

**Davis Polk**

# **FDIC's proposed revamp of the IDI resolution planning rule**

September 5, 2023 | Client Update

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# Key takeaways

01

# Key takeaways

The FDIC has issued an [IDI Resolution Planning Rule Proposal](#) to revamp its **IDI Resolution Planning Rule** that requires insured depository institutions over a certain total assets threshold (**CIDIs**) to submit resolution plans.

- **Lessons learned.** The preamble to the IDI Resolution Planning Rule Proposal and accompanying remarks from FDIC Directors emphasize that many of the proposed changes to the IDI Resolution Planning Rule come from “lessons learned” during failed bank resolutions. The preamble notes that during the spring 2023 banking turmoil, the “FDIC lacked important resolution planning information to facilitate marketing” of the failed CIDIs.
  - The IDI Resolution Planning Rule Proposal would introduce a requirement to provide information about certain key depositors by name and details on sweep deposit arrangements after running into informational hurdles during its recent brush with bank failures.
- **Two categories of filers.** The filing requirements would vary depending on the size of the CIDI. A summary comparison of the filing requirements applicable to the two categories of CIDIs can be found on [slide 21](#).
  - IDIs with total assets of \$100 billion or more (**Group A CIDIs**) would be required to submit a full resolution plan containing all content elements described in the IDI Resolution Planning Rule Proposal.
  - IDIs with total assets of at least \$50 billion and less than \$100 billion (**Group B CIDIs**) would be required to make an informational filing, which Vice Chair Travis Hill criticized as tantamount to a resolution plan requirement. See [slide 22](#).

# Key takeaways

- **Increased content requirements.** The IDI Resolution Planning Rule Proposal would codify elements of existing interpretive guidance, including information about franchise components and key personnel. The IDI Resolution Planning Rule Proposal would also add detail or expand on certain content requirements in the current version of the IDI Resolution Planning Rule or existing guidance, such as requiring additional details on deposit structure and cross-border activities. The overall effect would be to make the IDI Resolution Planning Rule more granular and prescriptive than the current version.
  - A comparison of content requirements under the current IDI Resolution Planning Rule / existing interpretive guidance and the IDI Resolution Planning Rule Proposal can be found on [slides 9 to 17](#).
- **Emphasis on capabilities testing and staff engagement.** The IDI Resolution Planning Rule Proposal aims to clarify the FDIC’s expectation for engagement with CIDs and their capabilities testing requirements. It solidifies the emphasis on these elements in the FDIC’s June 2021 policy statement which clarified and expanded on aspects of the current IDI Resolution Planning Rule (the [June 2021 Statement](#)) and reflects the belief that an iterative and engaged process strengthens CID submissions and the FDIC’s understanding of them. See [slides 25 to 26](#) for more.
  - In a [statement](#) dissenting from the IDI Resolution Planning Rule Proposal, Director Hill suggested that he would support the FDIC continuing “to shift [ ] focus toward firm engagement,” “rather than adding . . . new items to the plan requirements.”

# Key takeaways

- **Burden of informational filings.** While the current IDI Resolution Planning Rule applies to all IDIs with \$50 billion or more in total assets, Group B CIDs have been subject to a moratorium on their resolution plan submissions since 2018. The IDI Resolution Planning Rule Proposal would lift this moratorium, marking a significant shift for Group B CIDs. Under the IDI Resolution Planning Rule Proposal, the FDIC would not require this group to submit full resolution plans, but has indicated the informational filings will be more burdensome on an hourly basis than submissions required under the current IDI Resolution Planning Rule.
- **New credibility standard.** The IDI Resolution Planning Rule Proposal would introduce a new element into the FDIC’s credibility standard designed to evaluate the identified strategy and related requirements of Group A CIDs. See [slide 24](#) for more details. The FDIC believes that the new standard would help to “clarify the objectives and standards of review” under the IDI Resolution Planning Rule and “more clearly set[] forth the expectation with respect to the identified strategy, the supporting information and analysis, and the required capabilities.” Director Hill, however, has described the standard as “speculative” and “subjective.”
  - The FDIC has made it clear, for the first time, that the credibility standard would be enforceable against CIDs. There have been no previous credibility determinations for resolution plans submitted by CIDs. In a dissenting [statement](#), Director McKernan has questioned the FDIC’s authority to do so since the IDI Resolution Planning Rule relies on the FDIC’s general safety and soundness authority.

# Key takeaways

- **Biennial filing requirement.** Under the IDI Resolution Planning Rule Proposal, CIDs would make a submission every two years, instead of the current three-year cycle, with an informational supplement required in the off years. The FDIC would still be able to vary or extend the submission cycle, as under the current IDI Resolution Planning Rule.
  - The proposed cycle requirement is intended to “keep up-to-date dynamic information that would be critical if the institution were to fail,” but would mark a significant increase in CID and FDIC workload, especially when considered together with capabilities testing, firm engagement and the timeframes under the Dodd-Frank 165(d) resolution plan rule jointly administered by the FDIC and Federal Reserve.
  - The FDIC has outlined a proposed transition to manage submissions by CIDs under the IDI Resolution Planning Rule Proposal, including for Group A CIDs that are due to make resolution plan submissions under the current IDI Resolution Planning Rule.
- **Comment period.** The IDI Resolution Planning Rule Proposal is open for public comment until **November 30, 2023**, the same date that comments on the Section 165(d) Rule Guidance Proposals ([Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers](#) and [Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers](#)), [LTD Proposal](#) and [Basel III Proposal](#) are due.
  - Our client update analyzing the Section 165(d) Guidance Proposals can be found [here](#) and our client update on the LTD Proposal can be found [here](#).
  - Our client update on the Basel III Proposal is forthcoming.

# Comparison of content requirements

02

# Changes to content requirements

- The IDI Resolution Planning Rule Proposal would significantly revise the content requirements of the resolution submissions under the IDI Resolution Planning Rule. These changes stem from:
  - Codification of existing guidance;
  - Expansion on or clarification of the requirements set forth in the rule or existing guidance; or
  - Addition of new requirements.
- Most significantly, the IDI Resolution Planning Rule Proposal would change the manner and form by which Group A CIDs identify a resolution strategy and require additional information on key depositors and asset portfolios.
- [Slides 9 to 17](#) provide a comparative view of the key proposed changes to the IDI Resolution Planning Rule, comparing the IDI Resolution Planning Rule Proposal's content requirement to that under the current IDI Resolution Planning Rule or existing guidance.
- Except for changes to certain content requirements that only apply to Group A CIDs—and not Group B CIDs (see [slide 21](#))—the proposed changes to the IDI Resolution Planning Rule would generally apply to both categories of filers.

## Critique

As I read these authorities, the FDIC generally is on solid ground to the extent the proposal would require a covered insured depository institution . . . to submit resolution-related analysis and other information to the FDIC. However, this proposal would go further by requiring CIDs to demonstrate certain resolution-related capabilities. Similarly, the proposal would impose significant restrictions on a group A CID's identified resolution strategy. These proposed requirements and restrictions go far beyond information requirements and could compel changes in the CIDs' businesses. Many of those changes might make good sense as a policy matter, but that is a question distinct from whether the FDIC has the authority to mandate those changes.

- FDIC Director McKernan



# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Identified strategy</b>	<ul style="list-style-type: none"><li>— Requires strategies for the sale or disposition of the deposit franchise, including branches, core business lines (<b>CBLs</b>) and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure, maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution.</li><li>— The June 2021 Statement expands on the types of strategies that the CIDI can consider, such as whole bank P&amp;A or transfer of insured deposits from a bridge bank over time.</li></ul>	<ul style="list-style-type: none"><li>— Would mark a significant shift in the approach to resolution strategies.</li><li>— Would require a Group A CIDI to provide an identified strategy, describing the resolution from the point of failure through the sale or disposition of the franchise in a manner that meets the proposed credibility standard. See <a href="#">slide 24</a>.</li><li>— The preamble states that a Section 165(d) plan using a strategy in which the CIDI is not resolved—i.e., an SPOE strategy—may reasonably be identified as a mitigant to the potential systemic risk of the failure of the CIDI.</li><li>— Would require a bridge bank as the default, though the CIDI would be able to choose another strategy as long as it could justify the alternative approach; the CIDI would not be permitted to assume a sale of assets/liabilities over a closing weekend.<ul style="list-style-type: none"><li>▪ A bridge bank strategy must provide for the establishment and stabilization of a bridge bank and an exit strategy from the bridge bank—that is, asset wind-downs, an exit via restructuring and IPO, or a sale to multiple acquirers.</li></ul></li><li>— Would require a Group A CIDI to support the notion that the identified strategy maximizes value and minimizes losses to the creditors and contains meaningful optionality.</li></ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Failure scenario</b>	<ul style="list-style-type: none"> <li>– Strategies for resolution should take into account that failure of the CIDI may occur under baseline, adverse and severely adverse economic conditions.</li> <li>– FDIC guidance has exempted the CIDI from the requirement to take into account baseline and adverse economic conditions for the resolution plan, though an initial plan can be under a baseline scenario.</li> </ul>	<ul style="list-style-type: none"> <li>– Under the IDI Resolution Planning Rule Proposal, the identified strategy would be based on a failure scenario that has more granular requirements, likely born out of the FDIC’s observations during the spring 2023 banking turmoil, and assumes, among other things that:               <ul style="list-style-type: none"> <li>▪ The CIDI is experiencing material financial distress, including asset base deterioration and depletion of high-quality liquid assets and capital;</li> <li>▪ The macroeconomic conditions are severely adverse; and</li> <li>▪ The CIDI’s U.S. parent is in resolution.</li> </ul> </li> <li>– The FDIC may provide additional or alternative parameters to an individual CIDI or groups of CIDs at its discretion and will “endeavor” to provide a 12-month advance notice.</li> </ul>
<b>Executive summary</b>	<ul style="list-style-type: none"> <li>– Requires the executive summary to describe “key elements” of the CIDI’s resolution plan, as well as any material events that might impact the plan, material changes to the CIDI’s resolution plan and actions taken to improve the effectiveness of the plan.</li> </ul>	<ul style="list-style-type: none"> <li>– Would be more prescriptive and fold in concepts introduced by the IDI Resolution Planning Rule Proposal.</li> <li>– Would include a description of key elements of the identified strategy, an overview of CBLs and franchise components and a description of “material changes” as defined in the IDI Resolution Planning Rule Proposal. See <a href="#">slide 18</a>.               <ul style="list-style-type: none"> <li>– Similar to the current rule, the IDI Resolution Planning Rule Proposal would require a description of actions taken to improve the resolution plan information / processes since the last submission, but would also require a discussion of changes made in response to changes in law, regulation, guidance or FDIC feedback.</li> </ul> </li> </ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Organizational structure; legal entities</b>	<ul style="list-style-type: none"> <li>Requires the CIDI to provide all CIDI, parent company and affiliate legal and functional structures.</li> </ul>	<ul style="list-style-type: none"> <li>Would be more prescriptive than and expand on current requirements.</li> <li>The IDI Resolution Planning Rule Proposal would require description of and/or information about:               <ul style="list-style-type: none"> <li>All material entities (<b>MEs</b>);</li> <li>Domestic or foreign branch organizations, including total deposits of each branch;</li> <li>Certain types of listed regulated subsidiaries, such as registered investment advisors and insurance companies; and</li> <li>All CIDI subsidiaries, offices and agencies with cross-border operations associated with any CBL or franchise component.</li> </ul> </li> </ul>
<b>Material entities</b>	<ul style="list-style-type: none"> <li>Defines an ME as a company that is significant to a critical service or CBL.</li> <li>No requirement to explain methodology for identifying MEs.</li> </ul>	<ul style="list-style-type: none"> <li>Would retain the concept that MEs are significant to critical services or CBLs, but would add that they can be significant to franchise components.</li> <li>Would require the CIDI to describe the methodology for identifying MEs, which must be appropriate to the “nature, size, complexity and scope of the CIDI’s operations.”</li> </ul>
<b>Core business lines</b>	<ul style="list-style-type: none"> <li>Defines CBLs as business lines of the CIDI that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit or franchise value.</li> <li>Requires identification and description of CBLs and mapping of CBLs to MEs.</li> </ul>	<ul style="list-style-type: none"> <li>The definition would be refined to align with business and regulatory reporting so that CBLs are defined as business lines that “are significant to revenue, profit or franchise value.”</li> <li>Would specify that the description of a CBL include information about its assets and revenues and whether the CBL draws value from or relies on the CIDI’s parent company or affiliate or operates across borders.</li> <li>Would expand the mapping requirement to require CBLs to be mapped to franchise components, MEs and/or regulated subsidiaries.</li> </ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Least costly resolution</b>	<ul style="list-style-type: none"> <li>Requires the CIDI to explain how strategies for separation of the CIDI and its subsidiaries from its parent company and the sale or disposition of deposit franchise, CBLs and major assets can be demonstrated to be the “least costly” to the Deposit Insurance Fund of all possible methods for resolving the CIDI.</li> </ul>	<ul style="list-style-type: none"> <li>Would shift the requirement so that the CIDI must only “be able to demonstrate the capabilities necessary to produce valuations needed in assessing the least-cost test,” rather than the test itself. A description of certain underlying information would be required, including:               <ul style="list-style-type: none"> <li>Approaches the CIDI would employ for valuing franchise components and the IDI franchise as a whole; and</li> <li>Valuation analysis based upon the scenario used in development of the identified strategy.</li> </ul> </li> <li>Filers of 165(d) plans relying on an MPOE strategy with an IDI subsidiary would also need to demonstrate in their 165(d) plans how the IDI can be resolved in a manner consistent with the overall objective of the 165(d) plan to mitigate the risk that the firm’s failure would have adverse effects on U.S. financial stability.</li> </ul>
<b>Franchise component</b>	<ul style="list-style-type: none"> <li>The June 2021 Statement defines franchise component as “each major asset category, core business line or other key component of a CIDI’s franchise value.”</li> <li>The CIDI is expected to describe the drivers of value of each franchise component and present an approach to resolution through a sequence and process to sell such franchise component.</li> </ul>	<ul style="list-style-type: none"> <li>Would refine the definition of franchise component to mean “a business segment, regional branch network, major asset or asset pool, or other key component of a CIDI’s franchise that can be separated and sold or divested.”</li> <li>The CIDI would also be required to demonstrate the “capabilities necessary to ensure that franchise components are separable and marketable in resolution.” The requirement would encompass describing the CIDI’s current capabilities and processes to establish a virtual data room and current capabilities and processes to market the franchise components.</li> </ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Asset portfolios</b>	<ul style="list-style-type: none"> <li>No equivalent.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal would introduce a new concept of “material asset portfolio” defined as “a pool or portfolio of assets, including loans, securities or other assets that may be sold in resolution by the [bridge bank] or the receivership and is significant in terms of income or value to a [CBL].”</li> <li>The CIDI would be required:               <ul style="list-style-type: none"> <li>To identify material asset portfolios by size, category and class of assets;</li> <li>Provide a breakdown of assets held by a foreign branch or regulated subsidiary;</li> <li>Describe asset valuation; and</li> <li>Identify impediments to the sale of material asset portfolios and timeline for disposition.</li> </ul> </li> </ul>
<b>Critical services</b>	<ul style="list-style-type: none"> <li>Critical services mean services and operations of the CIDI that are necessary to continue day-to-day operations.</li> <li>Requires the CIDI to identify critical services and third-party providers of critical services and provide a mapping of critical services to MEs and CBLs.</li> <li>The CIDI also needs to describe its strategy for continuing critical services in the event of the CIDI’s failure.</li> </ul>	<ul style="list-style-type: none"> <li>The definition of critical service would stay largely the same, except that:               <ul style="list-style-type: none"> <li>For a Group A CIDI, critical services would include those services that support execution of an identified strategy; and</li> <li>For Group A and Group B CIDs, critical services would include those services that support a parent company’s Section 165(d) plan, if the parent holding company files such a plan.</li> </ul> <p>The proposal would also add a new defined term of “critical service support,” which is “resources necessary to support the provision of critical services.”</p> </li> <li>Would require the CIDI to demonstrate capabilities necessary to ensure continuity of critical services in resolution and expand on and clarify information required under the current rule and related guidance.</li> <li>Would require mapping of critical services to franchise components, in addition to MEs and CBLs, and information about the proposed approach to continuing critical services in the event of failure.</li> </ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Key personnel</b>	<ul style="list-style-type: none"> <li>– The June 2021 Statement requires the CIDI to identify key personnel, including by title, function and employing entity, explain the identification process and include a framework for retaining these personnel.</li> <li>– Key personnel are defined as those personnel with an essential role in support of a CBL, franchise component, or critical service, or having a function, responsibility or knowledge that may be important for the FDIC's resolution of the CIDI.</li> </ul>	<ul style="list-style-type: none"> <li>– Largely retains the key personnel requirements from the June 2021 Statement, including the definition of key personnel, with a couple of additions and tweaks:               <ul style="list-style-type: none"> <li>▪ Requires key personnel to be identified by CBL, as well as title, function and employing entity, and clarifies that key personnel can be employed by the CIDI, a subsidiary, a parent company, an affiliate or a third party.</li> <li>▪ Requires identification of all employee benefit programs, such as health insurance and retirement programs, provided to key personnel.</li> </ul> </li> </ul>
<b>Deposit activities</b>	<ul style="list-style-type: none"> <li>– Requires discussion of the “CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign.”</li> </ul>	<ul style="list-style-type: none"> <li>– Would build on the information related to deposit activities required by the existing IDI Resolution Planning Rule, resulting in a more prescriptive requirement that seeks to understand the CIDI's key depositors.</li> <li>– Would require identification or description of:               <ul style="list-style-type: none"> <li>▪ Overall deposit activities, including insured and uninsured deposits, commercial deposits by business line and unique aspects of deposit base, and mapping of any deposit types/groups to CBLs and franchise components;</li> <li>▪ Key depositors by name;</li> <li>▪ Foreign deposits by jurisdictions and other criteria;</li> <li>▪ Deposit sweep arrangements with a parent company, affiliates or third parties, as well as related contracts and reporting capabilities; and</li> <li>▪ Omnibus, sweep and pass-through accounts by certain criteria.</li> </ul> </li> </ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Payment, clearing and settlement (PCS)</b>	<ul style="list-style-type: none"> <li>— Requires identification of each of the PCS systems of which the CIDI, directly or indirectly, is a member.</li> <li>— Requires mapping membership of each system to the CIDI's legal entities and CBLs.</li> </ul>	<ul style="list-style-type: none"> <li>— Would require identification of PCS systems that are critical services or critical service supports and would require mapping to be extended to franchise components, as well as legal entities and CBLs.</li> <li>— Would also require a description of any services provided by the CIDI as an intermediary, agent or correspondent bank with respect to any PCS services that are material to revenue or value.</li> </ul>
<b>Economic effect of resolution</b>	<ul style="list-style-type: none"> <li>— No equivalent.</li> </ul>	<ul style="list-style-type: none"> <li>— Would require the CIDI to identify any activities or business lines of the CIDI that provide a material service or function to a U.S. geographic region, a business sector or product line or other financial institutions.</li> <li>— The CIDI would need to describe potential disruptive impacts of the termination of such activity or business line to the geographic region, sector, product line or institution.</li> </ul>
<b>Non-deposit claims</b>	<ul style="list-style-type: none"> <li>— The June 2021 Statement requires submissions to “describe the current capabilities of the CIDI’s processes and systems to collect, maintain, and report its . . . Non-deposit claimants . . . including long- and short-term bond, commercial paper, and subordinated debt issuances.”</li> </ul>	<ul style="list-style-type: none"> <li>— Would codify and build on the June 2021 Statement to “support management of non-deposit claims in resolution.”</li> <li>— Would require the CIDI to describe systems and processes used to identify unsecured creditors that are not depositors and unsecured creditors of each ME that is a subsidiary of the CIDI and identification capabilities.</li> <li>— Would also require a description of related records and recordkeeping practices.</li> </ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Cross-border elements</b>	<ul style="list-style-type: none"> <li>— Requires description of material components of the CIDI's structure located outside of the United States, including foreign branches, subsidiaries and offices.</li> <li>— Requires discussion of the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures and mapping to legal entities and CBLs.</li> </ul>	<ul style="list-style-type: none"> <li>— Cross-border elements would be addressed in a number of places throughout a resolution submission, such as requiring identification of foreign deposits or non-U.S. critical services.</li> <li>— There would also be a discrete and focused requirement that would provide context to that other information by requiring that a resolution submission describe components of cross-border activities of the parent company or affiliates that contribute to value, revenues or operations of the CIDI.</li> <li>— The CIDI would also have to identify regulatory or other impediments to divestiture, transfer or continuation of foreign branches, subsidiaries or offices during resolution.</li> </ul>
<b>Management information system (MIS); software licenses; IP</b>	<ul style="list-style-type: none"> <li>— Requires identification and description of key management systems and applications, including certain information such as the legal owner or licensor of each.</li> <li>— The CIDI must also describe the capabilities of the CIDI's processes to generate data relating to such systems underlying the plan.</li> </ul>	<ul style="list-style-type: none"> <li>— Would largely retain the MIS requirement under the current IDI Resolution Planning Rule with some additions / tweaks:               <ul style="list-style-type: none"> <li>▪ Would require the CIDI to identify the CBL relying on the MIS and personnel required to operate it; and</li> <li>▪ Would also require the CIDI to identify key systems or applications that the CIDI or its subsidiaries do not own or license directly and discuss how access can be maintained during resolution.</li> </ul> </li> </ul>
<b>Digital services; electronic platforms</b>	<ul style="list-style-type: none"> <li>— No equivalent.</li> </ul>	<ul style="list-style-type: none"> <li>— This new requirement stems from the proliferation of these types of services/platforms since 2012, which may add franchise value.</li> <li>— Would require a description of all digital services and electronic platforms offered to depositors to support banking transactions for customers and identification of the entity that maintains them.</li> <li>— The CIDI would need to discuss how these services/platforms are significant to operations or customer relationships.</li> </ul>

# Comparison of key content requirements

Content Req't	Current Rule/Guidance	IDI Resolution Planning Rule Proposal
<b>Communications</b>	<ul style="list-style-type: none"> <li>— The June 2021 Statement requires the CIDI to describe:               <ul style="list-style-type: none"> <li>▪ The CIDI's current capabilities that could be used to communicate with key stakeholders during a crisis; and</li> <li>▪ Categories of stakeholders, those responsible for communicating with such stakeholders and the messaging channels for doing so.</li> </ul> </li> <li>— The guidance emphasizes how important it is for the FDIC to understand the CIDI's communication capabilities to reduce adverse market reaction and address staff and other stakeholder concerns.</li> </ul>	<ul style="list-style-type: none"> <li>— Would codify and build on guidance, making the communication requirement more prescriptive. The IDI Resolution Planning Rule Proposal would also require a description of:               <ul style="list-style-type: none"> <li>▪ Logistics and limitations on the use of various communication channels;</li> <li>▪ Procedures for generating contact lists and estimated timing; and</li> <li>▪ Procedures for coordinating communications across key stakeholders.</li> </ul> </li> </ul>
<b>Corporate governance</b>	<ul style="list-style-type: none"> <li>— Requires description of how resolution planning is integrated into the corporate governance structure, as well as policies, procedures and internal controls governing the preparation and approval of the submission.</li> <li>— Requires identification of certain senior management officials responsible for the resolution submission.</li> </ul>	<ul style="list-style-type: none"> <li>— Other than technical, nonsubstantive revisions to the rule text, the corporate governance requirement would stay the same.</li> </ul>

# Requirements for interim filings and notices

**Interim supplement.** The IDI Resolution Planning Rule Proposal would introduce an entirely new requirement that CIDs make an interim supplement submission one year after their most recent resolution submission, unless otherwise notified by the FDIC.

- Practically speaking, this requirement would mean that each CID would make some form of submission to the FDIC every year—whether a full resolution plan / informational filing or interim supplement. See [slide 28](#) for a visual timeline of the submission cycle.
- The content requirements of the interim supplement, which the FDIC intends to be limited to the “most essential data elements that can be efficiently updated year over year,” are reflected in the chart on the following slide. [See slide 19](#).
  - As shown in this chart, some content requirements would need to be fully updated and resubmitted in the interim supplement, while others would be subject to a limited update of a subset of key information.

**Notice of material change.** The IDI Resolution Planning Rule Proposal would clarify the requirement under the current IDI Resolution Planning Rule that the CID give notice within 45 days of an event that materially affects the resolution plan by providing a definition for a “material change” that would trigger this notice requirement. This definition of material change is much broader than how the term is currently interpreted.

- A “material change” would include 1) a change to the CID’s organizational structure, core business, size or complexity that may have a significant impact on the identified strategy; 2) a change in the CID’s identification of MEs, critical services or franchise components; or 3) a change in the CID’s capabilities.

# Content requirements for the interim supplement

Content requirement	Full update required?	Limited update of key information?
Org. structure; legal entities; CBLs; branches	X	
Deposit activities		X
Critical services		X
Key personnel		X
Franchise components		X
Asset portfolios		X
Off-balance sheet exposures	X	
Unconsolidated balance sheet	X	
PCS systems		X
Capital structure; funding sources		X
Cross-border elements	X	
MIS; licenses; IP		X

\* This chart is based on Attachment 4 from the [Memorandum](#) to the FDIC's Board of Directors to the IDI Resolution Planning Rule Proposal.

# Considerations for Group B CIDs

03

# Specific requirements for Group B CIDs

According to the FDIC, **15 IDIs** would qualify as **Group B CIDs**—and **31 IDIs** would qualify as **Group A CIDs**.

- Many of the Group B CIDs will never have made a resolution submission, or if they have done so, it will not have been for at least five years.
- The requirement to make a resolution submission—even in the form of an “informational filing”—is a significant new requirement for Group B CIDs.

**Content requirements for Group B CIDs.** The content requirements for Group B CIDs are largely the same as those for Group A CIDs, except that Group B CIDs would not be required to address the following content requirements in their informational filings: **Identified strategy**; **Failure scenario**; **Executive summary**; and **Least costly resolution**.

- These four content requirements would only apply to Group A CIDs.
- Group B CIDs would be subject to the requirement to make interim supplement submissions.

**Assessment of informational filings made by Group B CIDs.** The FDIC’s review of informational filings would be largely similar to its review of resolution plan submissions made by Group A CIDs. See [slides 23 to 28](#) for more.

- Group B CIDs would similarly be subject to FDIC engagement and capabilities testing. The FDIC has stated that engagement would be a more important tool for the FDIC’s evaluation of informational filings for Group B CIDs than for its review of full resolution plans submitted by Group A CIDs.

# Burden of informational filings

As discussed in Director Hill's statement, the economic analysis in the IDI Resolution Planning Rule Proposal estimates that the burden associated with informational filings for Group B CIDs would be **67 hours** per billion dollars in assets and **72 hours** per billion dollars in assets for Group A CIDs.

- This would make the “informational filings” more burdensome than the resolution plans filed under the current IDI Resolution Planning Rule and related guidance.
- Under the current IDI Resolution Planning Rule, the economic analysis estimates the burdens for GSIBs to be 57.6 hours per billion dollars in assets and 48 hours per billion dollars in assets for non-GSIBs.

## Critique

I think it is disingenuous to call the submissions that would be required of firms with between \$50 billion and \$100 billion in assets “informational filings,” rather than resolution plans . . . I am open to the possibility that it would be worthwhile to receive some sort of periodic resolution-related information from a class of banks with less than \$100 billion in assets, but I think we should consider whether further streamlining is warranted, and if not, we at least should not pretend these are something other than resolution plans.

- FDIC Director Hill



# FDIC assessment of resolution submissions

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# Enhanced credibility standard

The IDI Resolution Planning Rule Proposal sets out a **two-pronged approach to the credibility standard** under which the FDIC would review resolution submissions. The FDIC may, at its sole discretion, determine that the resolution submission is not credible if:

**Prong 1:** The 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 risk of adverse effects on U.S. economic conditions or financial stability;

**OR**

**Prong 2:** The information and analysis in the resolution submission is not supported with observable and verifiable capabilities and data and reasonable projections or the CIDI fails to comply in any material respect with the [content requirements] for the resolution submission or interim supplement.

← **Only** applies to Group A CIDs\*

← Applies to **both** categories of CIDs

## Critique

I also dislike the proposed “enhanced credibility” standard. The proposed standard – particularly the first prong – is subjective and speculative, and puts the FDIC Board in the position of making definitive predictions related to highly unpredictable theoretical bank failures. In the [June 2021 Statement], the FDIC moved away from credibility determinations, a move that I continue to support. I think the FDIC should provide specific feedback to banks on particular issues as they arise, similar to the existing supervisory process, rather than putting every plan in its entirety up for a thumbs-up thumbs-down vote.

- FDIC Director Hill



\*The scope of application is because only Group A CIDs would have to include an identified strategy in their resolution submissions.

# Engagement and capabilities testing

The IDI Resolution Planning Rule Proposal indicates that, going forward, the FDIC would emphasize engagement with CIDs and conduct capabilities testing. The FDIC highlights that, in certain cases, a credibility finding would not be possible until the conclusion of engagement and capabilities testing with CIDs.

- The FDIC has significant discretion in whether / how to conduct engagement or capabilities testing and would have a broader mandate to access information or personnel than under the current IDI Resolution Planning Rule.
- In addition, it would be at the FDIC's discretion as to whether to send closeout / feedback letters.

## Engagement.

- **Requirement.** “Each CID must provide the FDIC such information and access to such personnel of the CID as the FDIC in its discretion determines is relevant to any of the provisions of [the IDI Resolution Planning Rule.]”
  - The FDIC may require CIDs to provide information or data to support the content requirements, other information related to Group A CIDs' identified strategies, or, for either group of CIDs, other resolution options being considered by the FDIC. Personnel made available must have sufficient expertise and responsibility to address the informational and data requirements of the engagement.
- **Projected frequency.**
  - **For Group A CIDs:** The FDIC would engage with Group A CIDs “on a selective basis” but does not expect to do so more than once in a two-year cycle.
  - **For Group B CIDs:** The FDIC would engage with every Group B CID in each two-year cycle because Group B CIDs would not be required to include an identified strategy in their informational filings. Engagement would therefore be a “key component of its resolution planning for such firms.”

# Engagement and capabilities testing

## Capabilities testing

- **Requirement.** “At the discretion of the FDIC, the FDIC may require any CIDI to demonstrate the CIDI’s capabilities described, or required to be described, in the resolution submission, including the ability to provide the information, data and analysis underlying the resolution submission.”
  - The CIDs must perform such capabilities testing promptly, and provide the results in a time frame and format acceptable to the FDIC.
  - An engagement may include capabilities testing.
- **Projected frequency.**
  - **For both Group A and Group B CIDs:** The FDIC would conduct capabilities testing no more than once per two-year cycle.

# Enforcement

The IDI Resolution Planning Rule Proposal would add a new provision to the IDI Resolution Planning Rule granting enforcement authority for any potential violation of the requirements of the rule under section 8 of the Federal Deposit Insurance Act.

- **Codification of existing view.** The IDI Resolution Planning Rule Proposal states that this provision would be nothing more than a codification of the FDIC’s existing view that it has enforcement authority, rather than a substantive change to the IDI Resolution Planning Rule. The FDIC’s position was challenged by Director McKernan.
- **Grounds for an enforcement action.** Under the IDI Resolution Planning Rule Proposal, an enforcement action against the CIDI could be brought in the event that:
  - A CIDI’s resolution submission was found to be not credible and the CIDI failed to submit the revised resolution submission within the required time period or the revised resolution submission failed to adequately address the identified weaknesses.
    - As noted in [slide 5](#), there has never previously been a public credibility determination on a resolution plan submitted by CIDs.
  - The CIDI failed to comply with the requirements of engagement and capabilities testing.

## Critique

The apparent need for a legislative grant of authority is underscored by the conflict between the different enforcement schemes contemplated by this proposal and the Dodd-Frank Act. Notably, the FDIC’s current resolution planning rule does not lay out an explicit enforcement scheme. The proposal now would add a new paragraph (k) to “reiterate” [the FDIC’s] view on enforcement. Under that view, if the FDIC determines that a resolution plan is not credible—for example because it “is not supported with observable and verifiable capabilities”—the FDIC could impose asset growth restrictions or require divestitures, among other remedies. In contrast, the Dodd-Frank Act enforcement scheme is considerably more tailored.

- FDIC Director McKernan



# Submission cycle visual

## Year 1

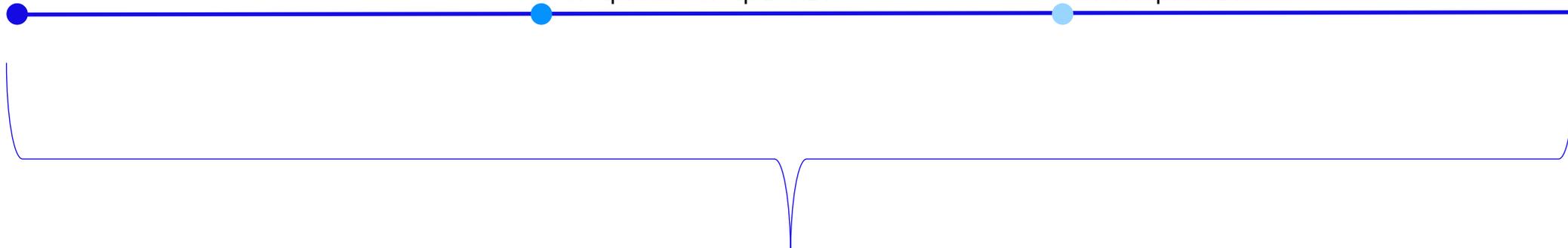
- An initial set of Group A CIDs make full resolution plan submissions
- Group B CIDs submit informational filings

## Year 2

- Initial set of Group A and Group B CIDI filers submit interim supplements
- Second set of Group A CIDs submit full resolution plan submissions
- FDIC aims to provide feedback to initial set of Group A and Group B CIDs

## Year 3

- Initial set of Group A and Group B CIDI filers make resolution submission
- Second set of Group A CIDs submit interim supplements
- FDIC aims to provide feedback to second set of Group A CIDs



Possible engagement and capabilities testing for initial set of Group A and Group B CIDs

# Glossary

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# Glossary

Term	Definition
<b>Section 165(d) Guidance Proposals</b>	FRB and FDIC, Publication for Proposed Guidance for Dodd-Frank Act Resolution Plan Submissions of Triennial Full Filers (Aug. 29, 2023). Consists of two proposals: (1) Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers and (2) Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers.
<b>IDI Resolution Planning Rule Proposal</b>	FDIC, 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 (Aug. 29, 2023).
<b>LTD Proposal</b>	FRB, FDIC, and OCC, Notice of Proposed Rulemaking on Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions (Aug. 29, 2023).
<b>Basel III Proposal</b>	FRB, FDIC, and OCC, Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity (July 27, 2023).
<b>CBLs</b>	Core business lines.
<b>CIDIs</b>	Insured depository institutions ( <b>IDIs</b> ) with over \$50 billion in total assets.
<b>GSIB</b>	Global systemically important bank.
<b>IDI Resolution Planning Rule</b>	Regulation regarding resolution plans required for insured depository institutions with \$50 billion or more in total assets; codified at 12 C.F.R. § 360.10.
<b>June 2021 Statement</b>	FDIC, Statement on Resolution Plans for Insured Depository Institutions (June 25, 2021).
<b>MEs</b>	Material entities.
<b>MIS</b>	Management information system.
<b>MPOE</b>	Resolution strategy in which multiple resolution proceedings are initiated by multiple authorities at the level of the parent company and at the level of the operating subsidiaries.
<b>PCS</b>	Payment, clearing and settlement.
<b>SPOE</b>	Resolution strategy in which only parent company is placed into receivership and its assets, principally investments in its subsidiaries, are passed into a newly created bridge holding company.

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