

Regulatory Alert

Regulatory Insights for Financial Services

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Resolution & Living Wills: FDIC/FRB Final Guidance

KPMG Insights:

- **Strengthen Credible Plans.** Guidance on "living wills" required by Dodd-Frank Act for Category II and III banking organizations (over \$250B, excluding GSIBs) aims to bolster resolution planning and strategies to enable a rapid and orderly resolution in cases of distress or failure.
- **Focus on Strategy Execution.** Follows from/informed by recent industry focus on liquidity risk management; the operational capability to execute the chosen resolution strategy and plan is important.
- **"Vulnerabilities".** Refines expectations for "vulnerable" areas in resolution plans, including capital, liquidity, governance, and operations under multiple resolution strategies.
- **Extended Submission Date.** Submission deadline for domestic and foreign covered banking organizations (triennial full filers) extended to October 1, 2025.

The Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FRB) jointly issue final guidance to assist domestic and foreign Category II and III banking organizations (generally those banking organizations with more than \$250 billion in total assets, excluding GSIBs) develop resolution plans, or "living wills", as required by section 165(d) of the Dodd-Frank Act. This group of banking organizations is required to submit a resolution plan every three years (referred to as "triennial full filers"); the plans are intended to describe the organization's strategy to carry out a rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure.

The guidance is adopted largely as proposed (see KPMG's Regulatory Alert, [here](#)), with some modifications and clarifications in response to public comments and "further assessment of the business and risk profiles of the firms" in the sections on capital, liquidity, governance mechanisms, operational, IDI resolution, separability and assumptions. The guidance will apply to the 2025 and subsequent resolution plan submissions.

The release follows several recent issuances focusing on resolution planning, including a(n):

- FDIC final rule requiring the submission of resolution plans by insured depository institutions (IDIs) with \$100 billion or more in total assets and information filings by IDIs with at least \$50 billion but less than \$100 billion in total assets (see KPMG's Regulatory Alert, [here](#)). This rule focuses on the resolution of an IDI in the event of insolvency. It is complementary to, but separate from, the resolution plan requirement for banking organizations under the Dodd-Frank Act.
- Office of the Comptroller of the Currency (OCC) proposed rulemaking to amend and enhance its recovery planning guidelines applicable to insured national banks, federal savings associations, and federal branches of foreign banks, including reducing the applicable threshold from \$250 billion to \$100 billion in total assets (see KPMG's Regulatory Alert, [here](#)).
- Joint announcement from FRB and FDIC identifying weaknesses in the resolution plans submitted by several Category I banking organizations, including

limitations related to plans to unwind derivatives and trading portfolios.

Key details from the final guidance are highlighted below.

Applicability, Transition Period, and Filing Frequency.

The guidance is separated into two parts, one directed to [domestic triennial full filers](#) and one to [foreign triennial full filers](#).

- Applies to resolution plans filed by both domestic and foreign Category II and III banking organizations (with more than \$250 billion in total assets, but not Category I banking organizations, GSIBs).
- When a banking organization becomes a Category II or III banking organizations (also referred to as a “specified firm”), the guidance applies to the next resolution plan submission with a due date at least twelve (12) months after becoming a specified firm.
- Resolution plans are required to be filed every three years, alternating between a full and targeted resolution plan.

Resolution Plan Expectations. The guidance does not prescribe a specific resolution strategy for any banking organization but provides expectations for resolution plan submissions under both single point of entry (SPOE) and multiple point of entry (MPOE) resolution strategies in areas of “vulnerability”. The areas covered include:

- Capital (SPOE strategy only)
- Liquidity
- Governance mechanisms (for decisions regarding entering bankruptcy - SPOE strategy only)
- Operational issues (e.g., payment, clearing, and settlement; shared and outsourced services)
- Legal entity rationalization (Note: the proposed separability section has not been adopted. The agencies state the final legal entity rationalization (LER) guidance contains separability-related expectations; the previously proposed governance sections have been moved to the LER guidance.)
- 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

Derivatives and Trading Activity. The final guidance does not include expectations for derivatives and trading activity as previously proposed. However, the agencies note that Category II and III banking organizations are subject to certain requirements regarding derivatives and trading activities under the agencies’ rules implementing section 165(d) of the Dodd-Frank Act and that the current activities of these firms are “sufficiently addressed” by these rules. Further, the agencies indicate they may “consider the need for firm-specific derivatives and trading expectations in the future for specified firms that substantially increase their derivatives and trading activities or change in a way such that having a strategy to wind-down their derivatives portfolios is critical to their resolvability.”

The agencies state, regardless of strategy, a resolution plan should address the key vulnerabilities, support the underlying assumptions required to successfully execute the chosen resolution strategy, and demonstrate the adequacy of the capabilities necessary to execute the selected strategy.

If the agencies jointly decide that an aspect of a resolution plan presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the plan, the agencies may determine jointly that the plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code.

2024 Full Filers Resolution Plan Submission. With the release of the final guidance, the agencies announce they are extending the 2025 resolution plan submission deadline for triennial full filers to October 1, 2025, in order to provide reasonable time for consideration of the final guidance in development of the full resolution plan submissions. The agencies add that, for all triennial full filers, the subsequent resolution plan submission, a targeted resolution plan, is due on or before July 1, 2028, and future submissions will be due every three years after that date.

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