FEDI

12 CFR Part 360

RIN 3064-AF90

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

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The FDIC is seeking comment on a proposal to revise its current rule that requires the submission of resolution plans by insured depository institutions (IDIs) with $50 billion or more in total assets. The proposal would modify the current rule by revising the requirements regarding the content and timing of resolution submissions as well as interim supplements to those submissions provided to the FDIC by IDIs with $50 billion or more in total assets in order to support the FDIC's resolution readiness in the event of material distress and failure of these large IDIs. IDIs with $100 billion or more in total assets will submit full resolution plans, while IDIs with total assets between $50 and $100 billion will submit informational filings. The proposed rule would also enhance how the credibility of resolution submissions will be assessed, expand expectations regarding engagement and capabilities testing, and explain expectations regarding the FDIC's review and enforcement of IDIs' compliance with the rule.

DATES: Comments must be received by November 30, 2023.

ADDRESSES: You may submit comments on the notice of proposed rulemaking, identified by RIN 3064-AF90, by any of the following methods:

- *Agency Website*: *https://www.fdic.gov/resources/regulations/federal-register-publications/. Follow instructions for submitting comments on the FDIC's website.*
- *Email*: *comments@fdic.gov*. Include "RIN 3064-AF90" in the subject line of the message.
- *Mail*: James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064-AF90), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received, including any personal information provided, will be posted without change to https://www.fdic.gov/resources/regulations/federal-register-publications/. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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I. Introduction/Policy Objective

The FDIC's regulation "Resolution plans required for insured depository institutions with $50 billion or more in total assets[1]," issued in 2012[2] (current

[1] The proposed rule would determine total assets for the purpose of identifying CIDIs, including group A CIDIs and group B CIDIs, as described in proposed § 360.10(b), which adopts the approach used in the current rule. The phrase "total assets" refers to the total assets of the IDI as described in that section.

[2] 12 CFR 360.10. The rule was published as an interim final rule with an effective date of January 1, 2012, 76 FR 2011 (Sept 11, 2011); the final rule was effective April 1, 2012, 77 FR 3075 (January 23, 2012).

rule), requires insured depository institutions (IDIs) with $50 billion or more in total assets (covered IDIs or CIDIs) to submit resolution plans periodically. This resolution plan requirement was established to facilitate the FDIC's readiness to resolve a CIDI under the Federal Deposit Insurance Act of 1950, as amended (FDI Act) in the event of its insolvency.

This proposal builds on the FDIC's more than a decade-long experience implementing the current rule, providing guidance and feedback to CIDIs, and leveraging the content of submissions for the development of resolution strategies by the FDIC. Through this process, the FDIC has gained a better understanding of the challenges of resolving CIDIs and the importance of resolution plans and other related submissions to facilitate the FDIC's readiness in the event of a failure of one of these CIDIs. Part of the challenge arises from the wide range of business models and structures among CIDIs. While some of these CIDIs are engaged largely in traditional banking activities, with nearly all assets and activities conducted within the CIDI or its subsidiaries (the bank chain), others conduct significant non-banking activities. Many of the CIDIs have a broker-dealer subsidiary or affiliate that provides services to bank customers. The CIDIs subject to the current rule also include banks primarily engaged in a particular business segment, such as credit card services, as well as U.S. IDIs that are part of large foreign banking organizations. There is no one-size-fits-all resolution approach for these institutions; rather, the FDIC must be prepared to execute a range of resolution options, recognizing the trade-offs among those options. The FDIC's development of resolution strategies—and its assessment of the options and trade-offs that inform them—benefit from the CIDI's knowledge of its own firm, an understanding of the CIDI's relevant capabilities, and an awareness of the impediments to executing an orderly resolution of the CIDI.

Across the different CIDI business models and structures, there are a variety of factors that increase the challenges and complexity of resolution in the event of the failure of these large banks. These factors include deposit profile as well as size and organizational complexity.

In general, the CIDIs tend to have a more significant proportion of uninsured deposits as compared to smaller banks. In the aggregate, more than 42 percent of deposits of IDIs over $50 billion in total assets are uninsured. High ratios of uninsured deposits increase resolution challenges, as was recently demonstrated in the failures of three large banks in the spring of 2023; Silicon Valley Bank (SVB), Signature Bank and First Republic Bank (First Republic). All were over $100 billion in size,[3] and at the time shortly before their distress and failure, the vast majority of their deposits was uninsured.[4]

The failures of SVB and Signature Bank on March 10 and 12, 2023, respectively were primarily caused by illiquidity precipitated by contagion effects, especially those resulting from withdrawals by uninsured depositors at unprecedented speed and volumes. The withdrawals were prompted in part by news of stress amplified through social media and other channels. As a result, the FDIC's resolution preparation runway and ability to market pre-failure were severely compressed. For both IDIs, the FDIC established a bridge depository institution (BDI) to continue bank operations during a brief marketing period. Less than two months following those failures, First Republic was placed in receivership and sold; although First Republic had a similar profile of largely

[3] The failure of Washington Mutual Bank in 2008 remains the largest bank failure in U.S. history. At the time of its failure, its assets totaled approximately $300 billion. First Republic, SVB, and Signature Bank, respectively, were the second, third, and fourth largest bank failures in history.
[4] As of December 31, 2022, SVB reported 88% of its deposits were uninsured; its total assets were approximately $209 billion. Signature Bank reported 90% uninsured deposits and total assets of approximately $110 billion. First Republic reported 68% uninsured deposits and total assets of approximately $213 billion.

uninsured deposits, it was able to manage its liquidity for several weeks prior to failure. With additional time to market First Republic pre-failure, the FDIC was able to transfer all of the assets and liabilities to a single acquirer without the necessity of establishing a BDI, although the FDIC stood ready to exercise the authority to form a BDI if needed.

In addition, the FDIC lacked important resolution planning information to facilitate marketing the IDIs. While SVB and First Republic had filed their first resolution plans just a few months before their failures, the FDIC had neither completed review nor had the opportunity to provide feedback on those plans. In general, the FDIC has found that development of fulsome resolution plans is an iterative process, building on feedback. Signature Bank had not yet filed any resolution plan, as its first submission was due in June 2023. Thorough and timely resolution planning information would have supported the FDIC's ability to prepare to more effectively and efficiently market the failed IDIs, including providing options for franchise components and asset portfolios that could have been offered in useful combinations and alternatives.

In addition to increasing the risk of a precipitous liquidity failure, a high level of uninsured deposits also increases resolution complexity in other ways. Under the FDI Act, any transaction using FDIC assistance – including where assistance is provided in connection with the establishment of a BDI – must meet the least-cost test, absent a systemic risk exception. Under the least-cost test, the cost to the deposit insurance fund (DIF) as a result of any sale needs to be less than the cost to the DIF from simply liquidating the bank's assets and paying off insured deposits. Where the proportion of insured deposits is very low, potential costs to the DIF of paying out insured depositors and liquidating is low relative to any other option in resolution. In the case of SVB and Signature Bank,

a systemic risk exception to the least-cost test was necessary to protect uninsured depositors to maintain franchise value and mitigate adverse effects on economic conditions or financial stability, including the risk of contagion to other IDIs.

Size of an IDI also can significantly impact the resolution options available to the FDIC under the FDI Act, as well as provide a marker for other resolution challenges, such as organizational complexity and higher levels of uninsured deposits. In particular, as IDIs increase in size, the likelihood of a timely sale to a single acquirer diminishes. Currently, there are 45 IDIs with at least $50 billion in total assets and 31 over $100 billion. As a group, these CIDIs represent approximately $13.8 trillion in total deposits. While a closing weekend sale may be an option in some cases, its availability cannot be assumed in view of the size, complexity, and potential speed of failure of a CIDI. This is particularly true for the largest CIDIs with $100 billion or more in total assets because the pool of potential acquirers for these institutions is extremely limited, and the complexity of any possible transaction is increased. While there is a larger pool of possible acquiring institutions for CIDIs in the $50 to $100 billion total asset range, some of these institutions engage in highly complex activities and pose similar levels of operational complexity as those over $100 billion in total assets. As such, these activities must be identified and considered when contemplating resolution strategies.

Thus, this proposal addresses two distinct groups of CIDIs based on size, with differing corresponding obligations for each group under the proposed rule.

The first group comprises those IDIs with $100 billion or more in total assets (group A CIDIs). The proposed rule would require group A CIDIs to submit full resolution plans containing an identified strategy appropriate to the CIDI for

its orderly and efficient resolution, as well as providing all other content elements described in the proposed rule. The second group comprises those IDIs with at least $50 billion but less than $100 billion in total assets (group B CIDIs). The proposed rule would require resolution submissions from group B CIDIs in the form of an informational filing. The informational filing would not require development of an identified strategy for resolution nor the demonstration of capabilities necessary to produce valuations needed in assessing the least-cost test. All CIDIs would be required to participate in engagement and capabilities testing regarding matters related to their resolution submissions.

Based upon these considerations, and the FDIC's experience in planning for and executing bank resolutions since the adoption of the current rule, the FDIC is proposing changes intended to make the resolution submissions more useful and appropriately focused on the resolution challenges presented by both group A CIDIs and group B CIDIs.

Specifically, this proposal would:

- Clarify and enhance resolution submission requirements applicable to IDIs with $50 billion or more in total assets, including resolution plans submitted by group A CIDIs and informational filings submitted by group B CIDIs;
- Require each group A CIDI to provide an identified strategy for resolution that ensures timely access to insured deposits, maximizes value from the sale or disposition of assets, minimizes any losses realized by creditors of the group A CIDI in resolution, and addresses potential risks of adverse effects on U.S. economic conditions or financial stability;
- Clarify requirements with respect to the assumptions for the failure scenario used by group A CIDIs in the resolution plan submission and

reserve the ability of the FDIC to provide additional parameters for the failure scenario for all group A CIDIs or specific individual group A CIDIs in future plan submission cycles;

- Strengthen resolution submission content elements and associated requirements regarding capabilities to support optionality available to the FDIC and ensure that the FDIC's development of resolution strategies reflects considerations related to the characteristics of the individual CIDI and potential challenges that could be faced in resolution;
- Refine the requirements for group A CIDIs with respect to least-cost analysis and focus on ensuring that the FDIC has the building blocks and capabilities it needs to undertake the least-cost test in resolution in the event of failure of a group A CIDI;
- Adjust the frequency of resolution submissions to accommodate a two-year cycle that includes engagement and capabilities testing as well as periodic interim supplements containing specified resolution submission content items;
- Establish an enhanced credibility standard for resolution submissions and clarify the process for review and feedback to identify and address weaknesses in resolution submissions and enforce the rule;
- Establish a requirement for informational filings to be submitted by group B CIDIs that is focused on information most important and appropriate for resolution of those CIDIs, and establish a credibility standard appropriate to the informational filings; and
- Codify certain aspects of guidance and feedback previously issued to IDIs subject to the current rule.

In finalizing this proposal, the FDIC proposes to supersede all prior

guidance and feedback related to the current rule.

The proposed rule retains the approach of the current rule in requiring each group A CIDI to develop a strategy for resolution that is appropriate for its size, complexity, and risk profile. However, the FDIC is mindful that the scenario for failure of a large, complex IDI cannot be predicted and could occur across a wide range of circumstances, both idiosyncratic to the institution and with respect to the greater economy. The FDIC will need to determine the strategy most appropriate to the scenario at the time, which may or may not be the strategy described in the group A CIDI's resolution plan.

While approximately 95 percent of the resolutions conducted by the FDIC since 2007 involved the sale of the IDI's franchise and assets to an open institution, the option of a transaction with a single acquirer where nearly all of the liabilities of the failed IDI are assumed that can close at the time of failure cannot be assumed to always be available to the FDIC. In particular, for the group A CIDIs under the proposed rule, the likelihood of a closing weekend sale is diminished because of the potential for a rapid liquidity failure, the limited pool of possible acquirers, and the complexity of such a transaction. Thus, while a transaction with a single acquirer over closing weekend poses the least execution risk for the FDIC, and is often the least disruptive and most efficient, it may not be available. In that case, the FDIC would likely consider an approach that relies on the establishment of a limited-duration BDI, pursuant to a charter granted by the Office of the Comptroller of the Currency (OCC), that can continue the operations of the group A CIDI while it is being restructured, sold, or otherwise returned to private ownership in whole or in parts, or wound down in an orderly fashion. Accordingly, the group A CIDI's identified strategy would need to provide for the establishment and stabilization of a BDI and an exit in which the

IDI is sold to one or more acquirers. This approach provides considerable useful optionality to the FDIC in preparing for a resolution across a wide range of possible failure scenarios. As noted above, the FDIC did not have sufficient time to widely market SVB and Signature Bank prior to their failure. In order to provide time for bidders to conduct appropriate due diligence, the FDIC established BDIs for both banks, and provided flexible bidding options with respect to businesses and assets acquired. The rapid failure and lack of advanced resolution planning information created challenges in establishing optionality with respect to the components offered in the bidding framework. This resulted in a broad range of bidding structures that added challenge and complexity to evaluating bids and combinations of bids.

Although the FDIC believes that the proposed requirement to develop a scenario using a BDI will enable the FDIC to adopt a strategic approach with useful optionality to support resolution in most cases, the FDIC is aware that for some group A CIDIs, the structure and profile of the institution may suggest that another resolution strategy is better suited to the goals described in the proposed rule. In such a case, the group A CIDI may use a different identified strategy that best meets the goals established in the proposed rule, such as a payout and liquidation of the bank, or a BDI to a different exit option. The proposed rule would not, however, permit the CIDI's identified strategy to be simply a sale of substantially all assets and liabilities over closing weekend. As noted, the FDIC cannot rely upon the availability of that strategy for group A CIDIs. In addition, its use as an identified strategy would provide less benefit to the FDIC in terms of information upon which to build optionality, as compared to a BDI strategy or liquidation. Regardless of the identified strategy used, the proposed rule would seek information and analysis that would inform the decisions that would be

made by the FDIC at the time of an actual failure, and development of the strategic approaches appropriate to the actual scenario. The FDIC's goals in resolution are unchanged from those expressed in the current rule, and the proposed rule would seek to embed them more explicitly in an enhanced credibility standard and reflect them more fully in the requirements for resolution submission content. In order to meet the goals of an orderly resolution that is least-costly to the DIF, protects depositors, and maximizes return, the FDIC must have an understanding of the obstacles to an individual IDI's resolution – and potential mitigants to those obstacles – including the impact of separation of the IDI from its parent company and affiliates and the impact on the business of the IDI and the continuity of its critical services. Because the use of a BDI may be a likely approach in many scenarios, an important focus of the proposed rule is the information, analysis, and capabilities necessary to establish and stabilize a BDI, including valuation information and capabilities that would support the FDIC's least-cost test analysis in evaluating a BDI strategy against other options.

The proposed rule requires a more limited informational filing from group B CIDIs, and does not require group B CIDIs to develop a resolution strategy or submit certain other content elements. The FDIC believes that the approach taken for group B CIDI requirements appropriately recognizes the additional complexity and greater resolution challenges applicable to the group A CIDIs. The threshold of $100 billion in total assets – which is also used in the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (Dodd-Frank Act)[5] and other rulemakings as a basis for assessing a banking

[5] *See* 12 U.S.C. 5365(a)(2)(C). The threshold for enhanced prudential standards under that provision was established through passage of the Economic Growth, Regulatory Relief, and Consumer Protection
Act in 2018.

organization's financial stability and safety and soundness risks[6] – is an appropriate threshold to apply to distinguish resolution submission requirements for group A and group B CIDIs.

Finally, the proposed rule would establish an expectation of complete resolution submissions by the CIDIs biennially. This biennial submission cycle is intended to balance the need for up-to-date information the time that it takes for CIDIs to prepare a complete submission, and to allow for thorough plan review, engagement and capabilities testing to supplement that review. In order to facilitate the FDIC's planning and readiness, CIDIs would be required to provide current information in non-submission years through an interim supplement that would include limited specified information that would be provided in years where a complete submission is not required.

II. Background

The current rule was proposed in 2010 and became effective in 2012;[7] it has not been amended to date. It requires IDIs with $50 billion or more in total assets to periodically submit resolution plans that should enable the FDIC to resolve the CIDI in the event of its insolvency under the FDI Act. Since issuing the current rule, the FDIC and many CIDIs have been through multiple resolution plan submission cycles. As a result of this experience, the FDIC has identified those aspects of the resolution planning process that are most valuable and those that could be clarified or enhanced to ensure that the CIDIs' submissions and participation better support the rule's objectives.

In 2014, the FDIC provided further clarification, guidance, and direction for

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[6] *See, e.g.*, 84 FR 59230 (Nov. 1, 2019) (codified at 12 CFR parts 3, 50, 217, 249, 324, & 329).
[7] 77 FR 3075 (Jan. 23, 2012) (Final Rule); 76 FR 58379 (Sep. 21, 2011) (Interim Final Rule); 75 FR 27464 (May 17, 2010) (Proposed Rule). In 2014, the FDIC issued guidance for CIDIs' resolution plans. Guidance for Covered Insured Depository Institution Resolution Plan Submissions (2014), https://www.fdic.gov/news/news/press/2014/pr14109a.pdf.

the preparation of subsequent CIDI resolution plans with a focus on the failure scenario, resolution strategies, least-cost analysis, and identified obstacles to be discussed in the resolution plan.[8] In addition, following each resolution plan submission cycle, the FDIC issued feedback letters to CIDIs with information for the subsequent plan submission.

After several plan submission cycles, in 2018 the FDIC announced a moratorium (moratorium) on the rule's requirements for all institutions pending completion of a new rulemaking.[9] At the time the moratorium was adopted, the FDIC also published an advance notice of proposed rulemaking (ANPR),[10] which requested comment on how to tailor and improve the current rule, including how to reduce the burden associated with the least-cost test analysis and whether requirements should be tiered based on size or complexity factors of cohorts of CIDIs. The ANPR also requested comment on potential enhancement of engagement and capabilities testing. At that time, the FDIC extended the due date for future plan submissions pending completion of the rulemaking process.

Following the issuance of the ANPR, the FDIC continued to further develop its thinking regarding resolution planning for large IDIs and how to maximize the FDIC's resolution readiness. In 2020-2021, the FDIC undertook targeted engagement with select CIDIs on their 2018 plan submissions, a step consistent with the enhanced emphasis on engagement and capabilities testing envisioned under the ANPR.

In January 2021, the FDIC Board took action to lift the moratorium on the

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[8] *See* FDIC Issues Guidance for the Resolution Plans of Large Banks (Dec. 17, 2014), https://archive.fdic.gov/view/fdic/4821.

[9] *See* 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.

[10] *See* FDIC Seeks Comment on New Approaches to Insured Depository Institution Resolution Planning (April 16, 2019), https://www.fdic.gov/news/press-releases/2019/pr19034.html.

resolution plan requirement for CIDIs with $100 billion or more in assets[11] and, in June 2021, the FDIC issued a policy statement (Statement) to describe how it planned to implement going forward certain aspects of the current rule with respect to those CIDIs. All prior guidance and feedback was superseded by this Statement.[12] For CIDIs with total assets of at least $50 billion and less than $100 billion, the moratorium on submission of resolution plans remained in effect. CIDIs with $100 billion or more in total assets are submitting resolution plans in accordance with a schedule established by the FDIC from December 1, 2022, through December 1, 2023. Consistent with the Statement, each of these CIDIs received exemptions from certain content requirements under the current rule and may submit streamlined resolution plans for review in this cycle. The proposed rule would build upon the Statement, eliminating on a permanent basis some of the content elements where exemptions were provided to all or some CIDIs for the current submission cycle and adjusting and providing additional context and clarity to others, as well as incorporating limited proposed new content requirements. It also would propose a modified approach to the CIDIs with at least $50 billion and less than $100 billion in total assets that provides clarity and certainty with respect to the requirements applicable to those CIDIs and limits the submission requirements for those CIDIs to an informational filing that is appropriate to the relative complexity of the resolution of those CIDIs.

In addition to enacting and implementing the current rule, the FDIC has instituted several rulemakings that support its mission as deposit insurer to make timely insured deposit payments and, as resolution authority, to resolve a failed

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[11] *See* FDIC Announces Lifting IDI Plan Moratorium (Jan. 19, 2021), https://www.fdic.gov/resauthority/idi-statement-01-19-2021.pdf.

[12] Superseded guidance and feedback included the guidance issued in 2014 and the feedback letters provided to IDIs following review of IDIs' 2015 and 2016 resolution plan submissions.

IDI in the manner that is least costly to the DIF. These separate rulemakings address certain difficulties the FDIC could face in the closing of a large, complex IDI, and include *Recordkeeping for Timely Deposit Insurance Determination* (part 370) and *Recordkeeping Requirements for Qualified Financial Contracts* (part 371).[13] Part 370 requires covered institutions, namely IDIs with two million or more deposit accounts, to put in place mechanisms to facilitate prompt deposit insurance determinations. Part 371 requires IDIs in a troubled condition to keep detailed records in a specified, standard format regarding their qualified financial contracts. This information would be used by the FDIC, were it appointed receiver, in making a determination of which qualified financial contracts entered into by the failed institution (if any) will be transferred within the brief statutory window.[14]

Separate from the FDI Act and the current rule's requirements, section 165(d) of the Dodd-Frank Act mandates that certain bank holding companies and nonbank financial companies (covered companies) submit resolution plans (DFA resolution plans) for the rapid and orderly resolution of the covered company under the U.S. Bankruptcy Code.[15] The goal of DFA resolution plans, which is different from that of resolution plans under the current rule, is to reduce the likelihood that the financial distress or failure of a covered company would have serious adverse effects on financial stability in the United States by requiring covered companies to report periodically their plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure and without public support.

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[13] Codified at 12 CFR part 370 and 12 CFR part 371, respectively.
[14] The period between the day on which the FDIC is appointed receiver and 5:00 p.m. Eastern time on the following business day; *see* 12 U.S.C. 1821(e)(8)(G)(ii)(II).
[15] 12 U.S.C. 5365(d). The DFA resolution plan of a foreign-based covered company must provide for the rapid and orderly resolution of its U.S. operations and entities.

In November 2019, the Board of Governors of the Federal Reserve System (FRB) and the FDIC published a joint final rule (section 165(d) rule)[16] to reflect improvements identified since the FDIC and the FRB finalized their initial joint resolution plan rule in November 2011[17] and to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act.[18] Key changes to the initial section 165(d) rule include an extension of the DFA resolution plan filing cycle from annual to once every two or three years and the establishment of risk-based categories for determining the frequency and scope of resolution plan submissions.

While the current rule and the section 165(d) rule both require planning for the resolution of large, complex financial institutions, to minimize the cost and disruption of failures, there are some noteworthy differences between the section 165(d) rule requirements and the current rule. Most fundamentally, the section 165(d) rule requirements are focused on financial stability and mitigating systemic risk. The current rule's requirements, by contrast, are focused on the FDIC's ability to resolve a particular IDI. This focus includes two critical priorities: 1) that insured depositors have access to their cash in an orderly fashion and as quickly as possible; and 2) that the FDIC must protect taxpayers and minimize potential losses to the DIF, which taxpayers stand behind.

Another difference between the section 165(d) rule requirements and the current rule is that the section 165(d) rule focuses on the entire banking organization, including the holding company and nonbank affiliates and envisions a resolution under the U.S. Bankruptcy Code.[19] By contrast, the current rule (and

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[16] 84 FR 59194 (Nov. 1, 2019) (codified at 12 CFR parts 243 & 381).
[17] 76 FR 67323 (Nov. 1, 2011).
[18] Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115-174, 132 Stat. 1296 (2018).
[19] In the case of a foreign-banking organization, the section 165(d) rule's focus on U.S. entities and operations may include U.S. nonbank operations and intermediate holding companies.

likewise the proposed rule) focuses only on the IDI subsidiary and envisions a resolution using the FDIC's traditional resolution tools under the FDI Act. In some cases, the preferred strategy in a firm's DFA resolution plan includes the separate resolution of material entities within the group under applicable insolvency regimes other than bankruptcy, including resolution of a subsidiary IDI under the FDI Act, and the FDIC would need to be prepared to execute that portion of a multiple point of entry strategy where necessary. Thus, while there are important differences between the two rules, they are complementary, with the IDI plans specifically focused on the execution of a resolution by the FDIC under the FDI Act and DFA resolution plans addressing the resolution considerations of the group as whole.

In keeping with the complementary purposes of the current rule and the section 165(d) rule, in developing this proposal, the FDIC has been mindful of the guidance that the FDIC and the FRB anticipate developing to help certain firms further develop their DFA resolution plans. That guidance is expected to be specifically addressed to Category II and Category III banking organizations,[20] a group that includes some firms with a subsidiary IDI that would be a CIDI under the proposed rule. The FDIC will continue to coordinate the elements of this proposal with the forthcoming guidance. In addition, where the information or content expectations of the section 165(d) rule and the proposed rule overlap, the proposed rule would specifically allow the incorporation of information from an affiliate's DFA resolution plan into a CIDI's resolution plan.

Recent events underscore the importance of robust resolution planning in

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[20] Category II and III banking organizations generally comprise banking organizations, other than the Category I U.S. global systemically important bank holding companies, that have over $250 billion in qualifying assets or over $100 billion in qualifying assets and meet certain other risk-based indicators. Qualifying assets are, for a domestic banking organization, average total consolidated assets, or, for a foreign-based organization, average combined U.S. assets. *See* 12 CFR 252.5.

advance of failure, particularly for these large and complex CIDIs. The speed of bank runs has been accelerated by advances in banking technology that allow deposits to move electronically, with no need to stand in line or wait for physical checks or bills. Advances in communications technology allow a message to reach hundreds of millions of screens instantaneously. In the case of SVB, the speed of the run was the fastest and largest withdrawal of deposits in a single day in the nation's history. From a resolution planning perspective, this new reality underscores the need for effective resolution planning long before a bank's failure is on the horizon.

III. Proposed Rule

A. Resolution Submissions

1. Scope

Like the current rule, the proposed rule would apply to all IDIs with $50 billion or more in total assets. Under the proposed rule, however, the requirements pertaining to group A CIDIs (i.e., IDIs with $100 billion or more in total assets) would differ from those pertaining to group B CIDIs (i.e., IDIs with at least $50 billion but less than $100 billion in total assets).

Each group A CIDI would be required to periodically submit a resolution plan to the FDIC, including an identified resolution strategy for its resolution under an identified failure scenario. The development of this strategy, together with a description and analysis of institution-specific information and capabilities relevant to resolution, will facilitate the FDIC's ability to resolve a group A CIDI across a range of scenarios in a manner that ensures timely access to insured deposits, maximizes value from the sale or disposition of assets, minimizes any losses realized by creditors of the CIDI in resolution, and addresses potential risk of adverse effects on U.S. economic conditions or financial stability, while

minimizing the cost of the resolution to the DIF. The resolution plan would be assessed based on the credibility of the resolution strategy as well as with respect to other information, analysis and capabilities included and described in the resolution plan. Each group A CIDI would also be required to participate in engagement and capabilities testing as described below in section III.C.

Each group B CIDI would be required to periodically submit an informational filing to the FDIC that would consist of the informational content required under the proposed rule, but would not include the requirement for the development of an identified strategy as described in section III.A.3.a below, or the requirement to develop capabilities necessary to produce valuations needed in assessing the least-cost test and provide the related content described in section III.A.3.d below. The informational filing would assist the FDIC in developing its own resolution strategy for the firm. Each group B CIDI would be required to participate in engagement and capabilities testing as described below in section III.C.

The FDIC invites comment on all aspects of the scope of the proposed rule and the tiering of requirements for group A and group B CIDIs. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(1) Do commenters believe that total assets is the right metric to use to determine the scope of IDIs subject to the rule? If not, please suggest any better metrics to use to determine the scope of IDIs subject to the proposed rule's requirements.

(2) Do commenters believe that $50 billion is the right amount of total assets to use to distinguish CIDIs from IDIs not subject to the proposed rule? If not, please suggest a better threshold to use to establish the scope of IDIs subject to the proposed rule, and explain why the suggested threshold is a

better option.

(3) Do commenters believe that there are CIDIs with less than $50 billion in total assets that should be subject to the proposed rule due to their complexity or other factors? If so, please explain the factors that suggest an IDI should be a CIDI regardless of its total assets and explain why those factors show that an IDI should be treated as a CIDI.

(4) Do commenters believe that total assets is the right metric to use to distinguish between group A CIDIs and group B CIDIs? If not, please suggest any better metrics to use to distinguish between groups of CIDIs and explain why the suggested metrics are preferable.

(5) Do commenters believe that $100 billion is the right level of total assets to use to distinguish between group A CIDIs and group B CIDIs? If not please suggest an alternative amount of total assets to use to distinguish between groups of CIDIs and explain why the suggested amount is preferable.

(6) Do commenters believe that there are CIDIs with between $50-$100 billion in total assets that would warrant group A CIDI status due to their complexity or other factors? If so, please explain the factors that suggest these CIDIs should be group A CIDIs regardless of their average total assets and explain why those factors show the CIDI warrants group A CIDI treatment.

2. Submission Schedules

a. *Submission Cycle and Additional Information Between Submissions*

Since the current rule's enactment in 2012, the FDIC has observed that the annual plan submission requirement has been challenging for both the CIDIs

and the FDIC. An annual submission cycle does not allow the FDIC sufficient time to thoroughly review CIDIs' submissions and develop meaningful feedback, nor does it provide sufficient time for CIDIs to incorporate that feedback into their subsequent submissions. Moreover, an annual cycle limits the opportunity for meaningful engagement between the FDIC and a CIDI between submissions. As discussed in section III.C below, the FDIC expects engagement and capabilities testing to be significant components of the resolution planning process under the proposed rule. At the same time, the FDIC is aware of the importance of up-to-date submissions, particularly as CIDIs continue to change, in some cases rapidly. In the case of rapid liquidity failures, which are more likely for large banks as reflected in the failures of spring 2023, timely information on hand is needed to support a short period to prepare for resolution, including establishment of a BDI and marketing the IDI franchise and the franchise components.

To balance these considerations, going forward, the FDIC proposes to establish a submission schedule that provides adequate time for review of a submission and the development of feedback; engagement and capabilities testing; and the CIDI's development of content for the next resolution submission that is responsive to feedback, as well as requiring limited interim supplements to provide timely updates of the most critical information.

Accordingly, under proposed § 360.10(c)(1), each CIDI would provide a complete resolution submission to the FDIC every two years, with the submission of a limited interim supplement every other year. The interim supplement is intended to provide critical up-to-date information that will update certain limited elements of submission content. In considering what information should be included in the supplement, the FDIC intends to limit the information to the most essential data elements that are can be efficiently updated year over year to

maximize the utility of the information to the FDIC, while limiting the burden to CIDIs of the interim supplement requirement.

The FDIC retains the discretion to alter the submission dates upon written notice to the CIDI. Consistent with past practice, the FDIC expects to provide notice of a different schedule in a timely fashion to accommodate appropriate time for preparation of the submission.

Under the proposed submission schedule, the FDIC would create two submission cohorts of group A CIDIs, comprising roughly the same number of CIDIs, with each cohort to file a complete resolution plan on a date that will be specified by the FDIC every other year, beginning at least 270 days from the effective date of the final rule. This approach would allow for improved workflow and efficiency, would permit the FDIC to create filing cohorts of group A CIDIs with like characteristics to support horizontal analysis across the submission cohort, and would further support engagement and capabilities testing. Section III.E.8 below discusses in more detail the proposed approach to transition to filing under the amended rule's requirements after it is finalized.

All group B CIDIs would be in the same cohort, with an initial filing date at least 270 days from the effective date of the final rule.

The proposed rule would retain in modified form the existing section of the current rule concerning the provision of information in the event of material changes to CIDIs between resolution submissions. Proposed § 360.10(c)(4)(i) would retain the requirement of the current rule that a CIDI must provide the FDIC with a notice and explanation no later than 45 days after certain events. The proposed rule also would retain the current rule's exemption from this requirement if the date on which the CIDI would be required to submit the notice would be within 90 days before the date on which the CIDI is required to provide

a regular submission. The proposed rule would, however, modify the set of events triggering the notice requirement. Proposed § 360.10(c)(4)(i) would replace the current trigger – a "material event" – with "material change." Under the current rule, a "material event" is "any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI."[21] Under the proposed rule, a "material change" would be a change in a CIDI's identified material entities, critical services, or franchise components or in its capabilities described in the most recent submission. "Material change" also would include a change to the CIDI's organizational structure, core business lines, size, or complexity, for example by merger, acquisition, or divestiture of assets, or similar transaction that may have significant impact on the CIDI's identified strategy. The purpose of the proposed change is twofold: first, to better reflect the modified informational requirements of the proposed rule; and second, to reflect the FDIC's experience under the current rule concerning the types of events for which contemporaneous notice is most useful to the FDIC.

The FDIC requests comments on all aspects of the proposed definition of material change and the proposed requirement that the CIDI provide notice of any material change. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(7) Is the proposed "material change" definition clear? Should other or different events trigger this notice requirement? Is 45 days an appropriate time frame for the notice requirement? The term "material change" is used in a similar context in the section 165(d) rule (12 CFR 381.2). Should the definition be revised to more closely align to the definition in the section

[21] 12 CFR 360.10(c)(1)(v)(A).

165(d) rule?

(8) Is the definition of material change over- or under-inclusive? Does it include all material events that would significantly impact the resolution submission and provide the FDIC with the notice it needs to assure consideration of whether new or updated resolution submission content would be important, necessary, or useful as a result of the change?

b. Resolution Submission by New CIDIs; Changes to Submission Dates

Under proposed § 360.10(c)(2), an IDI that becomes a CIDI after the effective date of the final rule would be required to provide its initial submission upon the date specified in writing by the FDIC, which would be no earlier than 270 days after the insured depository institution became a CIDI. The current rule provides that an IDI that becomes a CIDI after April 1, 2012, must submit its initial resolution plan no later than the following July 1, provided such date occurs no earlier than 270 days after the date it became a CIDI.[22]

The FDIC invites comments as to all aspects of the proposed submission schedule and the timing of submission of resolution plans by group A CIDIs and informational filings by group B CIDIs, including the two-year cycle, the interim supplements, the FDIC's discretion to change the timing of submissions, and the treatment of material changes at a CIDI. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(9) Is the proposed two-year submission cycle appropriate? What would be the benefits or trade-offs of a longer or shorter period between submissions?

(10) Does a two-year cycle provide adequate time for all aspects of the

[22] 12 CFR 360.10(c)(1)(ii).

resolution submission cycle (review, engagement, capabilities testing, provision of feedback, and development of responsive content in the next submission)?

(11) The FDIC is interested in comments on the dates of submissions, which would be commenced approximately a year after the effective date of the final rule. In the past, submissions have been required on December 1, December 31, or July 1. The FDIC may also consider other dates. In considering timing of submissions, are there dates that are more suitable or should be avoided? If so, what makes those dates more suitable or problematic?

(12) Under the current rule, the FDIC retained discretion to obtain material updates to a submission at its discretion upon notice to the CIDI, including but not limited to upon the occurrence of a material change. The proposed rule would eliminate that specific authority, relying upon the biennial complete submissions and interim supplements and would retain the FDIC's ability to change filing dates upon notice to the CIDIs. The FDIC seeks comment on whether the FDIC should retain the flexibility to change one or more filing dates upon its discretion, or upon the occurrence of a material change, or require additional interim updates, and if so, on what terms or conditions.

(13) Is a minimum of 270 days enough time for an IDI that becomes a CIDI to prepare a complete resolution submission? The FDIC notes that, under the proposed rule, the FDIC would have the authority to change the date by which a CIDI must submit its resolution submission subsequent to its initial submission, and that the FDIC would endeavor to provide written notice of the revised submission date at least one calendar year before

the resolution submission is due.

c. Status as a CIDI

The proposed rule would clarify aspects of the current rule concerning when an IDI becomes, or ceases to be, a CIDI. The proposed rule also would address a CIDI moving between group A and group B.

First, the proposed rule would retain the approach taken in the current rule, that an IDI is deemed to be a CIDI based upon whether it has crossed the threshold of $50 billion based on the average of the total assets as shown on its four most recent reports of Condition and Income. For clarity, the proposed rule would expressly address the event of an increase in size due to merger or acquisition of assets, which is not explicitly addressed in the current rule. Proposed § 360.10(b) would provide that in the case of an IDI whose total assets have increased as the result of a merger, acquisition, combination, or similar transaction, the status of the IDI as a CIDI or a group A CIDI will be based upon the date of the consummation of the merger, acquisition, combination or other transaction. While the four quarter average protects against the possibility that firms move quickly in and out of the rule's scope, growth by merger and acquisition tends not to be transitory, and the combined IDI should become subject to the rule promptly, based upon its combined balance sheet.

In addition, the proposed rule would add clarity about when an IDI ceases to be a CIDI. The current rule defines a CIDI as an IDI with $50 billion or more in total assets, but does not specifically address how and when an IDI ceases being a CIDI.[23] Under proposed § 360.10(b), an IDI would cease to be a CIDI when it has less than $50 billion in total assets, as determined based upon the average

[23] 12 CFR 360.10(b)(4).

of the institution's four most recent Reports of Condition and Income. The proposed rule provides a similar provision addressing when a group B CIDI would become – or cease to become – a group A CIDI. Addressing explicitly the circumstances under which an IDI ceases to be a CIDI would add useful clarity for IDIs and the public and would facilitate the FDIC's administration of the rule.

The FDIC requests comments on all aspects of the proposed approach to determining whether an IDI is a CIDI and whether it is a group A or a group B CIDI. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(14) Are the proposed changes to the rule concerning the process for determining when an IDI becomes, and ceases to be a CIDI, clear and appropriate? Should the FDIC consider Report of Condition and Income data for a period other than four consecutive quarters in ascertaining whether an IDI is a CIDI and whether a CIDI is a group A CIDI or a group B CIDI? This approach, which is also used in determining applicable requirements under the section 165(d) rule*, lessens the likelihood that IDIs bounce back and forth across the $50 billion or $100 billion threshold, but also delays the imposition of the requirements of the rule for IDIs that experience rapid growth, as was the case of SVB and Signature Bank. Should the FDIC consider other approaches to determining whether an IDI is subject to the requirements of the rule, or whether a CIDI is a group A CIDI, and if so, what other approaches should the FDIC consider, in weighing the balance between obtaining information promptly in the event of rapid growth, versus the risk that an IDI becomes subject to the requirements of the rule temporarily, if it hovers near the asset thresholds?*

(15) Is the approach in the proposed rule to a change due to merger,

acquisition, or similar transaction, based on the date of consummation of the transaction, appropriate for determining whether an IDI is a CIDI, or a group A or B CIDI, appropriate and clear? If not, please suggest an alternative with justification.

3. Content Requirements

a. Identified Strategy

Like the current rule, the proposed rule would require a CIDI to develop a strategy for resolution that is appropriate for its size, complexity, and risk profile. As noted, however, this requirement would apply only to group A CIDIs and not to group B CIDIs. Since the current rule was issued in 2012, the FDIC and CIDIs have been through multiple resolution plan submission cycles, allowing the FDIC to further its resolution readiness and strategic planning for the resolution of CIDIs. In reviewing and evaluating options for resolution of CIDIs, the FDIC has considered a variety of resolution strategies across the range of CIDIs. This has informed the approach in the proposed rule and the parameters provided as to the expectations for the development of an identified strategy.

The current rule requires the resolution plan to provide a "strategy for the sale or disposition of the deposit franchise, including branches, core business lines 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 (two business days if the failure occurs on a day other than Friday), 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 of cases."[24] The current rule also requires the resolution plan to provide a "strategy

[24] 12 CFR 360.10(c)(2)(vi).

to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion."[25]

In guidance and the preamble to the current rule, the FDIC has provided insight regarding strategies to be considered by CIDIs as they prepare their resolution plans, including a cash payment of insured deposits, a purchase and assumption agreement with an insured depository institution to assume only insured or all deposits, a purchase and assumption agreement with multiple insured depository institutions in which branches are broken up and sold separately, and a transfer of insured deposits to a BDI. Over time, the FDIC provided additional guidance and feedback with respect to the development of a strategy that includes transfer of assets and liabilities to, and the various options for exit from, a BDI, including through a multiple acquirer exit, initial public offering, or other capital markets transaction.

The proposed rule would require each group A CIDI to provide an identified strategy, which would describe the resolution from the point of failure through the sale or disposition of the group A CIDI's franchise, (including all of its significant business lines and segments and all of its major assets) in a manner that meets the credibility standard set forth in the proposed rule.[26] Because of the size and complexity of CIDIs, the development of an identified strategy that takes into account each IDI's organization, structure, business lines, and other characteristics provides significant insight into the obstacles that the FDIC might

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[25] 12 CFR 360.10(c)(2)(v).

[26] Prong (i) of the credibility criteria provides that a resolution submission by a group A CIDI is not credible if it 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 group A CIDI in resolution, and address potential risks of adverse effects on U.S. economic conditions or financial stability. Prong (ii) of the credibility criteria provides that a resolution submission is not credible if 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 informational content requirements of the proposal.

face in resolving the IDI, and what mitigating actions it can take to address those obstacles.

The strategic option that the FDIC considers most likely to be implemented for the group A CIDIs across the widest range of scenarios is the establishment of a BDI that can continue the operations of the CIDI. Generally, a BDI approach will allow the continuity of business operations and thereby preserve franchise value, and will allow time for restructuring and marketing to facilitate the sale or disposition of the business lines and related assets, while providing insured depositors with prompt access to their accounts. Accordingly, the proposed rule would establish the BDI approach as the default identified strategy. A BDI strategy must provide for the establishment and stabilization of a BDI and an exit strategy from the bridge, such as a multiple acquirer exit involving the regional breakup of the group A CIDI or sale of business segments, an orderly wind down of certain business lines and asset sales, 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.

In addressing the establishment of the BDI, the proposed rule would not require that a resolution plan demonstrate that the identified strategy be the least-costly to the DIF of all available strategies; in particular, it would not be required to demonstrate that it would be less costly to the DIF than liquidation. Similarly, it would not be required to demonstrate satisfaction of the chartering condition set forth in section 11(n)(2)(A) of the FDI Act such as by demonstrating that the amount which is reasonably necessary to operate the BDI will not exceed the amount which is reasonably necessary to save the cost of liquidating

the IDI.[27] Rather, each group A CIDI would be required to support its estimation that the identified strategy maximizes value and minimizes losses to the creditors of the group A CIDI. Valuation analysis discussed in section III.A.3.d below will support the FDIC's ability to evaluate the strategy's impact on value and its potential costs to the DIF across a range of options.

In addressing the stabilization of the BDI, the identified strategy may assume continuation of Federal Home Loan Bank advances and the availability of short-term liquidity advances from the DIF to meet temporary liquidity needs, provided that the identified strategy provides for timely repayment of those funds. The identified strategy should not assume use of the DIF to avoid losses to creditors of the BDI; all DIF advances must be made through a loan with an assured means of timely repayment.

Recognizing that the BDI approach may not be optimal for all group A CIDIs, the proposed rule would permit a different identified strategy if that different strategy would best address prong (i) of the credibility criteria (discussed in section III.B.1 below), could reasonably be executed by the FDIC across a range of likely failure scenarios, and would be more appropriate for the size, complexity and risk profile of the specific group A CIDI. An alternative identified strategy under the proposed rule could include transferring some but not all business lines and assets to a BDI and liquidating others in a receivership. For some group A CIDIs, a cash payment of insured deposits[28] and liquidation of all business lines and assets in receivership may be the most appropriate identified strategy.

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[27] *See* section 11(n)(2)(A)(i) of the FDI Act. There are three alternative conditions specified in the FDI Act, any one of which must be met.

[28] This task could be accomplished through a Deposit Insurance National Bank (DINB) established by the FDIC pursuant to 12 U.S.C. 1821(m).

Regardless of the identified strategy, under the proposed rule, any identified strategy would be required to include meaningful optionality for execution across a range of scenarios and provide the information and analysis that would inform the decisions that would be made by the FDIC at the time of an actual failure that could support optionality for the FDIC in undertaking a resolution of the CIDI following its material stress and failure. Meaningful optionality reflects an expectation that an identified strategy be flexible so that it can be adapted to a change in the failure scenario or an unexpected obstacle to its execution. The nature and extent of meaningful optionality will vary based upon the size and complexity of the CIDI. For instance, a relatively smaller and less complex CIDI with a focus on traditional banking may identify only a breakup between two business lines, or the spinoff or sale of a separable business unit. For the largest or most complex CIDIs, meaningful optionality might include alternatives such as a breakup by business lines and a regional breakup, or by sale of one or more identified franchise components as options for a sale of the IDI franchise.

Unlike the current rule, the proposed rule would expressly provide that the identified strategy may not be based upon the sale of substantially all assets and liabilities over closing weekend. While the FDIC recognizes that such a resolution outcome may be the most favorable approach when it is available, the FDIC will not accept this as the identified strategy for the group A CIDIs. For group A CIDIs, the pool of possible acquirers is very limited and any such transaction may involve long timelines and complex restructuring. In addition, the FDIC has learned that a resolution plan that assumes a single-acquirer all-deposit sale does not comprehensively address the complexities that would arise if that approach were not available, including the establishment and stabilization of a

BDI, continuity of critical services, and the identification of franchise components. Therefore, utilizing an identified strategy that is a full purchase and assumption over resolution weekend is less useful to the FDIC for its resolution readiness than the identified strategy that would be required under the proposed rule.

The FDIC invites comment on all aspects of the requirement to include an identified strategy in the resolution plan. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(16) The proposed rule establishes formation and stabilization of a BDI as the default identified strategy. Do commenters agree with this choice as the default strategy or do they believe there should be a different default strategy? If a different approach is preferable, what strategy should be used and why?

(17) Is there a resolution planning benefit in providing a wider range of strategies and/or exit options as possible default identified strategies from which a CIDI may choose?

(18) Are the criteria for a group A CIDI choosing a different identified strategy other than the default clear and appropriate?

b. Failure Scenario

The proposed rule would streamline and clarify the framework for development of the failure scenario under which group A CIDIs develop an identified strategy. This scenario, known as the “failure scenario,” would be also used in connection with valuation analysis. Under the current rule, resolution plans are required to “take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by

the FRB pursuant to 12 U.S.C. 5365(i)(1)(B)."[29] The proposed rule would require analysis considering severely adverse economic conditions only and not baseline or adverse conditions. This change generally would incorporate the approach that the FDIC has permitted in recent resolution plan submissions. While an IDI can fail under any economic conditions, a severely adverse scenario is a reasonable assumption, and the FDIC has found that analysis under three different scenarios does not provide significant additional resolution information of value.

The proposed rule also would incorporate more specific requirements concerning the circumstances assumed to lead to the CIDI's failure. In the FDIC's more than ten years of experience of reviewing resolution plans under the Dodd-Frank Act and the current rule, the FDIC has learned that the submission is most valuable when it is based on the assumption that the CIDI has experienced material financial distress such that its failure is a result of the depletion of capital and/or liquidity. While the resolution strategy may be based on an idiosyncratic event or action, including a series of compounding events, the firm should justify all assumptions, consistent with the conditions of the economic scenario. Where the identified strategy assumes the sale of franchise components or a multiple acquirer exit, the resolution plan should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale. To ensure that the resolution plan addresses the challenges that may occur in a wider range of scenarios, the proposed rule would require the identified strategy to be based on a failure scenario that demonstrates that the CIDI is experiencing material financial distress.

More specifically, the failure scenario would be required to assume and

[29] 12 CFR 360.10(c)(2).

demonstrate that the CIDI experienced a deterioration of its asset base and that its high quality assets have been depleted or pledged due to increased liquidity requirements from counterparties and deposit outflows. While the immediate cause of failure may be based on liquidity shortfalls, the failure scenario also should consider the likelihood of the depletion of capital and losses in the assets of the CIDI, which may include embedded losses that have been realized but may not have been recognized by the CIDI for financial reporting purposes. The failure scenario must assume that the U.S. parent holding company is in bankruptcy, as this is often the case in a bank failure, and is consistent with the approach taken in DFA resolution plans. This proposed failure scenario requirement draws upon the requirement that a DFA resolution plan must assume that the firm has experienced material financial distress.[30] The FDIC expects that this consistent approach to the failure scenario would facilitate incorporation of information from the affiliate's DFA resolution plan to the CIDI resolution plan, as would be permitted under the proposed rule.

While the FDIC anticipates that the proposed approach to the scenario for CIDI resolution planning would facilitate development of an identified strategy and other plan information that is most useful to the FDIC across a range of scenarios, the FDIC is aware that likely failure scenarios are different for CIDIs with different business models, balance sheets, and risks. In addition, in future plan reviews, the FDIC might find value in focusing on particular kinds of failure scenarios, such as a rapid failure due to a run on uninsured deposits or deposits associated with a particular line of business; or cyber or other operational risks; or other risks that focus on particular business lines. For that reason, the proposed rule includes flexibility for the FDIC to devise specific failure scenario

[30] *See*, *e.g.*, 12 CFR 381.5(b)(i).

assumptions, with respect to macroeconomic conditions or the precipitating cause of failure, for individual CIDIs, for cohorts of CIDIs, or for all group A CIDIs in future resolution plan submissions. Any specific failure scenarios would be communicated in writing, at least twelve months before the next resolution plan is due.

The FDIC invites comments on all aspects of the proposed failure scenario requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(19) Are there additional factors which would make the failure scenario more useful for the FDIC in resolution planning? How do those factors improve the quality of resolution plans?

(20) Are there aspects of the proposed failure scenario requirement that are unclear? For example, would further explication of what would constitute Federal assistance in recapitalization provide helpful clarity?

(21) Under the proposed rule, the FDIC may provide additional or alternative parameters for the failure scenario. Will this flexibility improve the usefulness of resolution plans in resolution planning? Is the process and timing for identifying changes to scenario assumptions clear and appropriate?

c. New and Modified Definitions

The proposed rule would introduce a number of new defined terms and modify others, while other terms will be unchanged from the current rule. The proposed new and revised defined terms are as follows:

Affiliate. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording

change.

Appropriate Federal banking agency. This term is used in the current rule but is not defined. The proposed rule would add a definition from the FDI Act.

BDI. The proposed rule would create this defined term using the FDI Act's definition of bridge depository institution.

Capabilities testing. The proposed rule would add this new defined term, which is discussed in section III.C.2 below.

CIDI or covered insured depository institution. This definition would be modified to reflect that the proposed rule would create two categories of CIDIs: group A CIDIs and group B CIDIs.

Control. This term is used in the current rule but is not defined. The proposed rule would define it using the term in the FDI Act.

Core business lines. In addition to a technical revision to the definition, core business lines would be revised to mean the CIDI's business lines that are significant to the CIDI's revenue, profit, or franchise. Under the current rule's definition, core business lines are those that, upon failure, would result in a material loss of revenue, profit, or franchise value. This change is intended to reflect the designation of core business lines used by CIDIs in their business and regulatory reporting.

Critical services. The proposed rule would not materially change the current rule's definition of critical services. The examples of critical services would be eliminated from the definition because proposed § 360.10(d)(8), which incorporates, clarifies, and builds upon past guidance, would provide more robust descriptions of the content required, including clarifying that critical services can include both shared and outsourced services. The proposed rule would also add that critical services includes the CIDI's services and operations that support the

execution of the identified strategy.

Critical services support. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below.

DFA resolution plan. The new defined term would mean a CIDI's parent company's resolution plan submission pursuant to 12 U.S.C. 5365(d).

Engagement. The proposed rule would add this new defined term, which is discussed in section III.C.1 below.

Failure scenario. The proposed rule would add this defined term, which is discussed in section III.A.3.b above.

FDI Act. The current rule defines this term in 12 CFR 360.10(a). The proposed rule would retain that definition in proposed § 360.10(a) and would add a cross-reference to that definition.

Franchise component. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below.

Group A CIDI: The proposed rule would add this defined term to mean CIDIs with $100 billion or more in total assets that would be required to submit resolution plans under the proposed rule.

Group B CIDI: The proposed rule would add this defined term to mean CIDIs with between $50 billion and $100 billion in total assets that would be required to submit informational filings under the proposed rule.

Identified strategy. The proposed rule would require each group A CIDI to choose for its resolution plan a strategy for its resolution in the event of its failure. Accordingly, the proposed rule would create a defined term to refer to such a strategy.

IDI franchise. The proposed rule would introduce this new defined term to mean all core business lines and all other business segments, branches, and

major assets that constitute the IDI and its business as a whole. The current rule uses the term “deposit franchise” to mean a similar idea, but the current rule does not define this term.

Informational filing. The proposed rule would introduce the concepts of group B CIDIs and the distinct submissions that would be required of them. The proposed rule would create this term to mean the resolution submission that a group B CIDI would submit under the proposed rule.

Insured depository institution. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Key depositors. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below.

Key personnel. The proposed rule would add this new defined term, which is discussed in section III.A.3.d below. The definition of key personnel, which incorporates prior guidance[31] would clarify that key personnel includes personnel with an essential role or having a function, responsibility, or knowledge that is important to the resolution of the CIDI. Thus, while management are likely to be key personnel, the definition is not limited to responsible managers, but includes staff with specialized knowledge and responsibilities that are essential to continuity of operations. The definition makes clear that key personnel can be employed by any entity, or through contractors.

Least-cost test. The proposed rule would add this new defined term to mean the process for meeting the requirements regarding least-cost resolution under the FDI Act at 12 U.S.C. 1823(c).

Material asset portfolio. The proposed rule would add this defined term,

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[31] Statement, p. 7-8.

which means a pool or portfolio of assets, including loans, securities or other assets, that is significant in terms of income or value to a core business line, and that could be sold in resolution.

Material change. The proposed rule would change the current rule's term "material event" to "material change." In lieu of the current rule's focus on the occurrence of an event or a change in condition that could have an effect on the CIDI's resolution plan, the proposed rule's definition of material change would focus on changes to the CIDI, including the identification of material entities, or changes to the CIDI's capabilities described in the resolution submission. In administering the current rule, the FDIC has observed that not all CIDIs have interpreted the material change concept similarly. Accordingly, the intent of revising the defined term is to provide greater clarity and achieve improved consistency.

Material entity. The proposed rule would retain the current rule concept that a material entity is a company that is significant to the activities of critical services or core business lines, and would add that it also means a company that is significant to a franchise component. This proposed change reflects the introduction of the franchise component concept into the proposed rule. The proposed definition specifies that all IDIs in the firm, regardless of size or other characteristics are material entities, reflecting that all affiliated IDIs would be significant to the resolution of the CIDI under the FDI Act.

Multiple acquirer exit. This proposed new defined term is related to the identified strategy described above. The multiple acquirer exit is an option for exit from the BDI as part of a group A CIDI's default resolution strategy by divesting the operations and assets of the group A CIDI to multiple acquirers . This definition would clarify that this exit strategy is focused on the sale of going

concern elements of the group A CIDI's businesses, e.g., through a regional breakup of the CIDI's deposit franchise or a sale of business segments to multiple acquirers. It is not intended to describe a liquidation of the group A CIDI's assets, although asset sales that are incidental to these divestitures may be included in a multiple acquirer exit. The business segments or regional or other components identified for divestiture in the multiple acquirer exit should be appropriate to the business of the CIDI and its regional footprint and other characteristics.

Parent company affiliate. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Qualified financial contract. This defined term would have the same meaning as set forth in the FDI Act to define qualified financial contract.

Regulated subsidiary. The proposed rule would add this defined term that encompasses a variety of domestic and foreign entities that are subsidiaries of the CIDI, including those that are subject to supervision or regulation by, or registration with, various domestic and foreign governmental entities. This definition is based upon the definition of "functionally regulated subsidiary" contained in 12 U.S.C. 1844(c)(5)(B), but has been expanded to include comparable subsidiaries formed and regulated under foreign law, as well as corporations organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) or corporations having an agreement or undertaking with the Federal Reserve Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 *et seq*.), commonly known as Edge Act corporations.

Resolution plan. The proposed rule would change this definition so that it only includes a resolution submission submitted by a group A CIDI instead of all

submissions by CIDIs. This change would reflect the proposed rule's differing proposed requirements of group A CIDIs and group B CIDIs, as opposed to the uniform requirements of the current rule for all CIDIs.

Resolution submission. The proposed rule would require each group A CIDI to submit a resolution plan and each group B CIDI to submit an informational filing, with each type of submission having its own informational requirements. However, certain aspects of the proposed rule would apply to both types of submission; accordingly, the proposed rule would create this defined term to capture both types of submission.

Subsidiary. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Total assets. The proposed rule would make non-substantive changes to improve wording, to reflect the current name of the Report of Condition and Income, and to clarify that the instructions to the Report of Condition and Income relate to the determination of total assets and not identification of CIDIs, which is addressed in the proposed rule.

United States. The proposed definition would be substantively unchanged from the current rule. The proposed rule would make a non-substantive wording change.

Virtual data room. The proposed rule would require a resolution submission to provide specified information concerning a virtual data room. Accordingly, the proposed rule would create a defined term to describe the concept and its parameters.

The FDIC invites comment on all aspects of the definitions in the proposed rule. In particular, the FDIC asks the following questions on specific aspects of

the proposal:

(22) Are all definitions clear and useful?

(23) Should additional changes be made?

d. All Other Content Requirements

In an effort to collect information that would better help the FDIC prepare to resolve a CIDI and to ensure that all CIDIs have key resolvability capabilities, the proposed rule would make a number of changes to the information a CIDI must submit to the FDIC in its resolution submission. Many of these proposed changes would incorporate and codify guidance the FDIC previously provided to CIDIs. The proposed changes would delete certain submission requirements, and modify others, in ways that may increase or lessen the type and amount of information required with respect to those content elements. The rule, as proposed, would supersede all prior guidance.

Except where otherwise noted, the following discusses the content requirements for both group A CIDIs' resolution plans and group B CIDIs' informational filings.

Executive summary, located at proposed § 360.10(d)(3), applicable only to group A CIDIs. Like the current rule, whose executive summary requirement is located at subpart 12 CFR 360.10(c)(2)(i), the proposed rule would require a group A CIDI to include an executive summary describing the key elements of its resolution plan. However, this revised subpart would reflect concepts that would be introduced by the proposed rule or incorporated from prior guidance, including asking for a description of the group A CIDI's identified strategy, an overview of the CIDI's franchise components, and a description of material changes. The proposed rule would also require a discussion of changes to the group A CIDI's

previously submitted resolution plan resulting from any change in law or regulation, guidance or feedback from the FDIC, or any material change. Finally, the proposed rule would require a discussion of any actions the group A CIDI had taken since submitting its most recent resolution plan to improve the resolution plan's information and analysis, or to improve its capabilities to develop and timely deliver that information and analysis. The FDIC believes these changes would better reflect the key elements of a group A CIDI's resolution plan.

Organizational structure: legal entities; core business lines; and branches, located at proposed § 360.10(d)(4). The proposed rule would retain and modify the corresponding subpart in the current rule, 12 CFR 360.10(c)(2)(ii). The proposed rule would retain the current rule's requirement to describe the CIDI's domestic and foreign branch organization and would add the requirement to provide addresses and asset size. An organizational chart showing all relevant entities and their place in the CIDI's organizational structure may be helpful. The proposed rule would also retain the current rule's requirement to identify and describe the core business lines of the CIDI, the parent company, and parent company affiliates.

The proposed rule would introduce the requirement to identify all regulated subsidiaries, a new defined term discussed above in section III.A.3.c. The FDIC is seeking this information because it would assist the FDIC in identifying entities with capital, liquidity, and other requirements, and in assessing these entities' capital and liquidity needs when it is resolving a CIDI using a BDI. The proposed rule would modify the requirement in the current rule that core business lines be mapped to material entities, by eliminating the mapping to assets and liabilities and instead require mapping to franchise components and to regulated subsidiaries. This would improve the utility of mapping and support the analysis

of franchise components and, for group A CIDIs, multiple acquirer exit considerations.

The proposed rule would also revise the current rule by requiring that the resolution submission describe whether any core business line draws additional value from, or relies on, the operations of the parent company or a parent company affiliate, and identify whether any such operations are cross-border. This information would support and inform the FDIC's analysis of the impact of breakup of the CIDI from its parent company and parent company affiliates.

As noted below, elements of the current rule's organizational structure; legal entities; core business lines and branches subpart would be incorporated into other provisions of the proposed rule, including the discussion of the deposit base and key personnel, in order to improve the organizational structure of the rule as proposed.

The FDIC invites comments on all aspects of the proposed organizational structure; legal entities; core business lines and branches requirements. In particular, the FDIC asks the following question on specific aspects of the proposal:

(24) The proposed rule would require a CIDI to identify each of its subsidiaries that is a "regulated subsidiary", a new proposed defined term. Is the defined term clear and understandable? Does it include all of the types of entities that are subject to capital, liquidity or other material requirements or are there others that should be included?

(25) The FDIC considered other approaches for collecting this type of information concerning regulated entities, including limiting this requirement to a CIDI's subsidiaries that are material entities, or requiring that all regulated subsidiaries be deemed material entities. Does the

proposed rule's approach seek an appropriate amount and type of information? If not, how can this aspect of the proposed rule be improved for utility in resolution planning?

Methodology for material entity designation, located at proposed § 360.10(d)(5). This would be a new component to the proposed rule. The proposed rule would require each CIDI to describe its methodology for identifying material entities. The proposed rule would not be prescriptive regarding such methodology, but rather would afford each CIDI the flexibility to develop a methodology that is appropriate to the nature, size, complexity, and scope of its operations. This would assist the FDIC in understanding the application of the material entity concept throughout the resolution submission, which is significant to the scope of other informational requirements. As noted in section III.A.3.c above, the proposed rule's definition of material entity would largely be the same as the definition in the current rule.

Separation from parent; potential barriers or material obstacles to orderly resolution, located at proposed § 360.10(d)(6). The proposed rule would retain the current rule's requirement to describe the actions needed to separate a CIDI from the organizational structure of its parent company and parent company affiliates, as well as how to separate the CIDI's subsidiaries from this structure, as described in current subparts 12 CFR 360.10(c)(2)(iv), (v).[32] The proposed rule would also retain the current rule's requirement to identify potential barriers or other material obstacles to an orderly resolution,[33] and would add the requirement to identify how such barriers or obstacles could pose risks to a group A CIDI's identified strategy. The proposed rule would also require that a

[32] 12 CFR 360.10(c)(2)(iv), (v).
[33] 12 CFR 360.10(c)(2)(iv).

resolution submission address the CIDI's ability to operate separately from the parent company's organization, and that the CIDI assume that its parent company organization and the parent company affiliates have filed for bankruptcy or are in resolution under another insolvency regime. It would also require addressing the impact on the BDI's value if the CIDI were separated from the parent company's organization.

While some CIDIs' operational structures are relatively simple, with the majority of assets and operations within the CIDI, others are significantly more complex. Even where the structure is relatively simple, there may be significant services, licenses, contracts, or operations – even those whose asset value is relatively small, that the CIDI uses that would impact the ability to establish and operate a BDI while the parent company and parent company affiliate are in bankruptcy or other resolution. These complexities include not only the challenge of continuity of critical services, but also the economic viability of the BDI as a going concern upon separation from the parent company, and the impact on BDI's franchise value. In the proposed revisions to the rule, this section has been revised to focus on whether the IDI, and therefore the BDI, can be a viable stand-alone entity from the point of view of economic value and viability of business lines. The issues related to continuity of critical services provided by or through the parent company and parent company affiliates would be discussed and addressed in the critical services discussion below.

The FDIC invites comments on all aspects of the proposed separation from parent; potential barriers or material obstacles to orderly resolution requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(26) Would it be helpful to resolution analysis to require certain assumptions

with respect to the possible risk of multiple competing insolvencies when the parent company and parent company affiliates are being resolved in bankruptcy or other insolvency regime?

(27) Would it be useful in developing resolution analysis to have challenging fact patterns for a wide range of contingencies, for example, if the resolution submission were required to address the possible outcome of adverse interests between the insolvency regimes and no support or services being provided by the parent company and parent company affiliates?

(28) Are there other assumptions or contingencies that should be explored?

Overall deposit activities, located at proposed § 360.10(d)(7). While the current rule's organizational structure subpart asks for some information about a CIDI's deposit base and systems, the proposed rule would expand and build upon the information related to deposit activities required by the current rule.[34] Understanding the deposit structure of the CIDI is important to understanding entry into a BDI and stabilization of its operations, and is useful in supporting valuation analysis as well. To improve the organizational structure of the current rule, the proposed rule would create a separate subpart for this information.

The proposed rule would require a discussion of foreign deposits, and identification of deposits dually payable in the U.S., which is relevant to the determination of priority of payments in resolution.[35] The proposed rule would also require information about insured and uninsured deposits, and commercial deposits by business line.

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[34] "Discuss 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." 12 CFR 360.10(c)(2)(ii).

[35] 12 CFR 330.3(e).

The proposed rule would also require information about deposit sweep arrangements with affiliates and unaffiliated parties, which would inform the FDIC about interconnections and assist in assessing depositor behavior; a CIDI would also have to identify the contracts governing those arrangements. The proposed rule would also require information about reporting capabilities for omnibus, sweep and pass-through accounts. Understanding those capabilities and the accuracy and timeliness of deposit reporting by accountholder is important for these deposits where the information for deposit insurance determinations is not maintained on the CIDI's systems.

In addition to requiring information about the deposit structure, the proposed rule would require information regarding key depositors, which would be defined in the proposed rule as depositors that hold or control the largest deposits (whether in one account or in multiple accounts) that collectively are material to one or more core business lines. Identification of key depositors is important to evaluation of strategic options in resolution, and to understanding the relationships between key depositors and other services provided by the CIDI or its parent company or parent company affiliates. Each key depositor must be identified by name, line of business and geographic location, where that information is known.

Finally, the proposed rule would require information about the relationship of deposit segments to core business lines and franchise components. In a multiple acquirer sale, the deposits related to a particular franchise component must be readily identified to facilitate the separation and sale of the franchise component along with the associated liabilities.

The FDIC invites comments on all aspects of the proposed overall deposit activities requirements. In particular, the FDIC asks the following questions on

specific aspects of the proposal:

(29) Is the information proposed to be required concerning the overall deposit structure available to CIDIs and would it be useful to understanding the impact of different resolution strategies?

(30) The FDIC considered different approaches to defining "key depositors," including by defining it as the top 100 depositors by size, or as those depositors that collectively represent the largest deposits making up 25 percent of the CIDI's deposits. Because the appropriate range of metrics varies from CIDI to CIDI based on its size and business model, the proposed rule would provide flexibility to the CIDIs in describing key depositors. Is this definition sufficiently clear and useful? Is there a way to define a CIDI's key depositors that would provide more useful information to support the FDIC's understanding of the profile of significant depositors and the impact of different resolution strategies on those depositors? What metrics or descriptions would be most useful to identify these significant depositors?

Critical services, located at proposed § 360.10(d)(8). Because the ability to continue critical services in resolution is essential to the ability to establish and stabilize a BDI, the continuity of critical services is an area of focus for the FDIC in assessing options for resolving a CIDI. Accordingly, the proposed rule would make express the implicit expectation of the current rule that a CIDI must be able to demonstrate capabilities necessary to ensure continuity of critical services while it is in resolution.

The proposed rule would expand on the information required by the current rule at 12 CFR 360.10(c)(2)(iii), and would incorporate and clarify guidance the FDIC previously provided on this topic. As explained in section

III.A.3.c, the definition of “critical services” would remain largely the same as in the current rule, but the proposed rule would require a resolution submission to explain the criteria by which critical services are identified in order to provide to the FDIC additional context and understanding to the CIDI’s approach to this content element.

The proposed rule would also introduce the defined term “critical services support,” which are the resources necessary to support the provision of critical services, including systems, technology infrastructure, data, key personnel, intellectual property, and facilities. CIDIs’ past resolution plans did not consistently address these elements, which are mentioned in various places throughout the current rule. Bringing together this information in a defined term and expressly stating the relationship to critical services is expected to provide additional clarity and promote consistency in the approach to these elements. For this reason, the proposed rule would consolidate informational elements relevant to critical services that are separated in various parts of the current rule, and incorporate and codify prior guidance,[36] such as breakup from parent and cross-border considerations, to the extent that they relate to critical services.

The proposed rule would also require that a CIDI identify critical services provided by the parent company or a parent company affiliate as well as the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States. The proposed rule would also require that a CIDI map critical services to material entities that provide those services directly or indirectly through third parties, and to the material entities, core business lines, and franchise components supported by those critical services. Further, the proposed rule would make express the

[36] Statement, p. 6.

requirement for information about the critical services and critical services support that may be at risk of interruption if the CIDI fails, as well as the CIDI's approach for continuing critical services in the event of its failure, and information about the contracts governing the provision of such services.

The proposed rule would also require a CIDI to provide information about its process for collecting and monitoring the contracts governing critical services and critical services support. Providing information about the systems that store these contracts and how this information is stored (e.g., centrally, by business line or material entity, by business function, etc.) would provide the FDIC valuable information when seeking to understand a CIDI's operations and business relationships.

The FDIC invites comments on all aspects of the proposed critical services content element requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(31) Are the proposed requirements with respect to mapping critical services clear? Are they appropriate to the FDIC's goal of understanding the risks and mitigants to continuity of critical services in a BDI strategy, and in the course of disposition of franchise components? Is the concept of "critical services support" clear and useful? If not, how could it be improved?

(32) Would it be helpful to provide more explicit expectations with respect to mitigants to the risk of discontinuity of critical services, such as resolution-friendly contractual provisions, arms-length terms for services provision, or the establishment of critical services and critical services support within the bank chain?

Key personnel, located at proposed § 360.10(d)(9). As mentioned above, rather than retaining the current rule's approach of requiring information about

key personnel in the discussion of organizational structure; legal entities; core business lines and branches,[37] the proposed rule would create a new, separate subpart for this information. The proposed rule would also create "key personnel" as a defined term: personnel tasked with an essential role in support of a core business line, franchise component, or critical service, or having a function, responsibility, or knowledge that may be important for the FDIC's resolution of the CIDI. The proposed rule would note that key personnel can be employed by the CIDI, a CIDI subsidiary, the parent company, a parent company affiliate, or a third party entity.

The FDIC invites comments on all aspects of the proposed key personnel definition and use requirements. In particular, the FDIC asks the following questions on a specific aspect of the proposal:

(33) Is the definition of "key personnel" appropriate and clear? Does it clearly include the personnel most important to continuing operations in a BDI, in a way that is usefully limited and focused?

The information that would be provided in response to this subpart, which would incorporate guidance previously provided by the FDIC,[38] is important because, among other things, it is relevant to helping enable continuity of a BDI's operations. The proposed rule would require a CIDI to describe its methodology for identifying key personnel to provide to the FDIC additional context and understanding of the CIDI's approach to this content element. The proposed rule would also require information including identification of employee benefit programs provided to key personnel, as well as identifying any applicable collective bargaining agreements or similar arrangements. This information would

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[37] "Identify key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization." 12 CFR 360.10(c)(2)(ii).
[38] Statement, p. 7-8.

assist the FDIC in planning for the retention of key employees by the BIDI, or assist with necessary receivership functions.

Further, the proposed rule would require a CIDI to provide a recommended approach for retaining key personnel during its resolution. A framework for, for example, specifying retention bonuses and other incentives to help retain key personnel could help the FDIC facilitate a program that could help minimize disruptions when a CIDI is in resolution.

Franchise components, located at proposed § 360.10(d)(10), would build upon the current rule[39] and would incorporate and codify certain elements of past guidance, with some modifications. Under the proposed rule, the term "franchise component" would be defined as a business segment, regional branch network, major asset or asset pool, or other key component of the IDI franchise that currently can be separated and marketed in a timely manner. By specifying that the CIDI should identify franchise components that "currently" can be separated, the proposed rule would emphasize that identified franchise components should be those that can be separated based upon the organizational structure and capabilities of the firm, and the regulatory requirements in effect, at the time of the resolution submission.

This proposed subpart would provide information that the FDIC believes will be critical in developing strategic options and meaningful optionality for resolution of a group A CIDI. The FDIC has previously described franchise components as the "building blocks" of resolution options.[40] Under the proposed rule, the identification of actionable, marketable franchise components is a required element of all resolution submissions. A franchise component must be

[39] 12 CFR 360.10(c)(2)(vi).
[40] Statement, p. 5.

identifiable and separable such that it can be marketed and sold in its current state in a timely manner. While this requirement applies to all CIDIs, the number of franchise components and the level of complexity of the approach to the sale and marketing of the franchise components would vary based on the size and complexity of the CIDI. The number of franchise components necessary to have an actionable plan and meaningful optionality in the resolution of a $50 billion group B CIDI would likely be considerably less than the expectation for a $500 billion group A CIDI.

For some CIDIs, particularly the largest and most complex CIDIs, the pool of possible acquirers is limited and the challenges associated with a sale of the IDI franchise to a single acquirer are the greatest. The multiple acquirer exit is more likely to be the most appropriate approach for such a CIDI. The multiple acquirer exit, a newly defined term in the proposed rule, would be a strategy for disposition of going concern elements of the group A CIDI where a single acquirer transaction is not available, thereby avoiding a potentially disruptive and value-destroying liquidation of the failed CIDI. The time required for a multiple acquirer exit or another exit option that requires significant restructuring may require restructuring and divestiture options that present greater obstacles than those presented in addressing separability of the franchise components. For group A CIDIs, restructuring and divestiture options should include those necessary to the identified strategy, as well as currently separable and marketable franchise components that provide additional optionality. For example, if the identified strategy includes a multiple acquirer exit from the BDI, the restructuring and divestiture options should include the parts of the CIDI to be divested as part of a regional breakup of the CIDI's IDI franchise or sale of business segments, in addition to identifying currently separable and marketable

franchise components that would provide additional optionality.

The proposed rule would require a description of the extent to which franchise components are currently separable, which would be supported by a description of all significant impediments and obstacles to execution of a divestiture of a franchise component, including legal, regulatory, or cross-border challenges, as well as operational challenges. It would also require that a CIDI be able to demonstrate capabilities necessary to ensure that franchise components are separable and marketable in resolution. While the proposed rule would not set an express standard for separability of a franchise component, identification of franchise components that are readily and quickly separable promptly after failure and stabilization of the BDI will provide useful optionality and may facilitate a brief bridge period.

While the goal is to provide optionality to the FDIC in marketing the failed CIDI, the number and nature of separable, marketable franchise components will vary based upon the size and complexity of the CIDI. The proposed rule would also require that resolution submissions provide information relating to, among other things, key assumptions underpinning each franchise component divestiture.

The proposed rule would set forth basic informational elements required for each franchise component, including identification of responsible senior management and metrics depicting each franchise component's size and significance. The metrics the FDIC would expect a CIDI to provide may include total revenue, net income, percentage market share and, if applicable and available, total assets and liabilities.

The proposed rule also would require a description of the CIDI's capabilities and processes to initiate marketing of the franchise component, and

to provide a description of necessary actions and a timeline for the divestiture, which would be supported by a description of the key underlying assumptions. The proposed rule would require the CIDI to identify the process it would use to identify prospective bidders for such franchise components. The FDIC makes every effort to market failed banks – and their assets and business segments – as widely as possible. A requirement that CIDIs provide analysis on identification of prospective bidders of franchise components would support that effort. In addition to describing the process for identification of prospective bidders, identification of prospective bidders would also be helpful.

The proposed rule would incorporate and clarify the informational requirements with respect to capabilities to establish a virtual data room promptly in the run-up to or upon failure of the bank, which must include the data elements sufficient to permit a bidder to provide an initial bid on the IDI franchise or the CIDI's franchise components. While the proposed rule is not prescriptive in length of time within which a data room must be able to be populated, the capabilities should support a very short time frame and not rely upon a stabilized BDI to extend the time necessary. The proposed rule would require a description of the length of time and any challenges or obstacles to providing complete and accurate information necessary to support a competitive bid, with an expectation that this time frame will be brief and measured in days.

The proposed list of content elements is indicative and not comprehensive; the specific information and data that would be appropriate and sufficiently detailed to support prompt and competitive bids would vary among CIDIs. For instance, deposit data and information elements might include a complete, current deposit trial balance reconciled to the general ledger, a description of the largest depositor relationships, information regarding sweeps

and brokered deposits and other data useful to inform a bid. Loan and lending operations information might include a loan tape or loan trial balance reconciled to the general ledger, loan portfolio file samplings, underwriting policies, information regarding real estate owned, and key lending relationships. Where the CIDI has non-traditional business lines, the information provided should be appropriate to the sale of those elements as franchise components or as part of the IDI franchise. The data and information as a whole should support a sale of the IDI franchise as a whole, while providing optionality for the sale of separable franchise components.

Finally, to effectuate a timely sale of a failed IDI, the FDIC must have access and control of data in a virtual data room. Historically, the FDIC has established a virtual data room controlled by the FDIC and migrated the information into that virtual data room. The proposal seeks information as to how the CIDI could support that process, either through providing sufficient access and controls to the CIDI's virtual data room to the FDIC as receiver for the failed IDI, or by establishing a process to timely and securely migrate all data to an FDIC-controlled virtual data room.

Because many of the CIDIs have a broker-dealer subsidiary or parent company affiliate, the proposed rule would also contain a provision specifically addressing content related to a broker-dealer. That is not intended to exclude or limit information related to other non-banking activities such as insurance or asset management.

The FDIC invites comments on all aspects of the proposed franchise components requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(34) Are the proposed definitions and required informational content clear and

appropriate to the identification of franchise components? Is the information and analysis proposed to be required useful to support the FDIC's understanding of the challenges to separation of franchise components, useful mitigants to those challenges, and the timeline for execution of a multiple acquirer exit?

(35) Is the proposed language clear with respect to the expectation for franchise components that can be timely divested, both for the purpose of identifying franchise components that are "currently" and "quickly" separable and for separation of franchise components where more restructuring or other actions would be necessary to implement an identified strategy, such as in a multiple acquirer exit? Would establishing prescribed time requirements, such as 60 or 90 days for divestiture of most franchise components, be appropriate or useful? If so, what time range would be appropriate for the most currently actionable franchise components, and what time range would be appropriate for execution of a more complex exit strategy, such as a multiple acquirer exit?

(36) Are the proposed definitions and required informational content clear and appropriate with respect to the multiple acquirer exit strategy? Is there additional or different information that would be useful to the FDIC in undertaking such a strategy, or to support strategic alternatives that may involve such a separation and disposition of franchise components to multiple acquirers in an existing BDI?

The FDIC is interested in all aspects of the proposed rule regarding the establishment of a virtual data room, including the timing, content, processes for integration with the FDIC's marketing efforts and capabilities described. In particular:

(37) Are the information and data elements required for the establishment of a virtual data room clear and appropriate for the timely sale of the IDI franchise or CIDI's franchise components? Are there additional useful elements that a bidder would need to timely submit a competitive bid for the IDI franchise or the CIDI's franchise components?

(38) Would a more prescriptive and detailed list of items to set a minimum standard of informational elements necessary for a virtual data room be useful to filers in preparing their resolution submissions, or helpful to assure readiness to facilitate timely sale of the IDI franchise or the CIDI's franchise components in the event of its material distress and failure?

(39) Would it be helpful or appropriate to establish a specific or prescriptive time frame for establishment and population of a virtual data room, and, if so, what would be the appropriate length of time to complete that process?

Asset portfolios, located at proposed § 360.10(d)(11). The proposed rule would require CIDIs to include information about material asset portfolios, a new defined term discussed above in section III.A.3.c, including how the assets within the portfolio are valued and recorded in the CIDI's records. The proposed rule would also require a CIDI to identify and discuss impediments to the sale of each material asset portfolio and to provide a timeline for each portfolio's disposition. This information will support resolution planning and development for options in marketing the CIDI, including identification of assets portfolios that can be sold separately from the franchise components with going concern value. Recent experience has demonstrated the importance of clear and timely identification of foreign assets, which is specifically requested in the proposed rule.

Valuation to facilitate FDIC's assessment of least-costly resolution

method, located at proposed § 360.10(d)(12), applicable only to group A CIDIs. The current rule requires CIDIs to describe how their chosen resolution strategies "can be demonstrated to be the least costly to the Deposit Insurance Fund."[41] Additionally, the current rule provides that the CIDI must provide a detailed description of its asset valuation process, and "the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions" on the CIDI and its core business lines.[42]

For all resolution plans submitted in 2022 or to be submitted in 2023, the FDIC has exempted the CIDIs from addressing how the strategies described in the resolution plan could be demonstrated to be the least costly to the DIF of all possible methods for resolving the CIDI. The FDIC granted these exemptions after having concluded that the current rule's requirement resulted in submissions that provided limited utility to the FDIC relative to the burden of producing the relevant information and analysis. However, the FDIC is required under the FDI Act to determine in all cases whether the proposed resolution strategy is least costly to the DIF as compared to other available strategic options, including liquidation. While the FDIC has experience in this analysis, the determination of costs for a BDI strategy, absent a bid price to establish value, is an element that varies by an IDI's businesses and by the failure scenario. Thus, rather than requiring CIDIs to demonstrate, on an *ex ante* basis, that the least-cost test can be met under a hypothetical scenario for an identified strategy, the FDIC proposes to require each group A CIDI to provide analysis that can serve as building blocks for conducting valuations that will result in a usable valuation roadmap that the FDIC may apply in an actual failure scenario.

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[41] 12 CFR 360.10(c)(2)(vii).
[42] 12 CFR 360.10(c)(2)(viii).

Under the proposed rule, group A CIDIs would be required to demonstrate the capabilities necessary to produce valuations that the FDIC can use to conduct the statutorily required least-cost analysis on its own at the time of an actual failure. To demonstrate valuation capabilities, a group A CIDI would be required to describe its valuation process in its resolution plan and include a valuation analysis that includes a range of quantitative estimates of value as an appendix to its resolution plan. While both of these components would be required under the proposed rule, the FDIC would not make a credibility determination as to the identified strategy based on the valuation information provided in response to this requirement. There would be no requirement to compare that valuation estimate to liquidation or other possible resolution strategies.

The proposed valuation analysis included in the resolution plan would require that a group A CIDI provide a narrative description of how it values its franchise components, and the IDI as a whole, including its approach to gathering information needed to support its analysis and its ability to produce updated and timely valuation information. An appendix to the resolution plan would also be required to include a valuation analysis, including a range of quantitative estimates of value, based upon its assumed failure scenario and identified strategy. Where a multiple acquirer exit is chosen as the preferred BDI exit, the analysis would be required to provide valuation estimates based on the net present value of proceeds that may be received under an enterprise valuation based on the disposition of the group A IDI franchise and a sum-of-the-parts analysis that values each IDI franchise component separately. In preparing estimates of value, the group A CIDI would need to consider appropriate valuation approaches and assess whether the valuation should reflect the results

of one valuation method or a combination of methods, and provide support for the methods chosen and why other valuation methods were deemed inappropriate. In determining whether one or more valuation approach is appropriate, the CIDI should consider the nature of the business lines of the CIDI as a whole as well as of the particular franchise components that are part of the identified strategy. The valuation approaches should be appropriate to the complexity and size of the CIDI, and the identified strategy. As appropriate, the group A CIDI would be required to discuss the relevance and weight given to the different valuation approaches and methods used.

Under the proposed rule, the valuation analysis also would need to include a qualitative and quantitative analysis of the destruction of franchise value that may result from not transferring any uninsured deposits to a BDI, including a narrative describing any options to mitigate franchise value destruction at different levels of loss to uninsured depositors. To the extent necessary to provide a meaningful quantitative analysis, the group A CIDI would be instructed to make such adjustments to the failure scenario used in the identified strategy to demonstrate the impact on value where losses invade the depositor class in the loss waterfall. The group A CIDI would need to provide a discussion of the assumptions that underlie the analysis, including a brief narrative explanation of factors such as assumptions with respect to depositor behavior. Useful analysis may also consider potential depositor loss levels of 5 percent, 10 percent, and 15 percent. One option that would be permissible under the proposed rule as a possible mitigant to reduce the impact of losses to uninsured depositors is the payment of an advance dividend to uninsured depositors, in an amount reasonably expected to be fully repaid to the FDIC from the disposition of assets during the resolution process.

Section 13(c)(4) of the FDI Act requires any resolution action to be the least-costly to the DIF of all possible resolution options (including payout and liquidation) and directs the FDIC to conduct the least-cost analysis.[43] The proposed rule would ensure that the burden of performing the least-cost analysis remains with the FDIC. Nevertheless, understanding how a group A CIDI values its assets and business lines provides valuable insight the FDIC can use to conduct an accurate least-cost analysis. A requirement for a group A CIDI to describe its valuation process and provide an actual valuation analysis using the assumed scenario would provide the FDIC with a better understanding of the assumptions and methodologies that can be applied in an actual resolution.

The FDIC invites comments on all aspects of the proposed valuation requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(40) Do commenters believe that the information proposed to be required will be useful to the FDIC in determining cost to the DIF of a bridge strategy for comparison to other available options in the event of a failure? If not, please describe in detail what the commenter believes would be the more useful information and analysis to support the determination of value in the BDI under a range of scenarios.

(41) Do the insured depository institutions that would be group A CIDIs currently have processes to develop the information and analysis that would be required under this provision of the proposal? If not, what additional information or analysis or capabilities would such insured depository institutions be required to obtain or develop in order to satisfy the proposed requirements concerning valuation to facilitate the FDIC's

[43] 12 U.S.C. 1823(c)(4).

assessment of least-costly resolution method?

Off-balance-sheet exposures, located at proposed § 360.10(d)(13). The proposed rule would retain the current rule's requirement, located at 12 CFR 360.10(c)(2)(x), that a CIDI describe any of its material off-balance sheet exposures, including unfunded commitments, guarantees, and contractual obligations; it would specify that a CIDI describe the amount and nature of unfunded commitments. In addition to a non-substantive wording change, the proposed rule would add to the current rule's mapping requirement that CIDIs map material off-balance-sheet exposures to franchise components as well as core business lines and material asset portfolios. This information would support the FDIC's understanding of the franchise components identified in the resolution submission.

Qualified financial contracts, located at proposed § 360.10(d)(14). Since the adoption of the current rule, the FDIC has continued to develop its capabilities and understandings with respect to derivatives contracts and, more generally, qualified financial contracts, including through information received following the 2017 revisions to the QFC recordkeeping rule, 12 CFR part 371.[44] In lieu of the current rule's *Trading, derivatives and hedges* subpart,[45] the proposed rule would seek information about qualified financial contracts (QFCs), which would support and enhance the information provided under the FDIC's QFC recordkeeping rule,[46] which was adopted after the current rule went into effect. The FDIC is seeking to change the name of this subpart and to require information about QFCs to better align with the FDI Act, which has provisions specific to the treatment of QFCs, and in recognition that the definition of QFCs is

[44] *See* 82 FR 35599 (July 31, 2017).
[45] 12 CFR 360.10(c)(2)(xii).
[46] *See generally* 12 CFR part 371.

somewhat broader than the more limited “derivatives transactions” term that is used in the current rule.

In particular, the focus of this element of the proposed rule would be on the relationship of QFCs to the CIDI’s core business lines and franchise components, and how these transactions are integrated with other services provided to customers. The proposed rule would require CIDIs to provide information about their booking models for risk, and how QFCs are used to manage hedging or liquidity needs. This information would help the FDIC to make decisions with respect to transferring QFCs to a BDI, and to better understand the impact of any decision not to transfer certain QFCs. The FDIC has, in the past, exempted this content element for certain CIDIs, with the view that for certain firms, understanding the CIDI’s use of QFCs is not a significant element in resolution planning. However, the importance of QFC activities to a line of business is not determined solely on the basis of notional values and varies with the business of the firm. Accordingly, the proposed rule would require this information for all CIDI resolution submissions, with the expectation that where the activity is limited the burden of providing the information will consequently be limited as well.

Unconsolidated balance sheet; entity financial statements, located at proposed § 360.10(d)(15). The proposed rule would retain the current rule’s requirement to provide an unconsolidated balance sheet and consolidating schedules for all material entities that are subject to consolidation with the group A CIDI,[47] and would add that amounts attributed to entities that are not material entities can be aggregated on the consolidating schedule.

The proposed rule would maintain the requirement that a CIDI provide

[47] 12 CFR 360.10(c)(2)(xiii).

financial statements for each material entity, and add this requirement with regard to regulated subsidiaries. The proposed rule would also maintain that audited financial statements should be provided where they are available. The FDIC has found that this information is helpful in developing options for sale of franchise components and understanding the financial structure of the organization, and that this information is complementary to the unconsolidated balance sheet and consolidating schedules.

Payment, clearing, and settlement systems, located at proposed § 360.10(d)(16). The continuity of payment, clearing, and settlement systems is important to stabilizing and continuing operations of a failed CIDI in a BDI, and identification and mapping of these systems would assist the FDIC in identifying whether the entity accessing these systems is part of the CIDI or one of its subsidiaries and thus would be under the control of the BDI, and where there may be a potential for interruption of access or services and a resolution of the CIDI.

Accordingly, the proposed rule would build on the current rule's requirement, located at 12 CFR 360.10(c)(2)(xiv), that a CIDI identify each payment, clearing, and settlement system of which the CIDI is a member or that it indirectly accesses by limiting such identification to each system (including financial market utilities) that is a critical service or a critical service support. The proposed rule would also require CIDIs to map payment, clearing, and settlement system memberships and access (including through correspondent and agent banks or intermediaries) to legal entities, core business lines, and franchise components. CIDIs would also be required to describe the services provided by these systems, including the value and volume of activities on a per-provider basis.

The proposed rule would also require CIDIs to describe payment, clearing, and settlement services they provide as an intermediary, agent, or correspondent bank that are material in terms of revenue to or value of any franchise component or core business line. The information that the proposed rule would require would help the FDIC be aware of these important relationships in resolution and to better understand any impact of interruption of those systems or services.

Capital structure; funding sources, located at proposed § 360.10(d)(17). Even though information regarding the capital resources available to a CIDI prior to failure is available through supervisory procedures, such resources are likely to be different once the CIDI is placed into receivership. It is generally the case that as a result of receivership appointment, capital is significantly depleted. This is likely the case whether the failure is the result of capital or liquidity issues in light of the temporal constraints of historical cost accounting. Therefore, the proposed rule would require identification of resources that would be available in resolution, including unsecured, non-deposit liabilities of the CIDI at the time of failure. These liabilities are subordinate to deposits and are unlikely to be transferred to a BDI. By causing these liabilities to remain in the receivership as claims against the estate, the BDI's capital resources would be significantly enhanced, which would assist in stabilizing the BDI and increasing optionality for BDI exit. The FDIC believes that such transactions would be more effective in preserving the franchise value of the failed CIDI. As a result, a CIDI with a material amount of the unsecured, non-deposit liabilities would be more likely to be able to devise a credible strategy involving an all-deposit transaction, potentially both to establish a viable BDI and ultimately in a sale to a third-party acquirer.

Accordingly, the proposed rule would require all CIDIs to provide more detail than is required by the current rule under 12 CFR 360.10(c)(2)(xv). Information regarding the composition of the liabilities of the CIDI and its material entities, including whether the liabilities are publicly issued, and information about maturity and call rights and, where applicable, indenture trustees would be required.

The proposed rule would also build upon the current rule and prior guidance regarding required information about funding. Specifically, the proposed rule would require that a resolution submission describe the current processes used to identify the liquidity and capital needs and resources available to each CIDI subsidiary that is a material entity,[48] and to describe the CIDI's capabilities to project and report its near-term funding and liquidity needs. It would also require a CIDI to describe material funding relationships and inter-affiliate exposures between the CIDI and its subsidiaries that are material entities. This information would support the FDIC's understanding of the impact of liquidity on divestiture of franchise components, and would inform considerations related to stabilizing the BDI and continuity of operations.

The FDIC invites comments on all aspects of the proposed capital structure; funding sources requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(42) The proposed rule would require information about liquidity and capital needs and resources available to each CIDI subsidiary that is a material entity. Should the final rule require this type of information about all entities – regardless of whether they are material entities – that have a

[48] The Statement provided that "the FDIC expects a resolution plan to describe the CIDI's current processes for determining the drivers of liquidity needs." Statement, p. 8.

regulatory capital and/or liquidity requirement?

Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations, located at proposed § 360.10(d)(18). The proposed rule generally would retain the content requirement of the current rule, whose corresponding subpart is located at 12 CFR 360.10(c)(2)(xvi). The proposed rule would make minor technical changes designed to improve and clarify wording and formatting of this subpart and its title, as well as delete the reference to "asset accounts," which has not proved to be useful information in prior resolution plan submissions.

Effects on U.S. economic conditions, located at proposed § 360.10(d)(19). The proposed rule would revise the *Systemically Important Functions*[49] informational element required in the current rule. Though the Statement indicated that all CIDIs with $100 billion or more in assets would be exempted from discussing this information in future resolution plan submissions, the FDIC has concluded that such a requirement may provide information that would contribute to the FDIC's resolution planning efforts. Under the proposed rule, CIDIs would be required to identify their activities or business lines that are material (a) to a particular geographic area or regions of the United States, (b) to a particular business sector or product line, or (c) to other financial institutions. The FDIC always seeks to minimize disruptions to customers when it resolves a failed IDI. Better understanding how the interruption of certain services could negatively affect certain geographic regions, industries or other financial institutions should help the FDIC better prepare to avoid disruptions that could have a severe impact on those regions, industries, and institutions. For example, a CIDI may note that it provides a number of transaction account functions like

[49] 12 CFR 360.10(c)(2)(xvii).

payroll accounts to a large number of customers, serves as a significant lender to a particular industry, or provides PCS services to a number of financial institutions. The more information the FDIC has in advance about these important functions, the better the FDIC can prepare to resolve the CIDI in a way that minimizes disruption. Although the systemic risk exception to the least-cost test was approved in connection with the recent resolutions of SVB and Signature Bank, the FDIC continues to expect to resolve banks under the FDIC without the expectation of that extraordinary action. First Republic was resolved without invoking the exception to the least-cost test requirement. Although particular facts and circumstances, such as macro-economic conditions, risk of contagion, and other factors may support a systemic risk exception for a particular institution or in particular circumstances, those circumstances are not the subject of this requirement. Rather, this content element seeks to understand information specific to the services that the CIDI provides, and whether those services are significant to a particular geographic area, business sector or product line, or other financial institutions.

While this information should be provided by all CIDIs, the level of information provided would be expected to vary based on the size and complexity of the CIDI. For the smaller group B CIDIs, this information may be fairly limited, perhaps only a particular market or sector where the CIDI has a significant presence. Conversely, for the largest group A CIDIs, systemic impact is a significant focus of DFA resolution plans. As discussed below with respect to the credibility assessment of an identified strategy, where the DFA resolution plan of the CIDI's parent company contains relevant analysis and information with respect to the risk of potential adverse effects on U.S. financial stability arising from the failure of a subsidiary group A CIDI, the inclusion of that

information by cross-reference is permitted under proposed paragraph (c)(6).

Non-deposit claims, located at proposed § 360.10(d)(20). The proposed rule would codify and build upon past guidance[50] regarding non-deposit liabilities to support the FDIC's effective and efficient management of non-deposit claims in resolution, including identifying claims and notifying claimants. Related to the requirement in proposed § 360.10(d)(17) (*Capital structure; funding sources*) to describe material components of the CIDI's and material entities' short-term and long-term liabilities, including unsecured debt, the proposed rule would also require a CIDI to identify and describe its capabilities to identify the non-depositor unsecured creditors of the CIDI and its subsidiaries that are material entities. The proposed rule would also require a description of how the CIDI would identify all non-depositor unsecured liabilities, including contingent liabilities like guarantees and letters of credit, as well as the location of the CIDI's related records and its recordkeeping practices.

Cross-border elements, located at proposed § 360.10(d)(21). The proposed rule would maintain and build on the information required in the current rule, but proposes organizational improvements and to require certain information that would provide additional context about the required content.

In general, in the proposed rule, cross-border elements are addressed in connection with the relevant content areas in various subparts. Specifically, cross-border elements are addressed in the discussion of *Organizational structure; legal entities; core business lines and branches*; foreign deposits are referenced in connection with *Overall deposit activities*; and critical services located outside the United States are referenced in *Critical services*, among other references. Proposed § 360.10(d)(21) would be retained to provide context to

[50] Statement, p. 8.

that other information by requiring that a resolution submission describe components of cross-border activities of the parent company or parent company affiliates that contribute to value, revenues, or operations of the CIDI. Where the CIDI has a significant interest (e.g., a controlling interest or a significant economic interest) in a foreign joint venture that contributes value to revenue or operations of the CIDI, that should be included. Entities with no meaningful function or contribution to the CIDI's operations, such as single purpose real estate holding companies, should be excluded.

The proposed rule would also require that a resolution submission identify regulatory or other impediments to divestiture, transfer, or continuation of foreign branches, subsidiaries or offices while the CIDI is in resolution, including regarding retention or termination of personnel, or impediments or necessary actions to transfer the CIDI's interest in the entity, such as approvals or restrictions on transfer of a license or other authorization.

The FDIC invites comments on all aspects of the proposed revised cross-border elements requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(43) Does it capture the information that would be most useful to the FDIC in its resolution planning? If there is different or additional information that would be useful, please describe it and explain how it would be helpful in resolution readiness.

Management information systems; software licenses; intellectual property, located at proposed § 360.10(d)(22). The proposed rule would retain the current rule's requirement, located at 12 CFR 360.10(c)(2)(xix), to identify and describe each key management information system and application, and would add the requirement that a CIDI identify both any core business line that uses it, and the

personnel needed to operate it. Each group A CIDI would also be required to identify each system's and application's use and function, which core business lines use it, and its physical location, if any. The proposed rule would also require a resolution submission to specifically identify key systems or applications the CIDI or its subsidiary does not own or license directly from the provider, and to discuss how access to the system or application can be maintained when the CIDI is in resolution. These changes would enhance the content required with respect to management information systems, software licenses, and intellectual property, with a focus on how to assure that these systems can be maintained in a BDI or receivership if necessary. Finally, the proposed rule would require describing the capabilities of the CIDI's processes and systems to collect, maintain, and produce the information and other data underlying the resolution submission. A CIDI would be required to identify all relevant systems and applications, and to describe how the information is managed and maintained. For example, the resolution submission must describe if the information is centralized or organized by region or business line, whether it is automated or manual, and whether the applicable system or application is integrated with other of the CIDI's systems or applications.

The proposed rule would delete the current rule's requirement to identify and discuss any disaster recovery or other backup plans;[51] this information is addressed through supervisory processes.

Digital services and electronic platforms, located at § 360.10 (d)(23), would be a new content element. The role of digital services and electronic platforms and related services provided to retail and commercial customers has increased dramatically since the current rule was adopted. A better

[51] 12 CFR 360.10(c)(2)(xix).

understanding of the value of these services, their impact on customer relationships, and the potential challenges to continuing those services in resolution will be helpful to the FDIC in its resolution planning.

The FDIC invites comments on all aspects of the proposed digital services and electronic platforms requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(44) Does it capture the information that would be most useful to the FDIC in its resolution planning? If there is different or additional information that would be useful, please describe it and explain how it would be helpful in resolution readiness.

Communications playbook, located at proposed § 360.10(d)(24), would codify and build upon previous guidance. As explained in the Statement,[52] the FDIC has found that, during a resolution, the timely provision of accurate information can reduce adverse market reaction and address employee and other stakeholder concerns about a CIDI's failure and resolution that could impede an orderly resolution. Therefore, it is important that the FDIC understand a CIDI's communications capabilities, and that a CIDI have a communications strategy that the FDIC could employ as part of the FDIC's communications plan to help mitigate obstacles to the orderly resolution of a CIDI. Accordingly, the proposed rule would require a resolution plan to include a communications playbook describing the CIDI's current communications capabilities and how those capabilities could be used from the point of the CIDI's failure through its resolution.

The FDIC invites comment on all aspect of the proposed communications playbook requirements. In particular, the FDIC asks the following questions on

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[52] Statement, p. 5.

specific aspects of the proposal:

(45) Is the request clear and would the information be appropriate to the FDIC's goal of establishing a comprehensive communications plan for important stakeholders over closing weekend and throughout the resolution?

(46) Is there additional or different content that is specific to the communication challenges in resolution that CIDIs have or may develop that would be helpful and important to include in resolution submissions?

Corporate governance, located at proposed § 360.10(d)(25). Other than technical edits, this subpart of the proposed rule would largely be identical to the corresponding subpart of the current rule, located at 12 CFR 360.10(c)(2)(xx). However, the proposed rule would eliminate the current rule's requirement to identify and list the position of the senior management official of the CIDI who is primarily responsible and accountable for the implementation of the resolution submission. In practice, the benefits to the FDIC from this information were minimal and did not warrant the burden on CIDIs of preparing and providing this information.

CIDI's assessment of the resolution submission, located at proposed § 360.10(d)(26). The proposed rule would retain the current rule's requirement, located at § 360.10(c)(2)(xxi), that a CIDI provide a description of any contingency planning or similar exercise it had conducted since its most recently filed resolution submission that assesses the viability of or improves the resolution submission. While neither the current nor the proposed rule would require any such assessment or contingency planning or similar exercise, such assessments are useful practice and the FDIC benefits from a description of the nature, extent, and results of any such activities.

The Statement exempted all CIDIs from including information required by this subpart, but in reflecting on resolution plan submissions received, the FDIC has found that information regarding exercises, such as simulations, tabletops, or other tools for self-assessment of resolution plans, processes, and capabilities is helpful to the FDIC. The assessment would be limited to requiring CIDIs to describe contingency planning or exercises they have done or plan to do; it would not require CIDIs to conduct these types of activities, so the associated burden would be limited.

Any other material factor, located at proposed § 360.10(d)(27). The proposed rule would make a non-substantive wording change for clarity and readability. Otherwise, this requirement is the same as the corresponding subpart in the current rule, which is located at 12 CFR 360.10(c)(2)(xxii).

In addition to the changes already noted, the proposed rule would delete the following subparts in the current rule:

Strategy for the Sale or Disposition of Deposit Franchise, Business Lines and Assets, located at 12 CFR 360.10(c)(2)(vi). As noted above, this content element is superseded by the proposed franchise components subpart at proposed § 360.10(d)(10).

Least Costly Resolution Method, located at 12 CFR 360.10(c)(2)(vii). As discussed above, the proposed rule would replace this subpart with proposed § 360.10(d)(11).

Asset Valuation and Sales, located at 12 CFR 360.10(c)(2)(viii). The proposed rule would delete the entire subpart, codifying the exemption provided to all CIDIs as described in the Statement. The most useful concepts related to valuation have been included in the discussion of valuation to support the least-cost test analysis, as discussed above. Also as discussed above, the rule as

proposed would not require analysis under baseline and adverse scenarios. Accordingly, this section is omitted as being duplicative in part, and in part because the burden on CIDIs exceeds the benefit of the information to the FDIC's resolution planning.

Major Counterparties, located at 12 CFR 360.10(c)(2)(ix). The proposed rule would delete this subpart, codifying the exemption provided to all CIDIs as described in the Statement. The FDIC believes that the burden of this subpart's requirements generally outweighs their utility for the FDIC planning for the resolution of CIDIs. In some cases, relevant information is provided in connection with other content areas, such as payment clearing and settlement systems; in other cases it can be obtained through supervisory or other information channels.

Collateral Pledged, located at 12 CFR 360.10(c)(2)(xi). The proposed rule would delete this subpart, codifying for all CIDIs the exemption provided to many CIDIs as described in the Statement. The FDIC believes that the burden of this subpart's requirements generally outweighs their utility for the FDIC planning for the resolution of CIDIs because it can be obtained through supervisory or other information channels.

The FDIC invites comment on all aspects of the proposed submission requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(47) Are the proposed submission requirements clear and appropriate to the goals of the proposed rule? Do they seek information that CIDIs can provide or, with reasonable effort, could develop the capabilities to provide?

(48) Would additional or different requirements in any of these or other topical areas better facilitate the FDIC's efforts to plan for and execute an orderly

resolution of a failed CIDI?

(49) Should the FDIC retain any of the requirements proposed to be eliminated, potentially with modifications?

As noted above in section II, the current rule was adopted in 2011 through an interim final rule and finalized the following year.[53] At that time, all IDIs with total assets of $50 billion or more were subject to the submission of a resolution plan under the current rule. This scope of the rule has not changed to the present day, although no resolution plan submission has been made by a CIDI with total assets of at least $50 and less than $100 billion since 2018, and a moratorium on filings by those firms remains in effect. The FDIC has considered whether to require resolution plans from group B CIDIs, whether they should be permanently exempted from any resolution submission requirement, or whether a reduced filing requirement is appropriate for these CIDIs. For the reasons discussed below, the FDIC would not require group B CIDIs to submit a resolution plan under the proposed rule, but would have a requirement for an informational filing by the group B CIDIs.

The size of an institution significantly impacts the FDIC's options for resolution. A significant constraint on the FDIC's ability to resolve large institutions is the limited set of institutions that could acquire an entire large institution. In the FDIC's experience, generally an institution of significantly greater size is the most likely potential acquirer of a failed IDI. In light of the fact that the group B CIDIs are smaller than the group A CIDIs, there are more potential acquirers. The FDIC is obligated by statute to find the least-costly resolution, which may well be a whole-bank sale immediately at failure. However,

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[53] *See generally* Resolution Plans Required for Insured Depository Institutions with $50 Billion or More in Total Assets, 77 FR 3075 (Jan. 23, 2012).

despite group B CIDIs' smaller size, that option may not be available. Where there is no acquirer for a transaction that meets the least-cost requirement, the establishment of a BDI may be necessary, either to facilitate a whole-bank sale or a range of other exit options.

A group B CIDI is a very large institution, and resolving such an institution will pose significant challenges. In order to be able to complete a sale at closing, the FDIC would need much of the same information regarding the group B CIDI and its operations as the FDIC is seeking regarding group A CIDIs. However, the FDIC wishes to better balance the burden on group B CIDIs and proposes exempting informational filings from including the following informational elements: Identified strategy (proposed § 360.10(d)(1)), Failure scenario (proposed § 360.10(d)(2)), Executive summary (proposed § 360.10(d)(3)), and Valuation to facilitate FDIC's assessment of least-costly resolution method (proposed § 360.10(d)(12)). The FDIC believes exempting these informational elements from group B CIDIs' informational filings strikes the right balance between providing the FDIC with information needed to facilitate resolution planning efforts and calibrating the compliance burden. Furthermore, the engagement provision of the proposed rule would provide the FDIC with an avenue to establish ongoing dialogue with institutions regarding the informational filing's content, including how the information may be considered when vetting potential resolution strategies.

The FDIC invites comments on all aspects of the proposed informational filing requirements for group B CIDIs. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(50) Do commenters believe there are any proposed information requirements for group B CIDIs that should not be included in the

proposed requirements for informational filings? If so, please explain which proposed information requirements should not be included for group B CIDIs and why the information requirements should not be included for group B CIDIs.

(51) Do commenters believe that any information requirements that are not proposed for group B CIDIs should be included in the proposed information requirements? If so, please explain what those information requirements are and why the information requirements should be included for group B CIDIs.

(52) Do commenters believe that the informational requirements relevant to group B CIDIs constitute information that those CIDIs regularly use as part of business-as-usual operations? If not, what specific informational requirements would be burdensome to group B CIDIs to produce?

(53) Do commenters believe that there are any barriers that would prevent group B CIDIs from complying with one or more of the proposed information requirements? If so, please explain why the barriers would prevent group B CIDIs from complying with one or more proposed information requirements and suggest any alternative approaches that would facilitate compliance.

e. Interim Supplement.

The FDIC is proposing a new requirement for CIDIs to submit limited interim supplements in the years that a CIDI is not required to provide a resolution submission. This interim supplement is intended to provide current and accurate information regarding a limited subset of the resolution submission content items, focusing on those informational elements where more current

information is especially useful, and where updating and producing that information can be accomplished with limited burden year over year. While the purpose of the interim supplement is to update and supplement information, the FDIC is proposing to require complete information for each content item in each interim supplement regardless of whether the information has changed from the CIDI's previous resolution submission for ease of access in the event of a CIDI failure. This interim supplement requirement is separate and distinct from the proposed requirements related to notice of material change under proposed paragraph (c)(4) or engagement and capabilities testing under proposed paragraph (g) and would not in any way limit those requirements.

Under proposed paragraph (e)(1), each CIDI would be required to submit an interim supplement to the FDIC on the one-year anniversary (or the first business day after the one-year anniversary if the anniversary falls on a non-business day) of the CIDI's most recent resolution submission, as determined by the proposed resolution submission timing requirements under proposed paragraph (c), unless the CIDI receives written notice from the FDIC establishing a different interim supplement submission date. No interim supplement would be required in a year in which a CIDI makes a timely resolution submission. The FDIC notes that the discussion of transition below in section III.E.8 describes the expectation that CIDIs that are not in the first cohort of CIDIs to file a resolution submission under amended § 360.10 would be required to supplement and update their most recent resolution submission under the current regulation- until they are required to file a resolution submission under amended § 360.10.

Under proposed paragraph (e)(2), each CIDI would be required to file interim supplements that address each of the content items required under proposed paragraph (e)(3), as discussed below. The information that is

submitted for each content item would need to be current as of the date of the end of the most recent fiscal quarter prior to the submission date for the interim supplement. Any material changes from information provided for any particular content item in the CIDI's most recent resolution submission would need to be identified and explained. The FDIC may also ask a CIDI to include additional content items in the interim supplement that would be required for the CIDI's resolution submissions under proposed paragraph (d).

Proposed paragraph (e)(3) lists the content items that would be required to be addressed in each interim supplement. Proposed paragraph (e)(3) cross-references proposed paragraph (d) in order to emphasize that the listed information to be provided is intended to be exactly the same as the cross-referenced content required under proposed paragraph (d). In many cases, the interim supplements need to include only a portion of information required to be included in a resolution submission for a particular content items. In identifying content for the interim supplement, the FDIC focused on information that is most essential to the FDIC's resolution planning, that can be more readily produced, and/or that is relatively likely to change year over year. For those reasons, the FDIC generally did not include detailed analysis, mapping, or rationale and explanation identifying the content elements – and the portions of those content elements – to be included in the interim supplements. The FDIC retains the discretion to add or eliminate elements from the interim supplement. That is to ensure that the interim supplements remain useful and include the most important information, and can evolve based on lessons learned. The FDIC expects to provide timely notice of any changes to the content expectations for the next interim supplement of at least six months.

As with the proposed resolution submission requirements, the FDIC is

proposing to include the interim supplement requirement in order to help ensure that the FDIC has timely information for key content items that will assist the FDIC with planning for potential CIDI resolutions with the expectation that improved planning will lead to more efficient and potentially less costly resolutions for failed CIDIs. In the event of a CIDI's failure more than a year after a CIDI's resolution submission, it would be beneficial for the FDIC to have updated information regarding the subset of content items that are included in the proposed interim supplement requirement. This updated information would be beneficial to the resolution process whether it indicates a change in the information for the content item from the previous resolution submission or confirms that the information in the resolution submission remains accurate.

The FDIC is also cognizant of the burden on CIDIs that may result from providing the proposed interim supplements and, in order to minimize that burden, is proposing to require the interim supplements to include only a subset of the resolution submission content requirements. This subset comprises fewer than half of the content items that would be included for resolution submissions under the proposed resolution submission requirements and, for many of the interim submission content items, only a portion of the content required for those elements. The FDIC has limited the proposed required content items and believes the proposed interim submission requirement strikes the right balance to provide the FDIC with valuable updated information to assist with resolution planning and CIDI resolution while limiting burden on the CIDIs in providing the updated information.

(54) The FDIC invites comments on all aspects of the proposed interim supplement requirement, including if the utility of the information provided outweighs the burden of providing the information. Do the interim

supplements appropriately balance the need for up-to-date information with the burden of filing submissions annually? Should the FDIC consider a different schedule for submissions of the interim supplements or require more or less information to be included in the supplements? Is the information requested readily available and repeatable year over year? Are there content elements including in the interim supplement that are not likely to materially change year over year? Are there important content elements identified in the NPR but not included in the enumerated items for the interim supplement that are likely to materially change and should be included in the interim update? Should interim supplements be subject to the second prong of the proposed credibility standard (which is discussed below) as provided for in the proposal, or is there a more appropriate standard that the FDIC should use?

B. Credibility; Review of Resolution Submissions

1. Credibility Criteria

The FDIC anticipates there would be benefit from clarifying the standard for credibility associated with resolution plan submissions and CIDI participation in engagement and capabilities testing. The express definition of credibility in the current rule is primarily focused on the quality of the information in the plan, i.e., whether it is "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."[54] The current rule also requires, separately, that the resolution plan should enable the FDIC, as receiver, to resolve the institution under the FDI Act "in a manner that

[54] 12 CFR 360.10(c)(4)(i).

ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution."[55] In specifying implementation matters, the current rule specifies that, "each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan."[56] The proposed rule would expressly incorporate both of these concepts in the credibility standard and would update and clarify the goals and standards for review from the current rule, in a manner intended to establish clearer guidelines for the CIDIs with respect to their resolution submissions, and to facilitate review by the FDIC.

As proposed, the credibility standard would have two prongs. The identified strategy would be assessed against the first prong set forth in proposed § 360.10(f)(1)(i), i.e., that a resolution plan is not credible if it 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. This prong is based upon the expectation set forth in the current rule, with clarifying changes to language and the transparency of making the expectation an express part of the credibility assessment. The second prong of the standard, set forth in proposed § 360.10(f)(1)(ii), aligns with the express standard under the current rule. It applies to all of the content in a resolution plan

[55] 12 CFR 360.10(a).
[56] 12 CFR 360.10(d)(1).

– including the identified strategy and all other elements in proposed § 360.10(d). To meet this proposed standard, all of the information and analysis in the resolution submissions must be supported with observable and verifiable capabilities and data and reasonable projections and the CIDI must comply in all material respects with the requirements of the rule. This second prong would go to the accuracy of information provided, the reasonableness of assumptions and projections on which information and analysis are based, and the capabilities of the CIDI to provide the required information and analysis and thereby meet the proposed rule's requirements. Several additional aspects of the proposed credibility standard are discussed in more detail below.

The first prong of the proposed credibility standard expressly includes the requirement that the identified strategy must address potential risks of adverse effects on U.S. economic conditions or financial stability. The history of the past several decades, including as demonstrated in the spring of 2023, makes clear that failure in the banking system can be contagious. The effects of failure of one large financial institution can propagate quickly and strongly to others through the vast array of interconnections that presently exist amongst various types of financial entities. To the extent that failure is disorderly those effects are magnified; to the extent it can be managed and controlled those risks are mitigated. This is especially true for a large, complex IDI, and the failure of such an institution, unless properly managed, is more likely to pose a serious risk to the financial stability of the domestic banking system (and, increasingly, the global financial system). This risk is likely to increase with size. For such institutions, Congress has provided the FDIC the flexibility, under certain important conditions, to depart from the restrictions of the least-cost-test in the interests of reducing adverse effects on financial stability. However, Congress

made clear that use of the systemic risk exception is intended to be an extraordinary event. The FDIC seeks to avoid the use of the systemic risk exception.

Accordingly, understanding and mitigating the impact on U.S. economic conditions and financial stability in resolution is an important consideration in resolution planning for large, complex IDIs. While the credibility standard does not include a requirement that the identified strategy demonstrate that it is the least-costly to the DIF, the FDIC cannot assume the availability of the systemic risk exception to the least-cost test in the event of a failure of a large, complex IDI requiring resolution under the FDI Act. Ensuring that the CIDI can be resolved without the need for extraordinary support from the DIF is a resolution planning objective. At the same time, the FDIC is cognizant that some CIDIs have critical operations identified in their affiliates' DFA resolution plans, are highly interconnected with other financial institutions, or have dominant market share in certain geographic regions or market segments, or their resolution could be disruptive to the U.S. economy or financial stability in other ways. The proposed rule would require the resolution submission to identify those effects. Addressing the impact of the identified strategy on U.S. economic conditions and financial stability by identifying those impacts and identifying mitigants to them is an important component of the credibility assessment of an identified strategy presented in a group A CIDI's resolution plan.

The requirement that the CIDI plan "address" the potential risk of adverse effects on U.S. economic conditions or financial stability is intended to require that the identified strategy take into account the potential for risks to U.S. economic conditions or financial stability arising from the execution of the strategy. Those risks should be described in the resolution submission, and the

identified strategy should include specified actions that would mitigate those risks so that reliance on a systemic risk exception would not be a necessary element of planning.

The FDIC has considered the particular challenges with respect to the requirement that the identified strategy address the potential for risks to U.S. economic conditions or financial stability for the largest and most systemic group A CIDIs, specifically the group A CIDIs that are subsidiaries of U.S. global systemically important banking organizations (U.S. GSIBs) as defined by rules promulgated by the FRB.[57] This category of firms comprise the U.S. banking organizations that pose the greatest risk to U.S. financial stability. The FDIC is aware of progress made by the U.S. GSIBs in the development of DFA resolution plans, including their adoption as their preferred resolution strategy a single point of entry strategy for the resolution of the firm pursuant to which any subsidiary U.S. IDI that is a material entity remains open and operating. Each of these firms has made progress in increasing the range of scenarios in which that strategy may be actionable and effective through structural and operational changes. Moreover, certain enhanced prudential standards that support resolvability apply only to the U.S. GSIBs.[58]

Despite this progress, the availability or success of a single point of entry strategy cannot be assured in all circumstances, and the possibility of a resolution of a CIDI that is part of a U.S. GSIB cannot be eliminated. Thus, the FDIC believes that it is appropriate to require group A CIDIs within these banking organizations to develop comprehensive resolution plans that include an

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[57] *See* 12 CFR 217.402 (Identification as a global systemically important BHC).
[58] *See* 12 CFR part 252 subpart G (External Long-term Debt Requirement, External Total Loss-absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S. Global Systemically Important Banking Organizations).

identified strategy that meets the requirements of the prong (i) standard, as described in the proposed rule, to support the FDIC's resolution readiness in the event that a CIDI within such a banking organization should fail. While these CIDIs may have a particular challenge in addressing the risks their identified strategy may present to the U.S. economy and financial stability, where the DFA resolution plan of the CIDI's parent company contains relevant analysis and information with respect to the risk of potential adverse effects on U.S. financial stability arising from the failure of a subsidiary group A CIDI, the inclusion of that information by cross-reference is permitted under proposed (c)(6). In addition, where the strategy for the rapid and orderly resolution[59] of a U.S. GSIB in its DFA resolution plan does not include the resolution of the CIDI under the FDIA, that strategy may reasonably be identified as a mitigant to the systemic risk, if any, posed by the failure of the CIDI under the FDIA.

The second prong of the credibility standard requires that the resolution submission be supported with observable and verifiable capabilities. Capabilities may be supported by analysis and information provided in the resolution submission, and assessed through capabilities testing as well as through assessments conducted by the IDIs and described in the submission. While the proposed rule would not be prescriptive with respect to capabilities, it would contain the express requirement that a CIDIs' capabilities are sufficient to support key elements, namely, capabilities necessary to ensure continuity of critical services in resolution, capabilities necessary to ensure that franchise

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[59] A "rapid and orderly resolution" for purposes of a DFA resolution plan is a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the U.S. Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States. 12 CFR 381.2.

components are separable and marketable, and, with respect to group A CIDIs, capabilities necessary to produce valuations needed in assessing the least-cost test. The purpose of not describing or prescribing specific capabilities is to have each group A CIDI consider its own business, operations, and identified strategy as the foundation for identifying the needed capabilities and how they are demonstrated for the CIDI's particular businesses and its resolution plan.

There are, however, certain capability expectations for some or all CIDIs that can reasonably be inferred from the content requirements of the resolution submission as described in the proposed rule, e.g., a requirement to map information clearly implies expectation of a mapping capability; and requirements to identify key depositors, critical services support, or key personnel requires the capabilities to support that identification.

Even though the language in the credibility standard regarding access to insured deposits is proposed to be changed to "timely access to insured deposits," this does not represent a change in the FDIC's long-standing goal of providing access to insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday). For some categories of deposit accounts, however, such as trust accounts or other accounts with many beneficial owners, additional due diligence is needed for an insurance determination, which can require additional time. While the recordkeeping and information technology capabilities required by 12 CFR part 370 should significantly expedite an insurance determination for a CIDI with more than two million deposit accounts, and the FDIC has improved its systems and processes with respect to all institutions, there will remain some portion of accounts for which additional due diligence is required. Accordingly, the language has been revised to align more closely to the statutory requirement that

payment of insured deposits shall be made "as soon as possible."[60]

The FDIC invites comments on all aspects of the proposed credibility standard. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(55) Is prong (i) of the credibility standard sufficiently clear? In particular, is the requirement that the identified strategy address potential risk of adverse effects on U.S. economic conditions or financial stability clear? Will addressing potential risks to the U.S. financial system through identifying risks in resolution as well as actions that the FDIC could take to mitigate those risks be helpful to the FDIC in planning for resolution in a manner that does not necessitate reliance on the systemic risk exception to the least-cost requirement?

(56) Is there a different standard that the FDIC should use to assess credibility of a resolution plan or an informational filing?

(57) Is the distinction between the credibility standard for group A and group B CIDIs sufficiently clear?

(58) Do commenters believe that the proposed approach with respect to prong (i) of the credibility standard, as applied to CIDIs within U.S. GSIB is appropriate and would support the FDIC's planning for resolution of such a CIDI under the FDI Act in the event it becomes necessary?

(59) Should a U.S. GSIB's single point of entry strategy as presented in its DFA resolution plan be considered with respect to content requirements in a related CIDI's resolution plan under the proposed rule? If so, which ones?

(60) Are there other resolution plan content elements in the proposed rule that

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[60] 12 U.S.C. 1821(f)(1).

should be modified when applied to CIDIs that are part of U.S. GSIBs?

(61) Are there additional or enhanced content elements that should be required of such CIDIs?

2. Resolution Submission Review and Credibility Determination; Resubmission; Notice of Feedback

Similar to the current rule, proposed § 360.10(f)(2) would maintain a process for resolution submission review and credibility assessment. The proposed rule makes no change to the current rule with respect to coordination with supervisors in connection with this review process: the FDIC would review a resolution submission in consultation with the appropriate Federal banking agency for the CIDI and for its parent company. If, after consultation with any such appropriate Federal banking agency (or agencies), the FDIC were to determine that a CIDI's resolution submission is not credible, the FDIC would notify the CIDI in writing of such determination. The writing would include a description of the weaknesses in the resolution submission that resulted in the determination.

The current rule includes, as part of the review process, provision for a brief 30-day review to determine whether the plan satisfies minimum informational requirements. The FDIC then would either acknowledge acceptance of the plan for review or return the plan if the FDIC determines that it is incomplete or that substantial additional information is required to facilitate the plan's review.[61] The current rule also includes a process for resubmission of an informationally complete plan or the provision of additional information requested

[61] 12 CFR 360.10(c)(4)(ii).

by the FDIC.[62] The FDIC has not found these provisions to be useful, or to meaningfully add to the plan review process. Accordingly, the proposed rule would eliminate these provisions.

Proposed § 360.10(f)(3) also provides, similar to the current rule, that within 90 days of being notified by the FDIC that a resolution submission is not credible, or such shorter or longer period as the FDIC may determine, a CIDI must submit to the FDIC a revised resolution submission that addresses any weaknesses identified by the FDIC and discusses in detail the revisions made to address such weaknesses.

In the current rule, if the resolution plan of a CIDI is found by the FDIC to be not credible, the FDIC provides a notice to the CIDI identifying the aspects of the resolution plan that the FDIC has determined to be deficient and the CIDI's revised resolution plan must address those deficiencies. In the proposal, the FDIC must provide a notice including a description of the weaknesses in the resolution submission that resulted in the determination that the resolution submission is not credible, and the revised resolution submission by the CIDI must address those weaknesses. Here, the term weakness is used in the proposal rather than deficiency to distinguish the proposal from the language utilized in the section 165(d) rule regarding the FDIC's findings in a submission and to clarify that the review process and criteria between the proposed rule and the section 165(d) rule are different and separate from each other.

Even though it is not directly addressed in the current rule, the FDIC has historically provided written feedback to CIDIs concerning their resolution plans. The proposed § 360.10 (f)(5) explicitly provides that, following its review of a resolution submission – either a resolution plan or an informational filing – the

[62] 12 CFR 360.10(c)(4)(iii), (iv).

FDIC may provide feedback on a resolution submission, and the FDIC expects that it generally will provide initial feedback within a year of a resolution submission. Under the proposed rule, this initial feedback notice could identify areas of engagement and, in the case of group A CIDIs, capabilities testing between the FDIC and the CIDI. The FDIC may include a written notice with respect to the credibility of the resolution plan submission within this initial feedback, or can defer that determination until after any engagement and, if applicable, capabilities testing.

In certain cases, it may be apparent based solely on a review of the resolution plan that the identified strategy is not credible as required by proposed paragraph (f)(1)(i) of the proposed rule. A resolution submission may, for example, fail to include required information, which may result in a finding following the FDIC's review that the resolution submission is not credible based on proposed paragraph (f)(1)(ii).

In other cases, a credibility finding may not be possible until the conclusion of engagement and capabilities testing with a CIDI. For example, a review of a resolution submission may indicate that the CIDI has certain required capabilities. It may only become apparent following the conclusion of engagement and capabilities testing exercises that the CIDI was unable to demonstrate those capabilities. Such a case could lead to the FDIC making a determination that the resolution submission is not credible based upon information provided by the engagement and capabilities exercises. As noted above in section III.B.2 in the discussion of resolution submission review and credibility determination, the FDIC may make a credibility finding at any time throughout the review and engagement and capabilities testing process and may include such findings together with an initial feedback letter following resolution

submission review, together with a conclusion letter following engagement or capabilities testing, or as an independent communication to the CIDI.

The FDIC invites comments on all aspects of the proposed resolution submission review and credibility determination; resubmission; notice of feedback requirements. In particular, the FDIC asks the following question on specific aspects of the proposal:

(62) Is the proposed review and feedback process clear?

(63) The FDIC proposes a flexible approach to timing of credibility determinations, which can be made following plan review and/or following engagement and capabilities testing. Are multiple opportunities for feedback helpful?

(64) Is the timing for the various steps over the resolution submission cycle clear, and is the timing appropriate?

C. Engagement and Capabilities Testing

The FDIC proposes to modify the current rule to provide more clarity concerning the FDIC's expectations for engagement between CIDIs and the FDIC. The FDIC has found that direct engagement with the knowledgeable staff at a CIDI has significant value in promoting FDIC understanding of the content of a resolution submission and the application of the information to both the identified strategy and other strategic options that will be useful to the FDIC in implementing a resolution strategy. In addition, engagement with a CIDI will allow the CIDI and the FDIC to focus on the areas most important to the business and organization of the particular CIDI and the particular challenges the FDIC may face in the potential resolution of that CIDI. Engagement is important with respect to informational filings as well, as it would provide an opportunity to identify gaps

in the FDIC's understanding of the particular institution and its potential challenges in resolution. The FDIC could use this opportunity to explore how identified gaps could be mitigated through additional data and analysis or future resolution submissions.

Capabilities testing also has proven useful to validate the information and capabilities described in a CIDI's resolution plan and to understand how those capabilities may apply across a range of scenarios and strategic options that the FDIC may be called upon to implement. The proposed rule contains express language that in both engagement and capabilities testing, the FDIC may seek to understand how information or assumptions may change based on possible changes to a scenario, or to test capabilities under a different set of assumptions than used in the identified strategy in a group A CIDI's resolution plan submission. The FDIC believes that the proposed amendments would clarify the FDIC's expectations with respect to engagement and capabilities testing.

In general, the FDIC expects to conduct engagement and capabilities testing in a manner consistent with the FDIC's examination practices, to the extent appropriate to the nature of the engagement and capabilities testing. For example, the FDIC would, as appropriate, provide the particular scope for an engagement exercise, establish a schedule, and provide a conclusion letter at the end of the engagement exercise.

In a biennial submission cycle the FDIC expects that engagement with group A CIDIs will occur on a selective basis but does not expect to engage with any group A CIDI more than once in each two-year cycle. Because informational filings by group B CIDIs do not include the development of an identified strategy and other elements of a group A resolution plan submission, the FDIC expects the engagement with group B CIDIs to be a key component of its resolution

planning for such firms, and will expect to engage with every group B CIDI in each cycle. In addition, the FDIC expects that capabilities testing for each group A and group B CIDI will occur no more than once per two-year cycle.

While the FDIC generally expects that engagement or capabilities testing with a particular CIDI would occur no more than once during a two-year submission cycle, the FDIC also believes that it is important to preserve the flexibility to undertake engagement and capabilities testing with a CIDI as frequently as needed and whenever prudent, based on the circumstances of the particular CIDI. In some instances no engagement or capabilities testing may be necessary during a two-year cycle, while in other cases, such as after changes at the CIDI or as the result of varying economic conditions, more frequent engagement and capabilities testing may be warranted. In addition to formal engagement and capabilities testing, the FDIC could also have other interactions with the CIDI, such as questions during the submission review process, or conversations regarding changes or updates to information or resolvability. This proposed provision is generally consistent with the current rule, although prior guidance had limited the FDIC's engagement and capabilities testing to once per firm per submission cycle.[63]

1. Engagement

Paragraph (d)(1) of the current rule[64] requires each CIDI to provide the FDIC with information and access to the CIDI's personnel as the FDIC determines is necessary to assess the credibility of the resolution plan, and the ability of the CIDI to implement, the resolution plan.[65] The current rule also states

[63] Statement, p. 3.
[64] 12 CFR 360.10(d)(1).
[65] *See id.*

that the FDIC will rely on examinations conducted by or on behalf of a CIDI's appropriate Federal banking agency to the fullest extent possible.[66]

Proposed paragraph (g)(1) would require each CIDI to provide the FDIC such information and access to such personnel of the CIDI as the FDIC in its discretion determines is relevant to any of the provisions of proposed § 360.10 (defined as "engagement"). This will allow the FDIC to focus engagement on the information and capabilities most relevant to a CIDI's resolution submission and the nature of the business and particular resolution challenges applicable to that CIDI. This engagement requirement is similar to the requirement in current § 360.10(d)(1)[67] but establishes more clearly that such information and personnel access is at the discretion of the FDIC and is not limited to assessments of credibility for a resolution plan or the ability of the CIDI to implement a resolution plan, but instead includes any information or personnel relevant to any provision of the proposed rule. Engagement will also allow the FDIC to obtain more in-depth information, such as copies of critical services agreements or deposit agreements, or to gain insight on the relationships between different elements of information provided, such as asset portfolios and key depositors.

The proposed removal of the provision in the current rule that focuses engagement on the "ability of the CIDI to implement the resolution plan"[68] is intended to reflect that it is the FDIC in its capacity as receiver that implements a resolution plan, not the CIDI.[69]

Proposed paragraph (g)(1) would also require that the personnel a CIDI

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[66] *See id.*
[67] *See id.* ("In order to allow evaluation of the resolution plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan.").
[68] *Id.*
[69] *See* 12 U.S.C. 1821(d) (detailing the powers and duties of the FDIC as conservator or receiver).

makes available for engagement purposes have sufficient expertise and responsibility to address the informational and data requirements of the engagement. The FDIC proposes to include this requirement to ensure that the CIDI personnel can effectively and efficiently participate in the engagement to achieve the goals of the engagement.

The FDIC invites comments on all aspects of the proposed engagement requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(65) Do commenters believe the definition of "engagement" is clear? If not, please discuss any ambiguity or uncertainty regarding the proposed definition.

(66) Do commenters believe the proposed requirements related to personnel are sufficiently clear? If not, please discuss any ambiguity or uncertainty regarding the proposed requirements.

(67) Do commenters believe that the proposed engagement examples should include additional examples or that any proposed examples should be removed? If so, please be specific as to what examples should be added or removed.

(68) Do commenters believe there are any barriers that would generally prevent CIDIs from complying with the proposed engagement requirements? If so, please describe any barriers and describe any alternative approaches that could overcome the barriers.

2. Capabilities Testing

Current § 360.10(d)(2) requires each CIDI, within a reasonable period of time as determined by the FDIC, to demonstrate its capability to produce

promptly, in a time frame and format acceptable to the FDIC, the information and data underlying the CIDI's resolution plan.[70] Current § 360.10(d)(2) also requires the FDIC to consult with a CIDI's appropriate Federal banking agency before finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.[71]

The FDIC proposes to amend current § 360.10(d)(2) to provide more clarity as to the FDIC's expectations for CIDI capabilities testing. Proposed paragraph (g)(2) would require each CIDI, at the discretion of the FDIC, to demonstrate that it can actually perform the capabilities described, or required to be described, in a resolution submission, including the ability to provide the information, data, and analysis underlying the resolution submission and that these capabilities are adaptable to a range of scenarios. Proposed paragraph (g)(2) would also require that a CIDI perform capabilities testing promptly and provide the results in a time frame and format acceptable to the FDIC. This capabilities testing requirement is similar to the requirement in current § 360.10(d)(2),[72] but proposed paragraph (g)(2) would clarify that capabilities testing may require a CIDI to demonstrate any of the capabilities the proposed rule would require a CIDI to have, rather than the potentially more limited requirement in the current rule regarding capabilities to produce the information and data underlying the resolution plan. In addition, for the purpose of clarity, the proposed rule would expressly provide that capabilities testing of CIDIs would be at the discretion of the FDIC.

Examples of the capabilities that a CIDI could be required to demonstrate

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[70] *See* 12 CFR 360.10(d)(2).
[71] *See id.*
[72] *See* 12 CFR 360.10(d)(2) ("Within a reasonable period of time, as determined by the FDIC, following its Initial Submission Date, the CIDI shall demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, the information and data underlying its resolution plan.").

might include identification of key employees and key critical services, as well as capabilities to meet the requirements of the proposed rule with respect to mapping, such as mapping critical services to material entities. The FDIC might also test capabilities that are necessary to key elements of the resolution submission content, such as continuity of operations, franchise component separation and marketing. An example of such a capabilities test might be the establishment of a virtual due diligence room for one or more franchise components or for the IDI franchise as a whole, which is a capability that is critical to the marketing efforts that are essential in resolution. For group A CIDIs, a capabilities test might require the development of valuation analysis required under the proposed rule under the identified scenario or an alternative scenario. These examples are only provided for illustrative purposes and do not in any way restrict the general proposed paragraph (g)(2) requirement that capabilities testing can involve any capability described or required to be described in a resolution submission.

The FDIC is proposing the revised capabilities testing requirements in order to help ensure that the capabilities that a CIDI identifies as part of a resolution submission, or that are required to be in the resolution submission under proposed § 360.10(d), are actually in place in the event of the CIDI's failure. Resolution submissions are intended to assist the FDIC with efficiently and effectively resolving a CIDI in a way that preserves value and minimizes disruption, and it would impede this goal if the capabilities underlying a resolution submission were not actually available when needed. Requiring a CIDI to be able to demonstrate any identified or required capabilities helps the FDIC ensure that the capabilities would be available in the event of a resolution, which would in turn help with the resolution process.

The FDIC invites comments on all aspects of the proposed capabilities testing requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(69) Do commenters believe that the proposed capabilities testing requirements are clear? If not, please discuss any ambiguity or uncertainty regarding the proposed requirements.

(70) Do commenters believe that the proposed capabilities testing examples should include additional examples or any proposed examples should be removed? If so, please be specific as to what examples should be added or removed.

(71) Do commenters believe there are any barriers that would generally prevent group A CIDIs from complying with the proposed capabilities testing requirements? If so, please describe any barriers and describe any alternative approaches that could overcome the barriers.

3. Conclusion Letter

The FDIC proposes to add a new paragraph (g)(3) to address a conclusion letter that the FDIC may at its discretion provide at the conclusion of any engagement or capabilities testing exercise. This letter may identify areas for further attention by the CIDI or other feedback. The FDIC intends for any identified areas to help guide a CIDI's improvements to its resolution planning and submissions. As noted above in section III.B.2 in the discussion of resolution submission review and credibility determination, the FDIC may make a credibility finding at any time throughout the review or engagement and capabilities testing processes and may include such findings together with an initial feedback letter following submission review, together with a conclusion letter following

engagement or capabilities testing, or as an independent communication to the CIDI.

The FDIC notes that providing a conclusion letter for an engagement or capabilities testing exercise does not in any way limit the FDIC's ability to commence further engagement or capabilities testing with the same CIDI.

The FDIC invites comments on all aspects of the proposed conclusion letter requirements. In addition, the FDIC asks the following question on a specific aspect of the proposal:

(72) Do commenters believe that the proposed conclusion letter provisions are clear? If not, please discuss any ambiguity or uncertainty regarding the proposed provisions.

D. Enforcement

The proposed rule would add a new paragraph (k) to proposed § 360.10 regarding enforcement authorities for any potential violation of the requirements of proposed § 360.10. While proposed paragraph (k) would be a new addition to proposed § 360.10, the FDIC emphasizes that the new paragraph would not constitute a substantive change to existing § 360.10 and that proposed § 360.10(k) would not add any new enforcement authority or power to the FDIC's or any other Federal banking agency's current enforcement capabilities.

Under proposed paragraph (f)(4), if a CIDI's resolution submission were found to be not credible and the CIDI were to fail to submit the revised resolution submission within the required time-period or the FDIC were to determine that the revised resolution submission failed to adequately address the identified weaknesses, the FDIC could take enforcement action against the CIDI in accordance with proposed paragraph (k). Similarly, proposed paragraph (g)(4)

states that a CIDI's failure to comply with the requirements of engagement and capabilities testing under proposed paragraph (g) may result in the FDIC taking enforcement action against the CIDI in accordance with proposed paragraph (k). The FDIC is proposing this provision in order to emphasize that the FDIC expects each CIDI to fully participate in every engagement and capabilities testing exercise and to inform CIDIs of potential consequences for failure to comply with these requirements.

Proposed § 360.10(k) would reiterate the existing enforcement authorities and powers in order to clearly notify CIDIs that any violation of a requirement of proposed § 360.10 would constitute a violation of a regulation that may subject the offending CIDI to enforcement remedies available to the appropriate Federal banking agency under section 8 of the FDI Act and, where applicable, the FDIC under paragraph (t) of that section.[73] Where the FDIC is the appropriate Federal banking agency of the CIDI, those powers would include the ability to impose civil money penalties or cease and desist orders. Where the FDIC is not the appropriate Federal banking agency of the CIDI, enforcement action may be taken directly by the appropriate Federal banking agency.[74] Where enforcement action is not taken by the appropriate Federal banking agency, the FDIC may, where applicable, utilize its backup enforcement authority in accordance with the requirements in section 8(t).

These enforcement authorities and powers would not be modified by this proposal. Nothing in proposed paragraph (k) is intended to limit in any way the powers or authorities of any Federal banking agency.

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[73] 12 U.S.C. 1818(t).

[74] The FDIC is the appropriate Federal banking agency for any state-chartered IDI that is not a member of the Federal Reserve System. The FRB is the appropriate Federal banking agency for any state-chartered IDI that is a member of the Federal Reserve System. The OCC is the appropriate Federal banking agency for any nationally-chartered IDI.

The FDIC invites comments on all aspects of the proposed enforcement provision.

E. Additional Provisions

1. Approval by the CIDI Board of Directors

The proposed § 360.10(c)(5) retains the current rule's requirement that a CIDI's board of directors approve the submission, and that this approval be noted in the board's minutes. For an insured branch, the proposed rule would allow a submission to be approved by a delegee acting under the express authority of the board, and would require such delegation of authority to be noted in the board's minutes. This proposed change would better facilitate insured branch approval at a level commensurate with the requirement applicable to IDIs and still ensure senior officials remain responsible for the quality and timeliness of the submission.

The FDIC invites comments on all aspects of the proposed approval by the CIDI board of directors requirements. In particular, the FDIC asks the following question on a specific aspect of the proposal:

(73) Does the proposed approach to approval of submissions by CIDIs and insured branches ensure responsibility for submission integrity rests at an appropriate level?

2. Incorporation from Other Sources

The current rule provides that in its resolution plan, a CIDI may incorporate data and other information from a DFA resolution plan filed by its parent company.[75]

[75] 12 CFR 360.10(c)(1)(vi).

The proposed § 360.10(c)(6)(i) would expand the sources from which incorporation in a resolution submission is permitted, adding the most recently submitted resolution submission by the CIDI or an affiliate of the CIDI; a regulatory filing by the CIDI with the FDIC; and a publicly-available regulatory filing by the CIDI or any of its affiliates with any Federal or State regulator. The CIDI would be able to incorporate this information or analysis without seeking the authorization for disclosure of FDIC confidential information required under 12 CFR part 309. These changes would potentially reduce the costs to CIDIs of preparing resolution submissions without reducing the quality of information provided to the FDIC. Moreover, the proposed change would not increase the administrative burden of the FDIC or CIDIs because the proposed additional sources are limited to information already available to the FDIC. As proposed, the rule would allow incorporation of material from other sources – but not incorporation by reference. The FDIC has found that it is beneficial to have all of the relevant information in one place, so information can be incorporated – via appendices or inclusion in a resolution submission through well –identified excerpts – but not simply a reference to another source. The proposed rule includes certain proposed requirements about the format and process for incorporation of information from other sources and would require certification that the information or analysis remains accurate in all respects that are material to the CIDI's resolution submission. The information required by the section 165(d) rule pertaining to the specified CIDI must be readily distinguishable from any extraneous parent company (or parent company affiliate) information and the CIDI resolution plan should describe any material differences. The information or analysis must also clearly indicate the source and as-of date. As an example, incorporated financial information with dates differing from the prescribed CIDI

resolution plan financial date would be acceptable if the dates are clearly reflected and the differences are not material.

These proposed changes would incorporate into the revised rule certain elements of the guidance provided by the FDIC in 2021.[76]

The FDIC invites comments on all aspects of the proposed incorporation from other sources requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(74) Are the proposed changes to the incorporation from other sources requirements clear?

(75) Would the proposed incorporation from other sources requirements streamline the process for CIDIs of preparing resolution submissions?

(76) Should the FDIC consider allowing incorporation from other sources of additional or different sources of information?

3. Financial Information

The proposed § 360.10(h)(1) would require that a CIDI's resolution submission use, to the greatest extent possible, financial information as of the most recent fiscal year-end for which the CIDI has financial statements or, if financial information from more recent financial statements would more accurately reflect the CIDI's operations as of the date of the submission, financial information as of that more recent date. The current rule does not detail the required timeliness of financial information to be used in a submission. During the time in which the FDIC has been administering the current rule, a number of questions have arisen as to whether year-end financial statements or information as of another period or on another date should be used. Clarifying this aspect

[76] *See* Statement, p. 3-4.

should assist CIDIs in preparing resolution submissions and would incorporate into the revised rule guidance provided by the FDIC in 2021.[77]

The FDIC invites comments on all aspects of the proposed financial information requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(77) Are the proposed requirements concerning the timeliness of financial information used in a resolution submission clear?

(78) Would modified or different requirements provide helpful flexibility to CIDIs while still ensuring that the FDIC receives information of sufficient timeliness and accuracy?

4. Indexing of Information and Analysis to Resolution Submission and Interim Supplement Content Requirements

Proposed § 360.10(h)(2) provides that a CIDI's resolution submission and interim supplement must include an index of each content requirement required to be included in that resolution submission or interim supplement to every instance of its location in the submission or supplement. This would be a new requirement. Indexing would facilitate the FDIC's review of these materials and help ensure clear understanding by both a CIDI and the FDIC of where particular content may be found. Doing so may reduce the need for follow-up questions by FDIC staff during review of resolution submissions and interim supplements.

The FDIC invites comments on all aspects of the proposed indexing of information and analysis to resolution submission and interim supplement content requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

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[77] *See* Statement, p. 3.

(79) Are the proposed indexing requirements clear?

(80) Would another approach better serve the FDIC's objective of obtaining clear indication of where a resolution submission and interim supplement addressed each applicable content requirement?

5. Combined Resolution Submission and Interim Supplement by Affiliated CIDIs

Proposed § 360.10(h)(3) adds to the current rule a provision that would allow CIDIs that are affiliates to submit a single, combined resolution submission or interim supplement, so long as all affiliated CIDIs submitting the combined submission or supplement are within the same CIDI group, whether group A or group B. The combined submission or supplement would be required to satisfy the content requirements for each CIDI's separate submission or supplement, as applicable, and the CIDIs would need to ensure that the FDIC would be able to readily identify the portions of a combined submission or supplement that comprise each CIDI's separate submission or supplement. The proposed change would incorporate into the rule guidance provided by the FDIC in 2021 for CIDIs with $100 billion or more in total assets.[78] The intent is to enable affiliated CIDIs that are within the same group, either group A or group B, to provide more streamlined information that would be more useful to the FDIC, with appropriate safeguards to ensure that a combined resolution submission and interim supplement clearly delineates content applicable to each CIDI.

The FDIC invites comments on all aspects of the proposed combined resolution submission and interim supplement requirements. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(81) Is the proposed approach to permitting combined resolution submissions

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[78] *See* Statement, p. 4.

and interim supplements by affiliated CIDIs in the same CIDI group clear?

(82) Would a modified approach result in a more useful product for the FDIC while increasing the efficiency to CIDIs?

6. Form of Resolution Submissions; Confidential Treatment of Resolution Submissions

The proposed rule, like the current rule, would require that each CIDI divide its resolution submission into a public section and a confidential section. The only notable difference in the proposed rule from the current rule with respect to resolution plans is that the proposed rule would require a description in the public section, at a high level, of the group A CIDI's identified strategy. The purpose of this proposed change is to align the public section with proposed changes to the substantive contents of the confidential section of a resolution plan. For all resolution plans submitted in 2022 or to be submitted in 2023, the FDIC has exempted the CIDIs from including this information, but the proposed rule would include a comparable requirement aligned with the requirement for the development of an identified strategy in the current rule.

The requirement to include a public section would not apply to interim supplements required under proposed paragraph (e), as the interim supplements are updates of information included in the confidential section of a resolution submission.

The FDIC invites comments on all aspects of the proposed form and confidentiality of resolution submission and interim supplement requirements for CIDIs. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(83) Do commenters believe there are any proposed public section

requirements for group A or group B CIDIs that should not be included in the proposed requirement? If so, please explain which proposed public section requirements should not be included for group A or group B CIDIs and why the proposed requirements should not be included for those CIDIs.

(84) Do commenters believe that any public section requirements that are not proposed for group A or group B CIDIs should be included in the proposed requirements? If so, please explain what those public section requirements are and why the public section requirements should be included for group A or group B CIDIs.

(85) Do commenters believe that there are any barriers that would prevent group A or group B CIDIs from complying with one or more of the proposed public section requirements? If so, please explain why the barriers would prevent group A or group B CIDIs from complying with one or more proposed public requirements and suggest any alternative approaches that would facilitate compliance.

(86) Do commentators believe that the public interest or other interests would be served by requiring interim supplements to include an updated public section?

7. Extensions and Exemptions

The FDIC is proposing a new paragraph (j) titled "Extensions and exemptions," which would include the requirements of current § 360.10(d)(3) and (4)[79] as new paragraphs (j)(1) and (j)(2), with some modifications. The FDIC believes it is more logical to separate these requirements into a new paragraph

[79] *See* 12 CFR 360.10(d)(3) and (4).

because the current and the proposed versions of these paragraphs apply to all of § 360.10, not only current paragraph (d) and proposed paragraph (g).[80]

Proposed new paragraph (j)(1) would be titled "Extension" and would allow the FDIC, on its own initiative or upon written request, to extend, on a case-by-case basis, any of the time frames or deadlines in proposed § 360.10. This is largely the same provision as current § 360.10(d)(3), but would not be limited to "the implementation and updating time frames"[81] of § 360.10 and would instead allow broader extension of any time frame or deadline in proposed § 360.10. The FDIC believes this would allow the FDIC and the CIDIs more flexibility to extend a time requirement in any particular individualized circumstances where the FDIC believes an extension is warranted.

Proposed new paragraph (j)(2) would be titled "Waiver" and would allow the FDIC, on its own initiative or upon written request, to exempt a CIDI from one or more of the requirements of proposed § 360.10. This proposed provision is identical to current § 360.10(d)(4).[82]

The FDIC invites comments on all aspects of the proposed extensions and exemptions requirements.

8. Transition

Group A CIDIs: Entities that are CIDIs would be required to comply with the amended rule beginning on the effective date.[83] However, pursuant to letters

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[80] *See* 12 CFR 360.10(d)(3)("Notwithstanding the general requirements of paragraph (c)(1) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, the implementation and updating time frames for all or part of the requirements of this section.") and 12 CFR 360.10(d)(4)("FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.").

[81] 12 CFR 360.10(d)(3).

[82] *See* 12 CFR 360.10(d)(4).

[83] The effective date of the amended rule would not be earlier than the first day of the first calendar quarter after the issuance of the final rule.

issued in 2021 and 2022, the FDIC has directed certain CIDIs to submit resolution plans pursuant to the current rule, and the FDIC proposes that those CIDIs submit resolution plans as previously directed unless they receive written notice of an extension as provided in the current rule.

Subsequent submissions by these CIDIs would be subject to the requirements of the amended rule following its effective date.

Because resolution plans submitted in 2023 will be prepared and submitted under the current rule, they will be evaluated under the current rule. However, recognizing that the amended rule may go into effect soon after these resolution plans are submitted, the FDIC anticipates that feedback given upon review of those resolution plans would focus on current rule elements that would remain relevant under the amended rule. Further, following the effective date of the final rule, the FDIC does not anticipate conducting engagement and capabilities testing on these resolution plans as contemplated in the Statement. Instead, FDIC staff would expect to offer to hold meetings with CIDIs to discuss the FDIC's expectations for future submissions under the amended rule and to respond to questions from the CIDIs.

The next resolution plan submission date for group A CIDIs would be set pursuant to the amended rule. The FDIC expects that about half of the group A CIDIs would file their first resolution plans under the amended rule on or before a date approximately not less than 270 days from the effective date of the final rule or as otherwise established pursuant to the amended rule. The other half of the group A CIDIs would file their first resolution plans under the amended rule on or before a date within two years of the effective date of the final rule or as otherwise established pursuant to the amended rule. Under this approach, some group A CIDIs would have more and some would have less than two years

between their last filing under the current rule and their first filing under the amended rule. The FDIC would endeavor to provide group A CIDIs at least 270 days' notice of their first filing date under the amended rule.

Group B CIDIs: The FDIC anticipates that group B CIDIs would be expected to submit their informational filings on or before a date that is at least 270 days from the effective date of the final rule or as otherwise established pursuant to the amended rule. The FDIC would endeavor to provide group B CIDIs at least 270 days' notice of their first filing date under the amended rule. Recognizing that none of the group B CIDIs have submitted a resolution plan under the current rule since implementation of the moratorium, the FDIC expects to offer meetings with the group B CIDIs to discuss the FDIC's expectations for their first submissions and future submissions under the amended rule. The FDIC also expects to respond to questions from the group B CIDIs.

In any calendar year that a CIDI does not provide a resolution submission, it would be required to provide an interim supplement as described in the proposed rule. Any CIDI that is not in the first cohort of CIDIs filing a resolution submission following the effective date of the final rule would be expected to provide an interim supplement on or before the first resolution submission filing date under the amended rule.

The FDIC invites comment on all aspects of the proposed transition period. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(87) Is the proposed process for evaluating resolution plans submitted in 2023 under the current rule appropriate in light of the proposed rule? Are there other alternatives to consider?

(88) Certain CIDI's have not submitted a plan since prior to the date that the

moratorium was put in place; others have not filed a plan at all. Does the proposed transition time frame balance the goals of receiving resolution plan submissions as early as possible while providing sufficient time to CIDIs to prepare their first resolution submissions or interim supplements under the amended rule? What longer period or shorter period would be appropriate, and why?

(89) Is there a preferred date for filing of resolution submissions and interim supplements (e.g., January 15, June 30, or December 1)? If so, why?

IV. Expected Effects

As previously discussed, the proposed rule would amend resolution plan submission requirements for all CIDIs and would establish two tiers of submission requirements to reflect the size and complexity of CIDIs. Group A CIDIs, which are IDIs with $100 billion or more in total assets, would be required to submit resolution plans that comply with all of the content requirements of the revised rule, including the development of an identified strategy for the resolution of the CIDI, and to participate in engagement and capabilities testing. Group B CIDIs, which are IDIs with total assets of at least $50 billion but less than $100 billion, would be required to submit an informational filing containing information on resolution planning and readiness, and to participate in engagement and capabilities testing. The following describes the expected costs and benefits of the proposed rule, as they would apply to the groups of affected IDIs, and other economic impacts.

A. *Proposed Changes to Current Rule, as Implemented*

Since the adoption of the current rule in 2012, the FDIC has provided

guidance and feedback to CIDIs about the FDIC's expectations regarding various elements of resolution plan content under the rule. In 2018, the FDIC announced a moratorium on resolution plan submissions.[84] In January 2021, the FDIC announced that it would lift the moratorium for CIDIs with $100 billion or more in total assets (which corresponds with the group of CIDIs the proposed rule would categorize as group A CIDIs),[85] and in the Statement, the agency described modified expectations for resolution plans from this group. Rule requirements continued to remain subject to the moratorium for CIDIs with total assets of less than $100 billion (which includes the group of CIDIs the proposed rule would categorize as group B CIDIs).

Under the approach outlined in the Statement, CIDIs with $100 billion or more in total assets are expected to submit a resolution plan once during the succeeding three-year period. In addition, pursuant to the Statement, the FDIC communicated that it would provide exemptions to all CIDIs that are required to file resolution plans (the group A CIDIs) from the obligation to include certain categories of content in their future resolution plan submissions. The exemptions that the Statement indicated would be provided to all group A CIDIs are: least-costly resolution method,[86] asset valuation and sales,[87] major counterparties,[88] material entity financial statements,[89] systemically important functions,[90] disaster recovery or other backup plans,[91] assessment of the resolution plan,[92] and high-level description of resolution strategy in the public section.[93]

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[84] See https://www.fdic.gov/news/speeches/2018/spnov2818.html.
[85] See https://www.fdic.gov/resources/resolutions/resolution-authority/idi-statement-01-19-2021.pdf.
[86] 12 CFR 360.10(c)(2)(vii).
[87] 12 CFR 360.10(c)(2)(viii)(B) through (C).
[88] 12 CFR 360.10(c)(2)(ix).
[89] 12 CFR 360.10(c)(2)(xiii).
[90] 12 CFR 360.10(c)(2)(xvii).
[91] 12 CFR 360.10(c)(2)(xix).
[92] 12 CFR 360.10(c)(2)(xxi).
[93] 12 CFR 360.10(f)(1)(xi).

As explained in the Statement, on a case-by-case basis, the FDIC also provided exemptions to certain CIDIs for their next resolution plan submissions for certain additional categories of content required by the current rule: off-balance sheet exposures; collateral pledged; trading, derivatives, and hedges; unconsolidated balance sheet and consolidated schedules; payment, clearing, and settlement systems; capital structure and funding sources; affiliate funding, transactions, accounts, exposures, and concentrations; and cross-border elements.[94]

The Statement also:

(1) Established a process for a CIDI to request additional exemptions;

(2) Maintained the requirement that a resolution plan take into account that the CIDI's failure may occur under the severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B), but communicated that CIDIs would be exempted from the requirement to take into account baseline and adverse economic conditions for their resolution plan submissions;

(3) Explained the FDIC's intention to conduct regular engagement and capabilities testing; and

(4) Permitted CIDIs to incorporate by reference into their resolution plans information from other sources, including the DFA resolution plans of a CIDI's parent company, a resolution plan submitted previously by the CIDI or its affiliate, a regulatory filing with the FDIC by the CIDI, and a publicly-available regulatory filing by the CIDI or any of its affiliates with any Federal or State regulator.

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[94] 12 CFR 360.10(c)(2)(x) through (xvi) & (xvii).

These changes were taken into account in the FDIC's most recent estimates of total annual labor hours and costs associated with recordkeeping, reporting, and disclosure compliance requirements for the current rule as implemented following the Statement.[95] These estimates will be used as a baseline from which the estimates of total annual labor hours and costs associated with recordkeeping, reporting, and disclosure compliance requirements of the proposed rule on CIDIs are derived.

1. Effects on Group A CIDIs

If adopted, the proposed rule will increase regulatory compliance costs for group A CIDIs due to a variety of proposed changes to resolution plan content and proposed changes with respect to engagement and capabilities testing, as well as the expected increased frequency of submissions and the proposed new requirement of interim supplements between submissions. The proposed rule will increase such costs by requiring certain content that was expected to be exempted for all or some of these CIDIs as explained in the Statement, by modifying certain other content requirements, and by modifying the expectations for engagement and capabilities testing. Group A CIDIs would be defined in the proposed rule as IDIs with $100 billion or more in total assets based upon the average of the institution's four most recent Reports of Condition and Income. As of the quarter ending December 31, 2022, the FDIC insured 4,715 depository institutions, of which 31 reported total average assets of $100 billion or more over their four most recent Reports of Condition and Income. Therefore, for the purposes of this analysis the FDIC estimates that 31 FDIC-insured depository institutions would be classified as group A CIDIs and directly affected by the

[95] https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202111-3064-003.

proposed rule, if adopted.[96] In aggregate, these 31 group A CIDIs held a combined $16.47 trillion in total assets, accounting for about 69 percent of total U.S. banking industry assets.[97]

a. *Previously-Exempted Content Reinstated*

The following content elements, which the Statement indicated would be exempted for all CIDIs, are included in the proposed rule or replaced by requirements of similar purpose.

Failure scenario/identified strategy. While the Statement indicated that IDIs would be exempted from developing a failure scenario and one or more resolution strategies for their resolution plans, the proposed rule would reinstate that requirement in a somewhat narrower fashion than described in the current rule. The proposed rule would require group A CIDIs to provide an identified strategy covering the period from point of failure to liquidation or return of the business to the private sector that would be developed according to a failure scenario determined by either the CIDI or (in whole or in part) the FDIC. Consistent with the Statement, a severely adverse economic scenario will be considered and alternatives under baseline or adverse conditions would not be required.

Least-costly resolution method. The Statement communicated that all

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[96] FDIC PR–16–2023. "FDIC Creates a Deposit Insurance National Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California." March 10, 2023. https:// www.fdic.gov/news/press-releases/2023/pr23016.html. FDIC PR–18–2023. "FDIC Establishes Signature Bridge Bank, N.A., as Successor to Signature Bank, New York, NY." March 12, 2023. https://www.fdic.gov/news/press-releases/2023/pr23018.html. FDIC PR-34-2023, "JPMorgan Chase Bank, National Association, Columbus, Ohio Assumes All the Deposits of First Republic Bank, San Francisco, California" May 1, 2023. https://www.fdic.gov/news/press-releases/2023/pr23034.html. This estimate has been adjusted for the recent failures of Silicon Valley Bank, Signature Bank, and First Republic Bank, as well as merger transactions that occurred in the first quarter of 2023 that would affect the number of institutions categorized as group A CIDIs.

[97] FDIC Call Report Data as of December 31, 2022. Two of these institutions have not yet filed a resolution plan. For the purposes of this analysis, their first plans are expected to be filed after the proposed rule is finalized.

CIDIs would be exempted from demonstrating that any resolution strategy was the least costly to the DIF of all available options. Under the proposed rule, this content element from the current rule would be replaced by a requirement that a resolution plan include information and analysis regarding processes to develop valuations under different resolution assumptions that would be helpful to the FDIC in developing its least-cost analysis at the time of a CIDI's failure.

Assessment of resolution plan: Finally, the proposed rule would not provide an exemption from the requirements with respect to information regarding any assessments made by the CIDI of its resolution plan.[98] The Statement explained that the FDIC would exempt all CIDIs from this content requirement.

b. *No Routine FDIC-Issued Case-By-Case Exemptions*

Unlike the intention expressed in the Statement, the proposed rule would not include the expectation of routine exemption of certain content on a case-by-case basis. Rather, all group A CIDIs would be required to include all content required by the revised rule if and to the extent those elements are relevant to their organization and businesses. For example, the Statement of provided an exemption for content relating to the parent company and parent company affiliates for a CIDI without a holding company. However, under the proposed rule, the resolution plan would simply provide the relevant information (e.g., that the CIDI does not have a holding company and therefore there are no challenges associated with separation from the parent company and parent company affiliates). Similarly, for example, rather than exempting CIDIs that do not have significant cross-border operations or activities from the *Cross-border elements*

[98] *See* proposed rule § 360.10(d)(24).

subpart,[99] the proposed rule will require the resolution plans discuss this information if and to the extent of such operations and activities. Thus, the burden on each group A CIDI would be commensurate with the applicability of the requirement in view of the complexity of each CIDI's organization and business.

c. *Codifying Guidance, New and Modified Plan Content Requirements, and Deleting Plan Content Requirements*

The proposed rule would codify and build upon certain elements of the Statement. The content items which were exempted pursuant to the Statement for all or some CIDIs are included in the proposed rule, with only limited exceptions. The proposed rule would eliminate the following content requirements that were exempted for all CIDIs, including the group A CIDIs, pursuant to the Statement: *Major Counterparties*[100] and disaster recovery and backup plans.[101] In addition, while the proposed rule does not require the content in the current rule with respect to "least costly resolution method," which was an exemption for all CIDIs as described in the Statement, the proposed rule adds a new content element, titled "*Valuation to Facilitate Assessment of Least-cost Test,*" with a related purpose and similar level of burden. The proposed rule would add one new category of required content: the *Digital services and electronic platforms* subpart.[102] Other content areas have been modified and reorganized to clarify and further develop the content requirements under the current rule as implemented.

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[99] Proposed rule § 360.10(d)(19).
[100] 12 CFR 360.10(c)(2)(ix).
[101] This information is part of *Management Information Systems; Software Licenses; Intellectual Property*, located at 12 CFR 360.10(c)(2)(xix).
[102] Proposed rule § 360.10(d)(23).

In addition, while the Statement expressly permitted incorporation by reference of relevant information provided in the DFA resolution plans and various other regulatory filings, the proposed rule would allow incorporation of that information, but would require that it be replicated in the resolution submission.

The proposed rule would address the instances in which a CIDI would be required to notify the FDIC about a significant change. Specifically, under the proposed rule, CIDIs would be required to provide the FDIC with a notice of "material change" to its organizational structure, core business lines, size, or complexity (such as via a merger), acquisition or divestiture of assets or similar transaction that may have significant impact on the identified strategy. There would be no change to burden as a result of this requirement, which is consistent with prior practice and burden estimates.

Taken overall, the proposed changes to required plan content are likely to result in cost increases for group A CIDIs associated with the preparation of their resolution plans, but would improve the utility of resolution plans for the FDIC's planning and readiness for the resolution of group A CIDIs.

d. Updated Reporting Compliance Estimates

In August of 2021, the FDIC updated its estimates of the total annual labor hours and costs associated with reporting compliance requirements of the current rule in light of the resolution planning expectations expressed in the Statement. The updated applicable reporting burden estimates as of August 2021 are: (1) reporting burden of 57.6 hours per billion dollars in assets for each resolution plan submission by a CIDI that had previously submitted a plan with over $100 billion in total assets that is affiliated with a U.S. GSIB; (2) reporting

burden of 48 hours per billion dollars in total assets for each resolution plan submission by a CIDI that had previously submitted a plan with over $100 billion in total assets that is not affiliated with a U.S. GSIB; and (3) reporting burden of 14,400 total hours for each resolution plan submission by a CIDI with over $100 billion in total assets (irrespective of U.S. GSIB affiliation) that has never submitted a resolution plan previously.[103] These estimates will be the baseline from which the estimated labor hours and costs associated with reporting compliance requirements of the proposed rule on group A CIDIs are derived.

Based on the FDIC's experience with the current requirements and expectations relative to those in the proposed rule, the FDIC estimates that the proposed changes would increase the reporting requirements for CIDIs. The FDIC estimates that the labor hours needed by group A CIDIs to comply with the reporting requirements of each resolution plan submission following their initial submission under the proposed rule will be 72 hours per billion dollars in assets, an approximately 25 percent increase from the 57.6 hours per billion dollars in assets estimated following the Statement for group A CIDIs affiliated with U.S. GSIBs; and an approximately 50 percent increase from the 48 hours per billion dollars in assets estimated following the Statement for group A CIDIs that are not affiliated with U.S. GSIBs.

Additionally, the FDIC estimates that group A CIDIs that are first-time filers will incur approximately 16,000 labor hours to comply with the reporting requirements of their first resolution plan submission based on the proposed rule. This estimate was calculated by taking the estimate for first-time filers in the

[103] See https://public-inspection.federalregister.gov/2021-24648.pdf.

Statement – 13,292 hours.[104] This estimate assumes that none of the exemptions addressed in the Statement are in effect, which returns to the base estimate of 14,400 hours, and then increasing that estimate by an additional 10.77 percent[105] to reflect additional content requirements and changes in the proposed rule. This results in an estimated first-time filing burden for group A CIDIs of approximately 16,000 hours. These estimations – for both subsequent plan submissions and new filings – also include compliance cost estimates for both engagements and capabilities testing (discussed below).

Finally, the proposed rule introduces a new requirement for group A and group B CIDIs to submit interim supplements in years where a resolution submission is not required. These submissions consist of a limited set of critical information that can be effectively updated year over year to help maximize the utility of resolution-related information to the FDIC. Specifically, these supplements would require a CIDI to provide the most up-to-date information, in whole or in part, for the following content elements: (1) organizational structure; (2) overall deposit activities (partial); (3) critical cervices (partial); (4) key personnel (partial); (5) franchise components (partial); (6) asset portfolios (partial); (7) off-balance-sheet exposures; (8) unconsolidated balance sheet; (9) payment, clearing, and settlement systems (partial); (10) capital structure and finding sources (partial); (11) cross-border elements; and (12) management information systems (partial). After a review of the content requirements for these

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[104] The FDIC estimated 13,292 burden hours for first-time filers following the Statement. This estimate was obtained by reducing the base estimate of 14,400 burden hours by 7.7 percent to reflect “non-individual streamlined content exemptions and engagement changes”. The reduction will not apply to first-time filers under the proposed rule.

[105] For reference, the Statement excluded some content elements and introduced a number of exemptions. However, the estimated labor hours necessary to comply with resolution plan submissions for CIDIs that had previously submitted a plan under the current rule prior to the Statement, was 65 hours per billion dollars in assets. The content requirements associated with the proposed rule is estimated to require 72 hours per billion dollars in assets in order to comply, which is an approximately 10.77 percent increase.

supplementary filings, the FDIC estimates that group A and group B CIDIs will incur approximately 24 hours per billion dollars in assets associated with the submission of an interim supplement to the FDIC. The FDIC expects that this submission would be biennial, i.e., on the years in which a resolution submission is not required.

2. Effects on Group B CIDIs

As previously discussed, group B CIDIs are defined in the proposed rule as IDIs with at least $50 billion but less than $100 billion, in total assets based on the average of the institution's most recent Reports of Condition and Income. As of the quarter ending December 31, 2022, the FDIC insured 4,715 depository institutions, of which 14 reported total assets of $50 billion or more, but less than $100 billion, over their four most recent Reports of Condition and Income. Therefore, for the purposes of this analysis, the FDIC estimates that 14 FDIC-insured depository institutions would be classified as group B CIDIs and directly affected by the proposed rule.[106] In aggregate, as of December 31, 2022, these 14 group B CIDIs held a combined $1.03 trillion in total assets, accounting for about 4.31 percent of total U.S. banking industry assets.

While group B CIDIs are required to provide resolution plans to the FDIC under the current rule, they are currently still subject to the FDIC's moratorium on resolution plan submissions and have not had to provide such submissions since 2018.[107] The baseline for this analysis of the estimated reporting compliance costs of the proposed rule for group B CIDIs includes the existing moratorium and, therefore entails no existing compliance costs for IDIs with total average

[106] FDIC Call Report data, December 31, 2022.
[107] See https://www.fdic.gov/resources/resolutions/resolution-authority/idi-plan-statement-052220.pdf.

assets of $50 billion or more, but less than $100 billion. Because the FDIC is using the estimates commensurate with the Statement and the moratorium as the baseline for its analysis, the FDIC estimates that the proposed rule's resolution submission requirements, which would be applied to group B CIDIs, would result in new reporting requirements for group B CIDIs. Concurrent with the implementation of the proposed rule, the FDIC expects there to be a separate action by the FDIC Board of Directors that would lift the moratorium for group B CIDIs, subjecting them to resolution-related filing requirements –under the amended rule - for the first time since 2018.

This analysis of the estimated compliance costs of the proposed rule (in conjunction with the lifting of the moratorium) for group B CIDIs is predicated on the assumption that all of the proposed filing requirements are new filing requirements for group B CIDIs, resulting in relatively high initial compliance efforts associated with implementation. Most CIDIs that would be categorized as group B CIDIs under the proposed rule have not provided resolution plans of any kind to the FDIC. For those CIDIs that have filed previously, the significant passage of time since that filing, taken together with the significant changes to the applicable informational filing requirements for group B CIDIs under the proposed rule, suggest that it is appropriate to consider them to be first-time filers for the purposes of assessing compliance costs.[108]

Under the proposed rule, each group B CIDI would submit an informational filing to the FDIC, and the FDIC could then engage with each group B CIDI to obtain additional information relevant to the FDIC's own resolution planning or to clarify data and analysis in the informational filing. Under the

[108] Of the 14 group B CIDIs identified, only three have submitted resolution plans under the current rule (in either 2015 or 2018).

proposed rule, an informational filing for a group B CIDI would differ from a resolution plan for group A CIDIs in that group B CIDIs submitting an informational filing would not be required to include an identified strategy and apply that strategy to a failure scenario, or be subject to review of the credibility of the identified strategy. In addition, an informational filing would not be required to include *valuation to facilitate FDIC's assessment of least-costly resolution method*.

The FDIC estimates that the proposed rule, if adopted, would pose reporting requirements of 7,200 labor hours for the initial informational filing of a group B CIDI. For informational filings in subsequent cycles, the FDIC estimates that the proposed rule would pose reporting requirements of approximately 67 hours per billion dollars in assets.

The FDIC arrived at these estimates by analyzing the content requirements for informational filings required to be submitted by group B CIDIs compared to those for full resolution plans required of group A CIDIs. Specifically, the proposed rule excludes elements pertaining to the creation, application, and review of an identified strategy, and to valuation to support least-cost test analysis for informational filings for group B CIDIs compared to resolution planning requirements for group A CIDIs. FDIC staff does not believe that this reduction in content elements results will have an effect on the estimated reporting burden for initial plan filings for a group B CIDI, but will result in a net reduction in burden of approximately 5 hours per billion dollars in assets for subsequent plan filings for group B CIDIs. These estimations also include compliance cost estimates for engagement testing (discussed below). As discussed above in section III.A.3.e, the proposed rule introduces a requirement for group A and group B CIDIs to submit interim supplements to the FDIC in

years where no resolution submission is required. The submission requirements for these interim supplements are identical for group A and group B CIDIs. Therefore, the FDIC has estimated that group B CIDIs will incur approximately 24 hours per billion dollars in assets associated with the submission of an annual interim supplement to the FDIC.

3. Marginal Effect of Proposed Changes

As discussed above, this analysis of the estimated compliance costs of the proposed rule is relative to a baseline scenario which includes burden estimates under the Statement, the existing moratorium on filing requirements for group B CIDIs, and the use of a triennial, rather than a biennial, filing cycle. If adopted, the proposed rule would have four primary effects: change in filing cadence, change in content requirements for group A CIDIs, change in content requirements for group B CIDIs, and the establishment of an interim supplement. The realized effects of the proposed rule are a function of filing dates, filing types, as well as the changes in filing content requirements for group A and B CIDIs discussed in detail above. To control for such changes and assess the marginal effect of the primary aspects of the proposed rule relative to the current baseline, the FDIC analyzed projected filings by CIDIs over a six-year period beginning in 2025. The following discussion addresses each of these primary effects so as to illustrate their marginal contribution to the aggregate effect.

Future changes in assets for existing individual CIDIs is difficult to accurately estimate. Therefore, for the purposes of this analysis, the FDIC assumes that the total assets reported by existing individual CIDIs for the quarter ending December 31, 2022, will remain constant throughout the period of analysis, notwithstanding assumptions made by the FDIC on the number of new

group A and group B CIDIs in each filing cycle (discussed below).

a. Marginal Effect of Proposed Change to Biennial Filing Cycle

As discussed above in section III.A.2.a, the proposed rule would change the filing cycle from triennial to biennial. To isolate the effect of the potential change from a triennial to a biennial filing cycle, the FDIC compared projected compliance costs of the current triennial filing cycle, as outlined in the Statement, to the costs of those same compliance requirements on a biennial basis. Over the six-year period of analysis, the FDIC estimates that the labor hours expended by CIDIs to comply with a biennial filing cycle would increase by an average of 150 thousand hours (28 percent) annually. Assuming a wage estimate of $109.32 an hour,[109] the FDIC estimates that the change from a triennial to a biennial filing cycle would result in average additional costs of about $16.4 million annually.

b. Marginal Effect of Proposed Changes in Content

Group A CIDIs

As previously discussed, the FDIC estimates that the labor hours needed by group A CIDIs to comply with the reporting requirements of the proposed rule for first-time resolution plan submissions will be 16,000 hours, and each subsequent resolution plan submission will be 72 hours per billion dollars in

[109] The reporting compliance burden for resolution submissions (for group A and group B CIDIs) is expected to be distributed between executives and financial analysts at a ratio of 1-to-3 for the two occupations, respectively. The estimated weighted average hourly compensation cost of these employees are found by using the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates for the relevant occupations in the Depository Credit Intermediation sector, as of December 2022. These wages are adjusted to account for inflation and non-monetary compensation rates for health and other benefits, as of December 2022, to provide a comprehensive estimate of overall compensation.

assets. Over the six-year period of analysis beginning in 2025 the FDIC assumes there to be 6 first-time group A plan submission filers – or 2 first-time filers per biennial filing cycle - based on a review of bank asset data from 2017 to 2022.[110] Of the 31 group A CIDIs described above, 29 have previously submitted resolution plans, and two have not. Therefore, the FDIC expects that these two group A CIDIs will file for the first time in the upcoming submission cycle. To isolate the effect of the potential changes in filing content for group A CIDIs from the changes in filing cadence associated with the proposed rule, the FDIC compared projected compliance costs, as outlined in the Statement, on a biennial basis to the projected reporting compliance costs, as outlined in the proposed rule, on a biennial basis.

For group A CIDIs submitting resolution plans in the upcoming and subsequent biennial filing cycles, the FDIC estimates that, over the six-year period of analysis, the changes within the proposed rule solely related to the group A content requirements will result in an average increase in reporting burden hours of approximately 141 thousand hours annually (26 percent). Assuming a wage estimate of $109.32 an hour,[111] the FDIC estimates that the increase in reporting burden hours for group A CIDIs solely due to changes within the proposed rule for group A content requirements will result in average additional costs of approximately $15.4 million annually. Over half of this increase in estimated annual compliance costs can be attributed to resolution plan submissions from the nine IDIs affiliated with U.S. GSIBs.

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[110] CIDIs that become group A CIDIs in subsequent filing cycles will have already submitted resolution plans as group B CIDIs, and are thus not considered “first-time” filers for the purposes of estimating burden.

[111] See footnote #110.

Group B CIDIs

As previously discussed, the FDIC estimates that the labor hours needed by group B CIDIs to comply with the reporting requirements of the proposed rule for first-time informational filings will be 7,200 hours and each subsequent informational filing will be 67 hours per billion dollars in assets. Over the six-year period of analysis beginning in 2025, the FDIC estimates there to be 20 first-time group B plan submission filers. As discussed above, the FDIC considers all existing group B CIDIs to be "new filers" in the upcoming filing cycle and assumes two new group B CIDIs to file for the first time in each subsequent filing cycle, based on a review of bank asset data from 2017 to 2022.

Therefore, to illustrate the effect of the proposed rule solely related to changes in filing requirements for group B CIDIs this analysis compares current compliance requirements, as outlined in the Statement, to the projected reporting compliance costs for group B CIDIs, as outlined in the proposed rule, on a biennial basis.

The FDIC estimates that, over the six-year period of analysis, the proposed rule would result in an average increase in reporting burden hours of approximately 44,000 hours annually (eight percent). Using a wage rate of $109.32 an hour,[112] the FDIC estimates that the increase in reporting burden hours for group B CIDIs submitting informational filings will result in average additional costs of approximately $4.8 million annually.

Interim Supplements

As discussed above in section III.A.3.e, the proposed rule introduces a new requirement for group A and group B CIDIs to submit an interim supplement for the years that they do not submit resolution plans or informational filings. The

[112] See footnote #110.

FDIC estimates that group A and group B CIDIs submitting an interim supplement will incur an hourly burden of approximately 24 hours per billion dollars in assets. Using this estimate over the six-year period of analysis, the requirement for annual interim supplements would result in an estimated average annual increase of approximately 197,000 hours and 12,000 hours for group A and group B CIDIs, respectively. Using a wage estimate of $109.32 an hour,[113] the FDIC estimates that the increase in reporting burden hours for group A and group B CIDIs submitting annual interim supplements will result in average additional costs of approximately $21.5 million annually and $1.4 million annually, respectively. Thus, the FDIC estimates the total average impact of this specific proposed requirement to be approximately 209,000 hours annually, and about $22.9 million annually (38 percent). The FDIC estimates that over 60 percent of this burden will fall on the nine group CIDIs that are affiliated with the U.S. GSIBs.

Engagement and Capabilities Testing

As previously discussed, the FDIC proposes to modify the current rule to provide more clarity concerning the FDIC's expectations for engagement between CIDIs and the FDIC. It is the FDIC's current practice to seek greater understanding of a resolution submission and the application of the information to all strategic options that will be useful to the FDIC in implementing a resolution strategy, as explained in the Statement and in the NPR.[114] The proposed rule further clarifies understanding about the existence and practice of such exchanges of information.

The FDIC expects to engage with group A CIDIs on a selective basis,

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[113] See footnote #110

[114] 12 CFR 360.10(d)(1) through (2).

depending on the complexity of resolution issues and the completeness of resolution submissions, among other factors. Further, the FDIC assumes, based on supervisory experience, that it will engage with about half of the group A CIDIs in each plan submission cycle. For the purposes of this analysis, the FDIC expects capabilities testing to be generally undertaken once per two-year submission cycle. The FDIC estimates that group A and group B CIDIs will incur one labor hour per billion in total assets and two labor hours per billion in total assets, respectively, to comply with the engagement requirements of the proposed rule. The FDIC believes that the engagement requirements of the proposed rule, if adopted, would result in an estimated reduction of one labor hour per billion in total assets for group A CIDIs, relative to the Statement, due to more selective engagement practices driven by the change to a biennial filing cycle. Further, the FDIC estimates that group A and group B CIDIs will incur one labor hour per billion in total assets to comply with the capabilities testing requirements of the proposed rule. To maintain consistency with the estimation approach taken in the Statement, the estimate of labor hours for both engagement and capabilities testing was included in the prior estimates of 72 labor hours per billion in total assets for resolution plan content requirements of group A CIDIs and 67 hours per billion in total assets for group B CIDIs.

Taken together, the total estimated marginal effect of the proposed change to a biennial filing cycle, content changes for group A CIDIs, content changes for group B CIDIs, requirements for Interim Supplements, and consideration of engagement and capabilities testing, in the proposed rule on group A and B CIDIs, over the six-year analysis period, would result in an average increase in reporting burden hours of approximately 544 thousand

annually. At an estimated wage rate of $109.32[115] per hour, this would amount to total additional estimated reporting costs for all CIDIs of approximately $59.5 million annually.

This analysis illustrates that the estimated costs of the proposed rule are likely to be small. The FDIC compared the average annual estimated reporting compliance costs to the reported total annual noninterest expenses for all CIDIs and compliance costs did not exceed five percent as a percentage of noninterest expenses for any CIDI.[116] Further, total average annual estimated reporting compliance costs of $59.5 million are approximately 0.015 percent of total noninterest expenses across all CIDIs.

B. *Effects on Insured Deposits and the Deposit Insurance Fund*

As previously discussed, the proposed rule, if adopted, would increase the amount of information CIDIs produce and furnish to the FDIC for the purposes of resolution planning. In the years since the adoption of the current rule in 2012, the FDIC has learned which aspects of the resolution planning process are most valuable and gained a greater understanding of the resources that CIDIs expend in meeting the requirements and expectations to comply with the current rule. The FDIC does not have the information necessary to quantify the benefits to the DIF associated with the increase in the amount of resolution planning information for CIDIs, and consideration of that information. However, the FDIC believes that

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[115] The reporting compliance burden for resolution submissions (for group A and group B CIDIs) is expected to be distributed between executives and financial analysts at a ratio of 1-to-3 for the two occupations, respectively. The estimated weighted average hourly compensation cost of these employees are found by using the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates for the relevant occupations in the Depository Credit Intermediation sector, as of December 2022. These wages are adjusted to account for inflation and compensation rates for health and other benefits, as of December 2022, to provide a comprehensive estimate of overall compensation.
[116] FDIC Call Report data, December 31, 2022. The 45 depository institutions that would be classified as group A and group B CIDIs under the proposed rule had total noninterest expenses of approximately $388 billion for the year 2022.

requiring CIDIs to regularly submit more information on their resolution readiness capabilities would be expected to reduce the costs to the DIF in the event of a failure of such an institution because this information would help the FDIC be more prepared to resolve these CIDIs.

C. *Additional Economic Considerations and Effects*

Because some of the methodologies used to estimate reporting costs – for subsequent plan filings and interim supplements - above are based on the number of labor hours per billions of dollars in total assets, it is possible for a CIDI's estimated compliance cost to change solely due to fluctuations in asset size. The FDIC acknowledges that economic trends resulting in, or contributing to, changes in banking industry assets generally would have an impact on the estimates described above, but believes that these potential changes in compliance costs are likely to be modest relative to the size of the IDIs affected by the proposed rule.

CIDIs would likely incur some regulatory costs, in addition to the reporting costs presented above, to transition their internal systems and processes in order to comply with the proposed rule. The FDIC does not have access to information that would enable it to estimate such costs. However, the FDIC believes that such costs are likely to be small relative to the size of the IDIs affected by the proposed rule.

Finally, the FDIC does not believe that any additional costs incurred as a result of the proposed rule would have significant adverse impact on the provision of banking services such as originating and servicing loans, processing payments, or various financial market activities that the CIDIs may be involved in. This analysis illustrates that estimated reporting costs in future years only

comprise approximately 0.015 percent of current (e.g. year-end 2022) noninterest expenses for all CIDIs.

D. *Overall Effects*

In summary, the FDIC believes that the proposed rule would result in public benefits by improving the FDIC's ability to effect timely and cost-effective resolutions of large, complex insured institutions. The FDIC estimates the proposed rule would result in average annual compliance cost increases of approximately $59.5 million over the six-year analysis period – which spans three filing cycles under the proposed rule.

V. Alternatives Considered

The FDIC considered several alternatives while developing the proposed rule. The FDIC first considered leaving the current rule unchanged. The FDIC rejected this alternative because it believes the proposed rule would improve the value of resolution submissions and provide additional clarity to CIDIs as to the requirements of the rule by incorporating elements of prior guidance. The value of these resolution submissions would be greatly increased to both the FDIC and CIDIs given the proposed rule intends to reflect the lessons learned from resolution planning under the current rule, including the iterative approaches to refinement and clarification through guidance and feedback since the current rule's issuance, and provide a complete and clear set of requirements with respect to resolution planning submissions, review, feedback and credibility. The proposed rule also would bolster and clarify the FDIC's approach to engagement and capabilities testing in a manner useful both to the CIDIs and the FDIC. Additionally, the proposed rule would formalize the expectation of a three-year

submission cycle, providing time for deeper engagement and capabilities testing and more opportunities for feedback to the CIDI from plan review and from engagement and capabilities testing to be more comprehensively integrated into both the submission and the day-to-day business of the CIDI.

The FDIC also considered the groupings of IDIs that would be covered under the proposed rule and how the requirements should differ for each, if at all. Possibilities included continuing the current rule's requirement to require resolution plans for all CIDIs over $50 billion in total assets; no longer requiring any resolution submission from the group of CIDIs with $50 to 100 billion in total assets; or tiering requirements based on size or other factors. One alternative considered was to group CIDIs with $100 billion or more in total assets into cohorts with different requirements, and reducing content expectations for CIDIs that have between $100 and $250 billion in total assets that do not have identified complexity factors such as significant cross-border operations or large off-balance sheet derivatives activities. As discussed in the introduction to this preamble, the limited pool of possible acquirers and the complexity of the transaction greatly diminishes the likelihood of a sale of any group A CIDI in a closing weekend or single transaction out of a BDI. Since this challenge applies to all CIDIs with $100 billion or more in total assets, the FDIC has determined that the information and analysis required under the proposed rule is appropriate for all group A CIDIs, with an emphasis on establishment and stabilization of a BDI and an exit in which the IDI is sold to one or more acquirers, to provide optionality to the FDIC in preparing for resolution. While the group A CIDIs vary in size and complexity, the CIDIs themselves are best suited to determine how to address content elements in a manner appropriate to their organization and business lines.

The FDIC considered various alternatives with respect to CIDIs that have between $50 and $100 billion in total assets, i.e., the group B CIDIs. Alternatives considered included whether to exclude them from any submission requirement, whether to require full resolution plans, or to require more limited informational filings. The pool of possible acquirers is generally larger for group B CIDIs than for group A CIDIs, and where a BDI is a strategic element, the complexity of a multiple acquirer exit is generally less. Thus, while the size and complexity of CIDIs between $50 and$100 billion in total assets presents significant challenges in resolution, the FDIC believes that the amount of information and analysis necessary to support the FDIC's resolution readiness for these CIDIs can be appropriately less than for the group A CIDIs, and that the proposed informational filing requirement for firms in this tier is an appropriate balance between the requirement of a full resolution plan and the exclusion of these CIDIs from all resolution planning requirements under the proposed rule.

The FDIC then considered what type of content should be included in each resolution plan or informational filing. The FDIC reviewed past submissions as well as prior feedback and guidance to identify the most useful content to support the FDIC's ability to resolve a CIDI efficiently and effectively in the event that a CIDI experiences material financial distress and failure. The proposal would clarify the type of information the FDIC is seeking in order to help facilitate CIDIs' efficient development of resolution submissions. The inclusion of a more clearly defined expectation for an identified strategy for CIDIs with over $100 billion in total assets and a more clearly defined credibility standard should assist in assuring resolution plans are more finely tuned to the unique complexities of each group A CIDI. The reductions in resolution submission content requirements for CIDIs with $50 to $100 billion in total assets are designed to

appropriately adjust the requirements to the challenges presented by group B CIDIs. For this reason, under the proposed rule they would submit only informational filings and not resolution plans.

The FDIC also considered a three-year submission cycle instead of the proposed two-year submission cycle. A three-year submission cycle, which is the current approach under the Statement, would allow additional time for engagement and capabilities testing; however, the FDIC believes that the enhanced timeliness of the resolution plans received on a two-year submission cycle outweighs the incremental benefit gained from additional engagement and capabilities testing over a longer submission cycle. The FDIC did not strongly consider maintaining the current rule's one-year submission cycle because through experience, the FDIC has found that a one-year submission cycle is not efficient for either the FDIC or the CIDIs because it does not allow sufficient time for review, feedback and incorporation of feedback into the next submission. The use of a two-year cycle should also allow adequate time for CIDIs to plan their resolution submission preparation cycles, and would support robust submission review, engagement, and, where required, capabilities testing.

The FDIC then considered, however, whether some of the benefits of timely information annually could be retained in a manner less burdensome for the IDIs and more useful to the FDIC by requiring limited interim supplements to the biennial submissions. Based on experience from the bank failures of 2023, key information submitted in a two-year cycle may become dated. First, CIDIs continue to change, and in some cases that happens in a time frame shorter than two years. Second, in the case of rapid liquidity failures, the time frame to prepare for resolution is compressed, heightening the need for accurate and timely information. To keep resolution planning information accurate and timely,

the FDIC is proposing that each CIDI would submit a limited interim supplement in years in which a complete submission is not required. The interim supplement is intended to provide critical up-to-date information for a limited number of the most essential data elements of the complete submission. In considering alternative data elements, the FDIC sought to maximize the utility of the information needed to resolve a CIDI efficiently and effectively, while limiting the burden to CIDIs of an interim supplement.

VI. Regulatory Analysis and Procedures

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA),[117] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed rule would modify the current filing cycle cadence from triennial to biennial, which will result in some CIDIs submitting multiple times across a given 3-year PRA renewal cycle. On content, the proposal would modify the current rule by establishing revised requirements regarding the content and timing of resolution submissions provided to the FDIC by IDIs with $50 billion or more in total assets to support the FDIC's resolution readiness in the event of material distress and failure of these large IDIs. IDIs with $100 billion or more in total assets will submit full resolution plans, while IDIs with total assets between $50 and $100 billion will submit informational filings with fewer requirements. Additionally, the proposed rule requires group A and group B CIDIs to submit interim supplements to the FDIC on years where they are not expected to file full

[117] 44 U.S.C. 3501 *et seq.*

plans or information filings. The proposed rule would also enhance how the credibility of resolution submissions will be assessed, expand expectations regarding engagement and capabilities testing, and explain expectations regarding the FDIC's review and enforcement of IDIs' compliance with the rule. The proposed revisions for the NPR represent an increase of 482,312 estimated annual burden hours from the PRA estimates in the 2021 collection, and an increase of 199,184 estimated annual burden hours from the PRA estimates in the 2018 collection. The FDIC proposes to revise this information collection as follows:

Title: Resolution Plans and Periodic Engagement and Capabilities Testing Required.

OMB Number: 3064-0185.

Affected Public: Large and Highly Complex Depository Institutions.

Table 1. Summary of Estimated Annual Burden (OMB No. 3064-0185)

Information Collection (Obligation to Respond)	Type of Burden (Frequency of Response)	Number of Respondents	Number of Responses per Respondent	Time per Response (HH:MM)	Annual Burden (Hours)
1. Resolution Plan update by previous filer (group A), NPR (Mandatory)	Reporting (Annual, 2-year filing cycle)	15	1	30,081:36	451,224
2. Resolution Plan by new filer (group A), NPR (Mandatory)	Reporting (Annual, 2-year filing cycle)	1	1	10,667:00	10,667
3. Informational Filing update by previous filer (group B), NPR (Mandatory)	Reporting (Annual, 2-year filing cycle)	4	1	4,059:05	16,236
4. Informational Filing by New Filers (group B), NPR (Mandatory)	Reporting (Annual, 2-year filing cycle)	6	1	7,200:00	43,200
5. Interim Supplement, NPR (Mandatory)	Reporting (Annual, 2-year filing cycle)	21	1	11,935:37	250,648

Total Annual Burden (Hours):	***771,975***

Source: FDIC.

Note: The annual burden estimate for a given collection is calculated in two steps. First, the total number of annual responses is calculated as the whole number closest to the product of the annual number of respondents and the annual number of responses per respondent. Then, the total number of annual responses is multiplied by the time per response and rounded to the nearest hour to obtain the estimated annual burden for that collection. This rounding ensures the annual burden hours in the table are consistent with the values recorded in the OMB's regulatory tracking system.

B. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[118] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to $850 million.[119] Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of five percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. For the reasons described

[118] 5 U.S.C. 601 et seq.

[119] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 87 FR 69118, effective Dec. 19, 2022). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is "small" for the purposes of RFA.

below and under section 605(b) of the RFA, the FDIC certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As of December 31, 2022, the FDIC insured 4,715 depository institutions, of which 3,433 the FDIC identifies as a "small entity" for purposes of the RFA.[120]

The proposed rule amends resolution plan requirements for IDIs with over $50 billion in total average assets. Therefore, the proposed rule would apply only to institutions with $50 billion or more in total average assets. As of December 31, 2022, there are no small, FDIC-insured institutions with $50 billion or more in total average assets.[121] In light of the foregoing, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities supervised.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section.

(90) In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[122] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposal in a simple and straightforward manner, and invites comment on the use of plain language. For example:

The FDIC invites comment on all aspects of the proposed transition

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[120] FDIC Call Report data, December 31, 2022.
[121] Id.
[122] Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

period. In particular, the FDIC asks the following questions on specific aspects of the proposal:

(91) Has the FDIC organized the material to suit your needs? If not, how could the FDIC present it more clearly?

(92) Are the requirements of the proposal clearly stated? If not, how could they be stated more clearly?

(93) Does the proposal contain unclear technical language or jargon? If so, which language requires clarification?

(94) Would a different format (such as a different grouping and ordering of sections, a different use of section headings, a different organization of paragraphs) make the proposal easier to understand? If so, what changes would make the proposal clearer?

(95) What else could the FDIC do to make the proposal clearer and easier to understand?

D. Riegle Community Development and Regulatory Improvements Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994[123] (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations

[123] 12 U.S.C. 4802(a).

and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[124]

(96) The FDIC invites comment on this section, including any additional comments that will inform the FDIC's consideration of the requirements of RCDRIA.

E. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (12 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the Internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the Internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

In summary, the FDIC is proposing to modify its current rule that requires the submission of resolution plans by insured depository institutions with $50 billion or more in total assets. The proposal would modify the current rule by revising the requirements regarding the content and timing of resolution submissions as well as interim supplements to those submissions provided to the FDIC by IDIs with $50 billion or more in total assets in order to support the FDIC's resolution readiness in the event of material distress and failure of these large IDIs.

The proposal and the required summary can be found at https://www.fdic.gov/resources/regulations/federal-register-publications/.

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[124] 12 U.S.C. 4802(b).

List of Subjects in 12 CFR Part 360

Bank deposit insurance, Banks, banking, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTIONS AND RECEIVERSHIPS RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1811 *et seq*., 1817(a)(2)(B), 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth, and Tenth, 1820(b)(3) and (4), 1820(g), 1821(d)(1), (4), (10)(C), and (11), 1821(e)(1) and (8)(D)(i), 1821(f)(1), 1823(c)(4), and 1823(e)(2).

2. Revise § 360.10 to read as follows:

§ 360.10 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.

(a) *Scope and purpose.* This section applies to insured depository institutions with $50 billion or more in total assets. It requires a covered insured depository institution with $100 billion or more in total assets (a group A CIDI, as defined in paragraph (b) of this section) to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. 1821 and 1823, in a manner that provides depositors timely access to their insured deposits, maximizes the net present value return from the sale or disposition of assets and

minimizes the amount of any loss realized by the creditors in the resolution, and addresses risks of adverse effects on U.S. economic conditions or economic stability. Other covered insured depository institutions (group B CIDIs, as defined in paragraph (b) of this section) are required under this section to submit to the FDIC an informational filing containing information relevant to the group B CIDI's resolution that will support the development of strategic options for resolution of the CIDI by the FDIC. This section also establishes the requirements regarding the submission of resolution plans and informational filings and their contents, as well as procedures for their review by the FDIC. This rule is intended to ensure that each group A CIDI develops a credible strategy to facilitate the FDIC's resolution of the institution across a range of possible scenarios and, with respect to each group A CIDI and each group B CIDI, the FDIC has access to all of the material information and analysis it needs to resolve efficiently any covered insured depository institution in the event of its failure.

(b) *Definitions.*

Affiliate has the same meaning as in 12 U.S.C. 1813(w)(6).

Appropriate Federal banking agency has the same meaning as in 12 U.S.C. 1813(q).

BDI means a bridge depository institution established pursuant to Section 11(n) of the FDI Act, 12 U.S.C. 1821(n).

Capabilities testing is defined in paragraph (g)(2) of this section.

CIDI or covered insured depository institution means a group A CIDI or a group B CIDI.

Company has the same meaning as in 12 CFR 362.2(d).

Control has the same meaning as in 12 U.S.C. 1813(w)(5).

Core business lines means those business lines of the CIDI, including

associated operations, services, functions, and support, that, in the view of the CIDI, are significant to revenue, profit, or franchise value of the CIDI.

Critical services means services and operations, including shared and outsourced services, that are necessary to continue the day-to-day operations of the CIDI, and, in the case of a group A CIDI, to support the execution of the identified strategy, and includes all services and operations that are necessary to continue any critical operation conducted by the CIDI that has been identified in any DFA resolution plan of the CIDI's parent company.

Critical services support means resources, including shared and outsourced resources, that are necessary to support the provision of critical services, including systems, technology infrastructure, data, key personnel, intellectual property, and facilities.

DFA resolution plan means a resolution plan filed by a CIDI's parent company under Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5365(d).

Engagement is defined in paragraph (g)(1) of this section.

Failure scenario means a scenario as described in paragraph (d)(2) of this section.

FDI Act is defined in paragraph (a) of this section.

Foreign-based company means any company that is not incorporated or organized under the laws of the United States.

Franchise component means 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.

Group A CIDI means an insured depository institution with $100 billion or more in total assets, as determined based upon the average of the institution's

four most recent Consolidated Reports of Condition and Income. An insured depository institution will remain a group A CIDI until it has less than $100 billion in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income. In the event of a merger, acquisition of assets, combination, or similar transaction by an insured depository institution that causes it to exceed $100 billion in total assets, such insured depository institution will become a group A CIDI effective as of the date of the consummation of such merger, acquisition, combination or other transaction.

Group B CIDI means an insured depository institution with at least $50 billion but less than $100 billion in total assets, as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. An insured depository institution will remain a group B CIDI until it has less than $50 billion in total assets or it has $100 billion or more in total assets, in either case as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. In the event of a merger, acquisition of assets, combination or similar transaction by an insured depository institution that causes it to have at least $50 billion but less than $100 billion in total assets, such insured depository institution will become a group B CIDI effective as of the date of the consummation of such merger, acquisition, combination or other transaction.

Identified strategy means the strategy chosen by a group A CIDI for its resolution plan as required pursuant to paragraph (d)(1) of this section, covering the time period from the point of failure to disposition of substantially all of the assets and operations of the group A CIDI through wind-down, liquidation, divestiture or other return to the private sector.

IDI franchise means all core business lines and all other business

segments, branches, and major assets that constitute the IDI and its businesses as a whole.

Informational filing means the resolution submission submitted by a group B CIDI pursuant to this section.

Insured depository institution has the same meaning as in 12 U.S.C. 1813(c)(2).

Key depositors is defined in paragraph (d)(7)(v) of this section.

Key personnel means personnel tasked with an essential role in support of a core business line, franchise component, or critical service, or having a function, responsibility, or knowledge that may be significant to the FDIC's resolution of the CIDI. Key personnel can be employed by the CIDI, a CIDI subsidiary, the parent company, a parent company affiliate, or a third party entity.

Least-cost test means the process for determining the resolution strategy that is least costly to the Deposit Insurance Fund, as required under 12 U.S.C. 1823(c).

Material asset portfolio means a pool or portfolio of assets, including loans, securities or other assets that may be sold in resolution by the BDI or the receivership and is significant in terms of income or value to a core business line.

Material change is defined in paragraph (c)(4)(i) of this section.

Material entity means a company, or a domestic branch or foreign branch as defined in section 3(o) of the FDI Act, 12 U.S.C. 1813(o), that is significant to the activities of a critical service, core business line, or franchise component, and includes all IDIs that are subsidiaries or affiliates of the CIDI.

Multiple-acquirer exit means an exit from a BDI through the sale of franchise components comprising all or nearly all of the CIDI's IDI franchise to multiple acquirers, such as a regional breakup of the CIDI's IDI franchise or a

sale of business segments to multiple acquirers, and may also include the wind-down or other disposition of franchise components, major assets or asset portfolios incidental to the divestitures of going concern elements, as applicable.

Parent company means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, parent company means the top-tier of the multi-tiered holding company only.

Parent company affiliate means any affiliate of the parent company other than the CIDI and the CIDI's subsidiaries.

Qualified financial contract has the same meaning as in Section 11(e)(8) of the FDI Act, 12 U.S.C. 1821(e)(8).

Regulated subsidiary is defined in paragraph (d)(4)(v) of this section.

Resolution plan means the resolution submission submitted by a group A CIDI pursuant to this section.

Resolution submission means a resolution plan for a group A CIDI, and an informational filing for a group B CIDI.

Subsidiary has the same meaning as in Section 3(w)(4) of the FDI Act, 12 U.S.C. 1813(w)(4).

Total assets has the meaning given in the instructions for the filing of Reports of Condition and Income.

United States means the United States and includes any state of the United States, the District of Columbia, and any territory of the United States.

Virtual data room means an online repository where information pertinent to a sale or disposition of a CIDI or its franchise components is maintained in a secure and confidential manner to facilitate, whether by the CIDI or the FDIC, such sale or disposition to one or more third party acquirers.

(c) *Resolution submissions required.*

(1) *Submission date*. Each CIDI must provide a resolution submission to the FDIC on the date that is two years from the date of its most recent resolution submission, unless it has received written notice of a different date from the FDIC.

(2) *Resolution submission by new CIDIs.* An insured depository institution that becomes a CIDI after [*effective date of revised rule*] must submit its initial resolution submission upon the date specified in writing by the FDIC. Such date will occur no earlier than 270 days after the date on which the insured depository institution became a CIDI.

(3) *Biennial submissions.* Submission dates generally will be on a two-year cycle, however, the FDIC may, at its discretion, provide for a shorter or longer time period between resolution submissions upon notice as described in paragraph (c)(1) of this section.

(4) *Notice of material change.*

(i) Each CIDI must provide the FDIC with a notice no later than 45 days after a change to the CIDI's organizational structure, core business, size, or complexity, for example by merger, acquisition or divestiture of assets, or similar transaction that may have significant impact on the identified strategy; a change in the CIDI's identification of material entities, critical services, or franchise components; or a change in the CIDI's capabilities described in the resolution submission (each, a "material change"). Such notice must describe the change and explain how the change constitutes a material change. The CIDI must address any change with respect to which it has provided notice pursuant to this paragraph (c)(4)(i) in the subsequent resolution submission submitted by the CIDI.

(ii) *Exception*. A CIDI is not required to submit a notice under paragraph

(c)(4)(i) of this section if the date by which the CIDI would be required to submit the notice under paragraph (c)(4)(i) of this section would be within 90 days before the date on which the CIDI is required to make a resolution submission under this section.

(5) *Approval by the CIDI board of directors*. The CIDI's board of directors or, in the case of an insured branch only, a delegee acting under the express authority of the CIDI's board of directors must approve the resolution submission. That approval or delegation of express authority must be noted in the minutes of the board of directors.

(6) *Incorporation from other sources.*

(i) *Sources*. A CIDI may incorporate information or analysis into its resolution submission from one or more of the following without seeking the authorization for disclosure of FDIC confidential information required under 12 CFR part 309:

(A) The most recent resolution submission submitted by the CIDI or an affiliate of the CIDI.

(B) The most recent DFA resolution plan of a company that is a CIDI affiliate.

(C) A regulatory filing by the CIDI with the FDIC.

(ii) *Requirements for incorporation from other sources*. A CIDI may incorporate information from other sources only if:

(A) The resolution submission seeking to incorporate information or analysis from other sources clearly indicates:

(*1*) the source and as-of date of the information or analysis the CIDI is incorporating; and

(*2*) the information or analysis required by this section is readily

distinguishable from any extraneous parent company (or parent company affiliate) information or analysis, with a description of any material differences.

(B) The CIDI certifies that the information or analysis the CIDI is incorporating from other sources remains accurate in all respects that are material to the CIDI's resolution submission.

(d) *Content of the resolution submissions for CIDIs*. Each group A CIDI must submit a resolution plan that includes all content specified in this paragraph (d). Each group B CIDI must submit an informational filing that includes the content specified in paragraphs (d)(4) through (11) and (d)(13) through (27) of this section, inclusive.

(1) *Identified strategy.*

(i) Each resolution plan must include an identified strategy for the resolution of the CIDI in the event of its failure that meets the credibility criteria in paragraph (f)(1) of this section.

(ii) A CIDI must utilize as its identified strategy the formation and stabilization of a BDI that continues operation through the completion of the resolution and exit from the BDI unless the CIDI determines and demonstrates in its resolution plan why another strategy:

(A) would be more appropriate for the size, complexity, and risk profile of the CIDI;

(B) reasonably could be executed by the FDIC across a range of likely failure scenarios; and

(C) best addresses the credibility criteria described in paragraph (f)(1) of this section.

(iii) The identified strategy must include meaningful optionality for execution across a range of scenarios. The exit from the BDI may be through a

multiple acquirer exit, or any other exit strategy following the stabilization of the operations of the BDI. The identified strategy may not be based upon a sale or other disposition to one or more acquirers over resolution weekend.

(2) *Failure scenario*. For the identified strategy, the CIDI must utilize a failure scenario that demonstrates that the CIDI is experiencing material financial distress, such that the quality of the CIDI's asset base has deteriorated and high-quality liquid assets have been depleted or pledged in the stress period prior to failure due to high, unexpected outflows of deposits and increased liquidity requirements from counterparties that would impact the CIDI's ability to pay its obligations in the normal course of business prior to the FDIC's appointment as receiver. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the CIDI prior to the final recognition of losses, the identified strategy must also consider the depletion of capital at the time of the appointment of the FDIC as receiver. The CIDI may not assume any regulatory waivers in connection with the actions proposed to be taken prior to or in resolution. The resolution plan must support any assumptions that the CIDI will have access to the discount window or other borrowings during the period immediately prior to failure. To the extent that the CIDI assumes that DIF funding is used during the resolution by a BDI, it must demonstrate the capacity for such borrowing on a fully secured basis and the source of repayment; the CIDI may not assume the use of discount window funding by the BDI. The identified strategy must take into account that failure of the CIDI will occur under severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B), and must assume that the U.S. parent company is in resolution under 11 U.S.C. 101 *et seq*. or another applicable insolvency regime.

The FDIC may provide additional or alternative parameters for the failure scenario detailed in this paragraph (d)(2). The FDIC will endeavor to provide a CIDI notice of such additional or alternative parameters for the failure scenario at least 12 months before the applicable resolution submission is due. Any such additional or alternative parameters:

(i) may be applicable to all CIDIs or only specific individual CIDIs; and

(ii) may include additional conditions, such as different macroeconomic stress scenario information or assumptions with respect to the cause of failure. If the FDIC provides such additional or alternative parameters, the CIDI must use the additional or alternative parameters rather than the conditions specified in the previous paragraph, to the extent inconsistent with the conditions specified in the previous paragraph.

(3) *Executive summary*. A resolution plan must include an executive summary providing:

(i) A description of the key elements of the identified strategy;

(ii) An overview of the CIDI's core business lines and franchise components;

(iii) A description of each material change since the submission of its prior resolution plan (or affirmation that no such material change has occurred);

(iv) A discussion of the changes to the CIDI's previously submitted resolution plan resulting from any change in law or regulation, guidance or feedback from the FDIC, or material change; and

(v) A discussion of any actions taken by the CIDI since the submission of its prior resolution plan to further develop the quality or comprehensiveness of the information and analysis included in the resolution plan, including the identified strategy, or to improve its capabilities to develop and timely deliver that

information and analysis.

(4) *Organizational structure: legal entities; core business lines; and branches.* A resolution submission must:

(i) Identify and describe the CIDI's, the parent company's, and the parent company affiliates' legal and functional structures, including all material entities.

(ii) Identify and describe each of the CIDI's core business lines, including whether any core business line draws additional value from, or relies on the operations of, the parent company or a parent company affiliate, and identify any such operations that are cross-border. Provide information about the assets and annual revenue for each core business line, clearly identifying revenue to the CIDI.

(iii) Map franchise components to core business lines, and franchise components and core business lines to material entities and regulated subsidiaries.

(iv) Describe the CIDI's branch organization, both domestic and foreign, including the address and total domestic and foreign deposits of each branch.

(v) Identify each CIDI subsidiary that is one of the following entities (each a "regulated subsidiary"), and provide the address and asset size of each regulated subsidiary:

(A) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq*.);

(B) A registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(C) An investment company that is registered under the Investment

Company Act of 1940 (15 U.S.C. 80a–1 *et seq*.);

(D) An insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator;

(E) An entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities;

(F) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq*.) or a corporation having an agreement or undertaking with the Federal Reserve Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 *et seq.*); or

(G) Any legal entity that is organized under the law of any jurisdiction other than the United States and that is authorized or supervised by a regulatory authority of such jurisdiction in a manner generally comparable to the U.S. entities and authorities described in paragraph (d)(4)(v)(A) through(E) of this section, and shall include any subsidiary that takes deposits or conducts the business of banking under the laws of such jurisdiction.

(vi) Identify all of the CIDI's subsidiaries, offices, and agencies with cross-border operations associated with the operations of any core business line or franchise component. For each such subsidiary, office, or agency, provide metrics that appropriately depict its size and importance, and the location of each such subsidiary, office, and agency.

(5) *Methodology for material entity designation*. A CIDI's resolution

submission must describe the CIDI's methodology for identifying material entities. The methodology must be appropriate to the nature, size, complexity, and scope of the CIDI's operations.

(6) *Separation from parent; potential barriers or material obstacles to orderly resolution*. The resolution submission must address the CIDI's ability to operate separately from the parent company's organization, and any impact on maintaining economic viability and preservation of franchise value in a BDI, with the assumption that the parent company and parent company affiliates are in resolution under 11 U.S.C. 101 *et seq*. or another applicable insolvency regime. The resolution submission must describe the actions necessary to separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The resolution submission must identify potential barriers or other material obstacles to an orderly resolution of the CIDI, risks to the identified strategy (if required), inter-connections and inter-dependencies that may hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

(7) *Overall deposit activities*. A resolution submission must:

(i) Describe the CIDI's overall deposit activities including, among other things, insured and uninsured deposits, commercial deposits by business line, and unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC. Describe whether any types or groups of deposits are related to particular core business lines and franchise components, and if so, how they are identified on the records or systems of the CIDI.

(ii) Identify the total amount(s) of foreign deposits by jurisdiction and what percentage of foreign deposits is dually payable in the United States. Describe

any relationship between foreign deposits and core business lines and sweep arrangements with foreign branches, subsidiaries, and affiliates.

(iii) Identify and describe deposit sweep arrangements, if any, that the CIDI has with the parent company, parent company affiliates, and third party entities, and identify contracts governing such sweep arrangements. Describe the CIDI's reporting capabilities on sweep deposits, including whether such reporting is automated and any data lag that would affect the accuracy of such reports. If the CIDI receives significant amounts of deposits through such sweep arrangements with the parent company or parent company affiliates, include a detailed discussion of such relationships and the business objectives of such sweep arrangements.

(iv) Identify all omnibus, sweep, and pass-through accounts, identifying the accountholder, the location of relevant contracts, and the system on which they are maintained. Provide a detailed discussion of the capabilities and timeliness of deposit reporting systems and capabilities of accountholders with respect to any omnibus, sweep, or pass-through accounts.

(v) Provide a report regarding the CIDI's depositors that hold or control the largest deposits (whether in one account or multiple accounts) that collectively are material to one or more business lines ("key depositors"). The report must identify key depositors by name and line of business and the amount of deposit of each key depositor, and for each key depositor identify other services provided by the CIDI to that depositor, such as lending, wealth management, brokerage services, or custody services. The resolution submission must describe how long it would take for the CIDI to generate such a report and the timeliness of the information provided.

(8) *Critical services.* A CIDI must be able to demonstrate capabilities

necessary to ensure continuity of critical services in resolution. In order to support these capabilities, a resolution submission must:

(i) Identify and describe the CIDI's critical services and critical services support, including whether they are:

(A) provided by or through the CIDI or a CIDI subsidiary or branch (and further indicate whether those critical services or critical services support are ultimately provided by a third party entity), or

(B) provided by or through the parent company or a parent company affiliate (and further indicate whether those critical services or critical services support are ultimately provided by a third party entity).

(ii) Describe the CIDI's process for identifying critical services and critical services support. Describe the CIDI's process for collecting and monitoring the terms of contracts governing critical services and critical services support, and whether services provided pursuant to such contracts and associated costs can be segmented by the material entity, core business line, or franchise component that receives the critical service or critical service support.

(iii) Map critical services support to the entities that own, contract for, or employ them, and map critical services to the material entities, core business lines, and franchise components that they support.

(iv) Identify the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States.

(v) Identify the critical services and critical services support that may be at risk of interruption in the event of the CIDI's failure and describe the process used to make this determination. Discuss potential obstacles to maintaining critical services that could occur in the event of the CIDI's failure and steps that

could be taken to remediate or otherwise mitigate the risk of interruption, and describe the CIDI's approach for continuing critical services in the event of the CIDI's failure. Identify contracts for critical services that contain provisions that, upon the insolvency of the CIDI or the FDIC being appointed receiver of the CIDI, permit the service provider to stop providing services, to alter pricing, or to alter other terms of service.

(vi) Address obstacles and mitigants to the continuation of all critical services and critical services support provided by the parent company or a parent company affiliate, including:

(A) whether the CIDI and the parent company or parent company affiliate have entered into a written agreement and whether it has established a cost plus or arms' length pricing rate, and the processes used by the CIDI to identify and project liquidity needs associated with those costs; and

(B) the impact on continuity of critical services or critical services support provided by the parent company or a parent company affiliate if the parent company or parent company affiliate is in resolution under 11 U.S.C. 101 *et seq.* or other applicable insolvency regime.

(9) *Key personnel*. A resolution submission must:

(i) Identify all key personnel by title, function, location, core business line, and employing entity.

(ii) Describe the CIDI's methodology for identifying key personnel.

(iii) Provide a recommended approach for retaining key personnel during the CIDI's resolution.

(iv) Identify all employee benefit programs provided to key personnel, including health insurance, defined contribution and defined benefit retirement programs, and any other employee wellness programs, as well as any collective

bargaining agreements or other similar arrangements. Identify the legal entity sponsor of each employee benefit program, and provide a description of and points of contact (by title) for such programs.

(10) *Franchise components*. A CIDI must be able to demonstrate the capabilities necessary to ensure that franchise components are separable and marketable in resolution. A resolution must:

(i) Identify franchise components that are currently separable and marketable in a timely manner in resolution. For a resolution plan submission by a group A CIDI, the franchise components identified must be sufficient to implement the identified strategy and to provide meaningful optionality across a range of scenarios if the preferred approach is not available.

(ii) Provide metrics that depict the size and significance of each franchise component.

(iii) Identify by position the senior management officials of the CIDI who are primarily responsible for overseeing the business activities underlying the franchise component.

(iv) Describe the CIDI's current capabilities and process to initiate marketing of franchise components to potential third party acquirers, and describe the process by which the CIDI would identify prospective bidders for such franchise components.

(v) Describe the key assumptions (such as market conditions, available time to market assets, and anticipated client behaviors) underpinning each franchise component divestiture.

(vi) Describe any significant impediments and obstacles to execution, including significant legal, regulatory, or cross-border challenges as well as operational challenges, to the divestiture of each franchise component. This

description must also address impediments and obstacles to maintaining internal operations (for example, shared services, information technology requirements, and human resources) and to maintaining access to financial market utilities. Identify the material actions that would be needed to facilitate the sale or disposition of each franchise component and, based on the CIDI's current capabilities, describe the projected time frame for preparation for and disposition of each franchise component.

(vii) If a CIDI subsidiary or a parent company affiliate is a broker-dealer that provides services to the CIDI or customers of the CIDI, describe such services and the integration of the broker-dealer with the CIDI's business and operations. Provide an analysis discussing the challenges that could arise if the CIDI were separated from the broker-dealer and actions to mitigate such challenges.

(viii) A resolution submission must describe the CIDI's current capabilities and processes to establish a virtual data room promptly in the run-up to or upon failure of the IDI that could be used to carry out sale of the IDI franchise and the CIDI's franchise components, including a description of the organizational structure of information within the virtual data room. Information in the virtual data room must support the ability of the FDIC to market and execute a timely sale or disposition of the IDI franchise or the CIDI's franchise components, be appropriate for a buyer to conduct due diligence for a timely sale or disposition of the IDI franchise or the CIDI's franchise components, and be sufficient to permit a bidder to provide a competitive bid on the IDI franchise or the CIDI's franchise components. A resolution submission must also describe expected access protocols and requirements for the FDIC to use the virtual data room in order to carry out the sale of the IDI franchise or the CIDI's franchise components,

including the FDIC's ability to facilitate bidder due diligence, and describe how information populated within the virtual data room could be transferred to a virtual data room hosted by the FDIC. The resolution submission should identify the time required to capture all elements of information in the virtual data room, indicating number of days it would take to populate each category of information described below, and the process for each, including any potential obstacles or impediments in producing accurate, timely, and complete information in a useful format. The content of the virtual data room must include, but is not limited to:

(A) Financial information, including annual and interim financial statements, including carve-out financial statements for franchise components, general ledger, and relevant financial information

(B) Deposit data and information

(C) Loan and lending operations information

(D) Securities information, including relevant information describing the CIDIs' securities and investment portfolio

(E) Corporate organization information, including current organizational chart

(F) Employee information, including organization charts, compensation and benefits

(G) Material contracts and critical services information, including bond indentures key critical services agreements

(H) Other information necessary to facilitate a rapid and effective due diligence process for the sale of the IDI franchise or the CIDI's franchise components

(11) *Asset portfolios.* A resolution submission must identify each material asset portfolio by size, and by category and classes of assets within

such material asset portfolio, and include a breakdown of those assets within a material asset portfolio that are held by a foreign branch or regulated subsidiary. For each material asset portfolio, the resolution submission must describe how the assets within the portfolio are valued and how they are maintained on the books and records of the CIDI. Identify and discuss impediments to the sale of each material asset portfolio identified and provide a timeline for such disposition.

(12) *Valuation to facilitate FDIC's assessment of least-costly resolution method.* A CIDI must be able to demonstrate the capabilities necessary to produce valuations needed in assessing the least-cost test. A resolution plan must:

(i) Provide a detailed description of the approaches the CIDI would employ for determining the values of the franchise components and the IDI franchise as a whole, including the underlying assumptions and rationale. Describe the CIDI's approach to the development of the information needed to support valuation analysis, including a description of the CIDI's current ability to produce updated information, timely if necessary, to support the FDIC's analysis to determine whether a resolution strategy would be the least costly to the Deposit Insurance Fund in the event of failure.

(ii) Provide the following valuation analysis based upon the scenario used in the development of the identified strategy, with such adjustments to the scenario as may be necessary to demonstrate the analysis required under paragraph (d)(12)(ii)(B):

(A) Valuation estimates based on the net present value of proceeds that may be received under an enterprise valuation based on the disposition of the IDI franchise, and where a multiple acquirer exit strategy is incorporated in the identified strategy, a sum-of-the-parts analysis. In determining these valuation

estimates, the CIDI must consider appropriate valuation approaches, such as the income-based approach, asset-based approach, and market-based approach. In deriving a range of estimates of value, the CIDI must assess and provide a reasoned quantitative or qualitative analysis in support of whether the conclusion of value should reflect the results of one valuation approach and method, or a combination of the results of more than one valuation approach and method and, as appropriate, discuss the relevance and weight given to the different valuation approaches and methods used.

(B) A qualitative and quantitative analysis of the destruction of franchise value that may result from not transferring any uninsured deposits to the BDI, including a narrative describing any options to mitigate franchise value destruction where there is not a transfer of all deposits to a BDI, consideration of an advance dividend payment to depositors that takes into account the expected loss to depositors, and the impact of such an advance dividend on depositor behavior and preservation of franchise value at different levels of loss.

(iii) All content responding to paragraph (d)(12)(ii) of this section must be provided as an appendix to the resolution plan, including any analysis of liquidity and deposit runoff assumptions and factors underlying such runoff estimates.

(13) *Off-balance-sheet exposures*. A resolution submission must describe any material off-balance-sheet exposures (including the amount and nature of unfunded commitments, guarantees and contractual obligations) of the CIDI and map those exposures to core business lines, franchise components, and material asset portfolios.

(14) *Qualified financial contracts.* A resolution submission must:

(i) Describe the types of qualified financial contract transactions the CIDI is involved with in respect of its customers, which core business lines and franchise

components with which such transactions are associated, and how the CIDI offsets position risk from such transactions. Identify customers of the CIDI that are counterparties to qualified financial contracts transactions with the CIDI that are significant in terms of gross notional amounts or volumes of transactions.

(ii) Describe the booking models for risk from derivative transactions, including whether customer-facing risk or other dealer-facing risk resides in the CIDI while the position risk hedging is performed by a parent company affiliate. Describe the CIDI's use of any "global risk book," "remote bookings," or "back-to-backs" booking model, identify the challenges these booking models present to the transfer or unwind of such related derivatives, and analyze approaches for addressing those challenges.

(iii) Describe how the CIDI uses qualified financial contracts to manage its hedging or liquidity needs, including specifying the hedged items (including underlying risk, cash flow, assets or liability being hedged) and the applicable core business line, as well as the approach used to mitigate such risks.

(iv) For each of paragraphs (d)(14)(i) through (iii) of this section, identify hedges that receive hedge accounting treatment, core business line-specific hedges, and reporting capabilities and practices for hedge accounting information and other end-user hedges.

(15) *Unconsolidated balance sheet; entity financial statements.* A resolution submission must provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI. Amounts attributed to entities that are not material entities may be aggregated on the consolidating schedule. Provide financial statements for each material entity and regulated subsidiary. When available, audited financial statements should be provided.

(16) *Payment, clearing, and settlement systems.* A resolution submission must:

(i) Identify each payment, clearing, and settlement system, including financial market utilities, of which the CIDI directly is a member or indirectly accesses that is a critical service or a critical service support. Map direct memberships in and indirect access to each such system, including through correspondent and agent banks or intermediaries, to the CIDI's legal entities, core business lines, and franchise components. Describe the services provided by such systems, including the value and volume of activities on a per-provider basis.

(ii) Describe services provided by the CIDI as an intermediary, agent, or correspondent bank with respect to payment, clearing, and settlement services that are material in terms of revenue to or value to any franchise component or core business line.

(17) *Capital structure; funding sources.* A resolution submission must:

(i) Provide descriptions of the current processes used by the CIDI to identify the funding, liquidity, and capital needs of and resources available to each material entity that is a CIDI subsidiary or foreign branch. Describe the current capabilities of the CIDI to project and report its funding and liquidity needs (e.g., next day, cumulative next five days, cumulative next 30 days).

(ii) Describe the composition of the liabilities of the CIDI including the types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities, and subordinated liabilities. Such descriptions must include whether such liabilities are held by affiliates, whether they are publicly issued, maturity, call rights, and, where applicable, indenture trustees.

(iii) Describe the material funding relationships and material inter-affiliate exposures between the CIDI and any CIDI subsidiary or foreign branch that is a material entity, including material inter-affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, deposits, and derivatives transactions.

(18) *Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations.* A resolution submission must:

(i) Describe material affiliate funding relationships, and material inter-affiliate exposures, including terms, purpose, and duration, that the CIDI or any CIDI subsidiaries have with the parent company or any parent company affiliate. Include in such description material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, deposits, and derivatives transactions.

(ii) Identify the nature and extent to which the parent company or any parent company affiliate serves as a source of funding to the CIDI and CIDI subsidiaries, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits, and the mechanisms by which funds are transferred from the parent company to the CIDI and CIDI subsidiaries.

(19*) Economic effects of resolution.* A resolution submission must identify any activities or business lines of the CIDI that provide a service or function that is material (i) to a geographic area or region of the United States; (ii) to a business sector or product line in that geographic area or region, or nationally; or (iii) to other financial institutions. A resolution submission must also describe the potential disruptive impact of the termination of such activities on the geographic area, region, or nationally or business sector, industry, or product line, or

financial industry.

(20) *Non-deposit claims*. A resolution submission must identify and describe the CIDI's systems and processes used to identify the unsecured creditors of the CIDI that are not depositors, as well as the unsecured creditors of each CIDI subsidiary that is a material entity. Such description must identify the location of the CIDI's records and recordkeeping practices regarding unsecured debt issued by the CIDI and any inter-creditor agreements for unsecured debt. The description must include a description of the CIDI's capabilities to identify each such unsecured creditor by name, address, nature of the liability, and amount owed by the CIDI and each CIDI subsidiary or, in the case of indentured securities, the identity of the indenture trustee.

(21) *Cross-border elements.* A resolution submission must describe all components of the parent company's and parent company affiliates' operations that contribute to the value, revenues, or operations of the CIDI that are based or located outside the United States, including regulated subsidiaries, and foreign branches and offices. A resolution submission must identify regulatory or other impediments to divestiture, transfer, or continuation of any foreign branches, subsidiaries and offices in resolution, including with respect to retention or termination of personnel.

(22) *Management information systems; software licenses; intellectual property.* A resolution submission must:

(i) Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, as well as those used to provide the information required to be provided in the resolution submission, used by or for the benefit of the CIDI and CIDI subsidiaries. For each

system or application the description must identify the legal owner or licensor, the personnel by title and legal entity employer needed to support and operate the system or application, the system or application's use and function, any core business line that uses the system or application, its physical location (if any), any related third-party contracts or service level agreements, any related software or systems licenses, and any other related intellectual property.

(ii) For any key management information system or application for which the CIDI or CIDI subsidiary is not the owner or licensor, describe both any obstacles to maintaining access to such system or application when the CIDI is in resolution, and approaches for maintaining access to such system or application when the CIDI is in resolution, including the projected costs of maintaining access when the CIDI is in resolution.

(iii) Describe the capabilities of the CIDI's processes and systems to collect, maintain, and produce the information and other data underlying the resolution submission. Identify all relevant management information systems and applications, and describe how the information is managed and maintained. Describe any deficiencies, gaps, or weaknesses in such capabilities and the actions the CIDI intends to take to address promptly any such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(23) *Digital services and electronic platforms*. A resolution submission must describe all digital services and electronic platforms offered to depositors to support banking transactions for retail or business customers. Identify whether such services and platforms are provided by the CIDI, a CIDI subsidiary, a parent company affiliate, or a third party entity, and which entity owns the related intellectual property or is the licensee. Discuss how these services or platforms are significant to the operations or customer relationships of the CIDI, and their

impact on franchise value and depositor behavior.

(24) *Communications playbook*. A resolution submission must include a communications playbook that describes the CIDI's current communication capabilities, including capabilities to communicate with personnel, customers, and counterparties, and how those capabilities could be used from the point of the CIDI's failure through the CIDI's resolution. The description must:

(i) Identify categories of key stakeholders addressed in the CIDI's communications plans including, but not limited to, counterparties, regulatory authorities, customers, and personnel.

(ii) Identify communication channels for each key stakeholder category and describe the logistics and limitations of the use of each communication channel.

(iii) Describe the procedures to generate contact lists for each key stakeholder category and estimate the time required to generate each list.

(iv) Describe procedures for coordinating communications across key stakeholder categories and communications channels, including cross-border communications, if any.

(25) *Corporate governance.* A resolution submission must include a detailed description of: how resolution planning is integrated into the corporate governance structure and processes of the CIDI; the CIDI's policies, procedures, and internal controls governing preparation and approval of the resolution submission; and the identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, and filing of the resolution submission, and for the CIDI's compliance with this section.

(26) *CIDI's assessment of the resolution submission.* A resolution

submission must describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed resolution submission to assess the viability of the identified strategy (if required) or improve any capabilities described in the resolution submission.

(27) *Any other material factor.* A resolution submission must identify and discuss any other material factor that may impede the resolution of the CIDI.

(e) *Interim supplement.* Each CIDI must submit interim supplements containing current and accurate information regarding the specified resolution submission content items in accordance with this paragraph (e).

(1) *Submission date.* Each CIDI must submit an interim supplement to the FDIC on the one-year anniversary (or first business day thereafter) of its most recent resolution submission, as determined by paragraph (c) of this section, unless the CIDI has received written notice of a different date from the FDIC. No interim supplement is required in a calendar year in which a resolution submission is made.

(2) *Information for interim supplement.*

(i) Each CIDI must submit an interim supplement that address each of the content items required under paragraph (e)(3) of this section.

(ii) The information submitted for each content item must be current as of the end of the most recent fiscal quarter prior to the interim supplement. Material changes from information provided in the previous resolution submission must be identified and explained.

(3) *Content items for interim supplement.* Each CIDI must submit interim supplements that address each of the following content items as required under this paragraph (e):

(i) the content required under paragraph (d)(4) of this section, “Organizational structure: legal entities; core business lines; and branches”;

(ii) from paragraph (d)(7) of this section, “Overall deposit activities,” the content required under paragraph (d)(7)(i), the first sentence of paragraph (d)(7)(ii), the first sentence of paragraph (d)(7)(iii), the first sentence of paragraph (d)(7)(iv) and the first two sentences of paragraph (d)(7)(v) of this section;

(iii) from paragraph (d)(8) of this section, “Critical services,” the content required under paragraphs (d)(8)(i) and (iv) of this section;

(iv) from paragraph (d)(9) of this section, “Key personnel,” the content required under paragraph (d)(9)(i) of this section;

(v) from paragraph (d)(10) of this section, “Franchise components,” the content required under paragraphs (d)(10)(i) through (iii) of this section;

(vi) from paragraph (d)(11) of this section, “Asset portfolios,” the content required under the first sentence of paragraph (d)(11) of this section;

(vii) the content required under paragraph (d)(13) of this section, “Off-balance-sheet exposures”, excluding the requirement to “map those exposures to core business lines, franchise components and material asset portfolios” ;

(viii) the content required under paragraph (d)(15) of this section, “Unconsolidated balance sheet; entity financial statements”;

(ix) from paragraph (d)(16) of this section, “Payment, clearing, and settlement systems,” the content required under the first sentence of paragraph (d)(16)(i) of this section;

(x) from paragraph (d)(17) of this section, “Capital structure; funding sources,” the content required under the first sentence of paragraph (d)(17)(ii) of this section;

(xi) the content required under paragraph (d)(21) of this section, “Cross-

border elements";

(xii) from paragraph (d)(22) of this section, "Management information systems; software licenses; intellectual property," the content required under paragraph (d)(22)(i) of this section; and

(xiii) any other content element expressly identified for the next interim supplement by the FDIC.

(f) *Credibility; review of resolution submissions.*

(1) *Credibility criteria*. Each resolution submission must be credible. The FDIC may, at its sole discretion, determine that the resolution submission is not credible if:

(i) 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

(ii) 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 requirements of paragraph (d) or (e) of this section.

(2) *Resolution submission review and credibility determination.* The FDIC will review the resolution submission in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the resolution submission of a CIDI is not credible pursuant to paragraph (f)(1) of this section, the FDIC must notify the CIDI in writing of such determination. Any notice provided under this paragraph (f)(2) must include a description of the weaknesses in the resolution submission identified by the FDIC that resulted in

the determination that the resolution submission is not credible.

(3) *Resubmission of a resolution submission.* Within 90 days of receiving a notice issued by the FDIC pursuant to paragraph (f)(2) of this section that the resolution submission is not credible, or such shorter or longer period as the FDIC may determine, a CIDI must submit a revised resolution submission to the FDIC that addresses any weaknesses identified by the FDIC and discusses in detail the revisions made to address such weaknesses.

(4) *Failure regarding resubmission*. If the CIDI fails to submit the revised resolution submission within the required time-period under paragraph (f)(3) of this section or the FDIC determines that the revised resolution submission fails to address adequately the weaknesses identified in the notice issued by the FDIC, the FDIC may take enforcement action against the CIDI in accordance with paragraph (k) of this section.

(5) *Post review notice of feedback and engagement and capabilities testing.* Following its review of a resolution submission, the FDIC will send a written notification to each CIDI providing feedback on the resolution submission. The written notification may be initial feedback that identifies areas of engagement and capabilities testing between the FDIC and the CIDI under paragraph (g) of this section.

(g) *Engagement and capabilities testing*.

(1) *Engagement.* Each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC in its discretion determines is relevant to any of the provisions of this section (“engagement”). Personnel made available must have sufficient expertise and responsibility to address the informational and data requirements of the engagement. Engagement between the CIDI and the FDIC may be required at any time. This engagement may

include the FDIC requiring the CIDI to provide information or data to support the content items required by paragraphs (d) or (e) of this section, other information related to a group A CIDI's identified strategy, or, for any CIDI, other resolution options being considered by the FDIC. Among other subjects, the FDIC may seek information from a group A CIDI on the impact to the identified strategy of a change in economic assumptions or CIDI-specific scenario assumptions.

(2) *Capabilities testing*. 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 ("capabilities testing"). In connection with capabilities testing, the FDIC may seek information from a CIDI on the impact on identified capabilities of a change in economic assumptions or CIDI-specific scenario assumptions, if applicable. The CIDI must perform such capabilities testing promptly, and provide the results in a time frame and format acceptable to the FDIC. Capabilities testing may be included in connection with any engagement.

(3) *Conclusion letter*. At the conclusion of any engagement and capabilities testing between the FDIC and CIDI pursuant to this paragraph (g), the FDIC may send a written notification to the CIDI that such engagement and capabilities testing has concluded. The written notification may identify areas for further attention by the CIDI or other feedback.

(4) *Engagement and capabilities testing enforcement.* A CIDI's failure to comply with this paragraph (g) may result in the FDIC taking enforcement action against the CIDI in accordance with paragraph (k) of this section.

(h) *No limiting effect on FDIC.* No resolution submission provided pursuant to this section will be binding on the FDIC as supervisor, deposit insurer, or

receiver for a CIDI or otherwise require the FDIC to act in conformance with such resolution submission.

(1) *Financial information*. The resolution submission must, to the greatest extent possible, use financial information as of the most recent fiscal year-end for which the CIDI has financial statements or, if the use of financial information as of a more recent date as of which the CIDI has financial statements would more accurately reflect the operations of the CIDI on the date the CIDI submits the resolution submission, financial information as of that more recent date.

(2) *Indexing of information and analysis to resolution submission and interim supplement content requirements*. A resolution submission or interim supplement must include an index of each content requirement in paragraph (d) or (e) of this section, as applicable, required to be included in that resolution submission or interim supplement, as applicable, to every instance of its location in the resolution submission, or interim supplement, as applicable.

(3) *Combined resolution submission or interim supplements by affiliated CIDIs.* CIDIs that are affiliates may submit a single, combined resolution submission or interim supplement, but only if all affiliated CIDIs submitting the combined resolution submission or interim supplement are within the same CIDI group, whether group A or group B. The combined resolution submission or interim supplement must satisfy the content requirements for each CIDI's resolution submission or interim supplement, as applicable, and the FDIC must be able to readily identify the portions of a combined resolution submission or interim supplement that comprise each CIDI's resolution submission or interim supplement.

(i) *Form of resolution submissions; confidential treatment of resolution submissions and interim supplements.*

(1) Each resolution submission must be divided into a Public Section and a Confidential Section. Each CIDI must segregate and separately identify the Public Section from the Confidential Section. The Public Section must consist of an executive summary of the resolution plan that describes the business of the CIDI. For each CIDI, the Public Section must include, to the extent material to the CIDI's resolution submission:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing, and settlement systems, including financial market utilities;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) For group A CIDIs only, a description, at a high level, of the CIDI's identified strategy.

(2) The confidentiality of resolution submissions and interim supplements must be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Disclosure of Information Rules (12 CFR part 309).

(3) Any CIDI submitting a resolution submission, interim supplement, or

related materials pursuant to this section that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and the FDIC's Disclosure of Information Rules (12 CFR part 309) and related policies may file a request for confidential treatment in accordance with those rules.

(4) To the extent permitted by law, information comprising the Confidential Section of a resolution submission and the information comprising an interim supplement will be treated as confidential.

(5) To the extent permitted by law, the submission of any non-publicly available data or information under this section will not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution submissions and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

(j) *Extensions and exemptions.*

(1) *Extension.* Notwithstanding the general requirements of paragraph (c) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, any time frame or deadline of this section.

(2) *Waiver*. The FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.

(k) *Enforcement.* Violating any provision of this section constitutes a violation of a regulation and may subject the CIDI to enforcement actions under Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including paragraph (t) thereunder.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 29, 2023.

James P. Sheesley,

Assistant Executive Secretary.

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