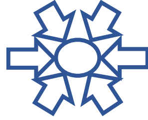

Financial Services Management

Large-IDI Resolution Plans

Cite

FDIC, Notice of Proposed Rulemaking, Resolution Plans Required for Insured Depository Institutions with $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions with At Least $50 Billion but Less Than $100 Billion in Total Assets

Recommended Distribution

Resolution Planning, Risk Management, Policy, Legal, Government Relations

Website

https://www.fdic.gov/news/board-matters/2023/2023-08-29-notice-dis-b-fr.pdf

Impact Assessment

- All large IDIs would face stringent new resolution-planning requirements and a heightened threat of enforcement actions up to and including mandatory restructuring.
- Large IDIs not now subject to resolution-planning standards will face steep operational and governance challenges ramping up all the systems and data to be quickly required by the FDIC.
- IDIs over $100 billion will face duplicative resolution-planning standards despite FDIC efforts to minimize this.
- The extent to which all this work will result in ready resolution without undue FDIC cost or systemic risk will depend on the FDIC's ability to absorb, review, validate, and quickly communicate findings and well as execute desired strategies under stress. Capabilities to do so are uncertain.
- Effective resolution planning will reduce DIF-premium costs, possible macro and systemic effects. The FDIC now prefers BDI resolutions instead of P&As. It is unclear if bridge banks would function as planned under stress due to counterparty fears regardless of BDI resilience.

Overview

Although a pending FDIC/FRB proposal imposes a raft of new requirements for resolution plans from IDIs with over $100 billion in assets,[1] the FDIC has also issued a freestanding proposal doing the same, also setting information-filing standards for IDIs below $100 billion but above $50 billion. Aspects of the resolution-plan filing standards for large covered IDIs (CIDIs) echo and in some cases allow reliance on aspects of the joint rule with the Fed, but the FDIC notes that this rule is, as required by the Dodd-Frank Act,[2] focused on financial stability. Its own IDI resolution rules now and as proposed instead address how the FDIC is to meet its own statutory requirements (e.g., least-cost resolution). The NPR mandates many new planning or filing requirements to achieve its goals, most notably adding new severability standards that may require new inter-affiliate or -branch firewalls that reduce operating efficiencies and, when it comes to broker-dealer or other entities, lead to indirect resolution requirements not mandated by functional

1 See **LIVINGWILL22**, *Financial Services Management*, September 7, 2023.

2 See **SYSTEMIC30**, *Financial Services Management*, July 22, 2010.

©2023. Federal Financial Analytics, Inc.

regulators. The proposal also tightens enforcement policy, most notably increasing the criteria by which a resolution plan will be judged "credible" and thus the extent to which a CIDI will be subject to monetary penalties or even allowed to operate as is.

Impact

The FDIC's current, 2012 IDI-resolution standard covers entities with assets over $50 billion.[3] Consistent with all the other proposals the banking agencies issued this summer, this NPR would principally cover only IDIs with over $100 billion in assets. Still, the new standards would also require information filings from IDIs below this threshold that have over $50 billion in assets. Thus, while some IDIs under current FDIC resolution standards may see some relief, the overall framework is nonetheless far more stringent and now goes beyond current standards also to include express enforcement requirements that will be most significant for IDIs over $100 billion. The extent to which the FDIC has authority to go beyond the penalties prescribed in the joint FRB/FDIC rule referenced above is unclear. Retaining this enforcement authority now only for itself would give the FDIC power to go beyond enforcement to which the Fed might also agree, increasing the likelihood that IDIs could be sanctioned if the primary regulator also concurs.

Although the proposal allows CIDIs to use material prepared for the systemic-resolution plans mandated by both the FDIC and FRB noted above where applicable, much in the proposal addresses the FDIC's view that its statutory resolution requirements mandate different and more frequent filings from large IDIs. The preamble details the challenges the FDIC believes it is likely to face with covered IDIs resolutions, interestingly noting that the systemic designation reached after SVB and Signature's failure was required not only to address systemic considerations, but also to preserve the IDI's franchise value in order to meet the least-cost test even though the actual authority for systemic designations does not address this consideration.[4]

The FDIC's proposal also puts its non-systemic resolutions in a new context. Under the current rule, the agency presumes and most IDIs planned for "purchase-and-assumption" (P&A) acquisition by a single institution over a weekend that reduces FDIC resolution costs in part because uninsured deposits are protected along with insured funds. The FDIC no longer believes this likely for most CIDIs and, even should this be viable under ordinary market conditions, the FDIC thinks it would not be possible under conditions prevailing at the time of one or more CIDI resolutions. The NPR thus states that the FDIC would then establish a bridge depository institution (BDI). However, it may well be possible for smaller CIDIs to be acquired in whole, as was the case for First Republic, nor is it clear that a BDI would resolve uninsured-depository, creditor and counterparty concerns given the fact that the FDIC could still decide to liquidate some or all of the bridge IDI. These BDI-focused plans would be a sharp departure from current plans that will likely require considerable new considerations that could be particularly challenging for IDIs that on their own or within holding companies that plan for multiple-point-of-entry (MPOE) resolution.

What's Next

The FDIC approved this NPR on an 3-2 vote on August 29. Comments are due by November 30, the same deadline set for all the capital, long-term debt, and other resolution rules. The first full resolution plan and informational filings would be required no sooner than 270 days after the final rule's effective date.

---

3 See **LIVINGWILL8**, *Financial Services Management*, January 27, 2012.

4 See **SYSTEMIC95**, *Financial Services Management*, April 26, 2023.

©2023. Federal Financial Analytics, Inc.

The proposal calls for biennial plan and informational filings, a more rapid schedule than that mandated under current FDIC rules and for parallel IDI plans under the joint Fed/FDIC rule noted above. Annual interim filings of more limited information would also be mandated, with all of these submission dates subject to alteration upon FDIC notice. IDIs would continue to be required generally within 45 days to alert the FDIC to specified material changes affecting resolution-related filings.

The NPR also includes transition provisions that, regardless of the rule's effective date, state that covered IDIs with pending plans would proceed under the current rule during this cycle. Plans submitted in 2023 will be evaluated under the current rule, with FDIC feedback focusing not only on the current rule, but also on how the current plan fits into the new construct. Most covered IDIs will not file their first plans until at least 270 days after the final rule's effective date. The FDIC will work with these IDIs given the relatively short time between the final rule and plan submission. Comment is sought on these transition provisions.

Analysis

The assessment below focuses on strategic, new requirements, omitting analysis of current standards that are left materially unchanged.

A. IDIs With Over $100 Billion in Assets

These IDIs will need an appropriate resolution strategy, with key provisions:

- no longer stipulating that the principal event for which IDIs are to plan is one-day P&As. Instead plans would need to cover times from the point of failure through sale or disposition of the franchise. As noted, the FDIC expects BDIs to be the most likely resolution, with this now set as the default standard addressing matters such as BDI exit. All strategies must ensure FDIC optionality;
- not require that identified strategies meet FDIC needs or are least-cost to the FDIC. Instead, plans are to demonstrate that identified strategies maximize value and minimize creditor loss;
- allow assumptions of continued FHLB advances and short-term liquidity advances from the DIF as long as the plan also addresses timely repayment;
- mandate that the IDI adopt the proposed failure scenario and incorporate it into valuation assumptions, now requiring planning only for severely-adverse scenarios as defined by the FRB for CCAR purposes. Failure scenarios would also need to assume material financial distress and holding-company bankruptcy;
- require identification of aspects of the overall franchise that can be readily separated in an actionable, market-realistic, and timely fashion. Large IDIs would need to find ways for the FDIC using a BDI to divest key activities to multiple acquirers if the size of key units makes problematic orderly acquisition as a whole. Restructuring and divestiture options may also be considered under certain circumstances;
- mandate maps of off-balance sheet exposures and QFCs;

© 2023 Federal Financial Analytics, Inc. All rights reserved.

- include identification of resources available at the time of resolution and drivers of liquidity need;
- force the IDI to lay out its systemic-risk profile;
- require specified information related to broker-dealer resolution and other material nonbank IDI affiliates or subsidiaries;
- require the IDI to provide the FDIC with the information necessary for rapid data-room establishment; and
- mandate demonstration that the IDI's desired resolution strategy is least-cost to the FDIC, substantiating claims to this effect as detailed in the proposal. However, failure to convince the FDIC that the desired approach is least cost would not damage the plan's credibility (i.e., increase the odds of an enforcement action).

B. IDIs Over $50 Billion Below $100 Billion

Several of the plan requirements noted above would not apply to these mid-sized IDIs nor would they be required to assess the extent to which their plan is least cost. An "engagement process" would give the FDIC an avenue to discuss any filing-content concerns.

C. Interim Supplement

As noted, covered IDIs would need to file interim supplements in plan off-years, with the proposal detailing a more limited set of content and data required for these reports that would need to be filed in full even if unchanged from the prior plan and be independent of other requirements for material-change and additional information. The FDIC would retain the right to alter interim-filing content or timing. Comment is sought on all aspects of the submission with particular regard to added burden.

D. Engagement and Testing

An array of new standards is proposed to ensure plans can in fact be effectively executed and meet the credibility standard (see below).

E. Credibility

1. Criteria

These would be redesigned to judge plans more harshly as well as to take engagement and testing-quality into account. As with the plan, the credibility standard omits current provisions judging resolution planning largely by the extent the FDIC could accomplish an over-the-weekend P&A. The credibility criteria would have two prongs:

- the plan provides timely access to insured deposits, maximizes value, minimizes creditor losses, and address macroeconomic and financial stability with clear recognition that the FDIC does not wish to make use of systemic authority. Where systemic considerations are unavoidable due to the IDI's (usually GSIBs) size or inter-connectedness, credibility will be judged by the extent to which risks are recognized and mitigated; and
- all information and analysis are supported with observable, verifiable capabilities, projections are reasonable, and the IDI otherwise complies with resolution-regulatory requirements.

©2023. Federal Financial Analytics, Inc.

2. *Credibility Determinations*

The NPR details the process by which the FDIC will assess plan credibility, notify an IDI, demand corrective action to the plan, or take still more stringent action. Current standards allowing an IDI to resubmit a problematic plan would be eliminated except when an IDI has been notified by the FDIC that its plan is not credible. The FDIC may reach a credibility judgment at any point in its review based the two prongs noted above. Considerations of credibility related to the IDI plan and those that would be required under the joint Fed/FDIC rule are different.

F. Enforcement

Here, the FDIC adds a new discussion it says is not substantively different than current policy even though new provisions related to the two-prong credibility test could materially alter when and how the FDIC intervenes. Credibility determinations will continue to be made in consultation with other supervisors and enforcement penalties may be executed by them (e.g., if an affiliate or entity subject to sanction or even divestiture is not subject to FDIC authority). General comment is sought on these provisions.

G. Public Disclosure

Larger IDI public disclosures regarding resolution plans would need to include a high-level description of the plan's strategy. Comment is sought on whether smaller covered IDIs should also make this disclosure and whether there are any impediments to IDIs doing so.

H. Request for Comment

In addition, notable questions on which views are sought include:

- the need to cover IDIs with less than $50 billion due to the complexity or other facets of their operations;
- if $100 billion is the correct lower threshold for more stringent requirements;
- if views also sought on whether some IDIs between $50 and $100 billion should come under full requirements;
- submission filing and implementation deadlines, including those that affect IDI coverage based on events such as mergers;
- if BDIs are the appropriate default resolution strategy for large IDIs;
- the new failure scenario and assumptions;
- the new severability construct, including the need to provide specific time periods in which viable divestitures or dispositions could be completed. The

© 2023 Federal Financial Analytics, Inc. All rights reserved.

extent to which severability is plausible for very large IDIs is also a matter for comment;

- the manner in which a virtual data room could be established and the need for more explicit requirements;
- the best way for the FDIC to assess least-cost likelihood;
- if the filing requirements for mid-sized IDIs strikes the “right balance”;
- whether interim filings should be judged on credibility criteria and, if so which;
- the need for different credibility standards for different IDI classes, especially GSIBs;
- the timing and structure of credibility assessments; and
- the engagement and testing process and how the FDIC would communicate its conclusions.

©2023. Federal Financial Analytics, Inc.