

June 20, 2024

MEMORANDUM TO: The Board of Directors

FROM: Arthur J. Murton, Director,  
Division of Complex Institution Supervision and Resolution;  
Deputy to the Chairman for Financial Stability

Maureen Sweeney, Director,  
Division of Resolutions and Receiverships

SUBJECT: Final Rule to Revise 12 C.F.R. § 360.10 and Associated  
Delegations of Authority

**I. SUMMARY OF RECOMMENDATIONS**

This Memorandum concerns a proposed final rule (“Final Rule”)<sup>1</sup> to amend and restate the existing insured depository institution (“IDI”) resolution plan rule (“2012 Rule”)<sup>2</sup> promulgated by the Federal Deposit Insurance Corporation (“FDIC”) under authority of the Federal Deposit Insurance Act (“FDI Act”). The 2012 Rule currently requires IDIs with \$50 billion or more in total assets (“CIDIs”) to periodically submit resolution plans to the FDIC. The Final Rule is intended to clarify and enhance submission requirements and reflect lessons learned since the 2012 Rule was finalized.

If approved by the Board of Directors of the FDIC (“Board”), the Final Rule will make important changes and improvements to the 2012 Rule, including (1) creating two groups of CIDIs with different submission requirements; (2) adjusting required content including with respect to the resolution strategy, and codifying certain aspects of previously issued guidance and feedback; (3) establishing a clear, two-prong standard by which resolution submissions will be

---

<sup>1</sup> The Final Rule proposed to be published in the *Federal Register* includes both the regulatory text and a preamble section (“Preamble”).

<sup>2</sup> Codified at 12 CFR 360.10.

assessed; (4) adjusting the frequency of submissions to a three-year cycle for most CIDs (“CIDI triennial filers”) and a two-year cycle for CIDs that are affiliated with the U.S. global systemically important banking organizations (“U.S. GSIBs”) (“CIDI biennial filers”); (5) clarifying the expectations with respect to engagement and capabilities testing; and (6) introducing an “Interim Supplement” requiring a limited set of key data-focused content elements to be provided by most CIDs in years in which they do not provide a full resolution submission.

The Final Rule builds upon the Notice of Proposed Rulemaking, “Resolution Plans Required for Insured Depository Institutions with \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions with At Least \$50 Billion but Less Than \$100 Billion in Total Assets” (“Proposal”). The Proposal was published in the *Federal Register* for comment in September 2023.<sup>3</sup> After analyzing and considering all comments, staff recommends adopting the Final Rule in the form set forth in the proposed form of *Federal Register* notice attached hereto as **Attachment 2**. The Final Rule is improved by several modifications to the Proposal, although key elements remain unchanged, as further discussed below.

In implementing the Final Rule, the FDIC would be required to exercise discretion in a range of actions. Staff has analyzed the Final Rule and identified certain actions that, if delegated, would result in more efficient utilization of the time of the Board, without a meaningful reduction in the Board’s oversight over the resolution submission review and assessment process.

---

<sup>3</sup> 88 FR 64579 (Sept. 19, 2023).

Finally, staff notes that a Moratorium<sup>4</sup> currently is in place under which no resolution submissions are required of CIDI's with less than \$100 billion in total assets. In order to implement the Final Rule provisions applicable to CIDI's with less than \$100 billion of total assets, staff recommends that the Board lift the existing moratorium on resolution submissions by CIDI's with total assets of less than \$100 billion.

Accordingly, staff recommends that the Board take the following actions:

- A. Adopt the draft Resolution, attached hereto as **Attachment 1**.
- B. Approve the Federal Register Notice that includes the Final Rule as well as the Preamble and related information, attached hereto as **Attachment 2**, and authorize its publication in the *Federal Register*.
- C. Delegate to the Director, Division of Complex Institution Supervision and Resolution ("CISR") and the Director, Division of Resolutions and Receiverships ("DRR"), as applicable, or their respective designees, certain authorities under the Final Rule, subject to certain requirements (including the concurrence of the General Counsel or designee) all as discussed below.
- D. Terminate the existing Moratorium.

## II. **BACKGROUND**

The 2012 Rule requires each CIDI to periodically submit a resolution plan to the FDIC with the intent of ensuring that the FDIC has access to all of the material information it needs to plan for the efficient resolution of a CIDI in the event of its failure. Since the issuance of the 2012 Rule, the FDIC and CIDI's have been through multiple rounds of resolution plan

---

<sup>4</sup> In 2019, the FDIC paused the 2012 Rule's requirement to submit resolution plans for all CIDI's ("Moratorium"). In 2021, the Board lifted the Moratorium on submission for CIDI's with \$100 billion or more in total assets. The Moratorium is still in effect for CIDI's with less than \$100 billion in total assets.



Staff reviewed and analyzed all comments and recommends a number of changes to the Proposal in the Final Rule. The Preamble describes each of the comments, any resulting changes from the Proposal reflected in the Final Rule, and the reason for the resulting modification or rejection of the comment.<sup>13</sup>

### **III. DISCUSSION**

#### **A. Key Elements Retained as Proposed, With Some Improvements**

Following review and consideration of all comments, staff recommends adopting the Final Rule, which retains many of the key provisions of the Proposal.

##### ***Scope; Creation of Two Filing Groups***

If adopted, the Final Rule would retain the scope of the rule as proposed and would apply to all IDIs with at least \$50 billion in total assets. This is consistent with the 2012 Rule; however, the Proposal introduced a new bifurcated approach with two distinct groups of CIDs based on size for each group with different requirements for each. This bifurcated approach would be adopted in the Final Rule.

CIDs with \$100 billion or more in total assets (“Group A CIDs”) would be required to periodically submit a resolution plan to the FDIC, including an identified strategy for its resolution under a specified failure scenario (“Resolution Plan”). CIDs with at least \$50 billion

---

and the Securities Industry and Financial Markets Association; (iii) The Independent Community Bankers of America; (iv) American Express National Bank; (v) The Council of Federal Home Loan Banks; (vi) BOK Financial; (vii) Better Markets; (viii) The Bank Policy Institute; (ix) Fifth Third Bank, National Association; (x) American Bankers Association; (xi) Americans for Financial Reform Education Fund; and (xii) Ally Bank, Discover Bank, Fifth Third Bank, National Association, First-Citizens Bank & Trust Company, Flagstar Bank, National Association, The Huntington National Bank, and Regions Bank. FDIC staff also participated in meetings with representatives of The Bank Policy Institute and Morgan Stanley at their request.

<sup>13</sup> At a high level, the individual comments concerned the following topics: submission cycle; transition period; scope and tiering; credibility standard and feedback; engagement and capabilities testing; relationship to DFA Rule (defined below) and resolution planning pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (“Dodd-Frank Act”); content of the resolution plans, which focused mainly on the failure scenario and identified strategy, the required valuation capabilities and analysis; the Interim Supplement; and Group B CIDI (defined below) content requirements.

but less than \$100 billion in total assets (“Group B CIDs”) would be required to periodically submit a more limited “Informational Filing” to the FDIC that would consist of a significant subset of the informational content required in Group A CIDI Resolution Plans. Group B CIDs would not be required to develop an identified strategy in their resolution submissions. A list of all IDIs that currently would be covered by the Final Rule is included in **Attachment 3**.

### *Strategy and Scenario*

The Final Rule would adopt the approach taken in the Proposal with respect to the development of an “identified strategy” by each Group A CIDI. This requirement includes the development of a strategy that must describe the resolution from the point of failure through sale or disposition of the CIDI’s franchise. While the FDIC would certainly consider any feasible bid for the sale of the IDI franchise over closing weekend or as promptly as possible post-failure, it cannot rely on that option, and must have available other strategic options. Thus, the default identified strategy under the Final Rule, consistent with the Proposal, would require a Group A CIDI Resolution Plan to provide for the establishment and stabilization of a bridge depository institution (“BDI”) and an exit strategy from the BDI, such as a multiple acquirer exit; an orderly wind down of certain business lines and asset sales; a restructuring and subsequent initial public offering or other capital markets transaction; or another strategy appropriate to the size, structure, and complexity of the CIDI (“BDI Strategy”). Staff expects that a CIDI’s BDI Strategy will provide information and analysis that would be useful in a wide range of potential scenarios, even though the approach may not be taken in all circumstances. The Final Rule would permit the use of an identified strategy other than the BDI Strategy if the alternative strategy meets certain specified criteria.

Consistent with the Proposal, under the Final Rule, a Group A CIDI would not be permitted to use as its identified strategy a closing weekend sale of the IDI franchise to one or more acquirers. While such a transaction poses the least execution risk for the FDIC, and is often the least disruptive and most efficient, it may not be available, particularly for the Group A CIDs, and particularly where the time for preparation for the resolution is short. However, the Final Rule would require that the content of the resolution submissions include informational elements and address capabilities necessary to conduct a timely sale of the IDI franchise to one or more acquirers in a weekend sale if the particular failure circumstances supported doing so. This information would be required whether or not part of the Group A CIDI's BDI Strategy.

The Final Rule would adopt the failure scenario set forth in the Proposal with only minor changes. Like the Proposal, it would require the identified strategy to be based on a failure scenario that demonstrates that the CIDI is experiencing material financial distress, and would add the required assumption that the CIDI's U.S. parent is in resolution.

### ***Credibility Standard***

The Proposal would have updated and clarified the credibility standard by setting out a two-prong approach. Staff recommends adopting this approach in the Final Rule. The first prong would provide the FDIC with criteria to evaluate the identified strategy of each Group A CIDI Resolution Plan. The second prong would establish criteria to evaluate the quality of information and analysis provided and the description of demonstrable capabilities in each full resolution submission by a Group A CIDI or a Group B CIDI.

The Final Rule retains the requirements of the Proposal for the CIDs to be able to demonstrate certain capabilities, with a modification. Under the Final Rule, each Group A CIDI must be able to demonstrate the capabilities necessary to execute its identified strategy and must

be able to demonstrate important capabilities with respect to valuations, described below. All CIDs must be able to demonstrate the capabilities necessary to ensure continuity of critical services necessary to the day-to-day operations of the CID and the execution of the identified strategy. However, while the Proposal would require that all CIDs be able to demonstrate that franchise components are separable and marketable, under the Final Rule, the requirement would be limited to the ability to demonstrate that the franchise components are marketable. A key example of that is the capability to establish a virtual data room, discussed further below. Instead of referring to separability as a required capability of a CID, the emphasis of the Final Rule would be on the identification of franchise components that are, in their current circumstances, able to be sold separately from the remainder of the CID.

#### ***Engagement and Capabilities Testing***

The Proposal also introduced enhanced expectations regarding engagement and capabilities testing. With respect to engagement between the FDIC and a CID, the Proposal called for each CID to provide the FDIC information and access to the CID's personnel needed to address the topics of the engagement. With respect to capabilities testing, the Proposal indicated that each CID might be required to demonstrate that it can in fact perform the capabilities required in a full resolution submission.

The Final Rule retains the proposed approach to engagement and capabilities testing, but with some modifications to the organization of the content. These changes are intended to reflect that engagement and capabilities testing are complementary parts of the review and evaluation process. The Preamble provides additional context with respect to the scope of capabilities testing and engagement for Group A CIDs and Group B CIDs and provides possible examples



of capabilities testing, such as capabilities to establish a virtual data room (“VDR”) or capabilities for timely identification of key personnel; and production of critical reports.

## **B. Key Changes from the Proposal**

In response to comments, staff recommends two significant changes to the Proposal: a modification to the approach to the timing of submissions, and a modification to the approach to credibility determinations and feedback.

### *Approach to Submission Cycle*

Under the Proposal, each CIDI would have been required to provide a full resolution submission (a Resolution Plan or an Informational Filing, as applicable) to the FDIC every two years. As suggested by commenters, the Final Rule adopts a three-year submission cycle for all CIDs other than CIDI affiliates of the U.S. GSIBs, with Interim Supplements to be provided in the off-years. Thus, these CIDI triennial filers will submit a full resolution submission and two Interim Supplements in every three-year cycle. Commenters flagged, and staff agrees, that timely and fulsome feedback and firm-specific engagement are important priorities, and the three-year cycle will allow more time for robust review and feedback to CIDs as well as for firm-specific engagement following full resolution submissions. The data and information that are important for resolution readiness and most likely to change over the period between full resolution submissions will be updated annually through an Interim Supplement. This concept was introduced in the Proposal and retained in the Final Rule. In addition, the Final Rule would require submission of notices of extraordinary events. These notices will provide information of significant changes at the CIDI, such as through a merger, acquisition, or divestiture, and the FDIC would be in a position to request additional resolution information if needed.

With respect to the CIDI affiliates of U.S. GSIBs, the cycle remains unchanged from the

biennial cadence set forth in the Proposal. Staff agrees with the comment that a full resolution submission cycle that is complimentary with the cycle applicable to the DFA Resolution Plans submitted by the U.S. GSIBs pursuant to the DFA Rule<sup>14</sup> will improve efficiency while ensuring timeliness of content needed for contingency planning for an FDI Act resolution. Staff has concluded that the more frequent biennial filing is appropriate for the U.S. GSIBs' CIDI subsidiaries, as they are the largest, most complex and most systemically important CIDs subject to the Final Rule.

Under the Final Rule, a CIDI biennial filer would be exempt from filing an Interim Supplement in any calendar year in which its parent company submits a DFA Resolution Plan. Staff anticipates that the FDIC will receive these DFA Resolution Plans and resolution plans under the Final Rule in alternate years. Accordingly, it is likely that no Interim Supplements will be required of the CIDI biennial filers. Staff has determined that there is sufficient overlap in content provided in the DFA Resolution Plans submitted by the CIDI biennial filers to meet the purposes of the Interim Supplement.

### *Approach to Feedback*

The Proposal provided that a finding of non-credibility must be supported by the identification of one or more weaknesses in the resolution submission. In response to a comment, the Final Rule would introduce the concept of “significant finding” as an intermediate level of feedback between informal observations and a “weakness,” defined as a “material weakness” in the Final Rule. A material weakness would require timely corrective actions,

---

<sup>14</sup> Section 165(d) of the Dodd-Frank Act and the related joint rulemaking published by the Board of Governors of the Federal Reserve System and the FDIC in November 2019 (“DFA Rule”) mandate that certain bank holding companies and nonbank financial companies submit to the FDIC and the Board of Governors resolution plans (“DFA Resolution Plans”) for the rapid and orderly resolution of the company under the U.S. Bankruptcy Code. *See* 12 USC 5365(d) and 12 CFR 381.

subject to enforcement actions if necessary. A significant finding, if not remediated, could become a material weakness. This approach is informed by the DFA Rule, which includes the parallel concepts of deficiencies and shortcomings.<sup>15</sup> In that context, there has been utility in providing feedback that requires correction with an appropriate level of urgency and provides appropriately scaled responsive actions.

### **C. Other Modifications to the Proposal**

Other modifications from the Proposal included in the Final Rule are meaningful improvements to the completeness, effectiveness, and clarity of the requirements of the Final Rule.

#### ***Group B CIDI Requirements***

Under the Proposal, the Informational Filing submissions by Group B CIDs would not include the development of an identified strategy under a defined scenario. While still large and complex, the relatively smaller size of these CIDs expands the pool of possible purchasers and increases the likelihood of a sale of the franchise as a whole. Overall, Group B CIDs would be less likely to require a longer term BDI Strategy to facilitate restructuring to exit. By the same token, the Proposal did not include a requirement for a Group B CIDI to provide the scenario analysis necessary to the demonstration of valuation capabilities, and the valuation analysis described in the Proposal would not be required to be included in Informational Filings. Under the Proposal, an Informational Filing would include all other content elements, except the executive summary.

The Final Rule would adopt the Proposal's approach to Informational Filings with two changes. First, the Final Rule would require that an Informational Filing include descriptions of

---

<sup>15</sup> See 12 CFR 381.8(b) for definition of deficiencies and 12 CFR 381.8(e) for definition of shortcomings.

material changes since the CIDI's last submission. In addition, in response to comments, the Final Rule would exempt Group B CIDs from reporting certain portions of the franchise component content element relating to marketing process and capabilities, key assumptions underpinning each divestiture, and obstacles to execution. Staff reached this conclusion because these aspects may require discussion of a resolution strategy, and the resolution strategy requirement is not applicable to Group B CIDs. The Final Rule would require all other proposed subparts of the franchise component content element for Group B CIDs.

### ***Franchise Components***

The Proposal would have required a CIDI to identify franchise components that are currently separable and marketable in a timely manner. The Final Rule would adopt this requirement with changes that refine its scope. As discussed above, the related capability requirement was narrowed to include the capability to market the franchise components (as compared to capabilities related to separability as well as marketability in the proposed rule). Staff refined the language of the Final Rule to make clear that the marketing capabilities, including the capability to establish a VDR, must also support the marketing of the IDI franchise as a whole or in conjunction with the marketing of its franchise components. The Final Rule, like the Proposal, would not require ongoing maintenance of a VDR; rather it is focused on the capabilities needed to establish a VDR in a timely manner.

### ***Valuation to Facilitate FDIC's Assessment of Least-Costly Resolution Method***

Under the Proposal, a Group A CIDI would have been required to provide a narrative description of how it values its franchise components and the CIDI as a whole. The Proposal also would have required qualitative and quantitative valuation analysis assuming both an all-deposit BDI and the transfer of insured deposits to the BDI. In all cases, the Proposal would

have required that the resolution plan describe the Group A CIDI's ability to produce updated and timely valuation information. This analysis and the related capabilities would support the FDIC's analysis in conducting valuations in any actual failure scenario, even where there are no bid prices available to establish value. The Final Rule would retain the proposed requirement, with some modifications. In response to comments, the Final Rule would modify the analysis relating to the impact on value in the event that losses are imposed on uninsured depositors in connection with the resolution strategy adopted, including by eliminating the requirement of quantitative analysis of this impact.

The presence of unsecured debt on the balance sheet of the failed IDI serves to protect insured deposits in resolution, and increases the likelihood that an all-deposits bridge bank will meet the requirements of the statutory least-cost test. However, even with the benefits of long-term debt positioned at the CIDI at the time of its failure, it cannot be assured that an all-deposit BDI would meet the requirements of the least-cost test. Thus, the Final Rule, like the Proposal, would require analysis of the impact on value where only insured deposits are passed to the BDI. This analysis will assist the FDIC in understanding the impact on value in an insured-only BDI in weighing whether that outcome is less costly than other available resolution options.

#### ***Other Content Elements***

The Final Rule would retain all other content requirements in the Proposal, with some changes to enhance, streamline, or clarify requirements for particular elements. For instance, the communications playbook content element would be modified to require identification of key personnel relative to that function; the cross-border content element would be modified to include identification of relevant authorities with jurisdiction over the cross-border entities and activities; and the overall deposit characteristics discussion would be modified to require a

description of the methodology used to identify key depositors. These and other changes made in response to comments are discussed in the Preamble.

#### **D. Other Considerations**

##### ***Effective Date; Transition***

Staff anticipates that the Final Rule will be published in the *Federal Register* in the month of July, with an effective date of October 1, 2024. If the Board approves staff's recommended delegation of authority, the Director of CISR will establish the date for each Group A CIDI to submit its first full resolution submission under the Final Rule on a specified date that is at least 270 days from the Final Rule's effective date.<sup>16</sup> Similarly, the Director of DRR will use delegated authority to set the first full resolution submission date at least one year from the effective date for Group B CIDs. As explained in the Preamble, the 270-day minimum time period is appropriate for the Group A CIDs. The somewhat longer time period of at least a year following the effective date is appropriate for the Group B CIDs, as they are generally new to the resolution planning process or have not filed for an extended period due to the Moratorium. Staff plans to provide all CIDs with letters promptly following the adoption of the Final Rule, advising them of the date of their first submission.<sup>17</sup>

#### **E. Expected Effects**

The Preamble outlines the expected effects of the Final Rule and considers requirements under several statutes, including the Paperwork Reduction Act, in the same manner as the

---

<sup>16</sup> Staff expects that the Group A CIDs will be divided into three filing cohorts of CIDs that share similar characteristics. Group A CIDs that are not in the first cohort for the submission of their full resolution plans will submit Interim Supplements on the submission dates that precede the date for their first full resolution plan filing, subject to the provisions noted above concerning the submission schedule for a Group A CIDI that is a U.S. GSIB's subsidiary.

<sup>17</sup> Staff plans to divide Group B CIDs into two cohorts with both cohorts providing full Informational Filings as their first submissions under the Final Rule.

analysis that staff conducted for the Proposal. For purposes of the expected effects and Paperwork Reduction Act, the proposed changes to the 2012 Rule were evaluated against the FDIC's most recent burden estimate, which was conducted in December 2021.<sup>18</sup> At that time, the FDIC was implementing the 2012 Rule as contemplated in the 2021 Statement.

The Proposal described estimated compliance costs for all CIDs as compared to compliance costs as of December 2021. The estimated costs associated with recordkeeping, reporting, and disclosure requirements are calculated based on the number of hours per billion dollars in assets.<sup>19</sup> Staff prepared a similar analysis for the Preamble to the Final Rule. The most significant changes to burden from the Proposal are:

- Reduction in estimated burden due to the change to a three-year cycle for full resolution submissions by the CIDI triennial filers, with a related, smaller increase in burden due to the expectation of increased engagement with Group A CIDI triennial filers.
- Reduction in estimated burden due the expectation that the Group A CIDI biennial filers would not be required to submit an interim supplement, as that filing is not required in years in which the CIDI's parent company submits a DFA Resolution Plan.

Overall, the modifications to the Proposal would decrease the estimated burden under the Final Rule by roughly 23% from the estimated burden described in the Proposal. Under the Final Rule, the overall increases in burden as compared to the 2012 Rule would be estimated as follows:

---

<sup>18</sup> *Resolution Plans Required for IDIs Over \$50 Billion*, [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202111-3064-003](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202111-3064-003).

<sup>19</sup> This approach reflects the view that the greater a CIDI's total assets, the more hours it will need to spend to satisfy requirements under the Final Rule. This approach is applied for ongoing submission requirements. Slightly higher fixed hourly estimates are used to estimate the burden for first-time filers, including the initial submissions by all Group B CIDs.

<b>Type of CIDI</b>	<b>Hours per billion in assets in December 2021</b>	<b>Hours per billion in assets under Final Rule</b>
Group A CIDI affiliated with a U.S. GSIB	57.6	73
Group A CIDI not affiliated with a U.S. GSIB <sup>20</sup>	48	72
Group B CIDI – Informational Filing <sup>21</sup>	0	67
All CIDI Triennial Filers – Interim Supplement	0	24
Engagement for CIDI triennial filers	2	2
Engagement for CIDI biennial filers	2	1

**IV. PROPOSED DELEGATIONS**

Implementation of the Final Rule, if approved, would enable the FDIC to take a large number of actions that, absent delegations to staff, would require Board action. The FDIC has accumulated extensive experience with the resolution submission process over the past decade resulting in the process becoming more routine, streamlined, and standardized. In view of this evolution, the volume of actions that will be needed, and the timing for decision-making for certain actions required or permitted under the Final Rule, staff believes that it no longer would be appropriate or efficient to require Board action to carry out many aspects of administering the Final Rule. At the same time, it remains important for the Board itself to make the most significant decisions under the Final Rule. Accordingly, staff recommends that the Board adopt a tiered approach to delegations:

---

<sup>20</sup> This table does not reflect the added burden that would be imposed on a Group A CIDI that is a first-time filer.

<sup>21</sup> As of December 2021—the time of the FDIC’s most recent burden estimate—the Moratorium was still in effect, so IDIs with less than \$100 billion in total assets (which includes IDIs that would be Group B CIDs under the Final Rule) were not required to comply with the 2012 Rule.



Decisions Reserved to the Board: Staff recommends reserving to the Board authority to

take five significant actions:

- Any determination that a CIDI's full resolution submission is not credible and the related identification of the material weaknesses that resulted in such a determination;<sup>22</sup>
- Approval of any notice to a CIDI concerning a non-credibility determination and identifying the material weaknesses that resulted in such a determination;
- Any decision to pursue an enforcement action under the Final Rule, including following a non-credibility determination;<sup>23</sup>
- For a full resolution submission by an existing CIDI, any adjustment to the submission date by more than 90 days;<sup>24</sup> and
- Following a non-credibility determination, any adjustment of the date the CIDI is required to submit a revised full resolution submission, or such other information or material specified by the FDIC, by more than 30 days.<sup>25</sup>

Delegation with Prior Board Consultation and Quarterly Report: Staff recommends delegating three authorities to the Directors of CISR and DRR, as applicable,<sup>26</sup> subject to the requirements that (a) the applicable Director offer an opportunity to each Board member to be consulted prior to taking any action pursuant to the delegated authority, and (b) the applicable Director report quarterly to the Deputy to each Board member on actions taken pursuant to the delegation. These three authorities are: (i) identification of significant findings in a CIDI's full resolution submission, and, where appropriate, establishing a project plan with identified

---

<sup>22</sup> 12 CFR 360.10(f)(1).

<sup>23</sup> 12 CFR 360.10(j); 12 CFR 360.10(f)(4).

<sup>24</sup> 12 CFR 360.10(i)(1).

<sup>25</sup> 12 CFR 360.10(f)(3). Notwithstanding any delegation of authority concerning the Final Rule, the Board would retain the authority to act on "major matters" through Resolution No. 074956 (June 19, 2007). Major matters include matters that would establish or change existing FDIC policy, could attract unusual attention or publicity, or would involve an issue of first impression. Moreover, any Board member would be able to request a briefing about actions taken under the Final Rule at any point and could provide feedback on staff's planned course of action.

<sup>26</sup> Each Director would have delegated authority with respect to the CIDs in their Division's portfolio.

milestones to promote adequate and timely remediation of any significant finding,<sup>27</sup> (ii) waiver of one or more full resolution submission content requirements,<sup>28</sup> and (iii) requiring additional content elements to be included in an Interim Supplement.<sup>29</sup> Further, the staff recommends that these delegated authorities be subject to a prohibition on redelegation.

Delegation with Quarterly Report: Staff recommends delegating the following authorities to the Directors of CISR and DRR, as applicable,<sup>30</sup> or their designee, subject to the requirement that the applicable Director, or their designee, reports quarterly to the Deputy to each Board member on actions taken pursuant to these delegated authorities:

- To establish dates for initial submissions under the Final Rule for all existing CIDs;<sup>31</sup>
- To establish initial submission dates for new CIDs;<sup>32</sup>
- To adjust by no more than 90 days submission dates for full resolution submissions of CIDI biennial and triennial filers;
- To extend by no more than 30 days submission date of a revised full resolution submission after a material weakness finding;
- To adjust submission dates for Interim Supplements;
- To extend, on a case-by-case basis, on the FDIC's own initiative or upon written request, any time frame or deadline set in the Final Rule, subject to the limited delegations relating to time frames and deadlines specified above and other reservations of authority;<sup>33</sup>
- To waive one or more Interim Supplement content requirements; and
- To provide additional or alternative parameters for failure scenario.<sup>34</sup>

---

<sup>27</sup> 12 CFR 360.10(f)(5)

<sup>28</sup> 12 CFR 360.10(i)(2)

<sup>29</sup> 12 CFR 360.10(e)(2)(xiv)

<sup>30</sup> Each Director would have delegated authority with respect to the CIDs in their Division's portfolio.

<sup>31</sup> 12 CFR 360.10(c)(2)(ii) and (c)(2)(ii)

<sup>32</sup> 12 CFR 360.10(c)(3)

<sup>33</sup> 12 CFR 360.10(i)(1)

<sup>34</sup> 12 CFR 360.10(d)(2)

Staff further recommends that, with the exception of the proposed limitation outlined above, the Directors of CISR and DRR be granted the authority to redelegate the authority delegated to them in order to expedite administration of the Final Rule, with the requirement for any redelegation to be in writing.

In addition, staff recommends that concurrence of the General Counsel, or designee, be required in the exercise of the authorities delegated herein. Legal concurrence will provide confirmation that the proposed action is within the scope of the delegated authority; that the form of any proposed written communication to a CIDI is sufficient; and that other, similar matters are legally sufficient and appropriate. Staff also recommends that the General Counsel be authorized to redelegate this authority in the same manner and to the same extent that the Directors of CISR and DRR are authorized to redelegate their related authorities.

#### **V. TERMINATING THE MORATORIUM**

For CIDs with total assets of less than \$100 billion, the Moratorium remains in place. Staff believes it is appropriate to require all CIDs to submit resolution filings under the Final Rule to facilitate the FDIC's resolution readiness. Moreover, the changes to the requirements applicable to Group B CIDs reflected in the Final Rule reflect the FDIC's differing needs for these comparatively smaller CIDs. Accordingly, in order to fully implement the Final Rule, staff recommends that the Board terminate the Moratorium in its entirety.

#### **VI. CONCLUSION**

For the foregoing reasons, Staff recommends that the Board:

- A. Approve the draft Resolution, attached hereto as **Attachment 1**.

B. Approve the Federal Register Notice that includes the Final Rule as well as the Preamble and related information, attached hereto as **Attachment 2**, and authorize its publication in the *Federal Register*.

C. Delegate to the Directors of CISR and DRR, as applicable, or their respective designees, certain authorities under the Final Rule as discussed above.

D. Terminate the Moratorium.

**CONCUR:**

\_\_\_\_\_  
Harrel M. Pettway  
General Counsel

\_\_\_\_\_  
Date

CONTACTS:

CISR: Elizabeth Falloon, Dora Douglass Kochman

DRR: Audra Cast, Varanessa D. Marshall, Brendan Lin

Legal: Esther Rabin, Haleh Rahjoo

ATTACHMENTS:

**Attachment 1: Draft Board Resolution**

**Attachment 2: Draft Federal Register Notice**

**Attachment 3: List of CIDs**

**Attachment 4: Delegations Chart**

## ATTACHMENT 3

### LIST OF CIDIS<sup>35</sup>

#### Group A CIDIs

	INSTITUTION NAME	PFR	TOTAL ASSETS (4Q AVG, \$000s)
<b><i>Triennial Filers</i></b>			
1	US BANK N.A.	OCC	661,792,612
2	PNC BANK N.A.	OCC	556,663,993
3	TRUIST BANK	FDIC	534,001,750
4	CAPITAL ONE N.A.	OCC	472,059,837
5	TD BANK N.A.	OCC	369,384,382
6	CHARLES SCHWAB BANK SSB	FED	305,608,000
7	BMO BANK N.A.	OCC	265,166,576
8	CITIZENS BANK N.A.	OCC	222,402,933
9	FIRST-CITIZENS BANK & TRUST COMPANY	FDIC	213,597,628
10	MANUFACTURERS & TRADERS TRUST COMPANY	FED	209,536,009
11	FIFTH THIRD BANK N.A.	OCC	211,505,750
12	HUNTINGTON NATIONAL BANK	OCC	189,002,390
13	AMERICAN EXPRESS NB	OCC	179,268,383
14	KEYBANK N.A.	OCC	187,369,474
15	ALLY BANK	FED	185,388,500
16	HSBC BANK USA N.A.	OCC	163,687,584
17	THE NORTHERN TRUST COMPANY	FED	152,364,634
18	REGIONS BANK	FED	153,180,500
19	DISCOVER BANK	FDIC	144,174,878
20	USAA FEDERAL SAVINGS BANK	OCC	110,955,000
21	SYNCHRONY BANK	OCC	107,285,500
22	FLAGSTAR BANK N.A.	OCC	114,181,282
23	UBS BANK USA	FDIC	113,391,673
24	SANTANDER BANK N.A.	OCC	100,872,087
<b><i>Biennial Filers</i></b>			
1	JPMORGAN CHASE BANK N.A.	OCC	3,416,565,500
2	BANK OF AMERICA N.A.	OCC	2,501,379,250
3	WELLS FARGO BANK N.A.	OCC	1,712,325,750
4	CITIBANK N.A.	OCC	1,686,698,000
5	GOLDMAN SACHS BANK USA	FED	531,380,750
6	THE BANK OF NEW YORK MELLON	FED	341,775,000
7	STATE STREET BANK & TRUST COMPANY	FED	299,565,750
8	MORGAN STANLEY BANK N.A.	OCC	207,910,500
9	MORGAN STANLEY PRIVATE BANK N.A.	OCC	200,468,750

<sup>35</sup> Data as of March 31, 2024.

**Group B CIDs**

	<b>INSTITUTION NAME</b>	<b>PFR</b>	<b>TOTAL ASSETS (4Q AVG, \$000s)</b>
<b><i>Triennial Filers</i></b>			
1	CITY NATIONAL BANK	OCC	94,308,440
2	ZIONS BANCORPORATION N.A.	FED	87,190,617
3	COMERICA BANK	FED	85,521,750
4	FIRST HORIZON BANK	FED	82,490,236
5	WEBSTER BANK N.A.	OCC	74,501,506
6	WESTERN ALLIANCE BANK	FED	71,607,732
7	EAST WEST BANK	FED	69,222,378
8	VALLEY NATIONAL BANK	OCC	61,205,217
9	SYNOVUS BANK	FED	59,790,202
10	BANCO POPULAR DE PUERTO RICO	FED	57,288,500
11	CIBC BANK USA	FDIC	53,427,990
12	UMPQUA BANK	FDIC	52,484,885

## ATTACHMENT 4

### DELEGATIONS CHART: Final Rule 12 CFR 360.10

<b>Proposed Delegation to the Director, CISR, and Director, DRR, with no authority to redelegate; Board members to have the opportunity for prior consultation; any exercise of delegated authority to be included in quarterly reports to the Deputy to each Board member; legal concurrence is required</b>		
<b>Topic</b>	<b>Decision</b>	<b>Rule Reference</b>
<b>1. Identify significant findings in a CIDI's full resolution submission; establishment of project plan</b>	<p>The FDIC may identify significant findings in a CIDI's full resolution submission that, if not satisfactorily remediated, may become a material weakness.</p> <p><i>This delegation would include the authority to approve a project plan with identified milestones to promote adequate and timely remediation.</i></p>	12 CFR 360.10(f)(5)
<b>2. Waive one or more full resolution submission content requirements</b>	<p>The FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more requirements of the Final Rule. This includes full resolution submission content requirements as set forth in paragraph 360.10(d).</p> <p><i>Staff recommends a limited delegation to waive one or more full resolution submission content elements. Any other waiver would require Board approval, except as specified in item 10 below.</i></p>	12 CFR 360.10(i)(2)
<b>3. Require additional content elements in interim supplement</b>	<p>The FDIC may require "any other content element expressly identified for the next interim supplement by the FDIC."</p>	12 CFR 360.10(e)(2)(xiv)

<b>Proposed Delegation to the Director, CISR (or designee), and Director, DRR (or designee) with authority to redelegate in writing; any exercise of delegated authority to be included in quarterly reports to the Deputy to each Board member; legal concurrence is required.</b>		
<b>Topic</b>	<b>Decision</b>	<b>Rule Reference</b>
<b>4. Establish submission dates for initial submissions under the Final Rule for all existing CIDs</b>	The FDIC must specify, by a written notice to each CIDI, the date on which their initial full resolution submission or interim supplement is due under the Final Rule, which will be at least 270 days from the effective date of the Final Rule.	12 CFR 360.10(c)(1)(ii) and (c)(2)(ii)
<b>5. Establish initial submission dates for new CIDs</b>	The FDIC must provide a written notice to a new CIDI establishing the date for the initial full resolution submission, which will be at least 270 days from the transition to CIDI status.	12 CFR 360.10(c)(3)
<b>6. Adjust submission dates for full resolution submissions of biennial filers</b>	Each biennial filer must provide a full resolution submission to the FDIC on or before the date that is two years after the date of its most recent full resolution submission (or first business day thereafter), unless it has received written notice of a different date from the FDIC.  <i>Staff recommends limited delegation to change the submission date for a full resolution submission by up to 90 days. Any change of more than 90 days would require Board approval.</i>	12 CFR 360.10(c)(1)(ii)
<b>7. Adjust submission dates for full resolution submissions of triennial filers</b>	Each triennial filer must provide a full resolution submission to the FDIC on or before the date that is three years from the date of its most recent full resolution submission (or first business day thereafter), unless it has received written notice of a different date from the FDIC.  <i>Staff recommends limited delegation to change the submission date for a full resolution submission by up to 90 days. Any change of more than 90 days would require Board approval.</i>	12 CFR 360.10(c)(2)(ii)
<b>8. Adjust submission date for interim supplement</b>	Each interim supplement must be submitted to the FDIC on or before the anniversary date (or first business day thereafter) of its most recent full resolution submission, or its most recent interim supplement, unless the CIDI has received written notice of a different date from the FDIC.	12 CFR 360.10(e)(1)(i)



<b>Proposed Delegation to the Director, CISR (or designee), and Director, DRR (or designee) with authority to redelegate in writing; any exercise of delegated authority to be included in quarterly reports to the Deputy to each Board member; legal concurrence is required.</b>		
<b>9. Extension of time frames or deadlines</b>	<p>The FDIC, on a case-by-case basis, may extend, on its own initiative or upon written request, any time frame or deadline set in the Final Rule.</p> <p><i>Staff recommends delegating this general authority, subject to the more specific delegations relating to time frames and deadlines specified in the other delegations and reservations of authority.</i></p>	12 CFR 360.10(i)(1)
<b>10. Waive one or more interim supplement content requirements</b>	<p>The FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more requirements set forth in the Final Rule including interim supplement content requirements pursuant to paragraph 360.10(e)(2).</p> <p><i>Staff recommends limited delegation to waive one or more interim supplement content requirements. Any other waiver would require Board approval, except as specified in item 2 above.</i></p>	12 CFR 360.10(i)(2)
<b>11. Briefly extend submission date of a revised full resolution submission after a material weakness finding</b>	<p>Final Rule requires a CIDI that has received a notice of non-credibility determination and material weaknesses to submit a revised full resolution submission, or such other information or material specified by the FDIC, within 90 days of such notice, or such shorter or longer period as the FDIC may determine.</p> <p><i>Staff recommends limited delegation to grant extensions of up to 30 days. Any longer extension would require Board approval.</i></p>	12 CFR 360.10(f)(3)
<b>12. Provide additional or alternative parameters for failure scenario</b>	<p>The FDIC may provide to one, more than one, or all CIDs additional or alternative parameters for the failure scenario detailed in paragraph 360.10(d)(2).</p>	12 CFR 360.10(d)(2)