

FDIC Finalizes Rules Revamping IDI Resolution Plan Requirements

June 24, 2024

On June 20, 2024, the Federal Deposit Insurance Corporation (“FDIC”) issued a final rule comprehensively restating and expanding its resolution planning rule (the “IDI Rule”) applicable to large insured depository institutions (“IDIs”).¹ The release finalizes the rule proposal from August 29, 2023 (the “Proposal”). The Proposal was released alongside (i) proposed guidance on resolution planning for section 165(d) holding company resolution plan submissions; and (ii) the long-term debt rule, each released with other agencies (unlike the Proposal, which was issued solely by the FDIC).² Notably, despite the joint release of the rule proposals last year, only the IDI Rule was finalized (although FDIC Chair Gruenberg referenced the others in his speech approving the IDI Rule).

This update identifies certain noteworthy similarities and distinctions between the IDI Rule and the Proposal. We intend to publish a more comprehensive summary of the IDI Rule in the near term.

KEY PROVISIONS AND CHANGES

- **Scope.** As in the Proposal, the IDI Rule amends the resolution plan requirements for IDIs with over \$100 billion in average total assets (“Group A Filers”) and creates a new submission requirement (“information filings”) for IDIs with between \$50 billion and \$100 billion in average total assets (“Group B Filers”). Expanding the scope of resolution planning to IDIs with over \$50 billion in average total assets has been a well-known focus of the regulators, in particular after the Spring 2023 bank failures of several large regional banks.
- In a separate memorandum, the FDIC identifies 33 Group A Filers—9 biennial filers and 24 triennial filers—and 12 Group B Filers.³

¹ See the final rule release [here](#).

² See the Proposal [here](#). See our commentary on the Proposal and the other concurrent releases [here](#).

³ See the FDIC memorandum [here](#).

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- **Frequency.** The IDI Rule requires IDIs affiliated with U.S. global systemically important banking organizations (“U.S. GSIBs”) to file biennially, increasing the frequency from the current triennial requirement.
 - Unlike the Proposal, however, the IDI Rule does not require other Group A Filers to switch to a biennial cycle (even if such filers are associated with non-U.S. GSIBs).
 - Group A Filers not affiliated with U.S. GSIBs and Group B Filers are required to file triennially.
 - Interim supplements are required in years where a filer does not submit a full resolution submission.
 - **Notice of Extraordinary Event:** In another shift from the Proposal, the IDI Rule requires notice to the FDIC no later than 45 days after an “extraordinary event” instead of a “material change.”
 - An “extraordinary event” is more significant than simply a “material change” and is meant to capture events such as a merger, acquisition or disposition of assets, or fundamental change to the CIDI’s organizational structure, core business lines, size or complexity.
 - This is more in line with the 165(d) holding company resolution plan rules.
 - **Significant Finding Designation:** Divergent from the Proposal, the IDI Rule will add an intermediate level of feedback to submissions—“a significant finding.”
 - A significant finding by the FDIC indicates a weakness or gap that raises questions about the credibility of an IDI’s submission—it is more serious than “informal feedback” but does not rise to the level of a “material weakness.”
 - In the release of the IDI Rule, the FDIC describes a material weakness as something that “that would significantly impact the FDIC’s ability to undertake an efficient and effective resolution of the [IDI] or would increase the risk of a disorderly and value-destructive resolution if not promptly corrected.”
 - In contrast, a significant finding by the FDIC is more likely to deal with the completeness, sufficiency and thoroughness of information provided in a submission or the adequacy of a demonstrated capability.

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- It is something that could affect the IDI but does not have the same impact or urgency as a material weakness.
 - If a significant finding is not addressed before the next resolution plan submission, then it may rise to the level of a material weakness.
 - **Credibility Assessment:** The IDI Rule sets out a two-prong approach to the credibility criteria the FDIC will use to review resolution plan submissions.
 - The first prong provides that a submission by a Group A Filer would be deemed not credible if its identified strategy would not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the IDI in resolution and address potential risks of adverse effects on U.S. economic conditions or financial stability.
 - The second prong provides that a submission (by any filer) would be deemed not credible if the information and analysis in it are not supported with observable and verifiable capabilities and data, and reasonable projections, or if the IDI fails to comply in any material respect with its filing requirements.
 - Interim submissions (required in years where a filer does not submit a full resolution submission) will not be assessed against the credibility standard.
 - **Content – Identified Strategy:** As in the Proposal, Group A Filers are required to include an “identified strategy” in their filings—a strategy that describes the resolution from the point of failure through sale or disposition of the IDI’s franchise.
 - The identified strategy for resolution cannot simply be a close-of-weekend sale, presumably in light of lessons learned during the 2023 regional bank failures.
 - Group B Filers are not required to include an identified strategy.
 - **Content – Capabilities.** The IDI Rule requires all filers (Group A and Group B) to demonstrate that they have the capabilities necessary to ensure continuity of critical services during resolution and that franchise components are marketable.
 - Unlike the Proposal, the IDI need not show that franchise components are separable.
 - To facilitate the marketing of franchise components, IDIs are required to describe current capabilities and processes to provide access to or establish a virtual data room promptly in the run-up to or upon failure of the IDI.

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- The data room requirement has been an emphasis of the FDIC and the other agencies, stemming from issues with the bank failures of 2023, and so, may be a particular area of scrutiny in reviewing a submission.
 - **Engagement & Capabilities Testing.** With only minor changes from the Proposal, the IDI Rule provides enhanced capacity for the FDIC to engage directly with all filers (Group A and Group B) regarding the content of their submissions and test their described capabilities.
 - The IDI Rule requires that information and personnel access be at the discretion of the FDIC and not be limited to information and personnel access necessary to assess the credibility of the resolution plan.
 - Unlike the Proposal, the IDI Rule specifies that the FDIC will provide timely notification of an engagement before it begins and will notify the IDI when the engagement concludes.
 - The IDI Rule allows the FDIC to require an IDI to demonstrate that it can perform the capabilities described, or required to be described, in a submission.
 - **Timing:** The IDI Rule will be effective on October 1, 2024 and submission dates will be set by the FDIC.
 - As in the Proposal, the FDIC will set a date for Group A Filers at least 270 days after the effective date (no earlier than July 1, 2025).
 - Extending the period for submission from the Proposal, which was also 270 days, the FDIC will set a date for Group B Filers at least a year after the effective date (no earlier than October 1, 2025).

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