

June 29, 2021

IDI Resolution Plans

FDIC Publishes New Guidance Streamlining Resolution Planning for Specified IDIs

SUMMARY

On June 25, 2021, the Federal Deposit Insurance Corporation published new guidance for resolution plans to be filed by insured depository institutions with \$100 billion or more in total assets. The guidance establishes a three-year filing cycle for these IDIs, with filers clustered into two groups; provides details regarding the content that filers will be expected to prepare; creates greater flexibility with respect to the incorporation of content from other sources; allows affiliated filers to submit a single, combined submission; and streamlines some of the content requirements that have proven to be less relevant to the FDIC after reviewing plans filed in previous years or that call for information obtainable through other supervisory channels. The new guidance also emphasizes periodic engagement with and capabilities testing by the FDIC.

BACKGROUND

In November 2018, in connection with the FDIC's planned modifications to 12 C.F.R. § 360.10 (the "IDI Rule"), FDIC Chairman McWilliams announced a moratorium on the filing of resolution plans by insured depository institutions ("IDIs") required under the IDI Rule.¹ In January 2021, the FDIC announced that IDIs with \$100 billion or more in total assets would be required to resume filing resolution plans under the IDI Rule and noted that it would provide further details regarding its approach to those plans.² The FDIC's statement on June 25, 2021³ provides those details, covering four broad topics:

- First, covered insured depository institutions with \$100 billion or more in total assets ("specified IDIs") will be required to resume making resolution plan submissions. The moratorium announced in November 2018 remains in effect with respect to covered insured depository institutions with total assets of \$50 billion or more, but less than \$100 billion, although the IDI Rule continues to refer to those institutions.

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- Second, the procedures for filing IDI resolution plans have been somewhat streamlined. The submission frequency for resolution plan submissions by specified CIDs has been extended to a three-year cycle.⁴ Prior to each plan submission cycle, the FDIC will send a written communication to each specified CID advising it of the timing of its next submission, which will be required no earlier than 12 months after the date of the communication.⁵ Filers will be permitted to incorporate information from a broader range of sources.⁶ In addition, affiliated filers will be able to file a single, combined plan.
- Third, the statement limits the information required in resolution plan submissions to the areas that the FDIC has found most useful in its review of prior filings. These areas are intended to assist the FDIC in identifying strategic options for the resolution of the specified CID, including through a sale to a third-party acquirer or a transfer to a bridge depository institution. To that end, the plans must address:
 - The strategy for separating the specified CID from its parent and affiliates, including identifying any need for cooperation with the parent company and affiliates or any resolution authority, any significant defaults and cross-defaults that may arise as a result of the separation, any loss of access to financial market utilities and service providers, and other considerations.
 - Interconnectedness to the specified CID's parent organization and related potential barriers or material obstacles to the orderly resolution of the specified CID, including legal and contractual arrangements or operational considerations that might diminish the specified CID's franchise value, impair its access to funding, or pose other obstacles to resolution.
 - Strategy for the sale or disposition of the specified CID's deposit franchise, business lines and assets, including identification and analysis of "franchise components" – elements of the specified CID that may be sold or transferred in resolution – including identifying strategies that would permit the FDIC to maximize the value obtained through their disposition and minimize any resulting disruption, and demonstrating the specified CID's ability to make data about the franchise components available to potential buyers in a timely manner.
 - Critical services and providers of critical services, including describing the process by which critical services and critical service providers are identified, identifying actions that the FDIC may need to ensure continuity of those services, and identifying any obstacles that may prevent continuity of those services.
 - Key personnel identification and retention, including identifying the individuals tasked with managing core business lines and deposit activities and the specified CID's branch activities, and describing a framework for establishment incentives for those key personnel in consideration of their continued employment during resolution.
 - Management information systems, asset valuations and sales, capital structure and funding sources, an unconsolidated balance sheet for the specified CID and a consolidating schedule for all of its consolidated material entity subsidiaries, and information regarding the specified CID's practices in relation to trading, derivatives and hedges.

The statement indicates that the FDIC may exempt particular filers from some of the key areas described above, and states that individual specified CIDs may submit written requests for additional exemptions from these requirements.⁷ In addition, the FDIC has exempted all specified CIDs from complying with some of the content requirements of the IDI Rule, including those relating to the determination of the least cost resolution method; the identification of systemically important functions and major counterparties of the specified CID; descriptions of disaster recovery or other backup plans of the specified CID, contingency planning and similar exercises undertaken by the specified CID, and the processes for assessing the feasibility and impact of asset sales; and financial statements for the specified CID's material entities.

- Fourth, the statement provides that all filers must develop resolution plan strategies to take into account that failure of the specified CID may occur under the severely adverse economic conditions developed by the Federal Reserve pursuant to 12 U.S.C. § 5365(i)(1)(B), but exempts

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all filers from the requirement to address the baseline and adverse economic scenarios under the IDI Rule.

The FDIC indicated that it will complete a review of a specified CIDI's resolution plan and provide a resolution plan review conclusion letter within 12 months of receipt of the submission or the submission due date, whichever is later. The statement also emphasizes periodic engagement with and capabilities testing by the FDIC, which may be used to assess a specified CIDI's ability to produce relevant information underlying its resolution plan in a timeframe and format acceptable to the FDIC and to identify areas for further attention by a specified CIDI, including the need to enhance or more fully support information in subsequent resolution plan submissions.

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ENDNOTES

- ¹ See FDIC Chairman Jelena McWilliams, “Keynote Remarks,” speech before the 2018 Annual Conference of The Clearing House and Bank Policy Institute (Nov. 28, 2018), *available at* <https://www.fdic.gov/news/speeches/2018/spnov2818.html>.
- ² FDIC Announces Lifting IDI Plan Moratorium (Jan. 19, 2021), *available at* <https://www.fdic.gov/resauthority/idi-statement-01-19-2021.pdf>. Following the moratorium on the filing of resolution plans by IDIs, the FDIC published an advance notice of public rulemaking to seek comments on modifications to the IDI Rule and announced its intention to engage in more targeted engagements and capabilities testing with select firms on an as-needed basis. See Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets, 84 Fed. Reg. 16,620 (Apr. 22, 2019), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-04-22/pdf/2019-08077.pdf>; IDI Plan Statement (May 22, 2020), *available at* <https://www.fdic.gov/resauthority/idi-plan-statement-052220.pdf>.
- ³ Statement on Resolution Plans for Insured Depository Institutions (June 25, 2021), *available at* <https://www.fdic.gov/news/press-releases/2021/pr21058.html> (the “Statement”).
- ⁴ The specified CIDs will be divided into two groups – those that are not subsidiaries of a U.S. global systemically important banking organization (U.S. GSIB) or a category II banking organization, as defined in 12 C.F.R. § 252.5, and all other specified CIDs. See Statement, at 2.
- ⁵ The FDIC indicated that plans will generally be due on the first business day in December of an applicable year. See Statement, at 2.
- ⁶ Filers will be permitted to incorporate information from the specified CID’s parent’s resolution plan filed under Section 165(d) of the Dodd-Frank Act, prior IDI resolution plans filed by the same filer or by an affiliate of the filer, other regulatory filings made by the filer with the FDIC, and other publicly available regulatory filings made by the filer or any of its affiliates with any Federal or state regulator (including information filed or furnished by the parent of the filer to the Securities and Exchange Commission, such as an annual report on Form 10-K). See Statement, at 3-4.
- ⁷ The statement indicates that the FDIC will consider any exemption request for a specified CID’s next resolution plan if it is submitted at least 18 months before that plan is due or no later than two months after the FDIC sends written communication to a specified CID after the conclusion of any engagement, whichever is later. Such an exemption request may include a description of why the information would not be useful or material to the FDIC in planning to resolve the specified CID. See Statement, at 10.

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