

August 29, 2023

MEMORANDUM TO: The Board of Directors

FROM: James L. McGraw, Acting Director  
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SUBJECT: Proposed Amendments to 12 C.F.R. § 360.10 –  
Notice of Proposed Rulemaking

**I. SUMMARY OF RECOMMENDATIONS:**

This Memorandum concerns a notice of proposed rulemaking (“Proposal”) to amend and restate the current resolution plan rule (“Rule”)¹ promulgated by the Federal Deposit Insurance Corporation (“FDIC”) under authority of the Federal Deposit Insurance Act (“FDI Act”). The Rule currently requires insured depository institutions (“IDIs”) with \$50 billion or more in total assets (“CIDIs”) periodically to submit resolution plans (“Current Rule Plans”) to the FDIC. The Proposal is intended to clarify and enhance submission requirements and reflect lessons learned since the Rule was finalized in 2012. The Proposal includes the following proposed modifications to the Rule: (1) creating two groups of CIDIs with different submission content 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 assessed; (4) adjusting the frequency of submissions to a two-year cycle, which will include engagement and capabilities testing; and (5) introducing an “interim supplement” requiring certain key content elements to be

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¹ Codified at 12 C.F.R. § 360.10.

provided by all CIDIIs in the year between submissions to ensure the availability of updated information.

Staff recommends that the Board of the FDIC (the “Board”) take the following actions:

A. Approve the Notice of Proposed Rulemaking, attached to this Memorandum as **Attachment 2**, and authorize its publication in the *Federal Register* for a comment period ending on November 30, 2023.

B. Authorize the General Counsel, or designee, and the Executive Secretary, or designee, to make technical, non-substantive or conforming changes to the draft *Federal Register* document to prepare it for publication.

## **II. BACKGROUND**

The Rule currently requires each CIDI periodically to submit a resolution plan that, in the event of its failure, should enable the FDIC to resolve the CIDI under the FDI Act. The Rule is intended to ensure that the FDIC has access to all of the material information it needs to resolve efficiently a CIDI in the event of its failure.

Since issuing the Rule in 2012, the FDIC and CIDIIs have been through multiple plan submissions, and the FDIC has provided information to CIDIIs to improve their submissions. In 2014, the FDIC issued publicly a Board-approved document that provided clarification, guidance, and direction for the preparation of all subsequent submissions.<sup>2</sup> In addition, following each submission, the FDIC has issued feedback letters to CIDIIs that included information about the expected contents of the subsequent submission. During this period, the Board extended the period for submissions on multiple occasions, reducing the frequency of submissions from the

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<sup>2</sup> See FDIC Issues Guidance for the Resolution Plans of Large Banks (Dec. 17, 2014), <https://archive.fdic.gov/view/fdc/4821>.

annual requirement provided in the Rule. Experience indicated that a one-year period was insufficient for the FDIC to review the submissions and develop and disseminate feedback, and for CIDs to incorporate that feedback into subsequent submissions.

In 2018, the FDIC announced that the FDIC would be pausing the Current Rule Plan submission requirement.<sup>3</sup> The following spring, the Board formalized this moratorium (“Moratorium”) on the Rule’s requirements for all CIDs, pending completion of a new rulemaking.<sup>4</sup> At the time, the FDIC also published an advance notice of proposed rulemaking (“ANPR”).<sup>5</sup> Among other things, the ANPR requested comment on how to tailor and improve the Rule, including whether requirements should be tiered based on size of the IDI or complexity factors. It also requested comment on potential enhancement of engagement and capabilities testing.

In January 2021, the Board lifted the Moratorium on submissions for CIDs with \$100 billion or more in total assets.<sup>6</sup>

On July 25, 2021, the FDIC issued the *Statement on Resolution Plans for Insured Depository Institutions* (“2021 Statement”), which described how the FDIC planned to implement certain aspects of the Rule with respect to CIDs with \$100 billion or more in total assets (“specified CIDs”).<sup>7</sup> Among other things, the 2021 Statement discussed certain content

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<sup>3</sup> See Keynote Remarks by Jelena McWilliams, Chairman, Federal Deposit Insurance Corporation, to 2018 Annual Conference of The Clearing House (TCH) and Bank Policy Institute (BPI) (Nov. 28, 2018), available at <https://www.fdic.gov/news/speeches/2018/spnov2818.html>.

<sup>4</sup> See Board Resolution No. 085874 (Apr. 16, 2019); see also Press Release, Fed. Deposit Ins. Corp., FDIC Seeks Comment on New Approaches to Insured Depository Institution Resolution Planning (Apr. 16, 2019), available at <https://www.fdic.gov/news/press-releases/2019/pr19034.html>.

<sup>5</sup> See 12 Fed. R. 16620 (Apr. 22, 2019).

<sup>6</sup> See Board Resolution No. 086949 (Jan. 19, 2021).

<sup>7</sup> See <https://www.fdic.gov/resources/resolutions/resolution-authority/idi-statement-06-25-2021.pdf>.

requirements and anticipated content exemptions, and noted the expectation of a three-year submission frequency.

Following issuance of the 2021 Statement, the FDIC notified the specified CIDs of the due dates for their next submissions. Twenty-one submissions were received on December 1, 2022; one was submitted on June 30, 2023; and plans for the U.S. global systemically important banks are due on or before December 1, 2023.<sup>8</sup>

In recent months, the FDIC resolved Silicon Valley Bank (“SVB”), Signature Bank, and First Republic Bank (“First Republic”). Initial IDI resolution plans had been received a few months earlier for SVB and First Republic; Signature had not yet filed a plan. This was SVB’s initial submission. First Republic had not submitted a plan since 2018, when it was a much smaller bank.

In developing the proposed modifications, staff incorporated the FDIC’s more than a decade of experience implementing the Rule, the guidance and feedback provided to CIDs, the Current Rule Plan content that has proven most useful to the FDIC in developing resolution strategies, and lessons learned from the recent resolutions of SVB, Signature Bank, and First Republic.

Part of the challenge in developing an approach to resolution planning arises from the wide range of business models and structures among CIDs. Staff’s development of resolution strategies for CIDs, including the assessment of options and trade-offs, benefits from the CID’s knowledge of its own institution, understanding its relevant capabilities, and awareness of the impediments to executing an orderly resolution of the CID. Across the different CID business

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<sup>8</sup> Two additional CIDs, Northern Trust Company and First-Citizens Bank and Trust Company, have been notified that they must submit resolution plans on or before December 1, 2024; staff expects that date will be adjusted to align with the first group of submissions after the revised rule is finalized by appropriate notice consistent with the amended rule.

models and structures, there are a variety of factors that increase the challenges and complexity of a CIDI's resolution. For example, in general, CIDs tend to have a more significant proportion of uninsured deposits as compared to smaller banks, and high ratios of uninsured deposits increase resolution challenges. SVB, Signature Bank, and First Republic each maintained a deposit base that was largely uninsured.<sup>9</sup>

An IDI's size also can significantly affect the resolution options available to the FDIC, and be a marker for other resolution challenges, such as organizational complexity. In particular, as IDIs increase in size, the likelihood of a timely sale to a single acquirer diminishes. While a closing weekend sale of the whole institution may be an option in some cases, its availability cannot be assumed given a CIDI's significant size, complexity, and potential speed of failure. This is particularly true for the largest CIDs because the pool of potential acquirers for these institutions is limited, and the complexity of any possible transaction is increased. While there may be a larger pool of potential acquiring institutions for CIDs with below \$100 billion in total assets and a longer runway with robust pre-planning may improve the likelihood of a closing weekend whole bank sale, some of these institutions engage in highly complex activities and pose similar levels of operational complexity as those with over \$100 billion in total assets. As such, these activities must be identified and considered when contemplating resolution strategies.

In developing the Proposal, staff also considered proposed guidance for certain bank holding companies that submit resolution plans pursuant to Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Certain CIDs are within the expected scope of that guidance. Staff also took into account another notice of proposed rulemaking that would require

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<sup>9</sup> As of December 31, 2022, SVB reported 94 percent of its domestic deposits were uninsured; its total assets were approximately \$209 billion. Signature Bank reported 90 percent uninsured deposits and total assets of approximately \$110 billion. First Republic reported 68 percent uninsured deposits and total assets of approximately \$213 billion.

the issuance of debt by certain bank holding companies and certain of their subsidiary IDIs. CIDs with at least \$100 billion in total assets are expected to be in scope for that rulemaking. Both of these other matters are expected to be presented for the Board’s consideration contemporaneously with the Proposal.

### **III. DISCUSSION**

#### **A. Certain Key Aspects of the Proposal**

##### **1. Creation of Two Filing Groups**

The Proposal would retain the Rule’s applicability threshold of \$50 billion or more in total assets. It would divide CIDs into two filing groups based on the average assets reported in the institution’s four most recent Reports of Condition and Income. IDIs with \$100 billion or more in total assets would be “Group A CIDs,” while IDIs with at least \$50 billion but less than \$100 billion in total assets would constitute the “Group B CIDs.” For Group B CIDs, this would be a notable change as the Moratorium has remained in place for these CIDs.

**Attachment 3** identifies the current Group A CIDs and Group B CIDs.

Under the Proposal, each filing group would be subject to distinct obligations. Group A CIDs would be required to submit complete resolution plans containing all content elements described in the Proposal (“Proposed Rule Resolution Plans”), including two items discussed in more detail below: (1) a resolution strategy appropriate for the CIDI’s orderly and efficient resolution and (2) a demonstration of the capabilities necessary to produce valuations that the FDIC could use to conduct the statutorily required least-cost analysis at the time of an actual failure. Group B CIDs would be required to submit an “Informational Filing.” A resolution strategy and valuation capabilities would not be required for Informational Filings.

If the Proposal is adopted in a form that requires submissions from some or all Group B CIDs, staff would recommend that the Board lift the Moratorium in its entirety concurrently with approving and adopting the final revised Rule.

## **2. Enhancement of Engagement and Capabilities Testing**

The Proposal would amend existing requirements to clarify the FDIC's expectations regarding engagement between the CIDs and the FDIC and regarding capabilities testing, with the objective of enhancing the usefulness of both exercises to the FDIC's resolution planning. Staff has found that engagement with a CIDI helps improve staff's understanding of the resolution submission's content and challenges the FDIC may face in resolving the CIDI. Engagement may also help staff evaluate the current feasibility of implementing a resolution strategy tailored to the particular CIDI. Capabilities testing would enable the FDIC to confirm that the CIDI has the capabilities described in a submission and enhance the FDIC's understanding of how those capabilities may apply across a range of failure scenarios and strategic options that the FDIC might undertake in an actual failure. Enhanced engagement and capabilities testing could also supplement information contained in the submission, thereby creating knowledge that staff could use to develop more effective resolution strategies for the particular CIDI or for CIDs generally.

For engagement, the Proposal would require the CIDI to provide the FDIC such information and access to CIDI personnel that the FDIC determines are relevant to any provision of the Rule. This requirement to engage is similar to the current Rule requirement but establishes more clearly that such information and personnel access would be at the discretion of the FDIC and would not be limited as it currently is to information and personnel access "necessary to

assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan.”<sup>10</sup>

For capabilities testing, under the Proposal, the FDIC could require a CIDI to demonstrate that it can perform the capabilities described, or required to be described, in a submission. This would include the CIDI’s ability to provide the information, data, and analysis underlying the submission, similar to the current requirement in the Rule. The Proposal would clarify, however, that capabilities testing may require a CIDI to demonstrate any capability described in the submission or required under the Rule.

### **3. Enforcement**

The Proposal is also intended to bolster the enforceability of the Rule. Previously, the FDIC issued guidance for the Rule, the most recent of which is the 2021 Statement, which superseded all prior guidance. Guidance in any form does not have the force of law and, therefore, is not enforceable.<sup>11</sup> Incorporating into the Rule expectations that have been suggested in guidance would align FDIC expectations for submissions with an enforceable regulatory requirement.

In addition, the Proposal clarifies that if a CIDI fails to resubmit within the prescribed timeline or if a resubmitted submission fails to adequately address identified weaknesses, the CIDI could be subject to enforcement action. Lastly, the Proposal clarifies that any violation of the Rule may, at the FDIC’s discretion, subject a CIDI to enforcement action under section 8 of the FDI Act, including backup enforcement action pursuant to section 8(t). While the provision

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<sup>10</sup> 12 C.F.R. § 360.10(d)(1).

<sup>11</sup> See *Statement Clarifying the Role of Supervisory Guidance*, 12 C.F.R. § 302, Appendix A (Mar. 2, 2021).



would add language, it would not constitute a substantive change and would not add to the FDIC's existing enforcement authority or power.

#### **4. Selection of Suitable Submission Cycle**

As noted above, experience has shown that an annual submission cycle provides insufficient time for its component steps of plan development, submission, review, and the provision of feedback. At the same time, recent experience has underscored the need for timely information, particularly where the runway to resolution is short. The Proposal balances these concerns by requiring a comprehensive submission – a Resolution Plan for Group A CIDs or an Informational Filing for Group B CIDs – and an interim supplement on a two-year cycle, rather than the annual cycle in the Rule or the three-year cycle expectation communicated in the 2021 Statement. Key information would be updated by the interim supplement that would be required on the one-year anniversary of a CID's most recent comprehensive submission and would be composed of a limited subset of the content items required in those submissions. **Attachment 4** compares the proposed content requirements applicable to each type of filing.

In addition, under the Proposal, the FDIC would retain the authority to set and change the submission dates, including to shorten or lengthen the period between submissions. The preamble explains that the FDIC expects to provide timely notice of a different schedule that accommodates sufficient time for preparation of the submission; historically, the FDIC has provided advance notice of any such change at least one year before the submission due date. Staff believes that this amount of notice would provide ample time for a CID to develop its submission under ordinary circumstances, and that, under appropriate conditions, this timeline could be accelerated.

## **B. Other Aspects of the Proposal**

The Proposal includes the following additional proposed modifications to the Rule as interpreted by prior guidance.

### **1. Credibility**

The Proposal contains credibility criteria that would update and clarify the objectives and standards of review under the Rule, which would in turn facilitate the FDIC's ability to determine the credibility of a submission. The Proposal sets out a two-prong approach to credibility. The first prong applies only to an "identified strategy" and therefore, as discussed below, applies only to the Proposed Rule Resolution Plans to be submitted by Group A CIDs. Prong one provides that a submission is not credible if its identified strategy would not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the CIDI in resolution, and address potential risks of adverse effects on U.S. economic conditions or financial stability.

The second prong applies to the submissions of both Group A CIDs and Group B CIDs. Under this prong, a submission is not credible if the information and analysis in it are not supported with observable and verifiable capabilities and data, and reasonable projections, or if the CIDI fails to comply in any material respect with the requirements of the Proposal. This second prong is similar to the standard of review under the current Rule, which provides that a Current Rule Plan is credible "if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets."<sup>12</sup> Staff believes that the

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<sup>12</sup> 12 C.F.R. § 360.10(c)(4)(i).

proposed change to the credibility standard is appropriate and will be helpful to CIDs in the development of their submissions as it more clearly sets forth the expectation with respect to the identified strategy, the supporting information and analysis, and the required capabilities.

## 2. Strategy

The content requirements under the current Rule include several “strategy” components.<sup>13</sup> Over the years, these provisions have been a source of confusion that the FDIC has addressed on multiple occasions through guidance and feedback. In considering prior submissions that have been most useful to the FDIC, staff concluded that certain strategic approaches to resolution, while feasible under certain circumstances, did not provide the depth of information and the optionality that best supports the FDIC in the resolution of a CIDI. This is particularly true because a future failure scenario likely will be materially different than the one developed for the resolution plan submission. Building on this experience, the Proposal would require each Group A CIDI to provide an “identified strategy” that the FDIC could implement to effect the Group A CIDI’s resolution. 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 and must meet the first prong of the credibility standard. The Proposal would establish as the default identified strategy one that would provide for the establishment and stabilization of a 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; or an exit via restructuring and subsequent initial public offering or other capital markets transaction, or another exit strategy appropriate to the size, structure and complexity of the CIDI (“BDI Strategy”). While

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<sup>13</sup> See 12 C.F.R. § 360.10(c)(2)(vi) & (vii).

recognizing that this approach may not be taken in all circumstances, the BDI Strategy provides information and analysis that would support this option if needed.

At the same time, the FDIC recognizes that for some firms an alternative strategy, such as a payout and liquidation of the bank or transferring some but not all business lines and assets to a BDI and liquidating others in a receivership, may be more appropriate for the businesses and organizational structure of a particular Group A CIDI. The Proposal would permit the use of an identified strategy other than the BDI Strategy if the alternative strategy meets certain specified criteria.<sup>14</sup> The Proposal would require any strategy to include meaningful optionality for execution across a range of scenarios. Under the Proposal, however, a CIDI would not be permitted to use as its identified strategy a closing weekend sale of the 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 largest CIDs of \$100 billion or more in total assets, and particularly where the runway for contingency planning for resolution is short. The development of this strategy is less useful to the FDIC in the event that option is not available, as it does not provide the robust information, capabilities and analysis to allow for development and execution of alternative strategies.

The Proposal does not require that the Group B CIDs provide an identified strategy. The relatively smaller size of Group B CIDs expands the pool of possible purchasers and increases the likelihood of a sale of the franchise as a whole. Typically, an acquiring institution is the same size or greater than the failing IDI. For assets that are not sold to an assuming institution, most asset classes would not have a protracted sales timeline based on market absorption rate (daily trading volume or total market capital). Moreover, private capital for certain asset classes are

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<sup>14</sup> The Proposal would not permit any identified strategy to be based upon the sale of substantially all assets and liabilities over closing weekend.

more likely to be raised and would not require significant financing. Overall, Group B CIDs should experience fewer limitations on market absorption or acquisition size given the overall size of the balance sheet, and would be less likely to require a longer term BDI to facilitate a multiple acquirer exit. For Group B CIDs, the focus of the Informational Filing will support such a resolution, and the development of an identified strategy will be less important.

### **3. Failure Scenario**

Staff has observed through years of reviewing Current Rule Plans that assumptions about the condition of the CIDI when it fails determine to a large extent the usefulness of a resolution strategy across a range of scenarios. Accordingly, the Proposal would add detail to the Rule concerning the failure scenario. Specifically, the Proposal would require the identified strategy to be based on a failure scenario that demonstrates that the CIDI is experiencing material financial distress. The Proposal also provides detail about conditions that must be assumed. The Proposal would retain the current Rule requirement for an identified strategy, as interpreted by the 2021 Statement, concerning the macroeconomic conditions at the time of failure<sup>15</sup> and add the required assumption that the CIDI's U.S. parent company is in resolution. In addition, because the likely failure scenarios for each CIDI may differ due to divergent business models, balance sheets, and risks, the Proposal includes flexibility for the FDIC to develop specific failure scenario assumptions, with respect to macroeconomic conditions or the precipitating cause of failure, for individual CIDs, for specific cohorts of Group A CIDs, or for all Group A CIDs in future submissions.

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<sup>15</sup> An identified strategy must assume that failure occurs under severely adverse economic conditions, as developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 5365(i)(1)(B).

#### 4. Valuation Capabilities that Facilitate the Least-Cost Test

The Rule requires a Current Rule Plan to “describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company’s organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI.”<sup>16</sup> Over the years, CIDs have struggled to understand and meet this requirement. Staff has concluded that the requirement has failed to meet its potential for informing the FDIC’s resolution planning and, if needed, resolution implementation.<sup>17</sup> Accordingly, the Proposal would replace this provision with the requirement that a Group A CIDI demonstrate the capabilities necessary to produce valuations that the FDIC can use to conduct the statutorily required least-cost analysis at the time of an actual failure.<sup>18</sup> To demonstrate these valuation capabilities, a Group A CIDI would be required to describe its valuation process in its submission and provide as an appendix a valuation analysis that includes a range of quantitative estimates of value. Under the Proposal, the FDIC would require valuations that would support the evaluation of a range of possible resolution options, including the impact on value if not all deposits were transferred to a BDI or acquirer, and the impact on value in a multiple acquirer exit as compared to a sale of the institution as a whole. While these capabilities would be evaluated under the second prong of the credibility standard under the Proposal, the FDIC would not make a credibility determination as to the identified strategy based on the valuation information provided in response to this requirement.

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<sup>16</sup> 12 C.F.R. § 360.10(c)(2)(vii).

<sup>17</sup> The FDIC has not expected Current Rule Plans to include this information since 2017.

<sup>18</sup> See 12 U.S.C. § 1823(c)(4).

The valuation capabilities requirement described above would not apply to Group B CIDs. As the Group B CIDs are not required to provide an identified strategy based upon a failure scenario, the informational filings submitted by the Group B CIDs will not include the scenario analysis necessary to the demonstration of valuation capabilities as required in the Proposal.

## **5. Approach to Capabilities**

Group A CIDs must demonstrate the capabilities with respect to valuations, as described above. In addition, the Proposal would require all CIDs to be able to demonstrate that they have the capabilities necessary to support the information and analysis provided in the submission, and that the capabilities necessary to ensure continuity of critical services and that franchise components are separable and marketable. To facilitate the marketing of franchise components, the Proposal specifically asks that the submission describe the CIDI's current capabilities and processes to provide access to or establish a virtual data room promptly in the run-up to or upon failure of the bank. This approach more clearly and directly addresses the expectation that the strategy and analysis in the submissions be actionable. The current Rule contains references to certain necessary capabilities but the Rule does not require CIDs to demonstrate the existence of specific capabilities in their submissions.

## **6. Content Requirements**

In an effort to collect information that would more effectively prepare the FDIC to resolve a CIDI and to facilitate all CIDs having key resolvability capabilities, the Proposal would make several additional changes to the information a CIDI must provide in its submission.

Many of the proposed content requirement modifications are familiar to CIDs as the FDIC previously issued them as interpretive guidance.<sup>19</sup> Their incorporation into the Rule would codify that guidance. These content requirements include information about franchise components, key personnel, and communications capabilities.

The Proposal would add detail or expand upon certain content elements that have been required in the Rule or articulated in past feedback as guidance, in addition to those described above. In particular, the Proposal would require more detailed information about the organizational structure of the firm and any cross-border activities. The Proposal incorporates and builds upon past guidance, including in addressing the identification of franchise components and requiring identification of those that currently are separable and can be marketed in a timely manner, to provide optionality in resolution and to support a potential multiple acquirer resolution strategy. The Proposal includes a requirement for focused and specific information on material asset portfolios, which is important where the resolution of the firm in the event of failure may include marketing asset portfolios either in coordination with the sale of the franchise or separately out of the receivership. Additional detail would be required with respect to the overall deposit structure, including mapping deposits to lines of business. While the Proposal would not require the submissions to address systemic risk, which was exempted for all submissions pursuant to the 2021 Statement, the Proposal would substitute a more focused requirement for firm-specific information related to the potential economic effects of resolution of the CIDI, such as market share in a particular region or business segment or a significant level of bank-to-bank activity.

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<sup>19</sup> If the Proposal is adopted as a final rule, all previously-issued guidance, including the 2021 Statement, would be superseded by the final Rule.



In addition, the Proposal would require all CIDs to include in their submissions information about digital services and electronic platforms that CIDs offer to depositors to support banking transactions for business customers. The Proposal addresses the fact that digital services and electronic platforms and related services provided to retail and commercial customers have proliferated dramatically since the Rule was adopted. This information will enhance the FDIC's understanding of the value of these services, their impact on customer relationships, and the potential challenges to continuing or winding down those services in resolution.

The Proposal would also eliminate certain information currently required by the Rule that is expected to be exempted for all specified CIDs pursuant to the 2021 Statement. For example, the Proposal would eliminate the requirements for information regarding major counterparties and disaster recovery or other backup plans. However, most of the content requirements that were expected to be exempted for all CIDs pursuant to the 2021 Statement would instead continue to be required in the Proposal. FDIC staff decided to maintain these content requirements because recent events have shown this content to be useful in resolution planning.

The Proposal would also eliminate the Rule's process requiring the FDIC to either acknowledge the acceptance of a submission or to return the submission if the FDIC determines that it is incomplete.<sup>20</sup> Staff recommends deleting these provisions because they have not proven to be useful.

### **C. Proposed Transition Period**

The preamble of the Proposal provides information about certain aspects of the transition from the current Rule to an amended Rule, consistent with staff's recommended approach. The

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<sup>20</sup> See 12 C.F.R. § 360.10(c)(4)(ii)-(iv).

Director of the Division of Complex Institution Supervision and Resolution, acting under delegated authority, has directed certain Group A CIDs to submit their next Current Rule Plans in December 2023, December 2024 or December 2025. The preamble advises that Group A CIDs be required to submit Current Rule Plans as previously directed unless they receive written notice of an extension. The 2023 Current Rule Plans must be evaluated under the current Rule. Nevertheless, the preamble indicates that feedback on those submissions will focus on Rule provisions that would remain relevant under the Rule as amended if the Proposal is adopted as a final rule (“Amended Rule”). The preamble also states that the FDIC does not anticipate conducting engagement and capabilities testing on 2023 Current Rule Plans. Finally, the preamble indicates that staff expects to offer meetings to the CIDs to discuss the FDIC’s expectations for submissions under the Amended Rule and to respond to their questions.

Going forward, staff recommends that approximately half of the Group A CIDs submit their first Proposed Rule Resolution Plans on a date specified by the FDIC that would be at least 270 days from the effective date of the Amended Rule, with the other half submitting their first Proposed Rule Resolution Plans the following year. The preamble describes this proposed approach and also advises that any Group A CIDI that is in the second cohort would be expected to provide an interim supplement on or before the date the first cohort is required to submit Proposed Rule Resolution Plans. This time period is consistent with the Rule’s provision for a 270 day minimum plan preparation period for an IDI’s first submission after it becomes a CIDI.<sup>21</sup>

In addition, the preamble indicates, consistent with staff’s recommendation, that all Group B CIDs would be required to submit their first Informational Filings on a date specified

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<sup>21</sup> See 12 CFR § 360.10(c)(ii).

by the FDIC that would be at least 270 days from the effective date of the Amended Rule. Staff believes that this would provide adequate time for Group B CIDs to develop their submissions, taking into consideration that most Group B CIDs have never made a submission under the current Rule and no Group B CIDI has submitted a Current Rule Plan more recently than 2018.

#### **D. Expected Effects; Paperwork Reduction Act**

The preamble analyzes the expected effects of the Proposal and considers requirements under several statutes, including the Paperwork Reduction Act. For purposes of the expected effects and Paperwork Reduction Act, the proposed changes are evaluated against the FDIC's most recent burden estimate for the Rule, which was conducted in December 2021.<sup>22</sup> At that time, the FDIC was implementing the Rule as contemplated in the 2021 Statement.

The Proposal would increase 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 ("HPBA").<sup>23</sup> The estimated increases are as follows:

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<sup>22</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>23</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 Proposal.

Type of CIDI	Hours per billion in assets in December 2021	Hours per billion in assets under Proposal
Group A CIDI affiliated with a U.S. GSIB – Proposed Rule Resolution Plan	57.6	72
Group A CIDI not affiliated with a U.S. GSIB – Proposed Rule Resolution Plan <sup>24</sup>	48	72
Group B CIDI – Informational Filing <sup>25</sup>	0	67
All CIDs – Interim Supplement	0	24

The Proposal would increase regulatory compliance costs for Group A CIDs due to three factors: (1) the proposed changes to submission content and to engagement and capabilities testing, including requiring certain content that the 2021 Statement indicated would be exempted for all or some of these CIDs; (2) the proposed increase in submission frequency; and (3) the new interim supplement requirement. The Proposal would increase regulatory compliance costs for Group B CIDs because, at the time of the most recent burden estimates, the Moratorium was in effect and exempted all IDs with less than \$100 billion in total assets from the Rule’s submission requirements. As discussed above, implementation of the Proposal in its final form would need to be accompanied by a separate action by the Board lifting the Moratorium for Group B CIDs, thereby requiring them to resume submissions. The expected HPBA regulatory compliance costs for Group B CIDs under the Proposal would be less than those for

<sup>24</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>25</sup> As of December 2021—the time of the FDIC’s most recent burden estimate—the 2018 moratorium was still in effect, so IDs with less than \$100 billion in total assets (which includes IDs that would be Group B CIDs under the proposed rule) were not required to comply with the Rule.

Group A CIDs as the Group B CIDs' Informational Filings would have fewer content requirements than the Group A CIDs' Proposed Rule Resolution Plans.

Staff does not believe that the net additional costs that would be incurred as a result of the changed requirements in the Proposal would have an adverse impact on banking activities such as originating and servicing loans, processing payments, or various financial market activities in which these IDs may be involved, as the costs are low compared to the size of the institutions affected by the Proposal. The preamble includes this statement.

**IV. CONCLUSION:**

Staff recommends that the Board:

A. Approve the attached Notice of Proposed Rulemaking and authorize its publication in the *Federal Register* for a comment period ending November 30, 2023.

B. Authorize the General Counsel, or designee, and the Executive Secretary, or designee, to make minor changes to the draft *Federal Register* document to prepare it for publication.

**CONCUR:**

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

\_\_\_\_\_  
Date

**CONTACTS:**

CISR: Patrick Bittner; Aaron Wishart; Brian O'Keefe; Elizabeth Falloon;  
Kent Bergey  
DRR: Audra Cast; Shawn Khani; Varanessa Marshall; Leslie Sulenta  
Legal: Celia Van Gorder; Angus Tarpley; Ben DeMaria; Dena Kessler;  
Francesca Muratori; Esther Rabin; Greg Wach

**ATTACHMENTS:**

**Attachment 1: Draft Board Resolution**

**Attachment 2: Notice of Proposed Rulemaking, Including Preamble**

**Attachment 3: Chart of CIDI Groups**

**Attachment 4: Comparison of Group A CIDI Submissions, Group B CIDI Submissions and Interim Supplements**

Chart of CIDI Groups<sup>26</sup>**Group A CIDs**

	<b>INSTITUTION NAME</b>	<b>PFR</b>	<b>Total Assets (4Q AVG, \$000s)</b>
1	JPMORGAN CHASE BANK, N.A.	OCC	3,289,826,000
2	BANK OF AMERICA, N.A.	OCC	2,446,180,500
3	CITIBANK, N.A.	OCC	1,730,770,250
4	WELLS FARGO BANK, N.A.	OCC	1,707,503,750
5	U.S. BANK N.A.*	OCC	700,671,699
6	PNC BANK, N.A.	OCC	549,090,745
7	TRUIST BANK	FDIC	544,332,500
8	GOLDMAN SACHS BANK USA	FR	498,394,250
9	CAPITAL ONE, N.A.	OCC	425,747,461
10	TD BANK, N.A.	OCC	396,899,813
11	CHARLES SCHWAB BANK, SSB	FR	366,151,000
12	THE BANK OF NEW YORK MELLON	FR	343,964,250
13	STATE STREET BANK AND TRUST COMPANY	FR	295,383,250
14	CITIZENS BANK, N.A.	OCC	224,842,002
15	FIRST CITIZENS BANK & TRUST COMPANY*	FDIC	207,113,382
16	FIFTH THIRD BANK, N.A.	OCC	205,926,465
17	MORGAN STANLEY PRIVATE BANK, N.A.	OCC	200,040,500
18	MORGAN STANLEY BANK, N.A.	OCC	197,268,500
19	MANUFACTURERS AND TRADERS TRUST COMPANY	FR	200,990,176
20	KEYBANK N.A.	OCC	188,792,756
21	THE HUNTINGTON NATIONAL BANK	OCC	182,073,119
22	ALLY BANK	FR	180,700,500
23	HSBC BANK USA, N.A.	OCC	165,654,561
24	BMO HARRIS BANK N.A.	OCC	192,612,413
25	THE NORTHERN TRUST COMPANY	FR	155,435,676
26	REGIONS BANK	FR	155,981,000
27	AMERICAN EXPRESS NATIONAL BANK	OCC	151,544,587
28	FLAGSTAR BANK, N.A.*	OCC	123,306,433
29	UBS BANK USA	FDIC	118,303,336
30	DISCOVER BANK	FDIC	123,350,410
31	USAA FEDERAL SAVINGS BANK	OCC	111,706,000

\*estimated assets following completion of recent mergers and acquisitions

<sup>26</sup> Data as of 3/31/2023.

**Group B CIDs**

	<b>Institution Name</b>	<b>PFR</b>	<b>Total Assets (4Q Avg, \$000)</b>
1	SANTANDAR BANK, N.A.	OCC	98,689,404
2	SYNCHRONY BANK	OCC	93,609,750
3	CITY NATIONAL BANK	OCC	93,681,513
4	COMERICA BANK	FED	87,013,500
5	ZIONS BANCORPORATION, N.A.	OCC	88,594,231
6	FIRST HORIZON BANK	FED	80,984,733
7	WEBSTER BANK, N.A.	OCC	70,594,669
8	WESTERN ALLIANCE BANK	FED	68,436,988
9	EAST WEST BANK	FED	64,060,191
11	SYNOVOUS BANK	FED	59,295,822
10	VALLEY NATIONAL BANK	OCC	58,031,681
12	BANCO POPULAR DE PUERTO RICO	FED	57,875,000
13	UMPQUA BANK	FDIC	53,985,895
14	FROST BANK	FED	52,272,816
15	CIBC BANK USA#	FDIC	50,224,642

#CIBC crossed the threshold into Group B as of 3/31/23



## Comparison of Group A CIDI Submissions, Group B CIDI Submissions and Interim Supplements

Content Item	Group A	Group B	Group A and B
	Resolution Plan Submissions	Informational Filings	Interim Supplement
	2yr cycle		Off-Cycle Year
Identified Strategy	X		
Failure Scenario	X		
Executive Summary	X		
Org. structure; legal entities; core business lines; and branches	X	X	X
Methodology for material entity designation	X	X	
Separation from parent; barriers or obstacles to orderly resolution	X	X	
Deposit activities	X	X	Key info
Critical services	X	X	Key info
Key personnel	X	X	Key info
Franchise components	X	X	Key info
Asset Portfolio Sales	X	X	Key info
Valuation for least-costly resolution	X		
Off-balance-sheet exposures	X	X	X
Qualified financial contracts	X	X	
Unconsolidated balance sheet	X	X	X
Payment, clearing, and settlement	X	X	Key info
Capital structure; funding sources	X	X	Key info
Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations	X	X	
Economic effects of resolution	X	X	
Non-deposit claims	X	X	
Cross-border elements	X	X	X
Management info. systems; licenses; IP	X	X	Key info
Digital services and electronic platforms	X	X	
Communications playbook	X	X	
Corporate governance	X	X	
CIDI's assessment of resolution plan	X	X	
Any other material factor	X	X	