November 30, 2023

Via Electronic Mail

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: James P. Sheesley, Assistant Executive Secretary
RIN 3064–AF90; Docket ID 2023–19266

Re: Notice of Proposed Rulemaking on 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. FDIC RIN 3064–AF90.

Dear Ladies and Gentlemen:

We value the opportunity to comment on revisions proposed by the Federal Deposit Insurance Corporation (the "FDIC") to the current resolution planning requirements applicable to insured depository institutions ("IDIs") with $50 billion or more in total assets (the "Resolution Plan Proposal").[1] We submit this letter on behalf of Ally Bank, Sandy, Utah; Discover Bank, Greenwood, Delaware; Fifth Third Bank, National Association, Cincinnati, Ohio; First-Citizens Bank & Trust Company, Raleigh, North Carolina; Flagstar Bank, National Association, Hicksville, New York; The Huntington National Bank, Columbus, Ohio; KeyBank National Association, Cleveland, Ohio; and Regions Bank, Birmingham, Alabama (the "Responding Banking Organizations") on matters that are unnecessarily burdensome to IDIs with more than $100 billion, but less than $250 billion, in total consolidated assets (the "In-Scope IDIs").

As a preliminary note, the Responding Banking Organizations consist primarily of traditional regional banking organizations that focus predominantly on domestic business

[1] 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, 88 Fed. Reg. 64,579 (Sept. 19, 2023).

activities. The Responding Banking Organizations have relatively simple operating models and none engage in significant trading or international activities or have meaningful interconnections with other financial firms. The Responding Banking Organizations are integral to the Main Street economy, but are less complex and much less likely to pose a systemic risk to the U.S. financial system than Category I, II and III banks. While Silicon Valley, First Republic and Signature Bank showed that banks other than those in Category I, II and III can pose significant risks, those three institutions had unique features that created undue exposure[2] and made them very different from the Responding Banking Organizations.

As discussed below, this letter focuses on the parts of the Proposal that are particularly impactful to In-Scope IDIs. First and foremost, the Proposal fails to tailor submission cycles and resolution requirements commensurate with the operational needs of, and risks posed by, such institutions. For instance, certain content requirements should be modified for In-Scope IDIs that do not meet defined thresholds of complexity. Second, the Proposal's expanded capabilities testing and its revised credibility standards are not sufficiently defined, particularly given the threat of enforcement actions. Lastly, there are a number of other provisions that raise practical concerns in the current Proposal. We believe that these concerns can be addressed without impeding the FDIC's objective of improving its ability to resolve a covered IDI under the Federal Deposit Insurance Act of 1950.

In addition to the comments in this letter, the Responding Banking Organizations also support the comments submitted on the Proposal by the American Bankers Association and the Bank Policy Institute.

I. The Proposal's resolution plans should be more narrowly tailored in light of the distinct characteristics of In-Scope IDIs.

We support the FDIC's intent to tailor the resolution requirements, but do not believe that the proposed framework appropriately reflects the risks presented by the In-Scope IDIs. We urge the FDIC to establish three categories of relevant filers, as opposed to the proposed two categories. The new groups should be based on size, provided that if banks have an increased level of complexity, such banks may be subject to reclassification. "Group A" should be amended to include IDIs with $250 billion or more in total consolidated assets. "Group B" should be amended to include IDIs with at least $100 billion, but less than $250 billion, in total consolidated assets. A new "Group C" should be for IDIs with at least $50 billion but less than $100 billion in total consolidated assets. The suggested changes below are for the In-Scope IDIs, which would be the suggested new Group B. This modification is aligned with the FDIC's 2019 advance notice of

[2] Examples of such unique features include rapid growth in deposits that were invested in large interest-sensitive portfolio exposures, as opposed through diverse lending activities; increased business complexity and size that were not met with enhanced corporate governance and risk management frameworks; overwhelming reliance on uninsured deposits; and concentrated business models with higher risk customers. *See, e.g.*, Board of Governors of the Federal Reserve System, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank* (Apr. 28, 2023), https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf; FDIC, *FDIC's Supervision of Signature Bank* (Apr. 28, 2023), https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf.

proposed rulemaking for resolution planning,[3] to ensure that the burden imposed on the In-Scope IDIs to comply with the new resolution requirements is appropriate based on their size and complexity.

A. In-Scope IDIs do not have business models that require more frequent resolution plan submissions and should remain on a three-year submission cycle.

The Proposal would change the frequency of resolution plan submissions and interim supplements for In-Scope IDIs. The current rule requires In-Scope IDIs to submit resolution plans every three years.[4] The FDIC proposes more frequent submissions by In-Scope IDIs because it believes "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."[5] Under the Proposal, In-Scope IDIs would have to submit resolution plans every two years and file an informational supplement during the interim years, unless the FDIC grants a variance or extension.

While the FDIC acknowledges that increasing the frequency of resolution plan submissions would create more work for IDIs, it underestimates the costs associated with a two-year submission cycle when weighing the Proposal's burdens and benefits.[6] Additionally, the Proposal's interim submission requirement exceeds what would typically be contemplated in an informational filing. To satisfy interim submission requirements, In-Scope IDIs would have to submit a substantial portion of the information otherwise required in the full resolution plan submission. As described in Section I.B of this letter, the Proposal's enhanced content requirements, engagement, and capabilities testing would place material burdens on specialized resources within In-Scope IDIs and detract from day-to-day firm operations.

While we recommend that the FDIC reconsider these enhanced content requirements, engagement, and capabilities testing, in the event that a final rule retains those features of the Proposal, we note that increased submission frequency would be particularly burdensome for In-Scope IDIs. The increased burden of biennial submissions, as well as interim submissions in the alternating years, would create material burdens that are not necessary in light of the limited value of the information that would have to be included in interim submissions to the FDIC. We observe that in the Proposal, the FDIC acknowledges that an interim supplement could feature no new information and only "confirm[] that the information in the resolution submission remains

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[3] *See* FDIC, *FDIC Seeks Comment on New Approaches to Insured Depository Institution Resolution Planning* (Apr. 16, 2019), https://www.fdic.gov/news/press-releases/2019/pr19034.html; *see also* Resolution Plan Proposal, *supra* note 1, at 64,582–83.

[4] 77 Fed. Reg. 3,075 (Jan. 23, 2012) (Final Rule); 76 Fed. Reg. 58,379 (Sept. 21, 2011) (Interim Final Rule); 75 Fed. Reg. 27,464 (May 17, 2010) (Proposed Rule).

[5] Resolution Plan Proposal, *supra* note 1, at 64,600.

[6] *See id.* (explaining that the FDIC is "cognizant of the burden on [covered IDIs] that may result from providing the proposed interim supplements" but concluding nonetheless that it "believes the proposed interim submission requirement strikes the right balance to provide the FDIC with valuable updated information to assist with resolution planning and [covered IDI] resolution while limiting burden on the [covered IDIs] in providing the updated information").

accurate."[7] Indeed, we anticipate that the vast majority of the information that would be requested in an interim filing will not change year-to-year. However, the FDIC does not explain why compelling In-Scope IDIs to submit lengthy supplements that restate the substance of resolution submissions is more beneficial than an alternative that, for example, requires interim filings only in the event of changes that have a material impact on a resolution submission. For this reason, we believe that the objectives of the Proposal's interim filing requirement are better achieved through timely notice of "material changes," as modified in accordance with Section IV.A.

We instead recommend that In-Scope IDIs continue to make full resolution submissions every three years. If the current rule must be revised, instead of the extensive annual interim filings described in the Proposal,[8] In-Scope IDIs should submit true informational supplement submissions within 18 months of submitting a full resolution plan. The interim supplement submissions should include only information that has a material impact on an In-Scope IDI's full triennial resolution plan submission. In-Scope IDIs would therefore still be required to file targeted submissions that disclose material changes to key personnel, certain financial data otherwise unavailable to the FDIC, internal reorganizations, changes to critical vendors, and cross-border considerations and business activities. Interim submission materials related to asset portfolios, franchise components, critical services, and management information systems should be limited to material changes.

We believe that maintaining the current rule's three-year full resolution plan submission cycle and requiring In-Scope IDIs to file a single interim supplement submission that addresses only material changes best satisfies the FDIC's need for up-to-date information without imposing unnecessary burdens on In-Scope IDIs.

B. <u>The Proposal's new identified strategy requirements would limit the ability of In-Scope IDIs to develop resolution plans that ensure orderly resolution given their specific size, complexity, and operational needs.</u>

The Proposal outlines additional content requirements for resolution plans that we believe will make resolution planning needlessly burdensome, increase duplication, and require access to more data than is actually available to In-Scope IDIs. The Proposal's content requirements for identified strategies, failure scenarios, valuation capabilities, and submission schedule are of particular concern. Much of our concern arises from the Proposal's lack of tailoring, which we believe can be alleviated by adding a new category of banks to the Proposal's framework.

1. *The proposed changes to the identified strategy requirements are not necessary for In-Scope IDIs.*

The Proposal makes two significant changes to the current rule's requirements for an identified strategy. The current rule requires an identified strategy to allow depositors to access

[7] *Id.*
[8] *Id.*

insured deposits within one or two business days of failure, maximize the net present value return from the disposition of assets, and minimize any loss.[9] In contrast to the flexibility of the current rule, the Proposal would limit the number of identified strategies in a resolution plan to one and would forbid In-Scope IDIs from submitting an identified strategy involving the sale of assets and liabilities over a closing weekend. The Proposal would also introduce a default identified strategy wherein the FDIC operates a failed bank under a bridge bank. In-Scope IDIs that want to use a different identified strategy would have to provide an additional justification for using an alternative strategy. The FDIC explains that its learnings from administering the current rule, along with lessons from the bank failures of early 2023, have led it to conclude that a total asset sale is not a realistic option for banks the size of In-Scope IDIs.[10]

We believe that the Proposal's new identified strategy requirements are insufficiently tailored to the characteristics of In-Scope IDIs. For example, prohibiting an In-Scope IDI from presenting an FDIC-arranged sale fails to acknowledge that some In-Scope IDIs have less complex structures that, even if their total assets exceed $100 billion, may make such an FDIC-arranged sale feasible. Furthermore, by limiting the number of identified strategies to one, the Proposal unnecessarily restricts In-Scope IDIs from presenting a range of realistic options for resolution that may benefit the FDIC in a bank failure scenario. The FDIC's goal of using an identified strategy as a tool to facilitate orderly resolution is not achieved by imposing blanket default assumptions on institutions of various sizes and complexities.[11]

With these concerns about the Proposal's identified strategy requirements in mind, we recommend preserving the current rule because it provides the FDIC with significant optionality to proceed as it sees fit in the event of an In-Scope IDI's resolution, without requiring a particular strategy once a bridge bank exists. The current rule's identified strategy requirements for In-Scope IDIs are optimal because they allow an In-Scope IDI to fashion an identified strategy for an orderly resolution that is suitable for its particular size, complexity, and operational realities.

2. *The Proposal's failure scenario requirements should not be applied to IDIs with under $250 billion in total assets, which includes In-Scope IDIs.*

Under the Proposal, resolution plans submitted by In-Scope IDIs would have to include a failure scenario. The failure scenario would have to be informed by a large number of assumptions. Failure scenario assumptions catalogued in the Proposal include an assumption that an IDI's asset base has deteriorated and an assumption that an IDI's "high quality assets have been depleted or pledged due to increased liquidity requirements from counterparties and deposit outflows."[12]

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[9] 12 CFR 360.10(c)(2)(vi).
[10] *See* Resolution Plan Proposal, *supra* note 1, at 64,588.
[11] *See* FDIC, *Fact Sheet on Proposed Rule on Resolution Planning for Insured Depository Institutions with $100 Billion or More in Total Assets; Informational Filings for IDIs with At Least $50 Billion but Less Than $100 Billion in Total Assets* (2023), https://www.fdic.gov/news/fact-sheets/idi-resolution-planning-8-29-23.html#:~:text=As%20proposed%2C%20the%20Identified%20Strategy,economic%20conditions%20or%20financial%20stability.
[12] Resolution Plan Proposal, *supra* note 1, at 64,586–88.

Detailed failure scenario requirements have not been found to be additive, especially in light of the fact that they are inherently theoretical, based on limited data, and require significant resources. In fact, the FDIC has historically exempted IDIs with over $100 billion in total assets from the current rule's failure scenario requirement because "the burden [of developing failure scenarios] currently exceeds their utility for the FDIC in planning for a specified [covered IDI's] resolution."[13] The Proposal presents no clear explanation for the FDIC's apparent change in position with respect to In-Scope IDIs.

We concur with the FDIC's current view – In-Scope IDIs are not complex enough to warrant development of failure scenarios. Furthermore, the FDIC can identify an In-Scope IDI's stressors without requiring a failure scenario through other supervisory channels. Thus, absent special circumstances, In-Scope IDIs should not be required to submit a failure scenario in resolution plans. Creating failure scenarios is a burdensome and time-intensive undertaking more appropriate for global systemically important banks, which have more resources and present greater threats to U.S. and global financial stability in the event of failure.

If any In-Scope IDI is required to submit failure scenarios as part of its resolution plans, the FDIC should clearly define a complexity threshold that considers multiple factors, including (i) whether more than 90% of the total consolidated assets of the parent holding company are within IDIs, (ii) whether the IDI engages in material cross-border activity and (iii) whether the IDI is a critical financial market utility.

3. *In-Scope IDIs should not be subject to the Proposal's valuation exercises because they would provide little value to the FDIC but impose significant costs on In-Scope IDIs.*

The Proposal would require In-Scope IDIs to demonstrate not only the capabilities to produce certain valuations in the event of a resolution, but to also provide a quantitative analysis of the valuation. To accomplish this, an In-Scope IDI would have to describe the valuation process it uses and include a valuation analysis with a range of quantitative estimates of value as an appendix to its resolution plan. The valuation analysis must include a qualitative and quantitative analysis of the destruction of franchise value that may result from not transferring any uninsured deposits to a bridge bank and mitigants. These valuations could theoretically be used by the FDIC to conduct a least-cost test analysis pursuant to 12 U.S.C. § 1823(c)(4) if a bank actually fails.

We believe that the Proposal's required valuation analysis imposes costs that far exceed the benefits. We agree that In-Scope IDIs should maintain the capabilities to provide accurate valuations in the event of a resolution scenario and be required to maintain processes to conduct such valuations in a timely manner at the time of failure. However, there is a material difference in maintaining the abilities to conduct such analyses and a requirement to append an extensive catalogue of valuation analyses that are unlikely to prove useful in an actual resolution scenario.

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

The Proposal's valuation requirements would be more effective if they focused on internal processes – as opposed to quantitative analyses.

We therefore recommend that the Agencies tailor the valuation requirements for In-Scope IDIs by clarifying that they are not required to provide the quantitative scenario analysis set forth in the Proposal.[14] Focusing on processes over valuation exercises will allow the FDIC to ensure that In-Scope IDIs are able to produce necessary analysis in the event of resolution, without actually requiring them to undertake extensive valuation exercises that are, ultimately, merely illustrative when done outside of an actual failure scenario.

II. Expanding capabilities testing will increase the burden on both the FDIC and IDIs, and may encourage inconsistent application of capabilities testing.

The Proposal would require In-Scope IDIs to engage more extensively with the FDIC compared to current requirements. For example, under the Proposal, In-Scope IDIs would have to "promptly" show their ability to perform the capabilities described in a resolution plan, including demonstrating an ability to provide the information, data, and analysis underlying the resolution submission and that these capabilities are adaptable to various scenarios. Meeting these capabilities testing requirements would necessarily impose increased technology costs on certain In-Scope IDIs. We agree conceptually with the FDIC's assertion that additional capabilities testing could be additive, as increased engagement would promote the FDIC's understanding of resolution strategies and other strategic options.

However, while we appreciate that engagement between the FDIC and IDIs can be beneficial, we are concerned by the Proposal's enhanced capabilities testing. Under the Proposal, the FDIC would have significant discretion to determine the format and time frame within which capabilities testing would proceed. FDIC personnel may request access to bank information and IDI staff more frequently, which would strain an IDI's resources.

Recognizing these concerns, we recommend that the FDIC make five changes to the Proposal capabilities testing requirement to add clarity to the process, expectations and remediation options:

- First, In-Scope IDIs should be given at least 120 days of notice and a description of the scope of testing so that IDIs can dedicate appropriate staff to testing. As part of this notice, the FDIC should provide clear, concrete details on the precise capabilities to be tested, the scenarios or simulation under which testing will occur, the expected time frame of the testing and the expected deadline by which covered IDIs must produce results or a submission to the FDIC.

- Second, the FDIC should proactively provide clear standards and expectations for the IDIs' capabilities through a notice and comment period to enable input from the

[14] *See* Resolution Plan Proposal, *supra* note 1, at 64,595 (citing proposed § 360.10(d)(12)(ii)).

industry. Such FDIC guidance should include a comprehensive list of the capabilities that it expects IDIs to maintain and, where appropriate, minimum standards. Such a process would enable the FDIC to make changes over time, as well as to provide the industry with transparent expectations.

- Third, the FDIC should follow a clear process in the testing, including a conclusion letter that would include any feedback it has on the tested capabilities. The FDIC should ensure that it provides IDIs with adequate time to incorporate any feedback prior to its next IDI plan submission, or otherwise adjust expectations in discussions with the relevant IDI.

- Fourth, the FDIC should create a procedure for IDIs to remediate gaps in testing and request retesting before the FDIC may issue enforcement actions based on capabilities testing outcomes.

- Lastly, there should be a formal process to challenge onerous testing practices or adverse findings prior to the FDIC's use of enforcement powers. Adding these standards and safeguards to the Proposal is crucial to ensuring that capabilities testing requirements are applied consistently to each In-Scope IDI.

III. The Proposal's new credibility standard is vague and includes a questionable enforcement mechanism.

The Proposal outlines a two-pronged approach to the credibility standard under which the FDIC would review resolution submissions. The FDIC would be able to, at its *sole discretion*, determine that the resolution submission is not credible if: (i) an 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 risk of adverse effects on U.S. economic conditions or financial stability"; or (ii) "[t]he information and analysis in the resolution submission is not supported with observable and verifiable capabilities and data and reasonable projections or the [IDI] fails to comply in any material respect" with the content requirements for the resolution submission or interim supplement submission.[15] The Proposal would allow the FDIC to request any and all information and personnel relevant to any provision of the proposed rule. This contrasts with the current rule, which typically only allows the FDIC to request information and personnel specifically related to credibility assessments and an IDI's ability to implement a resolution plan. Beyond codifying a new credibility standard for resolution plans, the Proposal would expressly authorize enforcement actions against any IDI that does not meet the standard.

We are concerned that the first prong of the Proposal's enhanced credibility standard lacks objective criteria and invites the FDIC to speculate on market conditions at the time of a bank

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[15] *Id.* at 64,624.

failure and the manner in which a specific IDI would fail.[16] After all, as noted above, the creation of the failure and resolution scenarios is inherently theoretical, and the availability of data to support projections is limited. The prospect that the FDIC could exercise its discretion and authorize enforcement actions against In-Scope IDIs on the basis of failure and resolution scenarios is worrisome. This is especially so because several of the new content requirements reflected in the Proposal appear to exceed information requirements.

With these concerns in mind, we recommend that the FDIC eliminate any credibility determination in favor of engagement and informal feedback. We also recommend that the FDIC implement an intermediate "shortcoming" level to avoid full-blown non-credible findings. To the extent that the FDIC is committed to providing credibility determinations, it should remove the first prong of the Proposal's credibility standard. If the first prong of the Proposal's credibility standard must be retained, the FDIC should at minimum modify it to recognize that any identified strategy is theoretical and clarify that IDIs will be afforded latitude in a credibility determination. Furthermore, the FDIC should remove the threat of enforcement actions with respect to this prong, as that is likely outside of the FDIC's statutory authority.[17]

IV. Other features of the Proposal raise concerns that warrant consideration by the FDIC.

A. <u>The Proposal's modified definition of "material change" is overly inclusive.</u>

The Proposal seeks to clarify the current rule's requirement that an IDI give notice within 45 days of an event that materially affects its resolution plan by defining a "material change" sufficient to trigger the notice requirement. The current rule defines a "material event" as "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 [IDI]."[18] In contrast, the Proposal would define "material change" as a change in an IDI's "identified material entities, critical services, or franchise components or in its capabilities described in the most recent submission."[19] The definition of "material change" would also encompass changes to an IDI'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 [covered IDI's] identified strategy."[20]

The Proposal's definition of "material change" is overly inclusive because it covers changes that are not material to an In-Scope IDI's resolution plan. Said differently, the Proposal's

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[16] *See* FDIC, *Statement by Vice Chairman Travis Hill on the Proposed Amendments to the IDI Resolution Planning Rule* (Aug. 29, 2023), https://www.fdic.gov/news/speeches/2023/spaug2923k.html.
[17] *See* FDIC, *Statement by Jonathan McKernan, Director, FDIC Board of Directors, on the Proposed Resolution Submission Requirements for Certain Insured Depository Institutions* (Aug. 29, 2023), https://www.fdic.gov/news/speeches/2023/spaug2923f.html.
[18] 12 CFR 360.10(c)(1)(v)(A).
[19] Resolution Plan Proposal, *supra* note 1, at 64,585.
[20] *Id.*

current "material change" notice requirement would be triggered by events untethered to the content of a resolution plan. For instance, certain In-Scope IDIs have an outsourced model for digital services, such that a substantial portion of a bank's digital services providers would also be a critical service provider within the meaning of the Proposal's "material change" definition, which may necessitate updates for rather immaterial changes that could be handled with interim submissions. The Proposal's definition of "material change" is particularly overly inclusive when considered along with the Proposal's increased submission requirements. As discussed, the Proposal's biennial full submission cycle with annual interim filings would impose significant burdens on In-Scope IDIs. As noted above, a three-year resolution plan submission cycle with interim updates would provide the FDIC with updated information, without unnecessarily burdening the In-Scope IDIs.

Instead, we recommend that notice only be required if there is a change that has a material effect on an In-Scope IDI's most recent resolution plan and that a materiality threshold should be added to the Proposal's "regulated subsidiary" requirement to minimize unnecessary updates.

In the event the FDIC retains the Proposal's broadened definition of "material change" in a final rule, it reinforces the need to remove a requirement for interim submissions. These submissions detract from resources dedicated to the preparation of the full resolution plan submissions and reflect limited changes year-over-year.

B. <u>The Proposal's requirements regarding disclosure of deposit activities are overly granular with limited value.</u>

The Proposal would significantly expand the amount of information In-Scope IDIs must provide about their deposit activities. The current rule asks IDIs to supply information about an IDI's deposit base and system, including "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."[21] The Proposal would expand that informational request and require In-Scope IDIs to discuss foreign deposits, insured and uninsured deposits, commercial deposits by business line, affiliates and unaffiliated parties, and reporting capabilities for omnibus, sweep and pass-through accounts.[22] Importantly, the Proposal would also require In-Scope IDIs to disclose information about key depositors, defined 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."[23]

The Proposal's information requirements regarding an IDI's deposit activities should be narrowed. The FDIC proposes to require disclosure of extensive information about depositors in resolution plans, but information on depositors is inherently volatile. Key depositors fluctuate over time, as do levels of reliance on sweep arrangements and pass-through accounts. The FDIC's proposed deposit activities disclosure requirements are therefore likely to be unhelpful or raise

[21] 12 CFR 360.10(c)(2)(ii).
[22] Resolution Plan Proposal, *supra* note 1, at 64,591–92.
[23] *Id.* at 64,592.

questions about an IDI's need to regularly update the FDIC on changes. Following the March 2023 bank failures, we fully appreciate the need for the FDIC to obtain more information about various types of deposits and depositor concentrations. However, requests for this type of information are more appropriately obtained through traditional supervisory and regulatory reporting channels, rather than through resolution planning requirements.

For the purposes of resolution planning, IDIs should be required to demonstrate their ability to provide the information about key deposit activities, outflow projections, and franchise alignment (as opposed to specific customer information). Any showings of capabilities should be done pursuant to clear guidance from the FDIC. We also believe that requiring In-Scope IDIs to disclose deposit concentration without specific names furthers the FDIC's objectives without demanding excessive information from IDIs.

C. <u>In-Scope IDIs should not be required to determine their resolution plan's impact on third parties.</u>

The Proposal would require In-Scope IDIs to provide an extensive description of the economic effect of resolution.[24] For example, IDIs would have to "identify any activities or business lines . . . 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."[25] Resolution plans would also have to "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."[26]

In-Scope IDIs are not well positioned to provide the type of economic effect analysis envisioned by the Proposal. Describing potential disruptive impacts of the termination of key activities or business lines is a complex undertaking that would be more of a speculative exercise than an objective quantitative analysis. Furthermore, because of their limited size and geographic footprints, In-Scope IDIs are not the best institutions to provide insight on a resolutions impact on third parties.

With these concerns in mind, we believe that a final rule should remove any requirement that In-Scope IDIs include economic effect descriptions in resolution plans. If the FDIC concludes that an economic effect analysis is necessary, the FDIC should clearly define "material regional provider" and limit economic effect analysis to impacts to a region and publicly available data.

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[24] *Id.* at 64,622.
[25] *Id.*
[26] *Id.*

D. <u>The proposed transition period is not long enough to allow In-Scope IDIs to conform to the Proposal's new requirements.</u>

Under the Proposal, in 2025 In-Scope IDIs would begin filing biennial resolution plans with interim supplemental submissions in each off-year. About half of IDIs would file their first resolution plans within 270 days of the rule becoming final, or at a date established by the final rule. The other half of IDIs would file their first resolution plans approximately two years after the rule becomes final, or at a date established by the final rule.

The compressed transition period envisioned in the Proposal is unworkable given the material burdens imposed by the Proposal's expanded content requirements. The Proposal's language materially changes the current rule's resolution plan requirements. If incorporated into a final rule, these new and enhanced requirements would require In-Scope IDIs to allocate excessive resources to meet the new resolution planning requirements. A 270-day lead time is simply not enough time to find resources to meet new regulatory demands.

We recommend increasing the proposed 270-day transition period to at least 12 months. That amount of time will allow In-Scope IDIs to hire the staff and engage the experts necessary to comply with the Proposal's new content requirements.

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We appreciate the opportunity to comment on the Resolution Plan Proposal and explain our views. Please feel free to contact any of the Responding Banking Organizations, Rosemary Spaziani at rspaziani@wlrk.com or Richard K. Kim at rkim@wlrk.com if you have questions or desire additional information.

Very truly yours,

Ally Bank
Discover Bank
Fifth Third Bank, National Association
First-Citizens Bank & Trust Company
Flagstar Bank, National Association
The Huntington National Bank
KeyBank National Association
Regions Bank