

October 18, 2019

# Agencies Finalize New Structure for Resolution Planning: More Focused & Less Frequent

The Federal Reserve and the FDIC approved a final resolution planning rule (the “[Final Rule](#)”) significantly revising the original rule adopted in 2011.<sup>1</sup> The Final Rule revamps the 2011 requirements by aligning the timing and certain requirements for resolution planning with the filer’s categorization under the Federal Reserve’s October 10<sup>th</sup> final tailoring rule. Most significantly, the Final Rule allows all filers to submit more targeted or reduced resolution plans, rather than full plans, in their next submission, generally streamlines content requirements for many filers, and creates new waiver and related procedures that could permit further tailoring of requirements based on the potential systemic significance of different filers. The Final Rule largely adopts the April proposal, but provides important clarifications and procedural improvements.

The most significant changes from the proposal are 1) the shift from full to targeted plans for the next submissions and 2) new deadlines and procedures to request waivers or to de-identify critical operations. First, the Agencies confirmed that all firms in Categories I, II, and III will submit targeted plans, rather than full plans, by July 1, 2021.<sup>2</sup> Category IV firms must submit reduced plans by July 1, 2022. Second, while the Final Rule did not specify additional substantive tailoring of resolution plan content, the Final Rule clarified the process for seeking waivers of certain content elements and/or de-identification of critical operations. These requests must be filed 18 months before the next due date of the next full resolution plan, and if no decision to grant the requests is provided by 12 months before that due date, the request will be deemed denied. In response to commenters, the Agencies also specified that, in general, all feedback or guidance, as well as any requirement to provide an update or additional submission, would be provided 12 months before the next due date.

<sup>1</sup> Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, *Resolution Plans Required* (Oct. 10, 2019) (the “Final Rule”). The Final Rule implements Section 165(d) of the Dodd-Frank Act, and does not apply to FDIC-insured banks. Together the Federal Reserve and the FDIC will be referred to as the “Agencies”.

<sup>2</sup> The Category I U.S. G-SIBs are Bank of America, Bank of New York Mellon, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, State Street and Wells Fargo. The thirteen firms identified by the Agencies as Category II and III filers are Barclays, Capital One, Credit Suisse, Deutsche Bank, HSBC, Mizuho, MUFG, Northern Trust, PNC Financial, Royal Bank of Canada, Toronto-Dominion, UBS and U.S. Bancorp.

## Key Takeaways

- The Final Rule is intended to align with the Federal Reserve’s [final tailoring rule, also adopted on October 10<sup>th</sup>](#).<sup>3</sup> This Final Rule adopts most of the substantive revisions as proposed on April 8, 2019 (the “[Proposed Rule](#)”) and implements changes required by the Economic Growth, Regulatory Relief, and Consumer Protection Act (“[EGRRCPA](#)”). For a complete summary of the Proposed Rule, please review our [April 11, 2019 alert memo](#).
- In substance, the Final Rule declined to make material changes to the substantive resolution planning requirements included in the Proposed Rule. As in the Proposed Rule, the only material tailoring between Categories I, II, and III lies in the Biennial filing deadlines for Category I U.S. globally systemically important banks (“[U.S. G-SIBs](#)”) and the Triennial filing deadlines for all others. The Agencies clearly are leaving further tailoring of the substantive requirements for resolution plans to the waiver process and the separate de-identification process for critical operations.
- Compared to current requirements, and consistent with the Proposed Rule, the Final Rule considerably reduces the resolution planning requirements for all current filers, eliminates the requirements for all U.S. filers with total consolidated assets below \$250 billion and virtually eliminates the requirements for all other filers except U.S. G-SIBs, and a limited number of foreign banking organizations (“[FBOs](#)”) and U.S. regional banking organizations.
- The Final Rule establishes the four classifications of resolution plan filers—Categories I, II, III and IV—based on asset size and defined indicia of potential risk, while establishing three types of resolution plans: Full Plans, Targeted Plans and Reduced Plans.
- The Final Rule requires the following filing deadlines based on an organization’s categorization:
  - Category I: The eight U.S. G-SIBs will be required to submit alternating Targeted Plans and Full Plans every two years, beginning with a Targeted Plan on July 1, 2021 and then a Full Plan on July 1, 2023.
  - Categories II and III: The 13 U.S. banking organizations and FBOs within these categories will be required to submit alternating Targeted Plans and Full Plans every three years, beginning with a Targeted Plan on July 1, 2021. The first Full Plan will be due July 1, 2024.
  - Category IV: The 53 FBOs with greater than \$250 billion in global consolidated assets not subject to Categories II & III will be required to submit Reduced Plans every three years, beginning July 1, 2022.
- In the interim, four FBOs with shortcomings identified in their 2018 plans will submit information in July 2020 regarding remediation of such shortcomings. Northern Trust Corporation will submit an update in January 2020 regarding projects undertaken to address a shortcoming identified in its 2015 plan.
- The Agencies affirmed industry comments, committing that future guidance will be subject to notice and comment, except in circumstances beyond the control of the Agencies.<sup>4</sup> The Agencies further provided that all such guidance will be finalized 12 months prior to the next applicable resolution plan filing deadline.<sup>5</sup>

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<sup>3</sup> Board of Governors of the Federal Reserve System, *Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations* (October 10, 2019). Available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-fr-notice-20191010a2.pdf>.

<sup>4</sup> Final Rule at 41-42.

<sup>5</sup> *Id.*

## The Final Rule

The following discussion is meant to highlight important departures from the Proposed Rule.

See our Appendix for a table reflecting the composition of each filing group and their respective filing cycles, requirements and submission timelines.

### Submission Dates Finalized; Targeted Plans Due Next

Notably, the Final Rule declared that Category I, II and III firms will file Targeted Plans July 1, 2021, rather than Full Plans as suggested in the Proposed Rule. The next filing cycle will proceed as follows:

- Category I: Targeted Plans due July 1, 2021; Full Plans due July 1, 2023.
- Category II and III: Targeted Plans due July 1, 2021; Full Plans due July 1, 2024.
- Category IV: Reduced Plans due July 1, 2022 and July 1, 2025.

### Future Guidance Subject to Notice & Comment

The preamble to the Final Rule commits to submitting future guidance to notice and comment rulemaking procedures and notes that the Agencies “will strive” to provide final general guidance at least one year prior to its proposed application to a subsequent filing deadline.<sup>6</sup> Commenters had suggested that the Agencies codify existing guidance into the final rule, but the Agencies declined, stating that such codification is unnecessary “[b]ecause general guidance sets forth non-binding expectations as opposed to rule-based requirements[.]”<sup>7</sup> A rather interesting observation given past experience.

### Aligning Timelines of Plan Content and Critical Operations Waiver Requests

The Agencies responded to comments seeking a more consistent process for waivers of resolution plan content

elements and of the requirement to adopt a methodology for assessing potential critical operations. Accordingly, the Agencies established the following streamlined procedure:

- Agencies must jointly issue a waiver, otherwise the waiver request is denied.
- The waiver must be requested at least 18 months prior to the next Full Plan filing deadline.
- The Agencies will jointly grant a waiver request in writing on a date prior to 12 months before the next Full Plan filing deadline, otherwise such requests are deemed to be denied.
- The Agencies retained broad discretion to grant waiver requests.<sup>8</sup>

### Resolution Plan Content

The Final Rule adopts the proposed three types of resolution plans: *Full Plans*, *Targeted Plans* and *Reduced Plans*. Within this structure, the Agencies did not materially change the baseline Full Plan requirements, while only general guidance was provided for the content of Targeted Plans. The Final Rule adopted the proposed requirements for Targeted Plans, including a strategic analysis and other defined “core elements” focused more on capital, liquidity, and the plan for any recapitalization, as well as responses to any material changes, feedback, and guidance. However, the Final Rule provides very little guidance on how these requirements are to be met.<sup>9</sup> Significantly, the Targeted Plans must include a full strategic analysis. Presumably, guidance will be provided at least a year before July 1, 2021.

Reduced Plans focus almost exclusively on material changes to the company and resultant changes to the strategic analysis.

Despite receiving comments recommending further tailoring, the Agencies declined to establish further tailoring between the content requirements of the largest

<sup>6</sup> Final Rule at 41-42.

<sup>7</sup> *Id.* at 41.

<sup>8</sup> The described procedures do not apply to firm de-identification notifications, as described in this memo. *See*

Final Rule at 67; § \_\_\_\_\_.3(d); § \_\_\_\_\_.3(a)(2); § \_\_\_\_\_.3(c)(2); and § \_\_\_\_\_.4(d)(6).

<sup>9</sup> Final Rule, § \_\_\_\_\_.6(b) (cross-referencing “Core Elements” defined at § \_\_\_\_\_.2).

and most complex Category I firms and the firms represented in Categories II and III. Instead, the Agencies rely on the established firm-initiated waiver request process, firm-specific feedback and future guidance to create meaningful tailoring among these firms.<sup>10</sup>

### **Content Waiver Requests**

In a departure from the Proposed Rule, only Category II and III firms filing Full Plans are eligible to request a content waiver. The largest and most complex Category I firms cannot request a waiver under the Final Rule. The Agencies also clarified in the Final Rule that requests that do not receive responses are deemed denied, rather than approved as in the Proposed Rule.<sup>11</sup>

In response to commenter requests for transparency on Agency waiver decisions, the Final Rule's preamble indicates that the Agencies intend to make waiver decisions public so that similarly-situated firms can become aware of decisions that may apply to other firms. However, the Agencies' intention is not codified in the Final Rule itself.<sup>12</sup>

The Agencies declined to articulate criteria for granting content waiver requests, instead suggesting that the "appropriate circumstances" described in the preamble were sufficient examples of situations where a waiver may be granted.<sup>13</sup>

### **Critical Operations Review**

The Final Rule retained the proposed system for the Agencies and for firms to identify, de-identify and challenge the Agencies' identifications of critical operations.

- **Agency Identification:** The Agencies finalized the requirement for the Agencies to conduct a review of all covered companies at least every six years. During this period, the Agencies must

identify or rescind identifications of critical operations. The Final Rule affirms comments that such identifications should be made at least 12 months prior to a firm's next submission date.<sup>14</sup>

- **Request for Reconsideration:** The Final Rule confirms that firms may request reconsideration of a critical operations identification by the Agencies, and subjects that process to the streamlined timeline described above, though the Agencies' response to such request is required to be issued by the later of (A) 90 days after receipt of all additional information submitted by firms, and (B) 12 months prior to the next submission due. The Agencies provide that they will review reconsideration requests after the 18 month deadline, but those requests will be subject to the timeline criteria described in this section, allowing the agencies up to 90 days following a submission of a reconsideration request.<sup>15</sup>
- **Firm Self-Identification:** The Final Rule expands the Proposed Rule's requirement to develop a methodology to identify critical operations to Category IV filers if they currently have any identified critical operations.<sup>16</sup> As a result, all filers now face a requirement to self-identify critical operations.
- The requirement for Category IV firms is not effective until after July 1, 2022 submissions.<sup>17</sup> The Final Rule also exempts foreign Category II and III filers from establishing and implementing a process and methodology until after their July 1, 2021 submissions.<sup>18</sup>
- **Waiver:** Under the Final Rule, any firm seeking a waiver of the critical operations methodology requirements, including those firms that have never identified a critical operation, must submit

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<sup>10</sup> Final Rule at 45-46.

<sup>11</sup> § \_\_\_\_\_.4(d)(6)(iii)(D).

<sup>12</sup> Final Rule at 50.

<sup>13</sup> *Id.* at 50. Such enumerated "circumstances" as where the content would be "of limited utility to the agencies," or in a case where a firm previously "submitted a tailored resolution

plan under the 2011 rule" and such firm proposes to limit content to that which would be similar to such a plan

<sup>14</sup> *Id.* at 66; § \_\_\_\_\_.3(b)(2).

<sup>15</sup> *Id.* at 66-67; § \_\_\_\_\_.3(c)(2).

<sup>16</sup> § \_\_\_\_\_.3(a)(1)(i).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 64; § \_\_\_\_\_.3(a)(3).

a waiver request pursuant to the process described above.

- Although this waiver process generally aligns with the streamlined procedures described above, this waiver process is modified so that firms with plans due on or before July 1, 2021 may submit requests at least 17 months prior to the submission deadline.<sup>19</sup>
- *Firms May De-Identify*: The Final Rule retained the proposed timeline allowing firms to elect to “de-identify” any self-identified critical operations by submitting a notice to the Agencies at least 12 months prior to the next filing submission.<sup>20</sup>
- “*Economic function*”: The “economic function” criterion is no longer included in the criteria to identify a critical operation.<sup>21</sup> The identification analysis should instead “be commensurate with the nature, size, complexity, and scope of [a firm’s] operations.”<sup>22</sup>

### **Alternative Scoping and Tailoring Criteria**

In the Proposed Rule, the Agencies suggested they are open to using a different methodology for determining the appropriate category of each firm. While commenters generally focused on the proposed categorization framework and the proposed risk-based indicators for determining categorization within that framework, few comments directly addressed the alternative scoping criteria as initially proposed. The Agencies ultimately declined to adopt alternative scoping and tailoring criteria in the Final Rule.<sup>23</sup>

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<sup>19</sup> *Id.* at 63. § \_\_\_\_\_.3(a)(2)(ii).

<sup>20</sup> *Id.* at 67-68; § \_\_\_\_\_.3(d)(2)

<sup>21</sup> *Id.* at 64.

<sup>22</sup> *Id.* at 65; § \_\_\_\_\_.3(a)(i).

<sup>23</sup> *Id.* at 25.

## Final Rule: Filing Groups and Requirements

### Biennial Filers: Category I

<b>Covered Companies</b>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p style="text-align: center;">Bank of America, Bank of New York Mellon, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, State Street, Wells Fargo</p> </div> <ul style="list-style-type: none"> <li>• Any other future filers subject to the Category I standards</li> <li>• Any future designated non-bank financial companies (designated as Biennial Filers)</li> </ul>
<b>Filing Cycle</b>	<ul style="list-style-type: none"> <li>• Every two years</li> <li>• Alternating between Targeted Plan and Full Plan</li> </ul>
<b>Submission Timeline</b>	<ul style="list-style-type: none"> <li>• Next plan due July 1, 2021 (Targeted Plan)</li> <li>• Subsequent plan due July 1, 2023 (Full Plan)</li> </ul>

### Triennial Full Filers: Categories II and III

<b>Covered Companies</b>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p style="text-align: center;">Barclays, Capital One, Credit Suisse, Deutsche Bank, HSBC, Mizuho, MUFG, Northern Trust, PNC Financial, Royal Bank of Canada, Toronto Dominion, UBS, US Bancorp</p> </div> <ul style="list-style-type: none"> <li>• Any other future filers subject to Category II or Category III standards <ul style="list-style-type: none"> <li>○ <i>Category II:</i> (1) U.S. firms with (a) <math>\geq</math> \$700 billion total consolidated assets or (b) <math>\geq</math> \$100 billion total consolidated assets with <math>\geq</math> \$75 billion in cross-jurisdictional activity; or (2) FBOs with (a) <math>\geq</math> \$700 billion combined U.S. assets; or (b) <math>\geq</math> \$100 billion combined U.S. assets with <math>\geq</math> \$75 billion in cross-jurisdictional activity</li> <li>○ <i>Category III:</i> (1) U.S. firms with (a) <math>\geq</math> \$250 billion and <math>&lt;</math> \$700 billion total consolidated assets or (b) <math>\geq</math> \$100 billion total consolidated assets with <math>\geq</math> \$75 billion in nonbank assets, wSTWF, or off-balance sheet exposure; or (2) FBOs with (a) <math>\geq</math> \$250 billion and <math>&lt;</math> \$700 billion combined U.S. assets; or (b) <math>\geq</math> \$100 billion combined U.S. assets with <math>\geq</math> \$75 billion in nonbank assets, wSTWF, or off-balance sheet exposure</li> </ul> </li> <li>• Any future designated non-bank financial companies (designated as Triennial Full Filers)</li> </ul>
<b>Filing Cycle</b>	<ul style="list-style-type: none"> <li>• Every three years</li> <li>• Alternating between Targeted Plan and Full Plan</li> </ul>
<b>Submission Timeline</b>	<ul style="list-style-type: none"> <li>• Next plan due July 1, 2021 (Targeted Plan)</li> <li>• Subsequent plan due July 1, 2024 (Full Plan)</li> </ul>

**Triennial Reduced Filers: Category IV**

<p><b>Covered Companies</b></p>	<div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"> <p>Agricultural Bank of China, Australia and New Zealand Banking Group, Banco Bradesco, Banco De Sabadell, Banco Do Brasil, Banco Santander, Bank of China, Bank of Communications, Bank of Montreal, Bank of Nova Scotia, Bayerische Landesbank, BBVA Compass, BNP Paribas, BPCE Group, Caisse Federale de Credit Mutuel, Canadian Imperial Bank of Commerce, China Construction Bank Corporation, China Merchants Bank, CITIC Group Corporation, Commerzbank, Commonwealth Bank of Australia, Cooperative Rabobank, Credit Agricole Corporate and Investment Bank, DNB Bank, DZ Bank, Erste Group Bank AG, Hana Financial Group, Industrial and Commercial Bank of China, Industrial Bank of Korea, Intesa Sanpaolo, Itau Unibanco, KB Financial Group, KBC Bank, Landesbank Baden-Weurttemberg, Lloyds Banking Group, National Agricultural Cooperative Federation, National Australia Bank, Nordea Group, Norinchukin Bank, Oversea-Chinese Banking Corporation, Shinhan Bank, Skandinaviska Enskilda Banken, Societe Generale, Standard Chartered Bank, State Bank of India, Sumitomo Mitsui Financial Group, Sumitomo Mitsui Trust Holdings, Svenska Handelsbanken, Swedbank, UniCredit Bank, United Overseas Bank, Westpac Banking Corporation, Woori Bank</p> </div> <ul style="list-style-type: none"> <li>• Any other future filers subject to Category IV standards that are FBOs with <math>\geq</math> \$250 billion in global consolidated assets and are not subject to Category II or Category III standards</li> </ul>
<p><b>Filing Cycle</b></p>	<ul style="list-style-type: none"> <li>• Every three years</li> <li>• Reduced Plans</li> </ul>
<p><b>Submission Timeline</b></p>	<ul style="list-style-type: none"> <li>• Next plan due July 1, 2022 (Reduced Plan)</li> <li>• Subsequent plan due July 1, 2025 (Reduced Plan)</li> </ul>

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