

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Date: August 15, 2023
To: Board of Governors
From: Staff¹
Subject: Joint Board-FDIC proposed guidance for Category II and III banking organizations regarding future resolution plans

ACTIONS REQUESTED: Staff requests approval to invite public comment on proposed guidance for (1) Category II and III domestic banking organizations (the domestic guidance proposal) and (2) Category II and III foreign banking organizations (the FBO guidance proposal) regarding these firms' future resolution plan submissions.² The proposals, which were developed jointly with staff of the Federal Deposit Insurance Corporation (FDIC), would provide comprehensive resolution planning guidance to domestic and foreign Category II and III banking organizations. Staff also requests authority to make technical, non-substantive changes to the attached materials prior to publication in the *Federal Register*.

¹ Charles Gray, Reena Sahni, Jay Schwarz, Andrew Hartlage, Sarah Podrygula, and Brian Kesten (Legal Division); Catherine Tilford, Molly Bergamo, Tudor Rus, Caro Elkin, and Mason Laird (Division of Supervision and Regulation); and Kristin Malcarney and Irmak Ince (LISCC Recovery and Resolution Program).

² The firms that would be included within the scope of the domestic guidance proposal as of the date of the proposal would be Capital One Financial Corporation; Northern Trust Corporation; The PNC Financial Services Group, Inc.; Truist Financial Corporation; and U.S. Bancorp. The firms that would be included within the scope of the FBO guidance proposal as of the date of the proposal would be Bank of Montreal; Barclays PLC; BNP Paribas; Deutsche Bank Aktiengesellschaft; Mitsubishi UFJ Financial Group, Inc.; Mizuho Financial Group, Inc.; Royal Bank of Canada; Sumitomo Mitsui Financial Group, Inc.; The Toronto-Dominion Bank; and UBS Group AG. The regulations implementing the resolution planning requirements in Title I of the Dodd-Frank Act do not require Category IV domestic banking organizations to file resolution plans; accordingly, Category IV domestic banking organizations are not included within the scope of the domestic guidance proposal. While certain Category IV foreign banking organizations (FBOs) are subject to reduced Title I resolution planning requirements because of their global total consolidated assets, given the limited scope of such plans these FBOs are not included within the scope of the FBO guidance proposal.

EXECUTIVE SUMMARY:

- Large banking organizations are required to periodically submit resolution plans, also known as living wills, to the Board and the FDIC (the agencies). These plans describe how the banking organizations would be wound down in an orderly way should they fail.
- The agencies previously issued guidance to the U.S. global systemically important banking organizations (GSIBs) and some of the largest, most complex FBOs to clarify the expectations that the agencies have for those firms' resolution plans.
- In September 2022, the agencies announced that they would issue additional guidance to assist all Category II and III banking organizations, including those not already subject to resolution planning guidance, in connection with the development of their upcoming submissions.
- As evidenced by recent events, the failure of a banking organization that is not a GSIB can affect U.S. financial stability.
- The proposals would invite public comment on the agencies' expectations about how Category II and III banking organizations' resolution plans should address key challenges in resolution. These challenges include:
 - Having resolution capabilities to appropriately measure and maintain adequate capital and liquidity to facilitate an orderly resolution;
 - Preparing an insured depository institution (IDI) to be resolved by the FDIC, to the extent that is contemplated in a plan; and
 - For FBOs, appropriately managing the interaction between a firm's resolution strategy for its U.S. operations and its global resolution strategy, which in many cases would be structured to prevent its U.S. operations from entering resolution.
- Comments would be accepted through November 30, 2023.

DISCUSSION:

A. Background

Resolution plans, also known as living wills, describe a banking organization's strategy for orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure of the firm. The purpose of resolution planning is to help ensure that a banking organization's failure would not have serious adverse effects on U.S. financial stability. Each

plan must include information about the banking organization’s capital, liquidity, and plans for recapitalization, if any, as well as information about the firm’s organizational structure and finances, management information systems, and corporate governance related to resolution planning.

The content and frequency of resolution plan submissions are determined by a banking organization’s size and complexity. Under the resolution plan rule (the Rule),³ banking organizations are split into three categories: (1) biennial filers, which are U.S. GSIBs that file a resolution plan every other year; (2) triennial full filers, which are Category II and III banking organizations under the Board’s enhanced prudential standards rule that file a resolution plan every three years; and (3) triennial reduced filers, which are large FBOs with a small U.S. presence that file a resolution plan every three years. Triennial full filers alternate between full and targeted plan submissions.⁴

Under the Rule, the agencies jointly review each resolution plan submission to determine whether the plan is credible and would facilitate an orderly resolution. The agencies jointly provide any feedback to the firm—including any shortcoming or deficiency determination⁵—within one year of plan submission. Feedback letters, as well as public sections of resolution plans, are posted publicly on the Board’s website.⁶

Triennial full filers submitted targeted resolution plans in July 2021, and the agencies provided feedback to most of these banking organizations in December 2022.⁷ These filers’ next resolution plan submission, a full resolution plan, is due by July 2024. Based upon review of

³ 12 CFR part 243 (Board) and 12 CFR part 381 (FDIC).

⁴ Targeted resolution plans contain information about capital, liquidity, and a firm’s plan for executing any recapitalization contemplated in its resolution plan; any areas of interest identified by the agencies in advance of the plan submission date; and certain changes to a firm or a firm’s plan since its previous plan filing. 12 CFR 243.6 and 381.6.

⁵ A deficiency is an aspect of a banking organization’s resolution plan that the agencies jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the banking organization’s resolution plan. A shortcoming is a weakness or gap that raises questions about the feasibility of a firm’s resolution plan but does not rise to the level of a deficiency as determined by both agencies. 12 CFR 243.8 and 381.8.

⁶ <https://www.federalreserve.gov/supervisionreg/resolution-plans.htm>.

⁷ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20221216b.htm>. The agencies provided feedback to Truist Financial Corporation in September 2022.

triennial full filers' 2021 targeted plan submissions, the agencies announced that they would issue guidance to assist triennial full filers in the development of their 2024 full plan submissions.⁸ The need for such guidance was further confirmed by the agencies' recent experience dealing with stress in the international and domestic banking systems.

B. Draft Proposals

Scope of Guidance

The proposals would apply to domestic and foreign triennial full filers.⁹ The agencies' review of the 2021 targeted resolution plans submitted by these firms revealed significant inconsistencies in the amount and nature of information provided on critical informational elements required by the Rule, as well as optimistic assumptions about their failure scenarios. The agencies already have issued guidance to U.S. GSIBs¹⁰ and certain large FBOs that are triennial full filers.¹¹ The FBO guidance proposal, if finalized, would supersede the 2020 FBO Guidance for the FBOs that were the subject of that guidance.

Resolution Strategy for Domestic Firms

Domestic banking organizations subject to the Rule have adopted two types of resolution strategies: the single point of entry (SPOE) resolution strategy and the multiple point of entry (MPOE) resolution strategy. Under an SPOE strategy, only the top-tier bank holding company would enter into a resolution proceeding; operating subsidiaries would continue on a going-concern basis. Under an MPOE strategy, a banking organization's material legal entities would generally enter their own separate resolution proceedings, with a firm's U.S. IDI being placed into an FDIC-led resolution. While all of the domestic triennial full filers presented an MPOE strategy in their 2021 resolution plan submissions, the domestic guidance proposal would include guidance for domestic triennial full filers that adopt an SPOE resolution strategy should a domestic triennial full filer adopt an SPOE resolution strategy in the future.

⁸ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20220930a.htm>.

⁹ The Rule categorizes FBOs based on their combined U.S. operations; accordingly, the FBO guidance proposal is scoped according to an FBO's combined U.S. operations.

¹⁰ Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 Fed. Reg. 1438 (Feb. 4, 2019) (2019 GSIB Guidance).

¹¹ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed. Reg. 83557 (Dec. 22, 2020) (2020 FBO Guidance).

Resolution Strategy for FBOs

The Rule's resolution planning requirements apply only to an FBO's U.S. operations.¹² FBOs subject to the Rule have adopted two types of resolution strategies with respect to their U.S. operations: a U.S. single point of entry (U.S. SPOE) resolution strategy or a U.S. multiple point of entry (U.S. MPOE) resolution strategy. Under a U.S. SPOE strategy, only the top-tier U.S. holding company would enter into a resolution proceeding; U.S. operating subsidiaries would continue on a going-concern basis. Under a U.S. MPOE strategy, the FBO's U.S. material legal entities would generally enter their own separate resolution proceedings, with a firm's U.S. IDI, if any, being placed into an FDIC-led resolution. For their 2021 resolution plan submissions, some of the foreign triennial full filers selected a U.S. SPOE strategy, but most presented a U.S. MPOE strategy.

Content of Guidance

The agencies do not prescribe a specific resolution strategy for any banking organization, domestic or foreign. Consequently, each proposal is bifurcated, with separate proposed guidance for each potential resolution strategy. Different resolution plan strategies pose different risks and require different types of planning and development of capabilities for execution of the strategy.

The proposals would articulate the agencies' expectations in relation to challenges that could arise in resolution with respect to: capital; liquidity; governance mechanisms for decisions associated with entering bankruptcy; operational issues; legal entity rationalization and separability; and IDI resolution, if applicable. The FBO guidance proposal would contain two additional topics related to home country, group-wide resolution plans (see below) and branches. The proposed guidance for domestic triennial full filers that adopt an SPOE resolution strategy is based on the 2019 GSIB Guidance with certain modifications that reflect the specific characteristics of, and risks posed by, the possible failure of Category II and III domestic banking organizations. The expectations for domestic triennial full filers that adopt an MPOE resolution strategy incorporate certain aspects of the 2019 GSIB Guidance that staff believes are broadly applicable to large banking organizations, with modifications appropriate to the MPOE strategy and institutions with the characteristics displayed by domestic triennial full filers. The proposed guidance for foreign triennial full filers that adopt a U.S. SPOE resolution strategy is

¹² See 12 CFR 243.5(a)(2) and 381.5(a)(2).

based on the 2020 FBO Guidance and the associated proposal,¹³ with certain modifications that reflect the specific characteristics of, and risks posed by, the possible failure of Category II and III FBOs. The expectations for foreign triennial full filers that adopt a U.S. MPOE resolution strategy are also based upon the 2020 FBO Guidance but customized for a U.S. MPOE strategy.

Home Country Group-Wide Resolution Plan for FBOs

The preferred resolution outcome for foreign triennial full filers is typically a successful home country resolution using a global SPOE resolution strategy that does not involve the placement of any U.S. material entities into resolution. As a result, understanding how the execution of these FBOs' global, group-wide resolution plan would impact U.S. operations is critical for effective resolution planning, given that the U.S. operations of an FBO within the scope of the proposed guidance are often highly interconnected with the broader global operations of the banking organization, as was observed when Credit Suisse Group AG was under stress. To facilitate greater understanding of these interconnections, the FBO guidance proposal focuses on gathering appropriate information about how the global resolution plan affects U.S. resolution planning under the Rule and identifying where the U.S. plan relies on different assumptions, strategies, and capabilities from the global plan. A banking organization's broader resolvability framework would be expected to consider the objectives of both the group-wide resolution strategy and the U.S. resolution strategy developed under the Rule, with complementary efforts to enhance resolvability across plans.

IDI Resolution

The agencies' recent experience resolving three large banking organizations—Silicon Valley Bank, First Republic Bank, and Signature Bank—revealed several challenges associated with resolving large IDIs, which informed the proposed guidance specific to IDI resolution. These challenges include ensuring that the resolution takes place in a manner consistent with the requirement that it pose the least cost to the FDIC's Deposit Insurance Fund,¹⁴ identifying potential acquirers, and addressing operational complexities associated with entering and exiting

¹³ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed. Reg. 15449 (Mar. 18, 2020) (2020 FBO Proposal). The FBO guidance proposal would adopt content from the 2020 FBO Proposal where the 2020 FBO Proposal contained more stringent expectations than the 2020 FBO Guidance as ultimately finalized.

¹⁴ See 12 U.S.C. § 1823(c)(4).

receivership. Accordingly, the proposals would include an expectation for domestic triennial full filers that adopt an MPOE resolution strategy and foreign triennial full filers that have a U.S. IDI and adopt a U.S. MPOE resolution strategy that their resolution plans should contain information about the feasibility and execution of the resolution of their U.S. IDI.

Relation to Long-Term Debt Rulemaking

The agencies, as well as the Office of the Comptroller of the Currency, are inviting public comment on a proposed rule that would require certain large depository institution holding companies, U.S. intermediate holding companies of FBOs, and certain IDIs to issue and maintain outstanding a minimum amount of long-term debt. A final long-term debt rule may have a material impact on the resolution strategies of firms covered by the proposed guidance, and the proposals would request comment about the interaction of the proposed guidance with the finalization of a long-term debt rulemaking.

Relation to 2024 Full Plan Resolution Submissions

When the agencies issued the Rule, they stated they would aim to provide resolution planning guidance to banking organizations no later than 12 months prior to a covered company's resolution plan submission date. Under the Rule, the triennial full filers' next resolution plan submissions are due by July 1, 2024. The proposal would state that the agencies are considering providing a short extension of the next resolution plan submission date for triennial full filers to provide reasonable time for the proposed guidance, once finalized, to be reflected in the plan submissions.

RECOMMENDATIONS:

For the reasons discussed above, staff recommends that the Board approve the attached domestic guidance proposal and FBO guidance proposal for publication in the *Federal Register* with a public comment period to end on November 30, 2023. Staff also requests that the Board delegate to staff the authority to make technical, non-substantive changes to the attached materials prior to publication in the *Federal Register*.