

Regulatory Alert

Regulatory Insights for Financial Services

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Resolution Plans: FDIC Final Rule

KPMG Insights:

- **Resolution scenarios:** Not updated since 2012, the final rule sets forth resolution scenario analysis in planning, including bridge depository institutions and varied resolution options.
- **“Tailored” requirements/changes:** Submissions and filings dependent on total assets (\$50B to \$100B, equal/over \$100B) with added differentiation for affiliates of U.S. GSIBs.
- **Financial risk management:** Regardless of size, expect continued supervisory focus on resolution and liquidity risk strategy, management, and governance as well as scrutiny of merger-related activity.

The Federal Deposit Insurance Corporation (FDIC) issues a [final rule](#) to require 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. The requirements facilitate the FDIC’s use of its authority under the Federal Deposit Insurance Act (FDI Act) to resolve an IDI in the event of insolvency.

In final form, the rule retains most key features from the proposal (see KPMG Regulatory Alert, [here](#)) including:

- A “tailoring” of requirements based on asset size, including content and timing of full resolution submissions and interim supplements.
- A credibility standard for reviewing and assessing full resolution submissions.
- Expectations for engagement and capabilities testing.

Key changes from the proposed rule include:

- The addition of a third cohort for IDIs that are affiliates of U.S. global systemically important banks (GSIBs).
- A shift to a three-year submission cycle for all IDIs other than those affiliated with U.S. GSIBs.
- The introduction of an intermediate level of feedback that requires corrective action in the next full

resolution plan rather than immediately (i.e. significant findings).

The final rule will take effect on October 1, 2024. All IDIs will receive a written notice specifying when their initial submissions are due. IDIs with \$100 billion or more in total assets should anticipate a submission date that is at least 270 days from the effective date of the final rule. IDIs with at least \$50 billion but less than \$100 billion in total assets should anticipate a submission date that is at least one year from the effective date of the final rule.

FDIC Final Rule on IDI Full Resolution Submissions

The [final rule](#) amends 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 final rule applies to all IDIs with \$50 billion or more in total assets (hereinafter, “covered IDIs” or “CIDs”) and classifies them as follows:

- **“Group A CIDs”:** CIDs with \$100 billion or more in total assets. Group A CIDs are further divided into two filing categories:
 - **Biennial Filers:** Group A CIDs that are affiliated with U.S. GSIBs will be required to submit a full resolution plan every two (2) years and an interim supplement every other year covering select items as outlined in the rule, except, no interim supplement would be required in any year in which the CIDI submits a resolution plan under the Dodd-Frank Act. *(Note: this is a new classification based on comments received.)*
 - **Triennial Filers:** Group A CIDs that are not Biennial Filers will be required to submit a full resolution plan every three (3) years and an interim supplement in each intervening year covering select items as outlined in the rule.
 - *Note: To adequately manage the volume of reviews in a given year, the FDIC will create three cohorts within Group A CIDs for purposes of full resolution submission review, horizontal capabilities testing, and firm-specific engagement.*
- **“Group B CIDs”:** CIDs with between \$50 billion and \$100 billion in total assets. Group B CIDs are required to submit an “informational filing” (as defined in the rule) every three (3) years and an interim supplement in each of the intervening years covering select items

as outlined in the rule. *Note: The FDIC intends to create two cohorts within Group B for purposes of review, testing, and engagement, and may establish different calendar dates for submissions from those cohorts.*

The asset size of CIDs 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 may, at the discretion of the FDIC, become a Group B CIDI or Group A CIDI, respectively, as of the consummation date of the transaction.

Notifications of “Extraordinary Event”. CIDs will be required to provide notice and explanation within forty-five (45) days after an “extraordinary event” (referred to as a “material change” in the proposed rule) to the CIDs organizational structure, core business, size or complexity; identification of material entities or franchise components; mergers or acquisitions; or capabilities described in the resolution submission, except in cases where the notice would fall within ninety (90) days before a regular submission.

Resolution Submission Contents. The final rule requires 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	Identified strategy. 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	Failure scenario. The identified strategy must utilize a failure scenario that demonstrates material financial distress including depletion of capital; must support	•			
3	Executive summary, describing key elements of the resolution plan, strategy, and actions and changes since last submission	•			
4	Organization structure, including legal entities, core business lines, and branches, as well as regulated subsidiaries and any value drawn from parent companies or affiliates	•	•	•	•
5	Methodology for material entity identification and designation	•		•	
6	Separation from parent and potential barriers or material obstacles to orderly resolution.	•		•	
7	Overall deposit structure and activities, including insured and uninsured deposits, 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	Critical services, 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	Key personnel tasked with essential roles in support of core business lines, franchise components, or critical services.	•	•	•	•
10	Franchise components, including identification and description of marketable and identification of components that are separable and marketable in resolution.	•	•	•	•
11	Asset portfolios, including material assets, their valuation, and identification and discussion of impediments to their sale and timeline for disposition.	•	•	•	•
12	Valuation to facilitate FDIC's assessment of least-costly resolution method (demonstrable capabilities).	•			
13	Off-balance sheet exposures, such as unfunded commitments, guarantees, and contractual obligations, including qualified financial contracts (QFCs).	•	•	•	•
14	Qualified financial contracts, including identification of customers that are counterparties and core business lines and franchise components associated with the transactions	•		•	
15	Unconsolidated balance sheet and consolidating schedule for material entities.	•	•	•	•
16	Payment, clearing, and settlement systems	•	•	•	•
17	Capital structure and funding sources	•	•	•	•
18	Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations.	•		•	
19	Economic effects of resolution, including activities or business lines providing a service/function material to a geographic area or other financial institutions.	•		•	
20	Non-deposit claims (unsecured creditors)	•		•	
21	Cross-border elements, including all components of the parent and parent affiliates that contribute to the CIDI value, revenue, operations outside of the U.S.	•	•	•	•
22	Management information systems, software licenses, and intellectual property (detailed inventory, including legal owner/licensor and third-party contracts).	•	•	•	•
23	Digital services and electronic platforms offered to depositors to support banking transactions and platform provider (e.g., CIDI, subsidiary, parent, third-party).	•		•	
24	Communications playbook, including capabilities and channels to reach personnel, customers, and counterparties.	•		•	
25	Corporate governance for resolution planning and senior management designee responsible.	•		•	
26	Assessment of the resolution submission, including the viability of the identified strategy (if required) or improvements to any capabilities since last submission.	•		•	
27	Any other material factors	•		•	

Credibility & Review. The final rule incorporates a credibility standard consisting of two prongs for assessing the credibility of a Group A CIDI's full resolution plan and a Group B CIDI's informational filing. (Interim supplements will not be assessed under the credibility standard.) The FDIC may determine that a full 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.

The FDIC states that it will review full resolution submissions (including informational filings) "promptly and endeavor to give feedback identifying material weaknesses or significant findings within one year of the

full resolution submission date.” With regard to these findings:

- A “material weakness” is considered a weakness that would “significantly impact the FDIC’s ability to undertake an efficient and effective resolution of the CIDI or would increase the risk of a disorderly and value-destructive resolution if not promptly corrected.” For such findings, the CIDI must submit, within 90 days, a revised full resolution submission that addresses the material weakness identified and discusses the revisions made to address the weakness.
- A “significant finding” is one of “the completeness, sufficiency, and thoroughness of information provided, or the adequacy of a capability demonstrated, that could affect the resolution of the CIDI and should be addressed but is not of the same level of impact and urgency as a material weakness.” A significant finding must be satisfactorily explained or addressed in the next full resolution submission and, if not, it may be found to be a material weakness.

Engagement & Capabilities Testing. The final rule also amends existing rules to expand direct engagement (information and access to personnel) and capabilities testing (demonstration of capabilities described in the full 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. The FDIC expects that capabilities testing will be conducted concurrently with the full resolution submission review process (i.e., once every two- or three-years as appropriate) and across a cohort of CIDs.

Effective Date. The final rule becomes effective October 1, 2024. All CIDs will receive a written notice specifying when their initial full resolution submission or interim supplement is due. CIDs that do not file a full resolution submission as their first submission following the effective date are required to provide interim supplements in the years prior to the date their first full resolution submission is due.

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

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