American Bankers Association
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November 30, 2023

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Attention: James P. Sheesley,
Assistant Executive Secretary, Comments/Legal OES

Re: Resolution Plans for Insured Depository Institutions With $100 Billion or More in Total Assets; Informational Filings for Insured Depository Institutions With at Least $50 Billion But Less Than $100 Billion in Total Assets (RIN 3064–AF90)

Ladies and Gentlemen:

The American Bankers Association (ABA)[1] appreciates the opportunity to share our members' views on the proposed amendments (Proposal) to the resolution planning regulation for large insured depository institutions (CIDIs) by the Federal Deposit Insurance Corporation (FDIC). ABA has been active on behalf of our members in the many policy issues involved in resolution planning since the development of the first requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and FDIC's original IDI resolution planning rule. Though resolution planning has required exhaustive work on the part of both FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve)) and the affected banking organizations, we acknowledge the enhanced resiliency, reduced systemic vulnerability, and enhanced public confidence that those efforts have yielded. Subsequent Congressionally mandated refinements under the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), preserved the benefits of those efforts while streamlining the workload by making the requirements more sensitive to risk. FDIC's policy statement issued in June 2021 (Policy Statement)[2] provided interim adjustments to the existing IDI rule in recognition of Congress's tailoring objectives.

Given that progress, ABA is concerned that several aspects of the Proposal may compromise those hard-won benefits. We believe that the Proposal would impose some requirements that are impractical, even in light of the many improvements in management information systems, risk governance, corporate structure, and operational resiliency that institutions have achieved since resolution planning commenced. Specifically, ABA is concerned that:

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[1] The American Bankers Association is the voice of the nation's $23.5 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2.1 million people, safeguard $18.6 trillion in deposits and extend $12.3 trillion in loans.

[2] Statement on Resolution Plans for Insured Depository Institutions, *available at* https://www.fdic.gov/resources/resolutions/resolution-authority/idi-statement-06-25-2021.pdf (June 25, 2021).

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Summary

- The Proposal's additional required information would extend to information that institutions do not have or control, and the final rule should be modified as described below. Definitions in the Proposal should be made consistent with the parallel definitions in the 165(d) Rule. Similarly, other terms, and the overall application of the 165(d) Rule and a final IDI resolution planning rule, should be consistent.

- The Proposal's revised credibility determination is not feasible absent reliance on assumptions that Group A CIDIs would be unable to verify. The possibility of an enforcement action, preceded by at most limited feedback from FDIC following the plan's initial submission, creates an unacceptably arbitrary compliance obligation when other approaches (discussed below) would yield practical and useful results.

- The Proposal raises similar concerns with respect to capabilities testing, but, again, changes in the proposed process discussed below would be beneficial without compromising the practical benefits of the resolution plan.

- Any individualized FDIC feedback on resolution plans should be treated as confidential supervisory information and not publicized, except to facilitate coordination between home and host country resolution planning where applicable. Broad-based industry guidance, however, should be made publicly available with an opportunity for prior notice and comment.

The remainder of this letter provides more detail on these matters.

I. The Proposal's additional required information would extend to information that institutions do not have or control, and the final rule should be modified as described below.

A. The requirement to include approaches for valuing franchise value will necessarily include key assumptions that are highly likely to vary with economic and market circumstances, and the approaches may produce information of very limited value to execution of an actual resolution.

The Policy Statement directed CIDIs to detail their valuation methods for "each major asset category, core business line or other key component of a CIDI's franchise value" (franchise components) and to demonstrate how disposition of each such component would achieve the least costly resolution of the institution. The Proposal nominally relieves the submitting CIDIs of the requirement to demonstrate how the least-costly resolution could be achieved and retains the requirements for details of valuation. It would, however, require Group A CIDIs[3] to continue to

[3] "Group A" CIDIs are those having $100 billion or more in total assets, and "Group B" CIDIs are those having between $50 billion and $100 billion in total assets.

provide extensive valuation information on the franchise components as currently defined. In addition, it would expand the scope of "franchise component," to include "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."[4]

Though many CIDIs, experienced in acquisitions, business or branch divestitures, and similar transactions, will likely have a sense of how to outline "franchise components" along the lines described, it is likely that their ideas and those of FDIC officials will differ in at least some details. Because the valuation exercise would be a key element of the Proposal's revised approach to resolution planning, and because of the possibility of drastic enforcement action if FDIC disagrees with the CIDI's approach (and if the disagreement cannot be quickly resolved), FDIC should at a minimum make its expectations clear. As discussed in greater detail below, the Proposal's apparent shift from the iterative process of resolution planning thus far (in which FDIC and the Federal Reserve have engaged in multiple rounds of discussion with institutions to develop effective resolution plans) to the Proposal's apparently less collaborative approach (under which FDIC emphasizes the possible use of enforcement actions, should it view a submission as unacceptable) makes the importance of clear expectations even greater.[5]

Moreover, as the Proposal acknowledges, valuation strategies depend significantly on assumptions about interest rates, general liquidity, the degree of financial stress among potential acquirers, and market conditions generally. Changes in asset values, deposit portfolios, and other franchise components are certainly possible, and in distressed market conditions would be likely, due not only to general market conditions, but also to reactions of borrowers and counterparties to commencement of the resolution, commencement of litigation (both offensive and defensive), and numerous other factors beyond the control of CIDI management. Management cannot forecast these factors precisely as it attempts to develop the identified strategy.

Particularly for aspects of "franchise components" that go beyond, for example, calculating discounted cash flows (which may provide reliable indications of market value for many financial assets), wide fluctuations in value will occur depending on economic conditions and the circumstances of other relevant market participants. For example, the terms of branch sales executed by an institution outside of a resolution context may be on terms different from those achieved in a resolution. Even if FDIC and the CIDI share the same view of appropriate assumptions, an institution's ability to demonstrate the "capabilities necessary to ensure that franchise components are separable **and marketable** in resolution"[6] may not be a normal part of a going concern's competencies, since in widespread stressful conditions healthy institutions would usually defer such transactions. Exceptions exist – some institutions have, for example, acquired other failed depository institutions in resolution. In general, however, such experience

[4] Proposal at 64593.
[5] As this letter makes clear throughout, new plan content requirements, though burdensome in some cases, may not present insurmountable problems, but FDIC's proposed limits on opportunities and timeframes for clarifying expectations and resolving questions are likely to create conflicts that could easily be avoided without compromising resolution planning effectiveness.
[6] Proposal at 64593 (emphasis added).

is found in niche consulting and investment banking firms and, of course, in FDIC itself.

For these reasons, ABA recommends that FDIC make clear its expectations concerning valuation methodologies, especially concerning franchise components (as distinct from asset market values). FDIC should not, however, require CIDIs' resolution plans to include quantitative information about values that will inevitably change as market conditions change over time. Having a detailed approach to valuation that can be implemented in the runup to an actual resolution will have a much greater practical value and will promote the goals of the resolution planning process.

B. The parameters for defining the identified strategy for resolution introduce further uncertainties that complicate the required valuation process.

The Proposal would require a Group A CIDI to provide an identified strategy, describing the resolution from the point of failure through the sale or disposition of the franchise in a manner that meets the proposed credibility standard.[7] The default strategy would be establishment of a bridge bank, and the CIDI could not assume the sale of assets or assumption of liabilities (to an acquirer other than the bridge) over resolution weekend.[8] An appropriate identified strategy "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."[9]

As a general matter, ABA supports consideration of the suitability of bridge banks as a resolution strategy for Group A CIDIs. Particularly in the case of more complex resolutions, employing a bridge bank is likely to preserve options and, in some cases, will permit an expanded universe of potential acquirers for all or parts of the institution's assets, deposits, and franchise components. Furthermore, the assumption that resolution of the Group A CIDI will involve a bridge bank would of itself reasonably assure timely access to insured deposits (if not access to all deposits). To make these options most effective, however, FDIC's final rule must address the concerns described above in Section I.A.

There are two further complications in selecting the identified strategy: first, the requirement to minimize losses realized by creditors will be significantly affected by FDIC's desire to increase options for managing its insurance exposure; and, second, FDIC proposes to require Group A CIDIs to estimate a range of impacts on financial stability, some of which would depend significantly on nonpublic information unavailable to them.

With respect to increasing options for resolution, FDIC and the other prudential regulatory agencies have proposed a new requirement for Group A IDIs (other than those that are "global systemically important banks" or G-SIBs) to issue qualifying long-term subordinated debt

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[7] Proposal at 64587.
[8] Proposal at 64581-64582.
[9] *Id.*

(LTD).[10] A key purpose of LTD would be to provide a loss-absorbing cushion when the IDI fails, effectively increasing the asset coverage of the institution's deposit base. In that sense, for a given level of total assets and equity capital, LTD would effectively replace uninsured deposits. Relying on the depositor-preference provisions of the Federal Deposit Insurance Act,[11] the receiver would be able to transfer some or all of the IDI's good assets and its insured (and in many cases, its uninsured) deposits to an acquirer or a bridge bank, while effectively imposing losses on LTD holders, since LTD obligations would at the receiver's option not be assumed (or only partly assumed) by the acquirer or bridge bank. The additional asset value would mitigate or eliminate draws on the Deposit Insurance Fund to facilitate the assumption of deposits and complete the resolution (or at least to establish and stabilize the bridge bank).

As part of its issuance of the proposed LTD rule concurrently with the Proposal, FDIC made clear that it in fact intends to impose (or, more specifically, to have the option to impose) losses on nondeposit creditors. If such Group A CIDIs are required under the Proposal to adopt a strategy to minimize losses to creditors (including, specifically, nondeposit creditors), and if a final LTD requirement also imposes a hierarchy of creditor losses as contemplated, this combination of requirements creates an apparent contradiction. All else being equal, minimizing losses for nondeposit creditors could increase costs for the DIF, and reducing costs to the DIF could increase losses borne by LTD investors as creditors. This plan requirement will arguably require those Group A CIDIs to speculate on the extent to which FDIC might elect to impose such losses in a given case for the benefit of the DIF. Thus, as noted, any identified resolution strategy will have to assume what actions FDIC will take. If FDIC takes this approach in a final rule, it should make clear that any assumptions it effectively requires CIDIs to make about nondeposit creditors' losses will not negatively affect their credibility assessment.

Finally, all 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.[12] CIDIs expect to provide detailed information about their general positions in various markets, their key customer and counterparty relationships, and their critical services, but assessments of the impact of resolution on all of these relationships is not equally feasible. ABA's most serious concern is that requiring CIDIs to assess the impact of their proposed resolution on other financial institutions goes well beyond simply describing those relationships. CIDIs will have, at best, partial and imperfect knowledge about such other institutions' asset quality, liquidity positions, operational resiliency, and general condition. Such detailed information is normally available only to supervisory agencies. Though details about the existence of the relationships and their materiality to the submitting CIDI are certainly available, the Proposal apparently seeks relevant analysis from the perspective of other firms, and much of that will be out of the public sphere. As a supervisory agency, FDIC is much better positioned to have such information from either its own supervisory activities or its liaisons with other primary Federal and state supervisors.

[10] *See* https://www.federalregister.gov/documents/2023/09/19/2023-19265/long-term-debt-requirements-for-large-bank-holding-companies-certain-intermediate-holding-companies.
[11] *See* 12 USC 1821(d)(11)(A).
[12] Proposal at 64597.

Again, extensive assumptions can address these uncertainties to some extent, but CIDIs must be able to include those assumptions to the extent necessary without facing enforcement actions or negative effects on their credibility assessments. The implications of FDIC's potential enforcement actions, particularly in light of the implicit retreat from the historical iterative resolution planning process, highlight the serious questions the Proposal raises.

C. Definitions in the Proposal should be made consistent with the parallel definitions in the 165(d) Rule. Similarly, other terms, and the overall application of the 165(d) Rule and a final IDI resolution planning rule, should be consistent.

One of the key requisites for successful resolution planning has been refining consistency between the regulators' requirements for IDI resolution plans and those required under Dodd-Frank Act Section 165(d).[13] In many cases achieving and preserving this consistency has both improved the quality and internal integration of resolution plans and made the plan development and governance process more efficient and effective. Though ABA acknowledges that resolutions of consolidated parent organizations and IDI subsidiaries proceed under different legal and regulatory frameworks, definitions should be consistent between the two rules.

As an important example, the Proposal would retain the current rule's 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 includes a company that is significant to a franchise component. The Proposal notes that, "[t]his proposed change reflects the introduction of the franchise component concept into the proposed rule."[14] Though "franchise value" is a well understood concept in the context of bank mergers and similar transactions, it is not distinct in that respect from resolutions of nonbank entities under the Bankruptcy Code, which are of course the objective of resolution plans under the 165(d) Rule. In light of the history of successful plan submissions under the 165(d) Rule that did not require separate consideration of franchise value, and the likelihood of confusion or inconsistent outcomes if a different universe of "material entities" is required under IDI and 165(d) plans if the Proposal is implemented, ABA urges the FDIC to maintain consistency of this key term in the two rules.

In addition, the Proposal would add a definition of "regulated subsidiary,"[15] the scope of which would be distinct from that of "material entities." The distinction implies that under a final rule, information would be required for regulated subsidiaries that are not material entities, simply because they are regulated. Because the fact of a subsidiary's regulation itself does not necessarily hold implications for appropriate resolution strategies, for regulated subsidiaries that are not also material entities, CIDIs should be required to furnish only a list of entities, their jurisdictions and regulators, and, if applicable, their asset size.

Other key terms defined in the Proposal should also be consistent with equivalent terms in the

[13] 12 USC 5365(d). FDIC's implementing regulation (165(d) Rule) is at 12 CFR, Part 381.
[14] Proposal at 64589.
[15] Proposal at 64590.

165(d) Rule, for example, the definitions of "core business line" and "material change."[16] Though the Proposal would establish increased emphasis in resolution planning on preservation of franchise value, the relevant terms in the final IDI resolution plan rule and the 165(d) Rule should be consistent, since such core elements of the plans themselves should be consistent.

Finally, FDIC feedback and/or credibility determinations for IDI plan submissions should be consistent with feedback provided by FDIC and the Federal Reserve on common elements between 165(d) and IDI plan submissions. Therefore, if the agencies are satisfied that a firm's plan under Section165(d) would facilitate an orderly resolution, FDIC should not deem the same firm's related IDI resolution plan (if consistent with its Section 165(d) plan) to be "not credible."

II. The Proposal's revised credibility determination is not feasible absent reliance on assumptions that Group A CIDIs would be unable to verify. The possibility of an enforcement action, preceded by at most limited feedback from FDIC following the plan's initial submission, creates a compliance obligation that is unacceptably arbitrary, when other approaches would yield practical and useful results.

The Proposal includes a new, expanded standard for determining whether a plan is "credible," that is, whether FDIC will accept it as compliant with the IDI rule. A Group A CIDI's plan will be credible if:

- It will 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; and

- The information and analysis in the resolution submission is supported with observable and verifiable capabilities and data and reasonable projections, and the CIDI complies in all material respects with the informational content requirements of the Proposal.[17]

Given the concerns noted above with respect to assumptions about required information, either because economic conditions at the time of resolution are inherently difficult to predict, or because aspects of the required information are not publicly available, setting the first credibility element as a requirement to avoid enforcement may place Group A CIDIs in an impossible position. If FDIC provides clear guidance about assumptions on which CIDIs can rely in supplying the problematic content, much of the rest of the required information can be supplied in the ordinary course. Such guidance could for example address the bridge bank's likely timing of asset sales and other administrative questions that will be in FDIC's control but not transparent to the CIDI. Guidance could also resolve the inconsistency between the directive to minimize losses to creditors and the expectation that FDIC will seek to impose such losses if the LTD rule becomes final. The submitting Group A CIDIs would also have to make assumptions

[16] Compare the definitions in 12 CFR 360.10 (as set forth in the Proposal) and 12 CFR 381.2.
[17] Proposal at 64587.

about information related to consequences for other financial institutions, U.S. economic impact, and financial stability. In many cases, this information will be much more readily available to FDIC and other supervisory agencies.[18]

In recognition of these problematic uncertainties, particularly in the context of potential enforcement actions, FDIC Vice Chairman Hill noted that

> The proposed standard – particularly the first prong – is subjective and speculative, and puts the FDIC Board in the position of making definitive predictions related to highly unpredictable theoretical bank failures. … I think the FDIC should provide specific feedback to banks on particular issues as they arise, similar to the existing supervisory process, rather than putting every plan in its entirety up for a thumbs-up thumbs-down vote.[19]

If anything, CIDIs would face even greater uncertainties than those the FDIC Board faces that Vice Chairman Hill cites.

The second element of the credibility determination also presents concerns, though ABA believes that changes in the processes outlined in the Proposal could address them. As already discussed, answering the Proposal's questions will require many assumptions about external economic conditions, FDIC procedures in administering a bridge bank, and other matters. FDIC should provide detailed guidance with respect to matters outside CIDIs control, and CIDIs should have an opportunity for iterative refinement of those elements of their submissions without the near-term pressure of enforcement actions. Vice Chairman Hill's statement quoted above emphasizes the value of that approach and the risks of the Proposal's different path.

Finally, any IDI Plan credibility assessment should not be binary. In line with the 165(d) Rule, the credibility assessment should allow for a plan to be credible with shortcomings that should be addressed.

III. The Proposal raises similar concerns with respect to capabilities testing, but, again, changes in the proposed process would be beneficial without compromising the practical benefits of the resolution plan.

The Proposal states that it would expand, "current [requirements] to provide more clarity as to the FDIC's expectations for CIDI capabilities testing."[20] Though the Proposal states that

[18] ABA acknowledges that FDIC and other supervisors are unable to share confidential supervisory information, but such disclosures would be unnecessary to achieve practical, useful resolution plans. Since CIDIs will be providing information about key customer and counterparty relationships and other information material to the assessment of the economic impact of their resolutions, FDIC will be in a position to judge such impacts on U.S. economic conditions and financial stability in light of information already available to it.

[19] Statement by Vice Chairman Travis Hill on the Proposed Amendments to the IDI Resolution Planning Rule, *available at* https://www.fdic.gov/news/speeches/2023/spaug2923k.html (August 29, 2023) (Hill Statement).

[20] Proposal at 64605.

capabilities testing may address information required by the regulation, as well as information directly supporting the resolution plan, it does not outline the specific requirements for capabilities testing – for example, in light of the emphasis placed on the ability quickly to establish a virtual data room, FDIC should provide at least a minimum prior notice. ABA recommends that the notice period be at least 10 business days.

ABA understands that various aspects of capabilities testing that were deemed sufficient in past resolution plans are being revisited in light of IDI failures in the first and second quarters of 2023. Nevertheless, FDIC's express linkage of testing requirements as they may ultimately be revised with enforcement action for perceived inadequacies puts the burden on FDIC to clarify its requirements. ABA members have noted that other authorities with whom they have had experience have made similar requirements clear. For example, the Canadian Deposit Insurance Corporation has provided specific, detailed capabilities testing guidance to domestic systemically important banks subject to its jurisdiction.[21]

The importance of these clarifications is highlighted by the Proposal's description of the revised feedback and communication process FDIC envisions. The Proposal notes that provisions in the current rule for a preliminary review for completeness and additional time to respond to additional FDIC information requests would be eliminated.[22] It also indicates that in many respects FDIC feedback will be optional. Since the start of resolution planning over 10 years ago, FDIC and the Federal Reserve have engaged in iterative discussions with covered institutions to develop common understandings of the submission requirements and needed information, a process that has produced more robust and credible plans. Current circumstances may not require such lengthy discussions going forward. Nevertheless, the reconsideration of resolution planning needs following the 2023 bank failures, the causes and effects of which are still being debated, necessarily means significant changes, at least for some CIDIs. ABA strongly believes that now would be exactly the wrong time to limit conversations that could improve the quality of resolution plans and the orderliness of resolutions, resulting in greater financial stability and less potential contagion. These goals are as important to CIDIs and their stakeholders as they are to the public. As noted in several contexts, a thorough understanding of FDIC's new requirements becomes much more important when shortened timeframes and abbreviated supervisory dialogue may be followed by enforcement actions. Furthermore, particularly in the early period after new and more extensive requirements become effective, CIDIs will need additional time to adjust to them and to receive further detailed guidance from FDIC regarding implementation.[23]

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[21] *See* Appendix O, "CDIC Resolution Plan Guidance for Domestic Systemically Important Banks," *available at* https://www.cdic.ca/wp-content/uploads/CDIC-Resolution-Plan-Guidance-for-DSIBs.pdf (June 2022).
[22] Proposal at 64603.
[23] ABA members have noted that the expert resources for resolution planning typically are also responsible for highly technical capital planning (including the annual Comprehensive Capital Analysis and Review), liquidity management, and/or public securities reporting, all of which require extensive expert judgment.

IV. Any FDIC feedback on resolution plans should be treated as confidential supervisory information, except to facilitate coordination between home and host country resolution planning where applicable. Broad-based industry guidance, however, should be made publicly available with an opportunity for prior notice and comment.

In particular, continuous, open, and effective dialogue between CIDIs and supervisory agencies is an essential part of preparation for an orderly resolution that prevents contagion. FDIC should expand this communication process rather than from appearing to retreat from it. It would provide a chance to correct any perceived shortcomings in resolution plans without the need to resort to enforcement actions. Moreover, it would deemphasize credibility determinations as conceived in the Proposal, which, as Vice Chairman Hill noted, would be subjective and speculative, when specific feedback instead would add more value.

An important practical exception should be made for CIDIs with foreign operations and affiliates that are subject to resolution planning regimes of other jurisdictions, or that have staff outside the U.S. These entities should be free to share resolution planning information, including the substance of FDIC consultations and feedback, with home-country staff and supervisors and with host-country staff and supervisors to the extent necessary or useful in harmonizing home- and host-country resolution plans.

A robust, confidential dialogue between FDIC and individual institutions will not obviate the need for general guidance, however. Consistent with past practice and applicable administrative law, the public should have an opportunity for prior notice and comment. Guidance that is shared with outside advisors and trade groups will facilitate consistency and formulation of best practices, and as in the past, it may reduce the burdens of compliance with the final rule.[24]

V. Additional concerns.

A. Institutions should be permitted to exclude items that do not apply to their operations.

ABA members have noted that some requested information items will not apply to all CIDIs. For example, not all banks will have foreign deposits or foreign branches.[25] FDIC should expressly acknowledge that inapplicable items can be excluded.

[24] Since shortly after regulators established the initial resolution planning requirements following passage of the Dodd-Frank Act, ABA has maintained a member discussion group in which members discuss the nonconfidential aspects of the planning process and benefit from appropriate sharing of each other's ideas and challenges.
[25] *See* Proposal at 64591.

B. The requirements for interim supplements should be more significantly limited to information that has materially changed since the most recent submission. Furthermore, the Proposal's new standards for "material changes" to resolution plans will require significant clarification.

In alternate years when Group A CIDIs are not required to file complete submissions, the Proposal would require interim supplements "to provide critical up-to-date information that will update certain limited elements of submission content."[26] The supplemental information would be limited to "the most essential data elements that are can [sic] be efficiently updated year over year."[27] Though FDIC states an intent to minimize the burden of producing the interim supplements, it also states that certain updated information will be required "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."[28] It appears that FDIC intends to require repetitive submissions of some information even in the absence of a material change since submission of the last full resolution plan. Since CIDIs are required to provide notice to FDIC of material changes in resolution plan information (in addition to required plan submissions and interim supplements), including unchanged information in interim supplements will be of questionable benefit at best; resubmission will simply confirm the absence of a material change similar to waiting until the next required plan submission.

In addition, the Proposal redefines CIDIs' obligations to provide unscheduled updates, introducing the concept of a "material change." The existing IDI resolution planning requirement is for notice of a "material event," one whose occurrence affects or reasonably could affect the institution's existing resolution plan. [29] The proposed "material change" standard would no longer refer simply to the event's impact on the resolution plan; rather, the Proposal would focus on changes to the CIDI, its organization, core business, size, or complexity, including the identification of material entities, critical services, franchise components, or changes to the CIDI's capabilities described in the resolution submission.[30] As noted above, the definition of "material change" should be consistent with that under the 165(d) Rule.[31] Moreover, if any of the Proposal's specified factors are included because they "reflect the FDIC's experience under the current rule concerning the types of events for which contemporaneous notice is most useful to the FDIC,"[32] CIDIs will need guidance on FDIC's informational update needs, which only FDIC can determine.[33]

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[26] Proposal at 64585.
[27] *Id.*
[28] Proposal at 64600.
[29] *See* 12 CFR 360.10(c)(1)(iv).
[30] Proposal at 64618.
[31] *See* 12 CFR 381.2.
[32] Proposal at 64585.
[33] As noted above, such guidance itself should be available for public notice and comment prior to implementation.

C. The Proposal's minimum of 270 days for transition is inadequate to accommodate the proposed changes and submit conforming resolution plans under the new standards, and the deadline for compliance should be extended as described below.

The Proposal could require CIDIs, to make their first submissions as soon as 270 days following the effective date. The Proposal suggests that this timing is designed to accommodate FDIC's expectations of creating two Group A cohorts.[34] In light of the significant plan content requirements, and the lead times required to adjust management information systems capabilities and other business and governance processes once the final requirements are known, this timing will be insufficient. One significant limitation is that key financial information cannot be generated outside of the public securities reporting routines already in place for financial reporting.[35] A reasonable extension of time for the first submission under the new rule would be until the December following one year after the effective date of a final regulation.

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Thank you for the opportunity to share these observations and concerns. Should you have any questions, please do not hesitate to contact the undersigned at hbenton@aba.com.

Very truly yours,

/s/

Hu A. Benton
Senior Vice President and Policy Counsel

[34] *See* Proposal at 64585.

[35] ABA members have noted that separating management reporting routines for resolution planning from those for public securities reporting is more than simply a duplicative workload burden – rigorous management and oversight of such systems and related internal controls are critical to sound accounting and risk management and accuracy of financial information. Creating duplicative systems to meet unaligned requirements risks introduction of serious vulnerabilities.