabilities described in the resolution submission, including the ability to produce timely and useful information and data underlying the resolution submission) between FDIC and CIDs in the course of regular examinations.

**Transition Period.** The proposal includes the following transition periods:

- Group A CIDs would be required to comply with the amended rule beginning on the effective date and submit resolution plans depending on their cohort’s required submission deadline, which would be expected on or before a date that is at least 270 days from the effective date of a final rule.
- Group B CIDs would be expected to submit their informational filings on or before a date that is at least 270 days from the effective date of a final rule.

**Comment Period.** The federal banking regulators are seeking comments on this proposal, with a comment submission deadline of November 30, 2023.

#### **FDIC/FRB Proposed Guidance on “Living Wills”**

The FDIC and FRB (together, Agencies) jointly propose guidance for resolution plans filed by domestic and foreign Category II and III banking organizations; these plans are required to be filed with the Agencies every three years. The guidance is divided into two proposals, one directed to [domestic triennial full filers](#) and one to [foreign triennial full filers](#). It is intended to “assist these firms in developing

resolution plans". Banking organizations covered by these requirements are expected to "demonstrate that they have assessed the challenges that their structures and business activities pose to resolution, and that they have taken adequate actions to address those challenges."

The proposals outline the Agencies' expectations regarding "areas of potential vulnerability to resolvability", including:

- Capital
- Liquidity
- Governance mechanisms (for decisions regarding entering bankruptcy)
- Operational issues (e.g., payment, clearing, and settlement; shared and outsourced services)
- Legal entity rationalization and separability
- Derivatives and trading activities
- IDI resolution (for separate resolution under the FDI Act - MPOE strategy only)
- Branches (foreign filers only)

- Group resolutions plans (foreign filers only)
- Format and structure of plans; assumptions

The Agencies' do not prescribe a specific resolution strategy for any banking organization and provide expectations in each of these challenge areas under both single point of entry (SPOE) and multiple point of entry (MPOE) resolution strategies.

**2024 Full Filers Resolution Plan Submission.** Domestic and foreign triennial full files are scheduled to submit their next full resolution plan in July 2024. The Agencies are considering, and seeking comments on a "short" extension of the next resolution plan submission date to give these filers sufficient time to incorporate the guidance into their 2024 plans once the guidance is finalized.

**Comment Period.** Comments on this proposal are requested to be submitted no later than November 30, 2023.

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