

# FDIC Proposes to Restructure Bank Resolution Planning Rules: Reduced Frequency and Streamlined Requirements

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On April 16, 2019, the Federal Deposit Insurance Corporation (“FDIC”) approved an Advance Notice of Proposed Rulemaking outlining potential major revisions to the 2012 regulations (the “IDI Rule”) governing resolution planning by FDIC-insured banks (the “Proposal”).<sup>1</sup> If adopted, the outlined changes would categorize CIDs into groups with varying resolution planning requirements, streamline the required content for all filers, significantly reduce the frequency for filing plans and potentially eliminate regular resolution planning for a substantial number of regional banks. While different in particulars, the Proposal parallels many of the goals and components contained in the joint FDIC and Federal Reserve proposal, also approved by the FDIC on April 16<sup>th</sup>, to revise the resolution planning requirements for large bank holding companies and nonbank financial companies under Section 165(d) of the Dodd-Frank Act (“Section 165(d) Proposal”).<sup>2</sup>

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<sup>1</sup> Federal Deposit Insurance Corporation, [Resolution Plans Required for Insured Depository Institutions with \\$50 Billion or More in Total Assets](#) (April 16, 2019). Currently, all FDIC-insured banks with \$50 billion or more in total assets are required to submit resolution plans to the FDIC annually. These banks are referred to as covered insured depository institutions (“CIDs”).

<sup>2</sup> See our alert memorandum on the Federal Reserve’s Section 165(d) Proposal, [Agencies Propose Revised RRP Rules: Less Frequent & More Focused Plans Seek to Balance Costs Against Benefits](#) (April 11, 2019).



The Proposal suggests two broad approaches to categorize CIDs and tailor resolution planning. Both approaches are based on differentiating between CIDs principally on asset size, complexity and funding sources. While both would result in less frequent, and more tailored, resolution plans, the second alternative approach would individually tailor planning requirements for each institution. The FDIC seeks comment on all aspects of CID resolution planning through broadly framed questions and invitations for feedback throughout. Comments are due June 21, 2019.

To avoid confusion, the FDIC Board of Directors also deferred all resolution plan submission deadlines until after the FDIC makes a final determination on amendments to the IDI Rule.

### Key Takeaways

- While prior discussions of potential changes to the IDI Rule tended to focus on increasing the asset threshold for filing plans, the Proposal offers a much broader rethinking of the CID resolution planning process. Though it is very likely that the current \$50 billion asset threshold will increase – both formally and, through streamlined or eliminated requirements for CIDs with fewer assets and limited complexity – the Proposal appears to envision streamlining and tailoring requirements across the board. The FDIC clearly wishes to focus more effort on factors, that could complicate a bridge bank resolution or the sale of the failed bank to one or more acquirers. While for larger CIDs asset size alone reduces the potential purchasers, it is probably unlikely that the FDIC will increase the asset threshold to match the general \$250 billion threshold for Dodd-Frank Act resolution planning. After all, while a resolution under the Dodd-Frank Act’s Orderly Liquidation Authority only occurs if the financial company’s resolution otherwise creates undue systemic risks, the FDIC must
- always serve as receiver for failed insured banks.
- While ambiguous on particulars, the Proposal suggests that significant resolution planning relief may be provided by tailoring requirements between categories of CIDs and relieving some number of regional banks from any resolution planning requirements.
- The proposed, but undefined, streamlining of resolution planning requirements appears to revolve around the categorization of CIDs based on their size, complexity and “other factors” (though it discusses only funding sources). However, the FDIC suggests no thresholds or quantitative or qualitative metrics. It does discuss how size, complexity and funding sources can make a CID more difficult to resolve. This discussion focuses on the common criteria used in the past to describe challenges to CID resolvability, such as asset size, capital markets activities, dispersed branch networks, multiple business lines conducted across the CID and affiliates, reliance on non-deposit funding and cross-border operations.
- A consistent theme is the importance of “streamlining” the resolution planning requirements across all potential categories of CIDs. As a result, comments focused on how to tailor such streamlined requirements based on the criteria of resolvability would appear likely to address a key issue for the FDIC.
- The Proposal suggests that resolution strategies included in prior CID plans have been of only marginal use. As a result, the FDIC is considering eliminating a requirement for the CID to develop strategies or assessing the “least costly” resolution strategy. Instead, the Proposal suggests that FDIC staff will use the CID plan as an information resource from which to then develop FDIC strategies. While this is a logical approach, it is likely that the

FDIC will seek to consult extensively with larger CIDs in developing those strategies.

- FDIC staff would solicit feedback on the crafted resolution strategies from the filing CIDI following the initial submission of a resolution plan.
- Similarly, the Proposal suggests that the FDIC, by overseeing several submission cycles and bank resolutions, has learned what information provided in resolution plans is useful and which is unnecessary and, as a result, is now more comfortable tailoring resolution plan requirements to the size and complexity of a CIDI.
- In a break from prior FDIC guidance, the Proposal encourages a CIDI to incorporate material by reference from its parent company's resolution plan under Section 165(d) of the Dodd-Frank Act. While such incorporation by reference from the 165(d) plans was permitted under the current IDI Rule, the FDIC had limited it in practice to ensure that the strategic analyses and supporting discussions were complete within the CIDI plan.
- While the FDIC has provided some waivers of required resolution planning content in the past, the Proposal indicates the FDIC is considering expanding the availability of such waivers in the future.

## **The Proposal**

The Proposal reflects the FDIC's experience gained through multiple resolution plan submission cycles and bank resolutions. Like the Section 165(d) Proposal, the Proposal seeks to streamline resolution planning requirements to focus on those companies and banks that could pose the most significant dangers to the U.S. financial system. Both proposals would accomplish this by tailoring planning requirements based on size, complexity and other factors relevant to resolvability.

In announcing the Proposal for bank resolution plans, the FDIC noted in particular that through the

experience gained through several cycles of resolution planning the FDIC, as well as the CIDs, have learned which parts of resolution planning are most valuable. The FDIC particularly noted that the real value of resolution planning lies in the insights about a CIDI's businesses and not the specific strategies. Considering these lessons from a cost-benefit perspective, as urged by many filers, the FDIC appears ready to significantly streamline resolution planning while materially reducing the future costs to CIDs.

The FDIC Board vote to approve the Proposal illustrated some dissention. Former Chairman, Vice Chairman and now Director Martin J. Gruenberg was the sole member of the FDIC Board of Directors to vote against the Proposal and the Section 165(d) Proposal. In his view, the Proposal wrongly focused on eliminating resolution plan requirements instead of modifying resolution plans in order to make them a more effective tool for managing the failure of large IDs. Coupled with the Section 165(d) Proposal, Gruenberg expressed concern that the FDIC was weakening the entire resolution plan framework developed since the 2008 financial crisis.

## **Tiered Approach**

The Proposal suggests one of two approaches for categorizing CIDs – Alternative One and Alternative Two – where the frequency and required content of resolution plan submissions would be based on a CIDI's size, complexity and other factors.

## **Alternative One**

Alternative One places CIDs into one of three groups which dictate whether a resolution plan must be submitted, as well as a plan's relevant content and informational requirements. However, all CIDs, regardless of group classification, would be subject to periodic outreach by FDIC resolution staff on certain specified resolution planning matters and would continue to be subject to capabilities testing (as described below). The three groups and their respective requirements are as follows:

**Group A:**

- Group A would include the largest, most complex, internationally active CIDs.
- Due to a Group A CIDI's size, the global nature of its business, critical importance of its operations and its interconnections with affiliates, the Proposal would require resolution planning by these IDs as preparation for the potential use of a bridge bank in the event of resolution.
- Group A CIDs would each submit a resolution plan biennially that includes all content requirements specified in the amended IDI Rule.
- The revised content requirements would represent a decrease in overall content as compared to the requirements under the current IDI Rule.
  - For instance, the FDIC is considering clarifying that the FDIC, not the CIDI, would develop the resolution strategies and make the least cost determination based on information provided by the CIDI.
  - Similarly, the FDIC is reconsidering requirements to describe the corporate governance structure for developing, approving and filing resolution plans and any contingency planning or other exercises undertaken to assess the viability of or to improve a CIDI's resolution plan.
- The FDIC stated it would expect that a Group A CIDI would participate in resolution planning through the resolution planning of its parent company under Section 165(d) of the Dodd-Frank Act and, therefore, CIDs are encouraged to incorporate material from such resolution plans by reference where practicable.
- The FDIC is considering expanding its practice of providing waivers for information content.

**Group B:**

- Group B would include larger, more complex regional IDs.

- A Group B CIDI would submit resolution plans triennially.
- In addition to the content requirement modifications applicable to Group A CIDs noted above, which would also apply to Group B CIDs, the Proposal noted that certain informational requirements may be less relevant for certain Group B CIDs due to their size, complexity and other factors.
  - Because a Group B CIDI does not share certain characteristics of a Group A CIDI, it would only be required to submit a subset of the resolution plan required of a Group A CIDI.
  - The subset of information required of a Group B CIDI would depend on the scope of the Group B classification.

**Group C:**

- Group C would include smaller, less complex regional IDs.
- Group C CIDs would no longer be required to submit a resolution plan under either Alternative One or Alternative Two, as described below.

**Alternative Two**

Under Alternative Two, there would be no bright-line distinction between larger CIDs (*i.e.*, entities that would be classified in Group A or B under Alternative One). Instead, content requirements would exist along a continuum based upon the size, complexity and other factors of the particular CIDI. Submissions would either be biennial or triennial depending on the CIDI's characteristics. As under Alternative One, smaller CIDs falling within Group C would not be required to file a resolution plan under Alternative Two.

Additionally, the FDIC is considering modifying the following information requirements under Alternative Two for larger CIDs for whom such information may be less material:

- Information concerning major counterparties of the CIDI;
- a description of off-balance sheet exposures;

- information concerning the CIDs pledged collateral;
- information on the CID's trading, derivatives and hedging activities;
- a description of the systemically important functions of the CID and its affiliates; and
- a description of cross-border elements of the CID's operations.

Informational requirements would be dictated by the complexity of the larger CIDs. Similar to the delineations between Groups A, B and C above, the FDIC did not clarify what specific aspects of a CID's business would determine its complexity for purposes of Alternative Two. It did note that components of complexity include those features of a CID which could have a bearing on its resolvability, triggering a corresponding informational requirement in the resolution plan. The FDIC is considering describing in the amended IDI Rule the specific metrics it would use to determine which specific information requirements would be required.

As under Alternative One, all CIDs, regardless of size, would be subject to periodic outreach by FDIC resolution staff on certain specified resolution planning matters and would continue to be subject to capabilities testing (as described below).

See Appendix A for a comparison of Alternative One and Alternative Two.

### **Frequency and Supplemental Resolution Planning**

**Frequency.** As noted above, in recognition of the burden associated with annual resolution plan submissions, the FDIC would extend filing deadlines to generally provide at least two years between resolution plan submissions. Under Alternative One, the submission cycles for Group A and B CIDs would be staggered with Group A CIDs filing biennially and Group B CIDs filing triennially. Under Alternative Two, larger CIDs would submit resolution plans either biennially or triennially based on the CID's characteristics.

In addition, the FDIC is considering a submission schedule similar to the Section 165(d) Proposal whereby a CID required to submit a resolution plan would alternate between submission of a full resolution plan and a targeted submission based on a subset of informational requirements.

The proposed changes to submission frequency mirror the Section 165(d) Proposal, revealing a desire for consistency among Section 165(d) and CID resolution planning. In fact, the Proposal explicitly asks for comment on whether and how the FDIC should endeavor to synchronize the resolution plan submission timeline for CIDs with the filing schedule of Section 165(d) resolution plans for certain bank holding companies and nonbank financial companies.

As noted above, under both Alternative One and Alternative Two, smaller, less complex regional IDIs would not be required to submit a resolution plan.

**Supplemental Resolution Planning.** The Proposal also contemplates conditions-based supplemental resolution planning, which could occur at the discretion of the FDIC once a CID begins to experience stress or becomes troubled. The trigger could be linked to liquidity measures, market indicators, ratings, or other indicators. Following a triggering event, the FDIC could, at its discretion, re-engage with the CID on resolution planning matters, including engagement and capabilities testing.

### **Engagement and Capabilities Testing**

Although the Proposal would streamline plan submissions and eliminate the plan submission requirement for smaller, less complex firms, all CIDs subject to the IDI Rule (even those not required to submit resolution plans) would be subject to capabilities testing and required to periodically engage with the FDIC to support the FDIC's resolution planning efforts. Capabilities testing would be tailored to the size, complexity and other factors of the CID.

**Engagement.** Under the current IDI Rule, each CID must make its personnel available to aid in the FDIC's review and assessment of the resolution plan's credibility and the ability of the CID to implement the

resolution plan. While, under the Proposal, the FDIC and not the CIDI likely would be responsible for developing strategies, it will continue to be critical for the FDIC to engage with the CIDI on feasibility. As a result, the Proposal suggests engagement with each CIDI's personnel on developing and tailoring strategies for that CIDI. The Proposal contemplates that areas of focus for engagement would include:

- Operational continuity (for example, critical services, back office applications and key personnel retention);
- Disposition of the CIDI's franchise component(s) (including treatment of interconnections and dependencies);
- Management information systems reporting capabilities (the CIDI's ability to provide key information needed for resolution when the institution is in financial distress and throughout resolution); and
- Liquidity needs and liquidity management practices (particularly significant off-balance sheet activities, large intraday needs, foreign currency dependencies and international time-zone funding books).

In the case of larger CIDs, engagement would cover the required general informational sections of the resolution plan submissions and outreach would follow an initial submission under the revised IDI Rule and occur periodically thereafter. For Group C CIDs, the FDIC would engage in periodic outreach in lieu of a resolution plan submission.

Due to the comparatively smaller size and less complex operations of Group C CIDs, engagement would cover a limited number of items such as:

- Information on structure and core business lines (including segmented financial analysis);
- Information about critical services and providers of those services; and
- Management information systems.

The format of engagement could include in-person meetings between FDIC staff and personnel from the

CIDI, requests for data and analysis, or other in-person or electronic outreach. The Proposal asks for recommendations from commenters on the format of engagement.

*Capabilities Testing.* All CIDs subject to the IDI Rule would remain subject to periodic capabilities testing. Such testing would be intended to verify the ability of the CIDI promptly to provide critical information if required to do so in exigent circumstances. For CIDs required to submit resolution plans, capabilities testing would also be intended to verify the accuracy of information provided in the resolution plan submission.

The scope of capabilities testing would be based on the size, complexity and other factors of the CIDI.

Examples of areas that could be covered include:

- Liabilities data;
- Operational continuity and bridge bank management (critical services, key personnel, subsidiaries and affiliates, key accounting processes and key operational processes); and
- Determination of franchise value (capability to produce marketing plan, segmented financial reporting and due diligence room).

## Future Steps

The comment period ends 60 days after the Proposal's publication in the Federal Register (or June 21, 2019).

In responding to the Proposal, we expect commenters to focus on the following issues and questions posed by the FDIC: the merits of Alternative One as compared to Alternative Two, the factors and thresholds for each tier, how to calibrate content and information requirements based on differing resolvability, alignment of the CIDI and Section 165(d) resolution planning processes and the tailoring and frequency of engagement and capabilities testing. In addition, given the breadth of the FDIC's reconsideration of its current resolution planning requirements, we expect that commenters also will address the broader relationships between bank holding company resolution planning and oversight,

on the one hand, and CIDI resolution planning, on the other. Given improvements in capabilities, strategies, available resources for recapitalization and liquidity and overall resiliency, we expect that commenters will address the role of resolution planning going forward in the context of other supervisory and resiliency requirements.

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## Classification of CIDs, Filing Cycle and Information/Content Requirements

Alternative One	
Group A	<b>Who:</b> The largest, most complex, internationally active CIDs
	<b>Filing Cycle:</b> Every two years
Group B	<b>Information/Content Requirements:</b> Subject to the most content requirements, as specified in the revised IDI Rule, but may incorporate by reference content from past submissions and parent company Section 165(d) resolution plans and an expanded practice of the FDIC providing waivers on content, where appropriate
	<b>Who:</b> Larger, more complex regional IDs
Group B	<b>Filing Cycle:</b> Every three years
	<b>Information/Content Requirements:</b> Subject to a subset of the resolution plan required of Group A CIDs and may benefit from use of incorporation by reference and waiver, where appropriate
Group C	<b>Who:</b> Smaller, less complex regional IDs
	<b>Filing Cycle:</b> Group C CIDs/Smaller CIDs are not required to file resolution plans (but are still subject to engagement and capabilities testing described below)

Alternative Two		
<b>Who:</b> Larger, more complex CIDs (those CIDs which would qualify as either Group A or B under Alternative One)	<b>Larger CIDs</b>	
		<b>Filing Cycle:</b> Either biennially or triennially depending on the CIDI’s characteristics
		<b>Information/Content Requirements:</b> Content and informational requirements would exist along a continuum based upon the size, complexity and other factors of the particular CIDI
<b>Who:</b> Smaller, less complex regional IDs	<b>Smaller CIDs</b>	
		<b>Filing Cycle:</b> Group C CIDs/Smaller CIDs are not required to file resolution plans (but are still subject to engagement and capabilities testing described below)

Engagement and Capabilities Testing		
Alternative One		Alternative Two
Group A	<b>Engagement:</b> Subject to FDIC engagement following an initial submission under the revised IDI Rule, whereby FDIC staff would solicit feedback from the CIDI regarding its resolution strategies, and occurring periodically thereafter  <b>Capabilities Testing:</b> Subject to periodic capabilities testing intended to verify the ability of the CIDI promptly to provide critical information if required to do so in exigent circumstances and verify the accuracy of information provided in the resolution plan submission	Larger CIDs
Group B		
Group C	<b>Engagement:</b> The FDIC would engage in periodic resolution planning outreach with Group C CIDs covering a limited number of items  <b>Capabilities Testing:</b> Subject to periodic capabilities testing intended to verify the ability of the CIDI promptly to provide critical information if required to do so in exigent circumstances	Smaller CIDs