

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Date: July 18, 2024
To: Board of Governors
From: Staff¹
Subject: Finalization of joint Board-FDIC guidance for triennial full filer banking organizations regarding future resolution plans and extension of 2025 plan deadline

ACTIONS REQUESTED: Staff seeks approval of (1) the attached draft final guidance and accompanying *Federal Register* notices for (a) domestic triennial full filers, which are domestic Category II and III banking organizations (the domestic guidance) and (b) foreign triennial full filers, which are foreign Category II and III banking organizations (the foreign guidance, and together with the domestic guidance, the final guidance) regarding these firms' future resolution plan submissions;² and (2) an extension of the March 31, 2025, deadline by which triennial full filers must submit their full resolution plans, to October 1, 2025. The final guidance and resolution plan deadline extension would be jointly issued by the Board and the FDIC (together, the agencies). Staff also requests authority to make technical, non-substantive changes to the attached materials prior to publication in the *Federal Register*.

EXECUTIVE SUMMARY:

- Large banking organizations are required to periodically submit resolution plans, also known as living wills, to the agencies. These plans describe how a banking organization would be wound down in an orderly way should it fail.

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² The firms that are expected to be included within the scope of the domestic guidance as of the date of this memo 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 are expected to be included within the scope of the foreign guidance as of the date of this memo 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 agencies previously issued resolution planning guidance to the U.S. global systemically important banking organizations (GSIBs)³ and some of the largest, most complex foreign banking organizations (FBOs).⁴
- In the letters sent to triennial full filers with feedback on the 2021 plan submissions, the agencies stated their intention to issue guidance to assist triennial full filers in their next plan submissions, and the agencies in August 2023 invited comments on two resolution plan guidance proposals, one for domestic and one for foreign triennial full filers.⁵
- The final guidance would be similar to the proposals with certain modifications and clarifications, as discussed below.
- To ensure triennial full filers have sufficient time to take into account the triennial full filer guidance, the deadline for triennial full filers' next resolution plan submission would be extended to October 1, 2025, from the current deadline of March 31, 2025.

DISCUSSION:

A. Background

Resolution plans 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. Under the resolution plan rule,⁶ the content and frequency of resolution plan submissions are determined by a banking organization's size and complexity. Banking organizations are split into categories, and triennial full filers, which are Category II and III banking organizations under the Board's enhanced prudential standards rule, file a resolution plan every three years.

³ 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).

⁴ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 Fed. Reg. 83557 (Dec. 22, 2020) (2020 FBO Guidance).

⁵ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230829b.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23067.html>; *see also* Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers, 88 Fed. Reg. 64626 (Sept. 19, 2023) (the domestic proposal); Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers, 88 Fed. Reg. 64641 (Sept. 19, 2023) (the foreign proposal, and together with the domestic proposal, the proposals).

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

Triennial full filers alternate between full and targeted plan submissions,⁷ and these firms last submitted resolution plans on or before December 17, 2021. On August 29, 2023, the agencies invited public comment on proposed guidance for how domestic and foreign triennial full filers' resolution plans could address key challenges in resolution. The agencies developed the proposals in light of issues identified during the agencies' review of these firms' 2021 resolution plans and the agencies' experiences dealing with stress events in the international and domestic banking systems in the spring of 2023.

B. Final Triennial Full Filer Guidance

The final guidance would be largely similar to the proposals, with several targeted changes reflecting public comments on the proposals and further analysis of the business and risk profiles of triennial full filers. Like the proposals, the final guidance would not prescribe a specific resolution strategy for any banking organization. The content of the final guidance would depend on a firm's status as a domestic or foreign filer, and resolution plan strategy, whether single point of entry (SPOE) or multiple point of entry (MPOE).

Insured Depository Institution (IDI) Resolution

The agencies' experience resolving three large domestic banking organizations in the spring of 2023 highlighted several challenges associated with resolving large IDIs, which are likely to be relevant to the resolvability of triennial full filers. In particular, staff recognized that it could be helpful to triennial full filers to provide guidance describing analysis that could demonstrate that an IDI resolution could take place in a manner consistent with the requirement that it represent the least costly resolution method to the Deposit Insurance Fund.⁸ It is important that a resolution plan adopting an MPOE resolution strategy explain how the least-cost requirement of the Federal Deposit Insurance (FDI) Act could be met, avoiding any reliance upon extraordinary government support. Accordingly, the domestic proposal and foreign proposal included expectations for firms that adopt an MPOE or a U.S. MPOE resolution

⁷ 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; 12 CFR 381.6.

⁸ See 12 U.S.C. § 1823(c)(4).

strategy, respectively, that their resolution plans should contain information about the feasibility and execution of the resolution of their U.S. IDI.

The agencies received several comments requesting that the agencies clarify this expectation or remove it from final guidance. In response to commenters, the final guidance would provide additional detail to help address commenters' questions related to the FDI Act's least-cost requirement and how it relates to the expectations in this section of the final guidance.

Home Country Group-Wide Resolution Plan for FBOs

The foreign proposal included an expectation that FBOs describe in their plans how execution of the global SPOE resolution plan would affect resolution planning in the United States and identify where the U.S. plan relies on different assumptions, strategies, and capabilities from the global plan. The agencies received several comments on this topic, many of which asserted that global plans are sometimes written by home authorities and FBOs may not always have full visibility into the details of those plans. In response to these comments and discussions with foreign regulators, the foreign guidance would clarify that firms are not expected to provide information that they do not possess and would not include an expectation that firms specifically identify the extent to which U.S. resolution planning differs from the global plan. Instead, the foreign guidance would include an expectation to describe the impact of executing the global resolution plan on U.S. operations and the extent of the firm's reliance on home country entities and operations for execution of the U.S. plan.

Differentiating Resolution Plan Guidance

The agencies received several comments about whether the expectations in the proposals were suitably revised from expectations included in past resolution plan guidance and whether the proposals appropriately distinguished between different types of triennial full filers. While the domestic proposal and foreign proposal were based on the 2019 GSIB Guidance and 2020 FBO Guidance, respectively, the final guidance would appropriately differentiate among firms, taking into consideration their size, complexity, and other risk-related factors; their resolution strategy, whether SPOE or MPOE; and whether they are domestic or foreign-based. The final guidance also would note that the selection of a resolution strategy is up to each firm.

Separability Expectations

The proposals included expectations relating to a firm's preparedness to sell businesses or assets in resolution, also known as separability. The agencies received several comments

contending that separability expectations would not enhance resolvability and encouraging the agencies to not include such expectations in final guidance. Because most of the domestic triennial full filers currently have the overwhelming majority of their assets concentrated in their IDI subsidiaries, the agencies' staffs believe that the resolution plan rule contains sufficient expectations regarding the feasibility and impact of sales or divestitures of the domestic filers, so the domestic guidance would not contain the proposed separability expectations. In contrast, the foreign triennial full filers currently have significant nonbank or cross-border activities and interconnections between U.S. intermediate holding company subsidiaries, U.S. branches, and the foreign parent. Accordingly, the foreign guidance would include the separability expectations as proposed.

Connection to Long-Term Debt Proposal

The agencies, as well as the Office of the Comptroller of the Currency, issued in August 2023 a proposed rule for comment that would require certain large holding companies, U.S. intermediate holding companies of FBOs, and certain IDIs, to issue and maintain outstanding a minimum amount of long-term debt (LTD), among other proposed requirements.⁹ The agencies requested that comments on the proposals take the LTD proposal into consideration, and commenters provided a range of views, including that the agencies should consider the interaction between the proposals and the LTD proposal to avoid duplicative or contradictory requirements. The LTD proposal has not been finalized; accordingly, the final guidance does not address how existing outstanding LTD and LTD issued pursuant to a final LTD rule should be considered. Staff expects these issues would be addressed in connection with any final LTD rule.

C. Next Resolution Plan Submission

Under the resolution plan rule, the agencies may jointly alter the date on which a resolution plan is due if they jointly provide a banking organization with written notice of such a determination no later than 12 months before the new date by which the banking organization is

⁹ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230829a.htm>; <https://www.fdic.gov/news/press-releases/2023/pr23065.html>. *See also* Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 FR 64524 (Sept. 19, 2023) (LTD proposal).

required to file a resolution plan.¹⁰ The proposals stated that the agencies were 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. On January 17, 2024, the agencies announced an extension of the resolution plan submission deadline for the triennial full filers from July 1, 2024, to March 31, 2025.¹¹ In the interest of providing banking organizations that would be the subject of the triennial full filer guidance time to take into consideration the guidance when developing their next resolution plans, staff believes it would be appropriate to extend the March 31, 2025, deadline by which triennial full filers must submit their full resolution plans to October 1, 2025. This resolution plan deadline would apply to any financial institution that becomes a Category II or III banking organization, or otherwise becomes a triennial full filer, before October 1, 2024.

RECOMMENDATIONS:

For the reasons discussed above, staff recommends that the Board, jointly with the FDIC, (1) approve the domestic guidance and foreign guidance and accompanying *Federal Register* notices and (2) approve an extension of the March 31, 2025, deadline by which triennial full filers must submit their full resolution plans to October 1, 2025. 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*.

Attachments

¹⁰ 12 CFR 243.4(d)(2); 12 CFR 381.4(d)(2).

¹¹ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20240117a.htm>;
<https://www.fdic.gov/news/press-releases/2024/pr24002.html>.