FEDERAL RESERVE SYSTEM

[Docket No. OP–1817]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA38

Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final guidance.

SUMMARY: The Board and the FDIC (together, the agencies) are adopting this final guidance for the 2025 and subsequent resolution plan submissions by certain foreign banking organizations (FBOs). The final guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted under the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (the Dodd-Frank Act), and the jointly issued implementing regulation (the Rule). The scope of application of the final guidance is foreign triennial full filers (specified firms or firms), which are foreign Category II and III banking organizations, and the guidance supersedes the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies.* The final guidance describes the agencies' expectations, depending on the resolution strategy chosen by the firm, regarding a number of key vulnerabilities in plans for an orderly resolution under the U.S. Bankruptcy Code (*i.e.,* group resolution plan; capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; branches; and insured depository institution (IDI) resolution, if applicable). The final guidance modifies and clarifies certain aspects of the proposed guidance based on the agencies' consideration of comments to the proposal, additional analysis, and further assessment of the business and risk profiles of the firms.

DATES: The final guidance is available on August 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Board: Catherine Tilford, Deputy Associate Director, (202) 452–5240, Elizabeth MacDonald, Assistant Director, (202) 475–6316, Tudor Rus, Manager, (202) 475–6359, Mason Laird, Senior Financial Institution Policy Analyst II, (202) 912–7907, Caroline Elkin, Senior Financial Institution Policy Analyst, (202) 263–4888, Division of Supervision and Regulation; or Jay Schwarz, Deputy Associate General Counsel, (202) 452–2970; Andrew Hartlage, Special Counsel, (202) 452–6483; Brian Kesten, Counsel, (202) 843–4079; or Sarah Podrygula, Senior Attorney, (202) 912–4658, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Robert C. Connors, Senior Advisor, (202) 898–3834; Mark E. Haley, Chief, (917) 320–2911, Patrick R. Bittner, Senior Policy Specialist, (202) 898–6571, Division of Complex Financial Institution Supervision and Resolution; Celia Van Gorder, Assistant General Counsel (Acting), (202) 898–6749; Dena S. Kessler, Counsel, (202) 898–3833; Gregory J. Wach, Counsel, (202) 898–6972, Legal Division.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
  A. Background
  B. Connection to Other Rulemakings
  C. Proposed Guidance
II. Overview of Comments
III. Final Guidance
  A. Scope of Application
  B. Transition Period
  C. Interaction With Group Resolution Plan
  D. Capital
  E. Liquidity
  F. Governance Mechanisms
  G. Operational
  H. Legal Entity Rationalization and Separability
  I. Insured Depository Institution Resolution
  J. Derivatives and Trading Activities
  K. Branches
  L. Format and Structure of Plans; Assumptions
  M. Additional Comments
IV. Paperwork Reduction Act
V. Text of the Final Guidance

I. Introduction

A. Background

Section 165(d) of the Dodd-Frank Act[1] and the Rule[2] require certain financial institutions to report periodically to the Board and the FDIC their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The Rule divides covered companies into three groups of filers: (a) biennial filers; (b) triennial full filers; and (c) triennial reduced filers.[3] The terms ''covered company'' and ''triennial full filer'' have the meanings given in the Rule, as do other, similar terms used throughout this final guidance document.

Triennial full filers under the Rule are required to file a resolution plan every three years, alternating between full and targeted resolution plans.[4] The Rule requires each covered company's full resolution plan to include, among other things, a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and a description of the covered company's organizational structure, material entities, and interconnections and interdependencies.[5] Targeted resolution plans are required to include a subset of information contained in a full plan.[6] In addition, the Rule requires that all resolution plans consist of two parts: a confidential section that contains any confidential supervisory and proprietary information submitted to the agencies, and a section that the agencies make available to the public.[7] Public sections of resolution plans can be found on the agencies' websites.[8]

Recent Developments

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. To assist the development of covered companies' resolution planning capabilities and plan submissions, the agencies have provided feedback on individual plan submissions, issued guidance to certain groups of covered companies, and issued answers to frequently asked questions. The agencies believe that guidance can help focus the efforts of similarly situated covered companies to improve their resolution capabilities and clarify the agencies' expectations for those filers' future progress in their resolution plans. To date, the agencies have issued guidance to: (a) U.S. global systemically important banks (GSIBs),[9] which constitute the biennial filer group; and (b) certain large FBOs that

[1] 12 U.S.C. 5365(d).

[2] 12 CFR parts 243 and 381.

[3] 12 CFR 243.4 and 381.4.

[4] 12 CFR 243.4(b) and 381.4(b).

[5] 12 CFR 243.5 and 381.5.

[6] 12 CFR 243.6(b) and 381.6(b).

[7] 12 CFR 243.11(c) and 381.11(c).

[8] The public sections of resolution plans submitted to the agencies are available at *www.federalreserve.gov/supervisionreg/resolution-plans.htm* and *www.fdic.gov/regulations/reform/resplans/*.

[9] Guidance for section 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019) (2019 U.S. GSIB Guidance).

are triennial full filers.[10] The agencies have not, however, thus far issued guidance to domestic triennial full filers and the additional FBOs that make up the remainder of the triennial full filers.

Several developments inform the final guidance:

- The agencies' consideration of comments to the proposed guidance (as defined below);
- The agencies' review of foreign triennial full filers' 2021 resolution plans and the issuance of individual letters communicating the agencies' feedback on those submitted plans;
- The agencies' recent experience with UBS Group AG's acquisition of Credit Suisse Group AG (CS) and, with respect to specified firms with large subsidiary IDIs, the resolutions of Silicon Valley Bank (SVB), Signature Bank (SB), and First Republic Bank (First Republic), and related stress experienced by a range of other financial institutions; and
- The agencies' analysis of the current risk profiles of the foreign triennial full filers.

The preamble to the 2019 revisions to the Rule indicated that the agencies would make any future resolution guidance available for comment,[11] and on August 29, 2023, the agencies invited comments on proposed guidance for the 2024 and subsequent resolution plan submissions by foreign triennial full fillers (proposed guidance or proposal).[12]

The Rule requires triennial full filers to submit their resolution plans on or before July 1 of each year in which a resolution plan is due.[13] At the time the agencies issued the proposed guidance, the foreign triennial full filers were required to submit their next resolution plans on or before July 1, 2024. In the proposal, the agencies requested comment about whether the agencies should provide more than six months for firms to take into consideration the expectations in the finalized guidance. Several comments discussed the timing of the next resolution plan submission and its relationship to the final guidance. Most requested extensions, with several requesting at least a year and one stating six months would be adequate. One stated a maximum of six months from publication of the final guidance to the first submission would be adequate, though it did not specifically ask for an extension.

On January 17, 2024,[14] the agencies announced an extension of the resolution plan submission deadline for the triennial full filers from July 1, 2024, to March 31, 2025. At this time, the agencies are further extending the 2025 resolution plan submission deadline for triennial full filers to October 1, 2025, to provide the firms with sufficient time to develop their full resolution plans in light of the final guidance. The agencies are also clarifying that all triennial full filers' subsequent resolution plan submission, a targeted resolution plan, are due on or before July 1, 2028, and that future resolution plan submissions will be due every three years after that, alternating between full and targeted resolution plans, pursuant to the Rule,[15] unless the agencies exercise their authority under the Rule to alter the submission date for future resolution plan submissions.[16]

Resolution Plan Strategy

Foreign-based covered companies subject to the Rule have adopted one of two resolution strategies for their U.S. operations: (1) a single point of entry (SPOE) strategy where only the top tier U.S. material entity holding company enters resolution through a bankruptcy proceeding; or (2) a multiple point of entry (MPOE) strategy where multiple U.S. material entities enter separate resolution proceedings, including any top tier U.S. material entity holding company enters bankruptcy, any U.S. material entity IDI subsidiary enters resolution pursuant to the Federal Deposit Insurance Act of 1950, as amended (the FDI Act), and other entities enter the appropriate resolution regimes or are wound down. The U.S. SPOE and U.S. MPOE resolution strategies that firms have chosen present different risks and entail different types of planning and development of capabilities; accordingly, the proposal contained content applicable to U.S. SPOE resolution strategies and separate content applicable to U.S. MPOE resolution strategies.

Commenters supported inclusion of expectations for both U.S. MPOE and U.S. SPOE resolution strategies, and supported firms' ability to choose either strategy. However, some commenters questioned whether the agencies were expecting or encouraging firms to adopt a U.S. SPOE resolution strategy and recommended that the agencies disclose publicly whether they prefer a particular resolution strategy and engage in notice and comment rulemaking if they do. For firms that change resolution strategies, some commenters requested that the agencies provide a transition period and made statements about the preferred length of such a transition period, and one asked for an explanation for how a firm that is changing strategies can satisfy the agencies' expectations, and others requested that the agencies not issue any findings regarding a firm's first resolution plan that adopts a different resolution strategy.

The agencies do not prescribe a specific resolution strategy for any firm. This guidance, similarly, does not suggest that any firm should change its resolution strategy, nor are the agencies identifying a preferred strategy for a specific firm or set of firms. The selection of a preferred strategy, including U.S. MPOE or U.S. SPOE as a preferred resolution strategy, should reflect the characteristics of the firm and its business operations, and support the goal of the resolution plan to substantially mitigate serious adverse effects of the firm's failure on financial stability in the United States. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate a rapid and orderly resolution.

The agencies are providing separate guidance for a U.S. SPOE resolution strategy and a U.S. MPOE resolution strategy in acknowledgment that firms are free to adopt the resolution strategy that best suits their operations and organizations. Further, the agencies note there may be resolution strategies other than U.S. SPOE and U.S. MPOE that could facilitate a rapid and orderly resolution. The specified firms should continue to submit resolution plans using the resolution strategies they believe would be most effective in achieving an orderly resolution of their firms. Regardless of strategy, a resolution plan should address the key vulnerabilities, support the underlying assumptions required to successfully execute the chosen resolution strategy, and demonstrate the adequacy of the capabilities necessary to execute the selected strategy.

Moreover, because the agencies do not prescribe resolution strategies, firms may voluntarily change their preferred strategy in the future. However, reflecting the voluntary nature of

[10] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies 2020 FBO Guidance, 85 FR 83557 (Dec. 22, 2020) (2020 FBO Guidance).

[11] Resolution Plans Required, 84 FR 59194, 59204 (Nov. 1, 2019) (2019 **Federal Register** Rule Publication).

[12] *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 Foreign Triennial Full Filers, 88 FR 64641 (Sept. 19, 2023).

[13] 12 CFR 243.4(b)(3) and 381.4(b)(3).

[14] *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20240117a.htm; https://www.fdic.gov/news/press-releases/2024/pr24002.html.*

[15] 12 CFR 243.4(b) and 381.4(b).

[16] 12 CFR 243.4(d)(2) and 381.4(d)(2).

resolution strategy changes, the agencies do not anticipate providing a transition period during which a firm would be free from potential findings under the Rule while it effectuates a change in resolution strategy, whether from U.S. MPOE to U.S. SPOE, or to any other resolution strategy. A firm controls the timing of when it submits its first plan with a different strategy; accordingly, it can take the time it needs to put in place the resources and capabilities needed to submit a plan that satisfies the standard in section 165(d) of the Dodd-Frank Act and the Rule. The standard of review for a resolution plan submission of a firm that transitions to a new strategy is therefore the same as for any firm subject to the Rule.[17]

B. Connection to Other Rulemakings

Long-Term Debt Proposal

The agencies, as well as the Office of the Comptroller of the Currency (together with the agencies, the Federal banking agencies), 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.[18] The agencies have received comments on the LTD proposal, and will consider all comments received in context of the LTD rulemaking. The agencies requested comments on the proposed guidance that take the LTD proposal into consideration.

One commenter recommended that, for purposes of their resolution plans, firms should only assume their existing outstanding LTD and not the projected LTD that would be in place once the firm has achieved full compliance with the LTD proposal. Another commenter argued that the agencies should consider the interaction between the proposed guidance and LTD proposal, with a goal of having them work together to improve the resolvability of applicable banking organizations and avoid duplicative or contradictory requirements. The commenter also asserted that calibration of an IDI's internal LTD requirement could lead banking organizations using a U.S. MPOE resolution strategy to adopt a U.S. SPOE resolution strategy because of the costs of compliance with such internal LTD issuance.

The Federal banking agencies have not finalized the LTD rulemaking as of the issuance of this final guidance. The agencies recognize that LTD issued and maintained by a specified firm could affect the firm's strategic analysis of the funding, liquidity, and capital needs of, and resources available to, the covered company and its material entities.[19] However, the agencies believe that the finalization of a requirement to maintain a specified amount of LTD would not affect this guidance in any material way. Any final LTD rule will address the manner in which its requirements will be implemented. This final guidance is intended to convey the agencies' expectations regarding the content of resolution plan submissions, and not to contradict, modify, or accelerate a company's obligations under other laws or regulations. As provided in the final guidance, firms should develop their resolution plans in accordance with the current state of the applicable legal and policy frameworks. The agencies also recognize, however, that there may be phase-in periods during which rules become effective. Should the LTD rule be finalized in advance of October 1, 2025, the agencies will not expect firms to incorporate the requirements of the rule into their 2025 resolution plan submissions. This should provide firms covered by the LTD rule with reasonable time to consider any final LTD rule in a future resolution plan submission. Further, and as noted above, the agencies are not recommending that any specified firm adopt any particular strategy in response to this guidance or the LTD proposal.

Basel III End Game Proposal and the GSIB Capital Surcharge Proposal

The Federal banking agencies also issued in July 2023 a proposed rule for comment to substantially revise the capital requirements applicable to large banking organizations and to banking organizations with significant trading activity.[20] The Board also issued a proposed rule for comment to amend the Board's rule that identifies and establishes risk-based capital surcharges for GSIBs.[21] The latter proposal would also amend the Systemic Risk Report (FR Y–15), which is the source of inputs to the implementation of the GSIB framework under the capital rule.

One commenter asserted that the issuance of multiple rulemaking and guidance proposals limited the commenter's ability to evaluate and comment on the proposed guidance. The commenter also recommended that the Federal banking agencies conduct an analysis of the costs and benefits of these proposals together. In addition, the commenter recommended providing the public more time to consider the interactions of the various proposals. Another commenter contended that the agencies should provide additional flexibility to firms that become triennial full filers as a result of the GSIB Capital Surcharge proposal and its associated changes to the Systemic Risk Report (FR Y–15). The commenter argued that such triennial full filers should have an extended transition period of two years before taking into account the final guidance.

The Federal banking agencies have not finalized the LTD rulemaking, Capital rulemaking, or GSIB Capital Surcharge rulemaking as of the issuance of this final guidance, and comments on those proposed rules are currently under consideration. The final guidance does not rely on or presume the finalization of these rulemakings and instead states, as proposed, that a resolution plan should be based on the current state of the applicable legal and policy frameworks.[22] The agencies note that the Federal banking agencies extended the comment period on the LTD rulemaking,[23] the Capital rulemaking,[24] and the GSIB Capital Surcharge rulemaking[25] to allow interested parties more time to analyze relevant issues and prepare their comments. In addition, staff of the agencies met with members of the

[17] *See* 12 CFR 243.8 and 381.8.

[18] *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).

[19] *See* 12 CFR 243.5(c)(1)(iii) and 381.5(c)(1)(iii).

[20] *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm; https://www.fdic.gov/news/press-releases/2023/pr23055.html. See also* Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity, 88 FR 64028 (Sept. 18, 2023) (Capital proposal).

[21] *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm. See also* Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y–15), 88 FR 60385 (Sept. 1, 2023) (GSIB Capital Surcharge proposal).

[22] *See infra* section V.X of this document.

[23] Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions; Extension of Comment Period, 88 FR 83364 (Nov. 19, 2023).

[24] Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity; Extension of Comment Period, 88 FR 73770 (Oct. 27, 2023).

[25] Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y–15); Extension of Comment Period, 88 FR 73772 (Oct. 27, 2023).

public—including those who asked for additional time to review the various proposals—at the request of those persons after the close of the comment period. Moreover, the Board collected data from the banks affected by the Capital rulemaking to further clarify the estimated effects of the proposal.[26] The FBO guidance proposal also included an analysis of potential burden of the proposal pursuant to the Paperwork Reduction Act.[27] As discussed below, the agencies did not receive any comment on that section of the proposal.[28]

The agencies also note that the Rule establishes a transition period for new covered companies that become triennial full filers.[29] As discussed elsewhere in this document, a specified firm is only expected to take into account the guidance for the resolution plan submission that is due at least 12 months after the date the firm becomes a specified firm.[30]

FDIC IDI Resolution Plan Proposal

The agencies received two comments on the connection between the proposal and the IDI Rule.[31] The FDIC published proposed revisions to the IDI Rule on September 19, 2023,[32] and published final revisions on July 9, 2024.[33] One commenter recommended coordinating aspects of the proposed guidance and the Proposed IDI Rule, including having consistent terms and concepts, and permitting cross-referencing to section 165(d) resolution plans under the Proposed IDI Rule. Another commenter suggested aligning the Rule and the IDI Rule to reduce the combined compliance burden.

The Rule requires a covered company to submit a resolution plan that would allow for the rapid and orderly resolution of the firm under the Bankruptcy Code in the event of material financial distress or failure. The final guidance clarifies the agencies' expectations regarding certain topics and provides direction as to how a covered company may demonstrate its compliance with its statutory obligation under section 165(d) of the Dodd-Frank Act to develop a resolution plan allowing for its rapid and orderly resolution. The IDI Rule serves a different purpose: the IDI Rule assists the FDIC in preparing to manage the resolution of a covered insured depository institution. While these two rules may be complementary, they are not the same. Additionally, whether to align the Proposed IDI Rule with the Rule or permit cross-referencing to section 165(d) resolution plans under the IDI Rule is outside the scope of this guidance.

C. Proposed Guidance

On August 29, 2023, the agencies invited public comment on proposed guidance for how foreign triennial full filers' resolution plans could address key challenges in resolution, which was proposed to apply beginning with the subject firms' 2024 resolution plan submissions.[34] The proposal identified the banking organizations to which the guidance would apply and articulated several areas of guidance: group resolution plan; capital; liquidity; governance mechanisms; operational; legal entity rationalization and separability; branches; and IDI resolution, if applicable. The proposed guidance described the agencies' proposed expectations for each of these areas. Most substantive topics were bifurcated, with separate guidance for a U.S. SPOE resolution strategy and a U.S. MPOE resolution strategy. The proposed guidance concluded with information about the format and structure of a plan that applied equally to plans contemplating either a U.S. SPOE resolution strategy or a U.S. MPOE resolution strategy.

The proposed guidance for firms that adopt a U.S. SPOE resolution strategy was generally based on the 2020 FBO Guidance or the associated proposal.[35] The proposed guidance for firms that adopt a U.S. MPOE resolution strategy was based upon the 2020 FBO Guidance but modified to be pertinent to U.S. MPOE resolution strategies. The agencies also proposed to clarify their expectations for specified firms that adopt a U.S. MPOE resolution strategy that includes the resolution of a material entity that is a U.S. IDI.

The agencies invited comments on all aspects of the proposed guidance. The agencies also specifically requested comments on a number of issues, including the utilization of a U.S. SPOE resolution strategy by FBOs, the interaction of resolution guidance with a final long-term debt rule, the interaction between U.S. and global resolution strategies, the amount of time between the publication of the final guidance and the firms' next resolution plans, the appropriateness of guidance on IDI resolution, and whether to issue derivatives and trading expectations.

II. Overview of Comments

The agencies received and reviewed eight comment letters on the proposed guidance. Commenters included various financial services trade associations and two public interest groups. In addition, the agencies met with representatives of a banking organization that would be a specified firm and trade associations that represents banking organizations at their request to discuss issues relating to the proposed guidance.[36] This section provides an overview of the general themes raised by commenters. The comments received on the proposed guidance are further discussed below in the sections describing the final guidance (and, in some cases, previously in section I), including any changes that the agencies have made to the proposed guidance in response to comments.

Differentiating Expectations Based on Size, Complexity, and Risk

Most commenters contended that the proposed guidance did not sufficiently differentiate expectations among firms subject to resolution planning guidance. Several commenters argued that the specified firms have reduced their activities in the United States, resulting in a reduced risk and financial stability profile, and that expectations be adjusted accordingly. Some commenters also recommended that foreign triennial full filers without intermediate holding companies (IHCs) should not be covered by the guidance or should be the subject of guidance tailored to their risk profiles. In contrast, one commenter contended that the proposed guidance favors the U.S. MPOE resolution strategy by including fewer expectations for firms that adopt that strategy and recommended that the guidance for such firms be more aligned with

[26] *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231020b.htm.*

[27] *See* proposed guidance at 88 FR 64648–49.

[28] *See infra* section IV of this document.

[29] *See* 12 CFR 243.4(b)(5) and 381.4(b)(5).

[30] *See infra* section III.B of this document.

[31] 12 CFR 360.10 (IDI Rule).

[32] 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 FR 64579 (Sept. 19, 2023) (Proposed IDI Rule).

[33] Resolutions 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, 89 FR 56620 (July 9, 2024).

[34] *Supra* note 12.

[35] Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 15449 (March 18, 2020) (2020 Proposed FBO Guidance).

[36] Summaries of those meetings and copies of the comments can be found on each agency's website. *https://www.federalreserve.gov/apps/foia/ViewComments.aspx?doc_id=OP-1817&doc_ver=1; https://www.fdic.gov/resources/regulations/federal-register-publications/2023/2023-guidance-resolution-plan-submissions-foreign-triennial-3064-za38.html.*

guidance for resolution plan filers using a U.S. SPOE resolution strategy.

In addition, some commenters argued that section 165 of the Dodd-Frank Act requires the agencies to tailor application of prudential standards issued pursuant to that section, such as resolution planning guidance; contended that the proposal was too similar to the 2019 U.S. GSIB Guidance or 2020 Proposed FBO Guidance; and encouraged expectations in the final guidance to be further differentiated based on size, risk and other factors. Several commenters also objected to expectations in the proposal that were proposed in the 2020 Proposed FBO Guidance but not finalized in the 2020 FBO Guidance—including guidance on group resolution plans, resolution capital adequacy and positioning requirements (RCAP), resolution liquidity adequacy and positioning (RLAP), governance mechanisms, and separability—and contended that the agencies did not adequately explain their rationale for adopting expectations different from those in the 2020 FBO Guidance.

Resolution Strategy and Transition Period

Several commenters supported the proposal's inclusion of expectations for both U.S. MPOE and U.S. SPOE resolution strategies and the agencies' statement that firms have the ability to choose their preferred strategy. However, as noted above, some commenters questioned whether the agencies were expecting or encouraging firms to adopt a U.S. SPOE resolution strategy. For firms that change resolution strategies, some commenters requested that the agencies provide a transition period during which the agencies would not make credibility findings in connection with a plan review, and one commenter requested that the agencies explain how a firm that is changing strategies can satisfy the agencies' expectations.

Interaction Between U.S. and Group Resolution Planning

Some commenters disagreed with the proposed guidance relating to the interaction of the U.S. and the global resolution plans. Commenters claimed that global resolution plans are sometimes written by home authorities and FBOs may not always have full visibility into the details of those plans' assumptions, strategies, and necessary capabilities. These commenters also asserted that, in some countries, home country regulators may consider aspects of the group plan to be confidential supervisory information and, accordingly, the global resolution plan is not shared with the firm beyond very general terms. In addition, one commenter contended that the proposal did not specify with sufficient detail what information from a group resolution plan should be included in the U.S. resolution plan. Commenters urged the agencies to coordinate with home country authorities and to use Crisis Management Groups (CMGs), which are designed for collaboration between international regulators, to obtain this type of information.

Capital and Liquidity

The agencies received a number of comments on the capital and liquidity sections of the proposed guidance. With regard to the capital section of the proposed guidance, most commenters argued that the proposal included expectations that are duplicative of existing capital requirements and suggested removing the guidance on RCAP from the final guidance; one commenter, however, supported including RCAP expectations in final guidance. One commenter suggested that RCAP expectations would increase the complexity of the resolution planning process and another commenter expressed concern that RCAP expectations could result in excessive capital placement in the U.S., which could prevent firms from effectively positioning capital in times of stress.

With regard to the liquidity section of the proposed guidance, commenters suggested there is redundancy between the proposal and certain regulatory requirements and also recommended removing the guidance on RLAP from the final guidance; one commenter, however, supported including RLAP expectations in final guidance. One commenter expressed concern that RLAP expectations could make it more difficult for the specified firm's parent to deploy liquidity resources most effectively in stress. In addition, one commenter requested that the final guidance strengthen expectations for liquidity in resolution by including a procedure or protocol for liquidity related decisions, irrespective of resolution strategy.

IDI Resolution Analysis

The agencies received a number of comments on the proposed guidance related to the resolution of a subsidiary material entity U.S. IDI. Multiple commenters requested clarity on how the firm's plan should address the expectations regarding the FDIC's statutory least-cost requirement and questioned whether there is sufficient information available for firms to effectively evaluate whether a proposed resolution plan would satisfy the least-cost analysis expectations. These commenters also questioned whether the least-cost analysis would be of value to FDIC in an actual resolution and argued that the guidance should be aligned with the requirements of the IDI Rule. One stated sufficient time should be given for firms to conduct new analyses and seek additional guidance from the agencies and that aspects of this section of the proposal should not be finalized.

One commenter asked the agencies to consider the compliance burden of the guidance, while another commenter argued that firms should not be expected to demonstrate that their preferred strategy would be consistent with the FDIC's statutory least-cost requirement. Another commenter suggested that the agencies should require firms to develop resolution strategies involving bridge depository institutions (BDIs) and recommended that the guidance address the value of assets transferred to such a BDI, how the resolution plan would address the IDI's franchise value, and how the preferred resolution strategy would result in a least-costly resolution.

Derivatives and Trading

Some commenters supported not including derivatives and trading expectations, stating it was appropriate to exclude such guidance because the specified firms have limited derivatives and trading portfolios, particularly relative to the U.S. G–SIB banking organizations covered by such guidance. However, some other commenters supported including such expectations in the final guidance, contending that derivatives activity for foreign triennial full filers may increase in the future and proposed applying such guidance to firms with net derivatives exceeding a given threshold.

Connection to Other Rules

The agencies received a number of comments about the interaction of the proposed guidance with several other rulemaking initiatives by the Federal banking agencies. For example, some commenters recommended coordinating the FDIC's Proposed IDI Rule revisions with the resolution plan rule and final guidance for the specified firms. Several commenters also suggested that the agencies consider the interaction between the proposed guidance and the LTD proposal to ensure the two proposals work together to improve the resolvability of applicable banking organizations and avoid duplicative or

contradictory requirements. Some commenters expressed concern that including certain expectations in the final guidance, such as those relating to capital, would be premature before finalizing the Capital proposal and LTD proposal, which impact firms' capital planning. Further, some commenters recommended that the Federal banking agencies analyze the costs and benefits of these proposals together.

Timing of Next Resolution Plan

Several comments discussed the timing of the next resolution plan submission and its relationship to this final guidance. Some commenters recommended providing at least one year between issuing final guidance and the deadline for foreign triennial full filers' next resolution plan submissions. However, other commenters suggested that six months from publication of the final guidance to the first resolution plan submission would be adequate for firms to take into account the guidance.

III. Final Guidance

After considering the comments, conducting additional analysis, and further assessing the business and risk profiles of foreign triennial full filers, the agencies are issuing final guidance that includes certain modifications and clarifications from the proposal. In particular, the capital, group resolution plan, operational, assumptions, and IDI resolution sections of the final guidance reflect changes from the proposed guidance. In addition, as was noted in the proposal,[37] the final guidance consolidates all prior resolution planning guidance for the firms in one document and clarifies that any prior guidance not included in the final guidance has been superseded. Further, as was noted in the proposal,[38] the final guidance is not intended to override the obligation of an individual firm to respond in its next resolution plan submission to pending items of individual feedback or any shortcomings or deficiencies jointly identified or determined by the agencies in that firm's prior resolution plan submissions. The guidance is drafted to reflect the current conditions in the industry and institutions as they exist today.

As discussed below,[39] several commenters asserted that the proposal did not adequately differentiate among covered companies based on their size, complexity, and risk to financial stability. The guidance, however, takes into account the size and complexity of firms, their resolution strategy, and whether they are based in the United States or in a foreign jurisdiction. In addition, the final guidance is not meant to limit firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy.

The agencies also note that commenters described certain expectations that are set forth in the guidance as ''requirements.'' As the agencies indicated in the proposed guidance and are now reaffirming, the final guidance does not have the force and effect of law. Rather, the final guidance outlines the agencies' supervisory expectations regarding each subject area covered by the final guidance.[40] The final guidance includes language reflecting this position.[41]

Finally, the agencies made several minor, non-substantive changes from the proposal, including to align the wording of guidance directed at firms that adopt an SPOE resolution strategy and firms that adopt an MPOE resolution strategy.

A. Scope of Application

The agencies proposed applying the guidance to all foreign-based triennial full filers and invited comment on all aspects of the proposed scope of the guidance. Multiple commenters argued that foreign triennial full filers without IHCs should not be covered by the guidance or should be the subject of guidance tailored to their risk profiles. In making this suggestion, one commenter stated that, unlike domestic firms, the resolution of U.S. operations of FBOs is anticipated to occur as part of the home country resolution and the IHC threshold represents a materiality threshold for understanding the importance of the U.S. operations and for resolution planning. The commenter also stated that separate guidance could be proposed for foreign triennial full filers without an IHC. Several commenters further argued that the specified firms are already subject to enhanced requirements in both the U.S. and their home jurisdictions, and that the firms are smaller, better capitalized, and present a much-reduced risk to U.S. financial stability relative to category I firms. One commenter also contended that imposing additional resolution planning expectations would undermine these firms' ability to support U.S. capital markets while another commenter argued that the guidance should place greater reliance on cooperation among international regulators.

After review and consideration of these comments, the agencies are finalizing this section of the guidance as proposed. The agencies are issuing expectations to these firms to help them further strengthen their resolution plans based on the agencies' recent experience with UBS Group AG's acquisition of CS and, with respect to specified firms with large subsidiary IDIs, the resolutions of SVB, SB, and First Republic. Like CS, many of the specified firms are foreign GSIBs with a large presence in the United States. The guidance covers large FBOs both with and without a U.S. IHC and covers the entirety of their U.S. operations. The final guidance will strengthen these firms' resolution plans for their U.S. operations, while allowing flexibility based on the characteristics of individual firms and their respective resolution strategies. The agencies note that some aspects of the guidance may not be relevant to banking organizations without a U.S. IHC and do not expect firms to include in their resolution plans information about topics that do not relate to the structure of their operations. More generally, the level of detail in firms' resolution plans about specific topics and vulnerabilities should reflect the importance of those activities to the firm and whether they relate to or support any identified critical operations or core business lines or are material to the execution of the resolution strategy.

In many cases, the preferred resolution outcome for U.S. operations would be successful execution of the home country's global resolution strategy and the agencies have developed guidance to clarify the interactions between firms' U.S. and global resolution strategies. The home country resolution planning requirements do not make the guidance unnecessary for these firms. The Rule requires FBOs to submit plans providing for the rapid and orderly resolution of their U.S. subsidiaries and operations[42] under the Bankruptcy Code in the event of their failure. The agencies are issuing guidance to assist FBO firms in enhancing the resolution plans required under U.S. law.

B. Transition Period

The proposed guidance did not describe how the guidance would be applied to FBOs that become covered by its scope, but it did request comment on all aspects of the proposed scope of

[37] *See* proposed guidance at 88 FR 64644.

[38] *See id.*

[39] *See infra* section III.M of this document.

[40] *See* 12 CFR 262.7 and appendix A to 12 CFR part 262; 12 CFR part 302.

[41] *See infra* section V.I of this document.

[42] *See* 12 CFR 243.5(a)(2)(i) and 381.5(a)(2)(i).

application. To provide certainty to FBOs, the final guidance states that when an FBO becomes a specified firm, the final guidance will apply to the firm's next resolution plan submission with a submission date that is at least 12 months after the time the firm becomes a specified firm.[43] If a specified firm ceases to be a foreign triennial full filer, it will no longer be considered a specified firm, and the guidance will no longer be applicable to that firm as of the date the firm ceases to be a foreign triennial full filer.

C. Interaction With Group Resolution Plan

The agencies recognize that the preferred resolution outcome for many specified firms is 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. However, by law, section 165(d) resolution planning provisions require relevant FBOs to contemplate their resolution in the United States. U.S. operations of an FBO are often highly interconnected with the broader, global operations of the financial institution. To clarify the interaction between U.S. and global resolution strategies, the proposal outlined expectations that specified firms should describe the impact of executing the firm's global, group-wide resolution plan on the firm's U.S. operations and detail the extent to which resolution planning under the Rule relies on different assumptions, strategies, and capabilities from the global plan. The group resolution plan section of the proposed guidance differed from a similarly named section of the 2020 Proposed FBO Guidance by focusing on how U.S. resolution planning is integrated into a FBO's global resolution planning efforts, in addition to describing the impact on U.S. operations of executing the global plan. In 2020, the agencies declined to finalize that aspect of the 2020 Proposed FBO Guidance, stating that the item was addressed by the Rule and that the agencies would collaborate with home country regulators to better understand the impact on U.S. operations of executing a firm's group resolution plan.[44] However, recent events have underscored the need to better understand group resolution plans, and particularly the impact of executing the home plan on U.S. operations. These events, combined with prior resolution plan submissions from the specified firms that did not provide consistent and sufficient details regarding the integration of U.S. resolution planning with the firm's group resolution planning process, prompted the agencies to issue additional guidance. Moreover, the final guidance differs from the 2020 Proposed FBO Guidance in several ways by further clarifying the Rule expectation and focusing on the reliance between U.S. and group resolution plans based on information available to the firm, as described below.

The agencies received several comments regarding this section of the proposal. Commenters claimed that global plans are sometimes written by home authorities and FBOs may not always have full visibility into the details of those plans' assumptions, strategies, and capabilities. Commenters also asserted that, in some countries, the global resolution plan is not shared with the firm beyond very general terms and that home country regulators may consider aspects of the group plan to be confidential supervisory information. In addition, one commenter contended that the proposal did not specify with sufficient detail what information from a group resolution plan should be included in the U.S. resolution plan. Commenters urged the agencies to coordinate with home country authorities and to use CMGs, which are designed for collaboration between international regulators, to obtain this type of information.

After consultation with certain home authorities and in response to these comments, the agencies are finalizing this section of the guidance with revisions. First, the agencies recognize that not all firms have access to the group-wide resolution plan for that financial institution. Accordingly, the final guidance clarifies that firms are not expected to provide information that they do not possess and does not include an expectation that firms specifically identify the extent to which resolution planning under the Rule relies on different assumptions, strategies, and capabilities from the global plan. Furthermore, the agencies note that while CMGs have been and continue to be a useful forum for collaboration between home and host authorities regarding resolution related topics, centralizing information about group resolution plans in resolution plans submitted under the Rule could help the agencies prepare for a range of outcomes and supplement ongoing coordination with home country authorities.

Accordingly, the final guidance provides that a plan should describe the extent of reliance on U.S. operations for executing the global resolution strategy and any reliance on the home or parent operations for executing the U.S. resolution strategy. A description of capabilities relied on to execute the U.S. resolution strategy that differ from capabilities to execute the global resolution strategy should also be included in a plan. The agencies also have retained language from the proposal that a specified firm's broader resolvability framework is expected to consider the objectives of both the group-wide resolution strategy and the U.S. resolution strategy pursuant to the Rule, with complementary efforts to enhance resolvability across plans. The agencies do not believe that inclusion of this type of information about group resolution plans in U.S. resolution planning poses confidentiality issues, and the agencies will collaborate with home authorities to address any outstanding issues regarding the confidentiality of group resolution plans. The agencies encourage specified firms to bring specific confidentiality concerns to the attention of the agencies and their respective home authorities.

D. Capital

For specified firms using a U.S. SPOE resolution strategy, the agencies proposed capital expectations substantially similar to those in the 2020 Proposed FBO Guidance. The ability to provide sufficient capital to material entities without disruption from creditors is essential to a U.S. SPOE resolution strategy's objective to ensure that material entities can continue to maintain operations as the firm is resolved. The proposal described expectations concerning the appropriate positioning of capital and other loss-absorbing instruments (*e.g.,* debt that a parent holding company may choose to forgive or convert to equity) among the material entities within the firm (RCAP). The proposal also described expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each material entity after the bankruptcy filing (resolution capital execution need, or RCEN).

The agencies received numerous comments on the capital section of the proposed guidance. One commenter supported including RCAP expectations in the final guidance. Several commenters, though, asserted that RCAP would be duplicative of existing capital requirements, such as total loss absorbing capacity (TLAC) provisions, and recommended that the agencies

[43] The plan type for that next submission remains as specified by the Rule, *i.e.,* a full or targeted resolution plan. *See* 12 CFR 243.4 and 381.4.

[44] *See* 2020 FBO Guidance at 85 FR 83567.

remove RCAP from the final guidance. These commenters also contended that the agencies did not sufficiently explain why the agencies proposed guidance on capital, including RCAP, when the agencies previously considered adopting RCAP expectations in the 2020 Proposed FBO Guidance but omitted these expectations from the 2020 FBO Guidance. A commenter argued that existing capital requirements are sufficient for the size and complexity of the firms subject to this guidance without RCAP expectations, which, the commenter asserted, add more complexity to the resolution planning process. Another commenter expressed concern that RCAP expectations could result in excessive capital placement in the U.S., and that this could prevent firms from effectively positioning capital in times of stress.

One commenter contended that as the majority of IHCs subject to guidance are required to hold local resources for the recapitalization of their U.S. operations under U.S. TLAC requirements, the agencies should not issue additional requirements related to local bail-in-able resources. A commenter argued that the risk characteristics of U.S. IHCs do not justify requiring pre-positioning of capital for U.S. IHC subsidiaries and urged that, at a minimum, the agencies should not implement both IDI-level LTD requirements and RCAP expectations for firms that select a U.S. SPOE resolution strategy.

One commenter also asserted that including expectations in this guidance regarding the positioning of capital is premature given that finalization of the Capital proposal and the LTD proposal may impact firms' capital planning. A commenter specifically pointed to language in the LTD proposal in which the agencies cite RCAP as one of the reasons why IDI-level LTD requirements are not necessary for the IDI subsidiaries of U.S. GSIBs.

After reviewing these comments, the agencies are finalizing this section of the guidance largely as proposed, with one clarification concerning RCEN. Whereas the proposed guidance provided that to the extent a firm's U.S. resolution strategy relies on the recapitalization of U.S. non-branch material entities, such recapitalization should be to a level that allows for an orderly resolution of the U.S. non-branch material entities, the final guidance specifies that the recapitalization should allow U.S. non-branch material entities to operate or be wound down in an orderly manner. This change is intended to provide more detail to firms to help them develop their plans.

Although the agencies previously pointed to TLAC requirements applicable to U.S. IHCs as part of the rationale for not including RCAP expectations in the 2020 FBO Guidance,[45] the agencies believe RCAP expectations are important for FBOs adopting a U.S. SPOE resolution strategy in order to ensure the appropriate positioning of capital and other loss-absorbing instruments among the U.S. IHCs and all of their material entity subsidiaries and to effectively execute a U.S. SPOE resolution strategy. Specifically, TLAC requirements apply to the IHC, while RCAP expectations under the guidance are applicable not just at the IHC level, but between the U.S. IHC and its material entity subsidiaries. Further, resources required to be held at the IHC consistent with TLAC requirements may differ from the firm's expected resource needs to execute a U.S. SPOE resolution strategy at specific material entities. Plans submitted by the specified firms would benefit from the firm's own assessment of its resource positioning and the resolution needs among its material entities, not just the IHC or the IDI.

Further, the stress experienced by and the failure of several large banking organizations in March 2023 highlighted the fast-moving nature of stress events, as several banking organizations entered resolution proceedings rapidly. These events also highlighted the potential for the failure of a large regional banking organization to affect financial stability. Successful execution of a U.S. SPOE resolution strategy—including the need to ensure that individual material entities have adequate capital to maintain operations as the firm is resolved—is unlikely to be successful under a short time frame without advance planning. Appropriate positioning of capital and other loss-absorbing instruments among the firm's material entities is an important element of this advanced planning to reduce uncertainty and enable timely recapitalization consistent with a U.S. SPOE resolution strategy. Accordingly, the agencies are finalizing guidance that includes RCAP expectations, despite not including those expectations in the final 2020 FBO guidance, to support the successful execution of the U.S. SPOE resolution strategy.

Finalizing RCAP expectations is not premature in light of outstanding proposals such as the LTD rulemaking and other pending rules because the RCAP expectations can be achieved with or without the LTD contemplated in the LTD proposal. The Federal banking agencies have not finalized the LTD rulemaking proposal as of the issuance of this final guidance, and comments on that proposed rule are currently under consideration. Specifically, the final guidance does not rely on or presume the finalization of pending rules and instead states, consistent with the proposal, that a resolution plan should be based on the current state of the applicable legal and policy frameworks.[46] The guidance is intended to assist firms in developing their resolution plans, which are required to be submitted pursuant to the Dodd-Frank Act and the Rule. While other capital and resolution-related rules may establish minimum standards applicable to firms submitting resolution plans, this guidance is designed to facilitate a firm's own analysis of the firm's expected needs in resolution across that firm's material entities.

Regarding the comment that RCAP expectations would result in excessive capital placement in the United States, RCAP is not a regulatory requirement, but rather a potential element of an effective SPOE resolution strategy. The specified firms are not required to adopt a U.S. SPOE resolution strategy. To the extent a specified firm selects a U.S. SPOE resolution strategy, any reduction in flexibility would be balanced by benefits prepositioning provides in reducing uncertainty and enabling timely recapitalization of material entities. Furthermore, the agencies' reference to RCAP in the LTD preamble as one reason for not proposing IDI-level LTD requirements for U.S. GSIBs does not provide a rationale for excluding RCAP expectations from this guidance. First, in addition to RCAP expectations, the U.S. GSIBs are different in profile from these firms, and are subject to the most stringent capital, liquidity, and other prudential standards of all banking organizations that operate in the United States. Second, as noted above, the goals of this guidance would be complemented by additional LTD issued by specified firms, and the guidance is practicable in the absence of an LTD requirement.

For firms that adopt a U.S. MPOE resolution strategy, the agencies did not propose further expectations concerning capital and asked a question about whether capital-related expectations should be applied. In response, one commenter agreed with the proposal that additional expectations are not warranted for firms using a U.S. MPOE resolution strategy, arguing that such expectations would serve no purpose.

[45] *See* 2020 FBO Guidance at 85 FR 83563.

[46] *See infra* section V.X of this document.

However, another commenter contended that it is not prudent to assume that material entities within a holding company structure can be discontinued in an orderly manner and that, at a minimum, capital plans are needed for each material entity to preserve its value during the transition period between a firm's failure and when it can be sold or closed in an orderly way. The commenter asked the agencies to reconsider expectations for firms that adopt a U.S. MPOE resolution strategy and align them with expectations for firms that adopt a U.S. SPOE resolution strategy.

The agencies have determined that additional capital expectations for firms selecting a U.S. MPOE resolution strategy are not necessary at this time. Under a U.S. MPOE resolution strategy, most material entities do not continue as going concerns upon the firm's entry into resolution proceedings and are likely to have already depleted existing capital requirements. Accordingly, the agencies are finalizing this section of the guidance as proposed.

E. Liquidity

For firms that adopt a U.S. SPOE resolution strategy, the agencies proposed liquidity expectations substantially similar to those in the 2020 Proposed FBO Guidance. A firm's ability to reliably estimate and meet its liquidity needs prior to, and in, resolution is important to the execution of a firm's resolution strategy because it enables the firm to respond quickly to demands from stakeholders and counterparties, including regulatory authorities in other jurisdictions and financial market utilities. Maintaining sufficient and appropriately positioned liquidity also allows subsidiaries to continue to operate while the firm is being resolved in accordance with the firm's resolution strategy. For firms that adopt a U.S. MPOE resolution strategy, the agencies proposed that a firm should have the liquidity capabilities necessary to execute its resolution strategy, and its plan should include analysis and projections of a range of liquidity needs during resolution.

The agencies received numerous comments on the liquidity section of the proposed guidance. One commenter supported including RLAP expectations in the final guidance for firms that adopt a U.S. SPOE resolution strategy.

Several commenters, however, requested that the agencies remove RLAP expectations from the final guidance, claiming that the expectation is redundant to certain liquidity requirements, such as the Liquidity Coverage Ratio (LCR) and Internal Liquidity Stress Testing (ILST). Several commenters also argued FBOs have reduced their activities in the United States, resulting in a reduced risk and financial stability profile, and that liquidity requirements set forth in existing regulatory requirements, and not RLAP, should set the binding constraint on the firms. In addition, one commenter expressed concern that RLAP expectations could make it more difficult for the global firm to deploy liquidity resources most effectively in stress. Several commenters also asserted that the agencies did not sufficiently explain the rationale for including RLAP expectations that the agencies had previously considered but omitted from the 2020 FBO Guidance.

Another commenter requested that for firms that adopt a U.S. MPOE resolution strategy, the guidance strengthen expectations for liquidity in resolution by including a procedure or protocol for liquidity related decisions, irrespective of resolution strategy. The commenter argued that the guidance should identify the importance of overcoming barriers to moving liquidity across material legal entities and clarify which types of transfers of liquidity are permissible for material entities in resolution.

After reviewing these comments, the agencies are finalizing this section of the guidance as proposed.[47] While the agencies previously did not adopt RLAP expectations in the 2020 FBO Guidance, the agencies' recent experiences highlighted the fast-moving nature of bank failure and resolution and underscored the need to maintain sufficient and appropriately positioned liquidity across the IHC and its subsidiaries to be prepared for a successful U.S. SPOE resolution strategy. The agencies also believe that RLAP expectations are appropriate in light of recent events demonstrating that liquidity pressures on these firms can change dramatically over a short period of time. Having sufficient and appropriately positioned liquidity at the time of failure increases the probability that operating subsidiaries will have enough liquidity to be able to continue to operate while the firm is being resolved, and the RLAP expectations help achieve this goal.

RLAP expectations are not addressed by ILST and other regulatory requirements. Maintaining sufficient and appropriately positioned liquidity is critical to executing a U.S. SPOE resolution strategy, regardless of the size and complexity of the banking organization. The LCR and ILST requirements that commenters referenced serve a different purpose—to promote resilience of firms' funding profiles—and are not focused on resolution planning.

RLAP expectations also would not hinder a specified firm's global parent from deploying liquidity resources most effectively in stress. Unlike ILST and other regulatory requirements, RLAP is not a regulatory requirement, but rather an example of a decision-making framework for liquidity needs and positioning in support of an effective SPOE resolution strategy that could be consistent with effective resolution planning. As discussed elsewhere, the guidance is not a legally binding enforceable requirement and is therefore not a binding constraint, and the specified firms are not required to adopt a U.S. SPOE resolution strategy or develop RLAP capabilities. To the extent a specified firm adopts a U.S. SPOE resolution strategy and uses RLAP, any reduction in flexibility would be balanced against the benefits prepositioning provides in enabling subsidiaries to continue to operate while the firm is being resolved.

Finally, the agencies are not establishing expectations for procedures or protocols for liquidity related decisions and clarifying the types of transfers of liquidity that are permissible for material entities in resolution for firms that adopt a U.S. MPOE strategy. The Rule already includes requirements for firms to include detailed descriptions of funding and liquidity needs and resources of material entities, and to identify interconnections and interdependencies related to liquidity arrangements.[48] Beyond the assumptions specified in the final guidance related to liquidity, additional details of how each firm provisions liquidity in the lead up to and during resolution are not needed at this time. Furthermore, firms should follow procedures and protocols that are aligned with their larger liquidity management frameworks to facilitate their preferred resolution strategies.

F. Governance Mechanisms

The agencies proposed separate governance mechanisms expectations based on a firm's preferred resolution strategy. Specified firms that use an SPOE resolution strategy would have been expected to develop an adequate governance structure with triggers that identify the onset, continuation, and increase of financial stress to ensure that

[47] The agencies are clarifying one aspect of RLAP guidance that could be construed to impose a requirement on the specified firms.

[48] 12 CFR 243.5(c)(1)(iii) and (g) and 381.5(c)(1)(iii) and (g).

there is sufficient time to prepare for resolution-related actions. For specified firms that adopt a U.S. MPOE resolution strategy, the agencies proposed providing governance mechanisms expectations to ensure communication and coordination between the governing body of the U.S. operations and the foreign parent.

The agencies requested comment on whether to apply additional governance mechanisms expectations to firms contemplating a U.S. MPOE resolution strategy. One commenter called for the agencies to apply similar expectations regardless of a firm's preferred resolution strategy, arguing that many aspects of resolution planning are the same or similar for U.S. MPOE and U.S. SPOE resolution strategies. The commenter also encouraged the agencies to adopt expectations that firms articulate their internal legal strategy, processes for making key decisions, and roles and responsibilities leading up to and after bankruptcy. Another commenter argued in favor of not providing any governance mechanisms guidance to firms adopting a U.S. MPOE resolution strategy.

Other commenters called on the agencies to limit the expectations for firms adopting a U.S. SPOE resolution strategy. These commenters contended that expectations should not apply to a specified firm that does not rely on foreign support or transfer of prepositioned resources during runway or resolution, and that the expectations as proposed were too prescriptive or burdensome. One commenter requested that the agencies clarify why expectations (for foreign parent support, triggers, and support within the United States) in the 2020 Proposed FBO Guidance but were not finalized were included in the proposed guidance for FBOs that adopt a U.S. SPOE resolution strategy.

The agencies are finalizing this section of the guidance as proposed.[49] For firms that adopt a U.S. MPOE resolution strategy, the governance mechanisms guidance already includes expectations regarding the role of U.S. board and senior management under the U.S. resolution strategy as well as expectations regarding triggers and other internal-decision-making processes relating to the decision to implement the strategy. Adopting expectations for the processes for making key decisions, internal legal strategy, and roles and responsibilities would be duplicative. In addition, under a U.S. MPOE resolution strategy, certain material entities' entry into resolution is typically determined by or dependent on the actions of supervisory and resolution authorities. As a result, additional expectations similar to those included for a U.S. SPOE resolution strategy (additional triggers, playbooks, foreign parent support, and support within the United States) would not meaningfully improve the resolvability of specified firms adopting a U.S. MPOE resolution strategy.

Governance mechanisms expectations for firms adopting a U.S. SPOE resolution strategy are reasonable in light of the events of March 2023. The stress experienced by and the failure of several large banking organizations in March 2023 highlighted the potentially fast-moving nature of bank resolution, as several banking organizations entered resolution proceedings rapidly. These events also highlighted the potential for the failure of a large regional banking organization to affect financial stability. Successful execution of a U.S. SPOE resolution strategy—including the timely escalation of information to both U.S. IHC and foreign parent governing bodies in order to mitigate vulnerabilities and take corresponding actions, and the transmission of resources to and within an FBO's U.S. material entity subsidiaries—is unlikely to be successful within a short time frame without advance planning, appropriate governance structures and processes, and assessment of possible impediments, legal or otherwise. Accordingly, in contrast to the 2020 FBO Guidance, this final guidance contains governance mechanisms expectations related to foreign parent support, triggers, and support within the United States for specified firms adopting a U.S. SPOE resolution strategy. Because the Rule requires firms to contemplate resolution under the Bankruptcy Code, resolution-specific triggers facilitating communication and coordination are appropriate to promote resolvability even if a firm monitors and controls capital and liquidity and operations in business-as-usual (BAU) and if the preferred strategy of an FBO is a successful home country resolution. The agencies note that firms' BAU processes and procedures may be relevant to, and could inform, such resolution capabilities.

In addition, while a firm may understand the current legal risks associated with its preferred resolution strategy under the Bankruptcy Code, commercial and bankruptcy law and precedent evolve, and it is important that a firm's plan reflect an up-to-date assessment of possible legal challenges and potential mitigants. The expectation that a resolution plan includes such an analysis of potential challenges does not constrain firms' ability to determine the particular form and structure of the framework developed to support its particular resolution strategy and needs. The agencies also note that the guidance only relates to an analysis of planned support; there are no expectations that a plan should provide for such support.

Regarding the provision of foreign support or transfer of prepositioned resources during runway or resolution, it should be noted that neither the final guidance nor the Rule endorses a specific mechanism for the provision of such support. Instead, a firm that adopts a U.S. SPOE resolution strategy should explain in its resolution plan how it will meet its U.S. resource needs, such as through prepositioning, parent support, and other options.

G. Operational

For firms that adopt a U.S. SPOE resolution strategy, the agencies proposed adopting portions of the operational expectations of the 2020 FBO Guidance, 2020 Proposed FBO Guidance, and SR letter 14–1,[50] with modifications based on the specific characteristics and complexities of the specified firms. The proposal contained expectations on payments, clearing, and settlement activities (PCS); managing, identifying, and valuing collateral; management information systems; shared and outsourced services; and qualified financial contracts (QFC). For firms that adopt a U.S. MPOE resolution strategy, the agencies proposed expectations based on SR letter 14–1 and the 2020 FBO Guidance that are most relevant to a U.S. MPOE resolution strategy. As noted in the proposal, development and maintenance of operational capabilities is important to support and enable execution of a firm's preferred resolution strategy, including providing for the continuation of identified critical operations and preventing or mitigating adverse effects on U.S. financial stability. The failure of several large banking organizations in March 2023 highlighted the importance of firm capabilities to generate timely and accurate data on a material entity basis. For example, having the ability to

[49] As noted above, the agencies made several minor, non-substantive changes from the proposal, including to align the wording of guidance directed at firms that adopt a U.S. SPOE resolution strategy and firms that adopt a U.S. MPOE resolution strategy. The agencies also provided one minor clarifying example of an external stakeholder that could be relevant for purposes of a governance playbook.

[50] SR letter 14–1, ''Principles and Practices for Recovery and Resolution Preparedness'' (Jan. 24, 2014), available at: *https://www.federalreserve.gov/supervisionreg/srletters/sr1401.htm.*

produce a list of key management and support employees at the legal entity level is critical both to continue operations pursuant to a U.S. SPOE resolution strategy and to facilitate the work of resolution authorities in a U.S. MPOE resolution strategy. As a result, in a change from the 2020 FBO Guidance, the agencies proposed and are now finalizing management information systems guidance for both U.S. SPOE and U.S. MPOE resolution strategies. The agencies also proposed, in a change from the 2020 FBO Guidance, and are now finalizing guidance on QFCs for the U.S. SPOE resolution strategy, as not all firms subject to the final guidance are subject to the QFC stay rules of the Board, Office of the Comptroller of the Currency, and the FDIC.[51]

The Agencies received three comments on the proposed guidance. One commenter suggested that the proposed guidance related to management information systems, qualified financial contracts, and shared and outsourced services should help strengthen the specified firms' operational readiness. Another commenter argued that the proposed guidance's expectation that MPOE firms remediate vendor arrangements to support continuity of shared and outsourced services is overbroad. The commenter asserted that this expectation is inappropriate for MPOE firms that mostly receive external services through its IDI because termination of such vendor contracts due to *ipso facto* clauses would be stayed by the FDI Act,[52] and as many firms include resolution-resilient terms in vendor contracts when those contracts undergo periodic review and renewal. The commenter recommended that the Agencies specify that this expectation would apply only to contracts not covered by the FDI Act stay. Another commenter contended that firms with limited PCS activities, such as firms without identified critical operations related to those activities, should not have to develop the same capabilities as firms with more complex PCS activities.

After review and consideration of these comments, the agencies are finalizing this area of the guidance with one clarification applicable only to firms that adopt a U.S. SPOE strategy, and one modification applicable to firms with either U.S. resolution strategy. The proposed guidance for firms that adopt a U.S. SPOE strategy stated that a firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations or core business lines. Implied in the concept of supporting identified critical operations or core business lines is the notion that a firm would need to be able to execute its resolution strategy. Accordingly, the final guidance for firms that adopt a U.S. SPOE strategy explicitly states that a firm's implementation plan to ensure continuity of shared services should include those services that are material to the execution of the firm's resolution strategy.

The agencies recognize that firms anticipate relying on external parties for the execution of some aspects of the resolution strategy, and the proposal included and the final guidance maintains the expectation that a firm identify and support the continuity of outsourced services that support critical operations or are material to the execution of the U.S. resolution strategy. Such outsourced services that firms may rely on could be employing outside bankruptcy counsel and consultants to help prepare documents needed to file for bankruptcy, and to represent the firm during the course of the bankruptcy proceedings. The agencies expect that covered companies engage in advance planning to help facilitate their ability to complete all filings, motions, supporting declarations and other documents to prepare for and file an orderly resolution in bankruptcy. In recognition of this expectation, the final guidance clarifies that—regardless of strategy—those professionals' services could be material to the execution of a firm's U.S. resolution strategy and, if so, should be accounted for in the firm's resolution plan. Accordingly, the agencies expect that firms should prepare during business-as-usual to ensure they can complete and file all documents needed to initiate their preferred resolution strategy.

The other aspects of this section of the guidance are being finalized as proposed. The comment addressing contract remediation correctly observes that the FDI Act permits the FDIC as receiver of a failed IDI to enforce contracts with that IDI notwithstanding any provisions in the contract permitting termination due to insolvency or appointment of the receiver. However, it is advantageous for contracts that support identified critical operations or that are material to the execution of the resolution strategy to not purport to permit termination. Counterparties may not be aware of the receiver's authority under the FDI Act to enforce such agreements, potentially requiring the receiver to seek authority from a court to compel the counterparty's performance, which could lead to interruption of identified critical operations and capabilities needed to execute the resolution strategy. Further, counterparties located overseas may not recognize the authority afforded the receiver to compel the performance of contracts. The agencies recognize that contract remediation is an ongoing process and encourage firms to make such changes proactively.

Regarding PCS activities, as discussed elsewhere,[53] the Agencies note that the level of detail provided in a firm's plan should be both consistent and commensurate with the firm's risk and activities.

H. Legal Entity Rationalization and Separability

For foreign banking organizations that adopt a U.S. SPOE resolution strategy, the agencies proposed substantively adopting legal entity rationalization (LER) expectations from the 2020 FBO Guidance and separability expectations from the 2020 FBO Proposed Guidance. The LER expectations stated that firms should maintain a structure that facilitates orderly resolution of their operations, including by developing and describing criteria that consider the best alignment of legal entities and business lines and facilitate resolvability of U.S. operations. The separability expectations provided that firms should identify discrete U.S. operations that could be sold or transferred in resolution under a range of potential failure scenarios. The agencies declined to finalize the separability expectations in the 2020 Proposed FBO Guidance, stating that the agencies had found that the separability options within the United States were few, their inclusion in resolution plans had yielded limited new insights, and the agencies expected that such information would be obtainable through international collaboration with home country regulators.

For FBOs that adopt a U.S. MPOE resolution strategy, the agencies proposed adopting LER expectations that were reduced relative to the 2020 FBO Guidance and separability expectations that were similarly reduced relative to the 2020 FBO Proposed Guidance. The LER expectations clarified that these firms should have legal entity structures that support their U.S. resolution strategy and describe these structures in their

[51] *See* 12 CFR part 47 (Office of the Comptroller of the Currency); 12 CFR part 252, subpart I (Board); and 12 CFR part 382 (FDIC).

[52] *See* 12 U.S.C. 1821(e)(13)(A).

[53] *See infra* section III.M of this document.

plans, as well as discuss their rationale for the legal entity structure in cases where a material entity IDI relies on other affiliates during resolution. The separability expectations requested that firms include options for the sale, transfer, or disposal of significant assets, portfolios, legal entities, or business lines in resolution.

The agencies received two comments on the separability guidance for foreign banking organizations. One commenter contended that separability analysis is inappropriate for businesses and legal entities that would be wound down in resolution, as it may not be feasible to sell or otherwise transfer such businesses, and that separability analysis would not enhance resolvability. The commenter further noted that many elements of the separability analysis may not be appropriate for firms that are not active in the investment banking space or lack large mergers and acquisitions teams. Another commenter called on the agencies not to reimpose separability expectations that had been proposed in 2020 but removed from the final 2020 FBO Guidance, instead suggesting that the agencies obtain separability insights through collaboration with home country regulators.

After review and consideration of the comments, the agencies are finalizing this guidance as proposed. The application of LER and separability expectations to FBOs, whether they adopt an SPOE or MPOE strategy, remains appropriate because these firms have significant non-bank or cross-national activities, as well as interconnections among U.S. IHC subsidiaries, U.S. branches, and the foreign parent. The 2023 bank failures highlighted the benefit of understanding the separability options of U.S. operations of FBOs, particularly for the purpose of informing discussions with foreign regulatory authorities regarding the potential restructuring of an FBO's U.S. operations in resolution. While the agencies continue to discuss firm separability and other topics with home country regulators, identification of separability options for U.S. operations and inclusion of supporting analysis in resolution plans provides important information to complement and enhance ongoing international coordination.

Finally, the agencies moved expectations on LER governance processes from the separability section to the LER section of the guidance text.

I. Insured Depository Institution Resolution

Background

In the proposal, the agencies provided clarifying expectations as to how a firm adopting a U.S. MPOE resolution strategy with a material entity IDI should explain how the IDI can be resolved under the FDI Act in a manner that is consistent with the overall objectives of the resolution plan. In particular, the proposed expectations for IDI resolution were designed to support the resolution plans' effectiveness in substantially mitigating the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States, while also adhering to the legal requirements of the FDI Act without relying on the assumption that the systemic risk exception will be invoked in connection with the resolution of the firm. For example, the agencies proposed clarifying that if a firm adopting a U.S. MPOE resolution strategy selects an IDI resolution strategy other than a payout liquidation, the firm's plan should provide information supporting the feasibility of the firm's selected strategy, although such a feasibility analysis need not consist of a full FDI Act least-cost requirement analysis. The agencies proposed that a firm could instead provide a more limited analysis. The proposal noted that the same expectations would not be applicable to firms adopting an SPOE resolution strategy because the U.S. IDI subsidiaries of such firms would not be expected to enter resolution.

The agencies received a number of comments on the proposed guidance related to the resolution of a subsidiary material entity U.S. IDI. Some commenters requested additional clarity on how the firm's plan should address the expectation that the plan include an analysis of how the resolution strategy could potentially meet the FDIC's statutory least-cost requirement. One commenter suggested that the agencies should require firms to develop resolution strategies involving BDIs. This commenter recommended that the guidance address how firms could describe and quantify the value of the firm's assets transferred to such a BDI, and that the agencies should provide guidance so that firms would address how the resolution plan would incorporate the value of the IDI's assets and liabilities, including its franchise value, and how the preferred resolution strategy would result in a least-costly resolution. The commenter also recommended that firms and regulators reach agreement on certain assumptions regarding valuations.

Another commenter argued that firms adopting a U.S. MPOE strategy should not be expected to demonstrate that their preferred strategy would be consistent with the FDIC's statutory least-cost requirement. This commenter stated that efforts to conduct a hypothetical least-cost requirement analysis, or a proxy for that analysis, would be of no or minimal value to the FDIC in an actual resolution event. The commenter claimed that it would not be possible to conduct a least-cost test requirement analysis in a resolution plan submission in the absence of actual bids from actual buyers. Instead, the commenter recommended that the guidance provide expectations for how firms selecting a U.S. MPOE strategy could demonstrate their valuation capabilities. The commenter also suggested that because a least-cost requirement analysis is not a component of the Proposed IDI Rule, it also should not be a component of the guidance. This commenter requested sufficient time to address any finalized guidance that provides expectations for including least-cost requirement analysis.

Several commenters suggested that the Proposed IDI Rule is a better forum to address how the IDI subsidiary of a specified firm selecting a U.S. MPOE strategy can be resolved under the FDI Act in a manner that is consistent with the FDI Act. Several commenters also suggested that the agencies' expectations for resolution plan submissions under the Rule should align with the requirements of the FDIC's IDI Rule plan submissions.

One commenter questioned whether firms have sufficient information about how the FDIC would conduct a least-cost test analysis in order for a firm to conduct an analysis of whether its preferred strategy could meet the FDIC's statutory least-cost requirement. This commenter stated that meeting the expectations in the proposal would involve significantly more detail and comparative analysis than the IDI Rule, and that, in order to prevent inconsistency and undue burden, the guidance should instead follow the IDI Rule so that firms can reference their IDI Rule submissions when preparing and submitting resolution plans under the guidance to reduce duplication and increase consistency.

When an IDI fails and the FDIC is appointed receiver, the FDIC generally must use the resolution option for the failed IDI that is least costly to the DIF of all possible methods (the least-cost

requirement).[54] A resolution plan that contemplates the separate resolution of a U.S. IDI that is a material entity and the appointment of the FDIC as receiver for that IDI should explain how the resolution could be achieved in a manner that adheres to applicable law, including the FDI Act, and that would achieve the overall objectives of the resolution plan. Prior resolution plans that have addressed the resolution of the IDIs in MPOE strategies have sometimes included resolution mechanics that are not consistent with the FDI Act, including inappropriate assumptions that uninsured deposits could automatically be transferred to a BDI.

Separate and distinct from the Rule, the FDIC has a regulation, the IDI Rule, requiring certain IDIs (covered IDIs or CIDIs) to submit to the FDIC resolution plans providing information about how the CIDI can be resolved under the FDI Act. Contemporaneous with publication of the proposed guidance, the FDIC published in the **Federal Register** the Proposed IDI Rule, a proposed rulemaking to amend and restate the IDI Rule, which has since been finalized and was published in the **Federal Register** on July 9, 2024.

The IDI Rule and the Rule each have different goals, and, accordingly, the expected content of the respective resolution plans is different. The purpose of the IDI Rule is to ensure that the FDIC has access to the information it needs to resolve a CIDI efficiently in the event of its failure, including an understanding of the CIDI's ability to produce the information the FDIC would need to conduct a least-cost determination under a wide range of circumstances.

The Rule serves a different purpose. The Rule requires a covered company to submit a resolution plan that would allow rapid and orderly resolution of the subsidiaries and operations of a foreign covered company that are domiciled in the United States under the Bankruptcy Code in the event of material financial distress or failure.

The regional bank failures in March 2023 demonstrated that banking organizations of size and complexity similar to that of the specified firms—or even smaller and less complex banking organizations—can be disruptive to U.S. financial stability. In the case of Silicon Valley Bank and Signature Bank, uninsured depositors would have faced the potential for significant losses had the least costly approach to resolution, a payout liquidation, been adopted. The potential for contagion from the deposit runs at the firms that failed, as well as related potential for risks to the economy and financial stability, led the Secretary of the Treasury, in consultation with the President and after a written recommendation from the FDIC's Board of Directors and the Board, to invoke the systemic risk exception to enable the FDIC to resolve these institutions in a way that would avoid or mitigate serious adverse effects on economic conditions or financial stability. Though a specified firm would be conducting its analysis without input in the form of actual bids from potential buyers, the agencies expect firms to use available information to estimate the value of its franchise for purposes of conducting the limited least-cost analysis articulated in the guidance.

If a firm's resolution plan under the Rule that includes a U.S. MPOE strategy calls for resolving an IDI using a strategy other than payout liquidation, the plan should explain how the requirements of the FDI Act could be met without depending upon extraordinary government support. Even though this analysis is not binding in an actual resolution scenario, an analysis showing that the firm's preferred resolution strategy could satisfy requirements of the FDI Act could help the firm demonstrate that the resolution plan's preferred strategy could be executed in a manner consistent with applicable law. If a resolution plan does not provide such an explanation, it may be appropriate to conclude that the strategy would not satisfy the FDI Act's relevant provisions, such as the least-cost requirement, which could represent a weakness in the plan. As a general matter, the agencies followed this practice in reviewing previous full resolution plan submissions.

Guidance. In response to commenters, the agencies are providing 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 final guidance. The final guidance does not express a change in the agencies' expectations. Instead, the final guidance provides more detail on approaches a firm can use to explain how the resolution of its IDI subsidiary can be achieved in a manner that substantially mitigates the risk that the firm's failure would have serious adverse effects on U.S. financial stability while also complying with the statutory and regulatory requirements governing IDI resolution. The final guidance lists a number of different common strategies for resolving an IDI and describes the kind of information that a firm could provide to explain how a resolution using one of the example strategies could be consistent with the least-cost requirement. The final guidance also provides information about calculating the value of an IDI's assets and its franchise value. Finally, the final guidance explicitly notes that the agencies are not expecting a firm to provide a complete least-cost analysis.

Strategies for Resolving an IDI

Purchase and Assumption Transaction. The FDIC typically seeks to resolve a failed IDI by identifying, before the IDI's failure, one or more potential acquirers so that as many of the IDI's assets and deposit liabilities as possible can be sold to and assumed by the acquirer(s) instead of remaining in the receivership created on the failure date.[55] This transaction form, termed a purchase and assumption or P&A transaction, has often been the resolution approach that is least costly to the DIF, and is usually considered the easiest for the FDIC to execute and the least disruptive to the depositors of the failed IDI—particularly in the case of transactions involving the assumption of all the failed IDI's deposits by the assuming institution (an all-deposit transaction).

The limited size and operational complexity present in most small-bank failures have been significant factors in allowing the FDIC to execute P&A transactions with a single acquirer on numerous occasions. Resolving an IDI via a P&A transaction over the closing weekend, however, has not always been available to the FDIC, particularly in failures involving large IDIs. P&A transactions require lead time to identify potential buyers and allow due diligence on, and an auction of, the failing IDI's assets and banking business, also termed its franchise. The acquiring banks must also have sufficient excess capital to absorb the failed IDI's assets and deposit franchise, sufficient expertise to manage business integration, and the ability to comply

[54] *See* 12 U.S.C. 1823(c)(4)(A). A deposit payout and liquidation of the failed IDI's assets (payout liquidation) is the general baseline the FDIC uses in a least-cost requirement determination. *See* 12 U.S.C. 1823(c)(4)(D). An exception to this requirement exists when a determination is made by the Secretary of the Treasury, in consultation with the President and after a written recommendation from two-thirds of the FDIC's Board of Directors and two-thirds of the Board, that complying with the least-cost requirement would have serious adverse effects on economic conditions or financial stability and implementing another resolution option would avoid or mitigate such adverse effects. *See* 12 U.S.C. 1823(c)(4)(G). A specified firm should not assume the use of this systemic risk exception to the least-cost requirement in its resolution plan.

[55] See generally *https://www.fdic.gov/resources/resolutions/bank-failures/* for background about the resolution of IDIs by the FDIC.

with several legal requirements. Larger failed banks can pose significant, and potentially systemic, challenges in resolutions that make a P&A transaction less viable. These challenges include: a more limited pool of potential acquirers as a failed IDI increases in size; operational complexities that require lengthy advance planning on the part of the IDI and the FDIC; the development of certain expertise; potential market concentration and antitrust considerations; and potentially the need to maintain the continuity of activities conducted in whole or in part in the IDI that are critical to U.S. financial stability.

Alternative Resolution Strategies. If no P&A transaction that meets the least-cost requirement can be accomplished at the time an IDI fails, the FDIC must pursue an alternative resolution strategy. The primary alternative resolution strategies for a failed IDI are (1) a payout liquidation, or (2) utilization of a BDI.

Payout Liquidation. The FDIC conducts payout liquidations by paying insured deposits in cash or transferring the insured deposits to an existing institution or a new institution organized by the FDIC to assume the insured deposits (generally, a Deposit Insurance National Bank or DINB). In payout liquidations, the FDIC as receiver retains substantially all of the failed IDI's assets for later sale, and the franchise value of the failed IDI is lost. A payout liquidation is often the most costly and disruptive resolution strategy because of this destruction of franchise value and the FDIC's direct payment of insured deposits.

Bridge Depository Institution. If the FDIC determines that temporarily continuing the operations of the failed IDI is less costly than a payout liquidation, the FDIC may organize a BDI to purchase certain assets and assume certain liabilities of the failed IDI.[56] Generally, a BDI would continue the failed bank's operations according to business plans and budgets approved by the FDIC and carried out by FDIC-selected BDI leadership. In addition to providing depositors continued access to deposits and banking services, the BDI would conduct any necessary restructuring required to rationalize the failed IDI's operations and maximize value to be achieved in an eventual sale. Subject to the least-cost requirement, the initial structure of the BDI may be based upon an all-deposit transaction, a transaction in which the BDI assumes only the insured deposits, or a transaction in which the BDI assumes all insured deposits and a portion of the uninsured deposits. Once a BDI is established, the FDIC seeks to stabilize the institution while simultaneously planning for the eventual exit and termination of the BDI. In exiting and terminating a BDI, the FDIC may merge or consolidate the BDI with another depository institution, issue and sell a majority of the capital stock in the BDI, or effect the assumption of the deposits or acquisition of the assets of the BDI.[57] While utilizing a BDI can avoid the negative effects of a payout liquidation, such as destruction of franchise value, many of the same factors that challenge the feasibility of a traditional P&A transaction also complicate planning for the termination of a BDI through a sale of the whole entity or its constituent parts.

Though one commenter suggested that the guidance should require firms to develop resolution strategies involving BDIs, the agencies do not maintain an expectation that firms will develop resolution strategies involving BDIs. The expectations provided in this guidance are also intended to be helpful to firms that have chosen to involve a BDI in their resolution strategy.

Least-Cost Analysis for Resolution Plans. The final guidance does not include an expectation that firms provide in their resolution plans a complete least-cost analysis. Such an analysis would, for example, include a comparison of the preferred strategy for resolving an IDI that is a material entity against every other possible resolution method. While a firm may choose to provide a complete least-cost analysis, this guidance discusses expectations regarding a limited least-cost analysis that would explain how the firm's preferred U.S. strategy is not more costly than a payout liquidation and, if applicable, an insured-only BDI.

One commenter suggested that the agencies should provide guidance for how firms should address the valuation of an IDI's assets and liabilities, including its franchise value. In this final guidance, the agencies are providing additional explanation for how firms can develop and support the valuation of the IDI's assets and liabilities in an IDI resolution. This guidance includes a description of how firms can assess the franchise value of a firm's business.

Example. The following example should be read in conjunction with section VIII of the guidance text, *Insured Depository Institution Resolution.* This example is only intended to provide firms with an illustration of the types of considerations and calculations that could be included in a firm's analysis explaining how its preferred strategy would be less costly than a payout liquidation and, if applicable, an insured-only BDI. This example is not intended to serve as a template for firms or to provide guidelines for reasonable valuations of a firm's assets or liabilities. The valuations described in this example are intended to be illustrative and are not guidance about the likely values of a firm's assets and liabilities in an individual resolution plan or in resolution.

Bank A has $500 billion in total assets, consisting of $250 billion loans; $75 billion cash and equivalents; $125 billion in investment securities; and other assets totaling $50 billion. The bank's initial funding structure consists of $400 billion in deposits; $25 billion in various unsecured payables and debt; $25 billion in secured funding; and $50 billion in capital instruments. For this example, the bank assumes it would encounter idiosyncratic events at a time when severely adverse economic conditions are present and this combination of events would cause the bank to be closed by the chartering authority and the FDIC appointed as receiver. The illustrative tables below reflect values as of the appointment of the FDIC as receiver.

The initial events combine to cause immediate losses of $25 billion recognized as direct operating charges and $15 billion through write-downs/provision expense for the loan portfolio, and $60 billion of deposit runoff occurs.

- For purposes of conducting the analysis, the firm's management assumes that additional value diminution is present in the loan portfolio. Accordingly, after thoroughly analyzing the quality of its loan portfolio and determining the potential for additional credit losses, as well as considering the market value of the loan portfolio based upon the type of loans it holds in comparison with comparable sales transactions, and after further considering sensitivity testing, management supports an estimate near $175 billion for the loan portfolio.
- In developing its Resolution Plan, the firm's management further supports that $40 billion of additional deposit runoff would occur in addition to the initial $60 billion. At the time of failure, Bank A's remaining $300 billion of deposits are 60 percent insured and 40

[56] Before a BDI may be chartered, the chartering conditions set forth in 12 U.S.C. 1821(n)(2) must also be satisfied. For purposes of this guidance, if the Plan provides appropriate analysis concerning the feasibility of the BDI strategy, there is no expectation that the resolution plan also demonstrates separately that the conditions for chartering the BDI have been satisfied.

[57] 12 U.S.C. 1821(n)(10).

percent uninsured. The ratio of insured deposits to uninsured deposits is used to calculate the pro rata recovery of depositors and the losses imposed on the DIF as a result.[58]

• The deposit runoff is assumed to be met by using $50 billion of cash and selling $50 billion of investment securities. The remaining $75 billion investment portfolio is entirely invested in short-term U.S. Treasury securities with an estimated value of $70 billion.

• The other assets are implicated in the initial idiosyncratic loss. These other assets include fixed assets, foreclosed property, intellectual property, and miscellaneous items with a market value of $25 billion.

• As shown in table 1, the Plan provides an analysis of the payout liquidation strategy. This strategy includes an expected loss to the DIF of $18 billion.

TABLE 1—ILLUSTRATION OF BANK A PAYOUT LIQUIDATION—COST ESTIMATE

[*dollars in billions*]

Liquidation market value		Payout liquidation liability claim and amount recovered		
Category	Value	Category	Claim	Recovery/(loss)
Loans	$175	Secured Claims	$25	$25/($0)
Securities	70	Deposits Insured	180	$162/($18)
Cash	25	FDIC incurs the loss for the insured deposits so that all insured deposits are fully repaid.		
Other	25			
Total	295	Deposits Uninsured	120	$108/($12)
		Unsecured Claims/Debt	25	$0/($25)
		Equity Holders	....	No recovery

Loss to Deposit Insurance Fund (to make whole insured depositors) = $18 billion[59]
Losses to uninsured depositors = $12 billion.

• However, the Plan also asserts and supports that the payout liquidation approach fails to reflect the franchise value of the combined deposit and loan relationships stemming from considerations such as the low administrative costs associated with servicing large deposits, the elimination of significant customer acquisition costs, the stable fee income stream associated with the accounts due to barriers to entry for certain products, and the importance and value of integrating the loan and deposit products.

• The Plan calculates, and provides the analysis supporting the calculation, that the economic benefit of packaging these benefits together in an all-deposit BDI is $20 billion, which is reflected as a bid premium to liquidation pricing in table 2.

• The result is that the all-deposit BDI is less costly to the DIF than liquidation because of the inclusion of the bid premium.

TABLE 2—ILLUSTRATION OF BANK A PREFERRED STRATEGY—COST ESTIMATE

[*dollars in billions*]

All deposit bridge market value		All deposit bridge bank liability claim and amount recovered		
Category	Value	Category	Claim	Recovery/(loss)
Loans	$175	Secured Claims	$25	$25/($0)
Securities	70	Deposits Insured	180	$174/($6)
Cash	25	FDIC incurs the loss for the insured deposits so that all insured deposits are fully repaid.		
Other	25			
Sub Total	295	Deposits Uninsured	120	$116/($4)*
Bid Premium	20	Unsecured Claims/Debt	25	$0/($25)
Total	315	Equity Holders	....	No recovery

Loss to Deposit Insurance Fund (to make whole insured and uninsured depositors) = $10 billion, which is less than the payout liquidation loss.[60]
* Losses to uninsured depositors total $4 billion and are absorbed by the DIF.

J. Derivatives and Trading Activities

The agencies requested comment on whether to provide derivatives and trading activities guidance for specified firms that adopt a U.S. SPOE or MPOE resolution strategy. Some commenters argued that no derivatives and trading guidance is needed for foreign triennial full filers because they have limited derivatives and trading portfolios, particularly relative to the U.S. GSIB banking organizations covered by such guidance. These commenters also noted that not all of the biennial filers, which are Category I firms, are subject to this type of guidance. These commenters also argued that if the agencies adopt

[58] *See infra* note 60.

[59] Calculation: (1) $295 billion asset value less secured claim of $25 billion = $270 billion available to depositors and junior claims; (2) $270 billion available spread pro-rata across $300 billion depositor class; 60 percent insured deposits and 40 percent uninsured deposits; (3) $270 billion × .6 = $162 billion paid to insured depositors; $270 billion × .4 = $108 billion paid to uninsured depositors.

[60] Calculation: (1) $315 billion asset value less secured claim of $25 billion = $290 billion available to depositors and junior claims; (2) $290 billion available spread pro-rata across $300 billion depositor class; 60 percent insured deposits and 40 percent uninsured deposits; (3) $290 billion × .6 = $174 billion paid to insured depositors; $290 billion × .4 = $116 billion paid to uninsured depositors.

guidance on this topic, the agencies should be careful to avoid extraterritorial application of the guidance and should use the derivatives and trading expectations in the 2020 FBO Guidance for certain FBOs as a model, rather than the expectations in the 2020 Proposed FBO Guidance.

Other commenters supported providing such guidance to foreign triennial full filers, despite observing that these firms engage in less activity than the biennial filers. One commenter cautioned that derivatives activities for foreign triennial full filers may increase in the future and proposed the inclusion of an orderly-wind-down analysis for firms with net derivatives exceeding a given threshold. Another commenter recommended that the guidance include expectations for: roles and responsibilities in derivatives unwind, plan reporting regarding derivatives exposures, plan risk assessments in cross-border activity, barriers to swift unwind of derivatives activities booked outside the United States, and capabilities to generate detailed derivative reports. This commenter also argued that firms should specify plans to wind-down between affiliates and external counterparties, as well as describe potential sale of some trading positions.

After reviewing the comments and considering the scope of derivatives and trading activities of foreign triennial full filers,[61] the agencies determined that the banking organizations that would be specified firms have limited derivatives and trading operations compared to the subset of Category I firms that are the subject of derivatives and trading guidance. The agencies also note that the Rule includes certain requirements regarding derivatives and trading activities with which all covered companies—including foreign triennial full filers—must comply, as well as the overall requirement to provide a strategic analysis describing the covered company's plan for orderly resolution.[62] The agencies believe that for this set of covered companies (including the two firms that are in scope of the 2020 FBO guidance), given their current activities, the topic of derivatives and trading activities is sufficiently addressed by the Rule. The agencies are therefore finalizing the guidance without including expectations on derivatives and trading activity for the specified firms.

The agencies also recognize that derivatives activity or risk for foreign triennial full filers may change in the future. The agencies may consider the need for firm-specific derivatives and trading expectations in the future for specified firms that substantially increase their derivatives and trading activities or change in a way such that having a strategy to wind-down their derivatives portfolios is critical to their resolvability.

K. Branches

The agencies received no comments regarding the branches section of the proposed guidance. The agencies are finalizing the section as proposed.

L. Format and Structure of Plans; Assumptions

This section of the proposal described the agencies' preferred presentation regarding the format, assumptions, and structure of resolution plans. Under the proposal, plans would have been expected to contain an executive summary, a narrative of the firm's resolution strategy, relevant technical appendices, and a public section as detailed in the Rule. The proposed format, structure, and assumptions were generally similar to those in the 2020 FBO Guidance, except that the proposed guidance reflected the expectations that (a) a firm should support any assumptions that it will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy and clarified expectations around such assumptions, and (b) a firm should not assume the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act. In addition, for firms that adopt a U.S. MPOE resolution strategy, the proposal included the expectation that a plan should demonstrate and describe how the failure event(s) results in material financial distress of the firm's U.S. operations, including consideration of the likelihood of the diminution the firm's liquidity and capital levels prior to bankruptcy.

The final guidance also includes an expectation contained in the 2019 U.S. GSIB Guidance and 2020 FBO Guidance regarding the parameters of economic forecasting in resolution plan submission. Those guidance documents stated that a resolution plan should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which a resolution is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.[63] While this assumption is similar to a provision in the Rule,[64] the agencies believe it is important to provide guidance to firms about the timing of the required assumption in the Rule. The Board provides DFAST scenario information to the specified firms through the Board's public website. As such, the information is available to specified firms who themselves or their IHC subsidiaries are not subject to stress testing requirements.[65]

The agencies received one comment in response to a question posed regarding assumptions related to lending facilities, including the Discount Window. The commenter supported the proposed assumptions guidance regarding these facilities and recommended that the agencies consider providing additional guidance on the assumptions related to the amount, timing, and limitations of liquidity that might become available from these sources. However, the additional guidance requested by the commenter is unnecessary, and the agencies are finalizing this section of the guidance as proposed with one clarification. Specifically, the proposed guidance regarding the relevant assumption already includes references to timing and limitations of liquidity commensurate with the activities of firms subject to the guidance.

As a clarification, the agencies have added a reference to Federal Home Loan Banks (FHLBs) as a type of borrowing for which firms should provide support in their resolution plans if they assume access during the period immediately prior to entering bankruptcy. The agencies' experiences in 2023 showed that many IDIs depend heavily on FHLB funding in times of stress and, accordingly, the agencies expect firms to be prepared to support any assumptions around such reliance for resolution planning purposes.

The agencies also received a comment recommending that more of firms' resolution plans be disclosed publicly to promote market discipline and specifically asking that the public portion of resolution plans describe

[61] *See* FR Y–15 Systemic Risk Report, 2nd quarter 2023 data. Publicly available at the National Information Center, *https://www.ffiec.gov/NPW. See also* Quarterly Report on Bank Trading and Derivatives Activities—Third Quarter 2023. Publicly available at *https://www.occ.gov/publications-and-resources/publications/quarterly-report-on-bank-trading-and-derivatives-activities/index-quarterly-report-on-bank-trading-and-derivatives-activities.html.*

See 12 CFR 243.2 and 381.2; 12 CFR 243.5(c) and (e)(6)–(7), and 381.5(c) and (e)(6)–(7).

[62] *Id.*

[63] 2019 U.S. GSIB Guidance at 84 FR 1459; 2020 FBO Guidance at 85 FR 83578.

[64] 12 CFR 243.4(h)(1) and 381.4(h)(1).

[65] *https://www.federalreserve.gov/publications/dodd-frank-act-stress-test-publications.htm.*

potential acquirers of operations in the event of resolution. The Rule establishes at a high-level the required content of the public section of a resolution plan,[66] and this final guidance clarifies the agencies' expectations with respect to that section. The agencies are mindful that the public disclosure of resolution plans, which may contain private commercial information, has both benefits and drawbacks, and the agencies believe that, at the moment, the Rule—revisions to which are outside the scope of this guidance—and the final guidance appropriately balance transparency with confidentiality.

In addition, the agencies received two comments requesting clarification of the definition of ''material entity'' as applied to certain non-U.S. entities, such as foreign offices, in order to improve the alignment of U.S. resolution planning with home country strategies. In particular, the commenter contended that an aspect of the proposed guidance, which concerned assumptions regarding material entities, was inconsistent with the Rule. This was not the agencies' intent, and the final guidance modifies the assumption's description of ''material entity'' for consistency with the Rule by adopting the language for that provision in the final 2020 FBO Guidance.

The agencies are otherwise finalizing this section of the guidance as proposed.[67] The agencies did not receive any comments in response to the proposal's request for comments about answers to frequently asked questions, and the agencies have not included those prior answers to frequently asked questions because these prior answers were in response to questions posed by only a portion of the firms to which this guidance is applicable and regarding guidance with certain different expectations.

M. Additional Comments

Differentiating Resolution Plan Guidance

The agencies received several general comments about whether the expectations in the proposal were suitably modified from expectations included in past resolution plan guidance and whether the proposal appropriately distinguished between different types of triennial full filers. Several commenters contended that the proposed guidance did not sufficiently differentiate expectations among firms subject to resolution planning guidance. Some of these commenters specifically claimed because the specified firms have limited operations compared to the U.S. GSIBs and have reduced the size and complexity of their U.S. operations, they should not be subject to similar resolution planning guidance as the U.S. GSIBs. One commenter argued that section 165 of the Dodd-Frank Act requires the agencies to differentiate the content of the resolution planning guidance; the proposal was too similar to the 2019 U.S. GSIB Guidance; and expectations for the specified firms should be further differentiated based on size, risk, and other factors. Another commenter argued that the proposed guidance favors the U.S. MPOE resolution strategy by including fewer expectations for firms that adopt that strategy and recommended that the guidance should be more aligned with guidance for resolution plan filers using a U.S. SPOE resolution strategy.

While the differentiation requirement in section 165 of the Dodd-Frank Act does not apply to this non-binding resolution plan guidance, the guidance differentiates among covered companies, 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 thresholds and risk-based indicators that form the basis of the risk-based category framework used by the Rule are designed to take into account an individual firm's particular activities and organizational footprint that may present significant challenges to an orderly resolution.[68] The Rule, using those categories, defines triennial full filers as one cohort because the failure of a Category II or III banking organization could pose a threat to U.S. financial stability. Banking organizations in these two categories often have similar characteristics, such as organizational structures, and similar resolution strategies that benefit from similar resolution guidance. Accordingly, the agencies believe the guidance is equally appropriate for all foreign Category II and III banking organizations. In addition, as discussed above, the regional bank failures in March 2023 demonstrated that the failure of banking organizations with $100 billion to $250 billion in total consolidated assets can be disruptive to U.S. financial stability. For these reasons, providing the guidance to foreign triennial full filers in that asset range is appropriate to prevent or mitigate risks to the financial stability of the United States.

Guidance for specified firms that adopt a U.S. SPOE resolution strategy is differentiated relative to guidance for Category I banking organizations (*i.e.,* the 2019 U.S. GSIB Guidance), notably with the absence of derivatives and trading expectations, which are applicable to most of the U.S. GSIBs, and other operational guidance as well as reduced separability expectations. Other aspects of the U.S. SPOE guidance are appropriately similar to the 2019 U.S. GSIB Guidance because the successful execution of a U.S. SPOE resolution strategy benefits from the capabilities discussed in the guidance. The guidance for firms that adopt a U.S. MPOE resolution strategy includes substantially simpler expectations, relative to U.S. SPOE guidance and the 2019 U.S. GSIB Guidance, in the areas of capital, liquidity, governance mechanisms, operational, legal entity rationalization and separability, derivatives and trading expectations, and PCS. Having simpler expectations relative to U.S. SPOE guidance does not necessarily mean a firm adopting a U.S. MPOE strategy will encounter fewer challenges developing its resolution plans; regardless of the strategy chosen, the firm is responsible for providing adequate information and analysis to demonstrate its plan will facilitate an orderly resolution. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate an orderly resolution, and the agencies are not suggesting that any firm change its resolution strategy, nor do the agencies identify a preferred strategy for a specific firm or set of firms.[69]

Finally, resolution plan guidance for Category II and III banking organizations is adapted to whether a covered company is based in the United States or in a foreign jurisdiction, with dedicated guidance documents for each type of firm. The Rule differentiates between banking organizations based on home jurisdiction,[70] and whether a banking organization is based in the United States can significantly impact its resolution strategy, resolution capabilities, and resolution planning. Accordingly, expectations for domestic and foreign-based triennial full filers are differentiated in the areas of capital, liquidity, governance mechanisms,

[66] 12 CFR 243.11(c) and 381.11(c).

[67] The agencies also are clarifying one expectation in the Financial Statements and Projections subsection of the Format and Structure of Plans; Assumptions section of the guidance that could be construed to impose a requirement on the specified firms.

[68] *See* 2019 **Federal Register** Publication at 84 FR 59197–201.

[69] See Section I.A *Resolution Plan Strategy* for further discussion about why the agencies are differentiating expectations depending on whether a firm adopts a U.S. SPOE or U.S. MPOE resolution strategy.

[70] *See* 12 CFR 243.5(a) and 381.5(a).

shared services, separability, branches, and group-wide resolution plans.

Relation to the 2020 Proposed FBO Guidance and 2020 FBO Guidance

Two commenters asserted that the agencies did not adequately explain why the proposal contained certain expectations the agencies had included in the 2020 Proposed FBO Guidance but declined to adopt in the 2020 FBO Guidance. One of these commenters also contended that the agencies did not adhere to certain administrative law requirements to identify and justify the proposed changes in expectations, particularly given that the agencies recently adopted the 2020 FBO Guidance. The proposal adequately identified and explained the proposed changes in resolution planning expectations,[71] and the guidance is permissible under section 165(d) of the Dodd-Frank Act and the Rule. However, to promote transparency in the guidance-making process, the agencies have further clarified areas in which and explained why the final guidance differs from the 2020 FBO Guidance and adopts certain expectations proposed in the 2020 Proposed FBO Guidance.[72]

The agencies also considered whether the 2020 FBO Guidance engendered reliance interests among the banking organizations that were the subject of that guidance. The agencies received no comments explicitly identifying such reliance interests; the 2020 FBO Guidance, like the current guidance, did not have the force and effect of law; and the 2020 FBO Guidance was applicable for only one resolution plan submission cycle, and only three banking organizations were within the scope of application of the 2020 FBO Guidance for the 2021 targeted plan submission (and one such banking organization no longer exists). Accordingly, the agencies believe that resolvability improvements that may arise from issuing this guidance outweigh any reliance interests generated by the 2020 FBO Guidance.

General Comments About the Proposal

The agencies received several general comments about resolution planning guidance. The agencies have considered these commenters' input but have made no modifications to the final guidance.

One commenter expressed support for the proposed guidance, in part because it reaffirms that bankruptcy is the preferred resolution strategy and would improve the quality of resolution plan submissions through enhanced information and assumptions, better enabling the resolution of a specified firm in an orderly manner. Another commenter praised the agencies' proposal for providing needed clarity and transparency on expectations for specified firms' resolution plans, and for making several improvements that will improve specified firms' resolution plans.

Another commenter recommended that the agencies adopt the content of the guidance in the form of a legally binding and enforceable rule, in part due to the size and scope of specified firms, the importance of resolution planning, and the financial stability implications involved. This commenter also suggested that the large bank failures in 2023 demonstrated the need for improvement in banking organizations' resolution planning and the agencies' process for assessing these plans.

Resolution planning is important to U.S. financial stability; however, the agencies have not made changes to the guidance in response to these comments. The Rule, which is legally enforceable, identifies the specific topics that must be addressed in resolution plans. In contrast, resolution plan guidance outlines the agencies' supervisory expectations and priorities and articulates the agencies' general views regarding appropriate resolution planning practices for the specified firms. The final guidance provides examples of resolution plan content and capabilities that the agencies generally consider consistent with effective resolution planning. This approach is consistent with resolution planning guidance provided to other covered companies in the past, including guidance for Category I banking organizations and certain foreign Category II banking organizations.

A commenter argued that the agencies should allow for an iterative process for foreign triennial full filers to develop their strategies and capabilities, similar to the gradual maturation of Category I banking organizations' resolution plans. This commenter also argued the agencies should provide more than one year for firms to incorporate the final guidance into their next resolution plan submissions and that the guidance should not be the basis for a deficiency.

By statute and under the Rule, each resolution plan filer must submit a plan for orderly resolution under the Bankruptcy Code, and the agencies must assess the credibility of each plan. Each firm remains free to choose the resolution strategy it believes would most effectively facilitate an orderly resolution and the agencies are not suggesting that any firm change its resolution strategy, nor do the agencies identify a preferred strategy for a specific firm or set of firms. The standard of review for a resolution plan submission of a firm that transitions to a new strategy is the same as for any firm subject to the Rule. The agencies stated in the preamble to the 2019 revisions to the Rule that they would endeavor to finalize guidance a year in advance of the next applicable resolution plan submission date, and the agencies are extending the next resolution plan submission deadline for these firms to provide at least one year advanced notice of general guidance.[73] The agencies also reaffirm that the guidance does not have the force and effect of law, and the agencies do not take enforcement actions or issue findings based on resolution planning guidance.

A commenter argued that the various capital and resolution related proposals would, when considered holistically, disproportionately affect international banks and discourage international bank participation in U.S. banking and financial services markets to the detriment of U.S. financial stability. This commenter further cautioned that additional expectations for the U.S. operations of international banks could have unintended consequences and may lead to similar demands by other host-country supervisors, which could lead to fragmentation and less orderly resolution.

This guidance does not create additional requirements, but rather describes one approach to resolution plan content that could address the agencies' expectations. Furthermore, the agencies recognize that the specified firms' U.S. operations differ not only in the businesses they engage in, but also in their scope, size, and complexity. As such, the agencies expect that firms will adapt the guidance expectations in a manner commensurate with the risk profile of their U.S. operations. Doing so in a proportionate manner does not disadvantage the specified firms relative to domestic or foreign peers and the guidance does not serve as a deterrent to participating in the U.S. financial market.

Additionally, the agencies believe the guidance would help facilitate orderly resolution of U.S. operations of the specified firms in the event an orderly home-country led group-wide resolution is not feasible. The agencies note that to date, the existence of guidance for

[71] *See* proposed guidance at 88 FR 64641, 64644–45, 47.

[72] *See* sections III.C–L of this document.

[73] *See* 2019 **Federal Register** Publication at 84 FR 59204.

certain FBOs has not led to increased fragmentation, but rather has enhanced the dialogue among authorities about expectations for those FBOs' capabilities and resolution preparedness. The agencies will continue to engage with home-country authorities on resolution planning for foreign triennial full filers.

Comments About Resolution Planning Generally

Finally, a commenter asked the agencies to provide more information on the inconsistencies and problematic assumptions found in the 2021 plan submissions, as well as why the UBS Group AG's acquisition of CS and the U.S. domestic bank resolutions in 2023 prompted reversals of policy.

The agencies believe the preamble to the proposed guidance addresses the findings from the 2021 resolution plan submissions and learnings from the 2023 bank resolutions. The agencies would refer the commenter to other areas of this preamble for explanation of new areas of guidance, including the 2020 FBO Proposed Guidance. No specific changes have been made to the final guidance in response to this comment.

Comments Outside the Scope of Proposal

The agencies received several comments outside the scope of the proposed guidance. One commenter urged the agencies to shorten the length between resolution plan submissions under the Rule, from three to two years, and evaluate key aspects of plans annually. This commenter also recommended the agencies create an independent committee to advise the agencies on resolution planning matters as well as require large banking organizations to hold more capital generally. Another commenter argued that any LTD requirements should reflect a banking organization's preferred resolution strategy and not push a banking organization to adopt a particular strategy. That commenter also encouraged the FDIC to provide banking organizations at least one year to comply with any final IDI Rule and to align aspects of the IDI Rule with resolution planning under section 165(d) of the Dodd-Frank Act. The agencies have not made any changes to the guidance to address these comments.

IV. Paperwork Reduction Act

Certain provisions of the final guidance contain ''collections of information'' within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies have requested and OMB has assigned to the agencies the respective control numbers shown. The information collections contained in the final guidance have been submitted to OMB for review and approval by the FDIC under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final guidance under the authority delegated to the Board by OMB and has approved these collections of information.

The agencies did not receive any comments related to the PRA.

The agencies have a continuing interest in the public's opinions of information collections. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** caption in the proposed guidance notice. All comments will become a matter of public record. Written comments and recommendations for these information collections also should be sent within 30 days of publication of this document to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Collection title: Board: Reporting Requirements Associated with Regulation QQ.

FDIC: Reporting Requirements Associated with Resolution Planning.

OMB control number: Board 7100–0346; FDIC 3064–0210.

Frequency: Triennial, Biennial, and on occasion.

Respondents: Bank holding companies (including any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978 and meets the relevant total consolidated assets threshold) with total consolidated assets of $250 billion or more, a bank holding companies with $100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

Current actions: The final guidance modifies certain provisions of the proposed guidance. For domestic firms, the final guidance eliminates expectations related to separability, reducing the average burden hours per response by 3,000 for domestic firms using an SPOE strategy and 975 for domestic firms using an MPOE strategy. The final guidance also clarifies expectations around operational shared services for firms using an SPOE resolution strategy and around the IDI Resolution Plan/Least-Cost Test for all firms. Regarding operational shared services, the guidance clarifies that a firm's implementation plan to ensure continuity of shared services should include those that are material to the execution of the resolution strategy, such as reliance on outside bankruptcy counsel and consultants. Regarding the FDI Act's least-cost requirement and how it relates to expectations around IDI resolution, the agencies provided additional detail on how firms can develop and support the valuation of an IDI's assets and liabilities in an IDI resolution. The agencies do not anticipate these clarifications impacting the burden estimates.

Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. As a result of this split and the final revisions, there is a proposed net increase in the overall estimated burden hours of 14,922 hours for the Board and 14,304 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection would be 216,129 hours and the total FDIC estimated burden would be 210,844 hours.

The following table presents only the change in the estimated burden hours, as amended by the final guidance, broken out by agency. The table does not include a discussion of the remaining estimated burden hours which remain unchanged.[74] As shown in the table, the triennial full filers' resolution plan submissions would be estimated more granularly according to SPOE and MPOE resolution strategies.

[74] In addition to the revisions to the estimations for triennial full filers, the agencies have revised the estimation for biennial filers from 40,115 hours per response to 39,550 hours per response to align with burden estimation methodology with what was used for triennial full filers under the final guidance. Specifically, the agencies removed a component for a biennial filer's analysis of its critical operations as part of its submission of targeted and full resolution plans, because this critical operations analysis is integrated in the preparation of such plans.

FR QQ	Estimated number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
Board Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	7	1	4,667	32,669
Current Total				42,446
Final				
Triennial Full:				
FBO SPOE *	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	3	1	5,285	15,855
Final Total				57,368
FDIC Burdens				
Current				
Triennial Full:				
Complex Foreign	1	1	9,777	9,777
Foreign and Domestic	6	1	4,667	28,002
Current Total				37,779
Final				
Triennial Full:				
FBO SPOE	2	1	11,848	23,696
FBO MPOE	3	1	5,939	17,817
Domestic MPOE	2	1	5,285	10,570
Final Total				52,083

* There are currently no domestic triennial full filers utilizing an SPOE strategy. Estimated hours per response for a domestic SPOE triennial full filer would be 10,535 hours.

V. Text of the Final Guidance

Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers

I. Introduction

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) requires certain financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Board) and the Federal Deposit Insurance Corporation (the FDIC) (together, the agencies) their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2011, the agencies promulgated a joint rule implementing the provisions of section 165(d).[1] Subsequently, in November 2019, the agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the agencies' experience implementing the joint rule since its adoption.[2] Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain foreign financial companies required to submit Plans regarding development of their respective U.S. strategies to assist their further development of a Plan for their 2025 and subsequent Plan submissions. Specifically, the guidance applies to any foreign-based covered company that is triennial full filer under the Rule[3] because it is subject to Category II or III standards according to its combined U.S. operations in accordance with the Board's tailoring rule (specified firms or firms).[4] This guidance supersedes the joint *Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies.*[5]

The Plan for a specified firm would address a scenario where its U.S. operations experience material financial distress and the foreign parent is unable or unwilling to provide sufficient financial support for the continuation of U.S. operations, and at least the top tier U.S. IHC files for bankruptcy under title 11, United States Code. Under such a scenario, the Plan should provide for the orderly resolution of the specified firm's U.S. material entities and operations.

The document does not have the force and effect of law.[6] Rather, it describes the agencies' expectations and priorities regarding the specified firms' Plans and the agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful implementation of their U.S. resolution strategy.

When an FBO first becomes a specified firm,[7] this document will

[1] Resolution Plans Required, 76 FR 67323 (Nov. 1, 2011).

[2] Resolution Plans Required, 84 FR 59194 (Nov. 1, 2019). The amendments became effective December 31, 2019. The ''Rule'' means the joint rule as amended in 2019. Terms not defined herein have the meanings set forth in the Rule.

[3] *See* 12 CFR 243.4(b)(1) and 381.4(b)(1).

[4] Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

[5] 85 FR 83557 (Dec. 22, 2020).

[6] *See* 12 CFR 262.7 and appendix A to 12 CFR part 262; 12 CFR part 302.

[7] *See* 12 CFR 252.5(c)–(d).

apply to the firm's next resolution plan submission that is due at least 12 months after the date the firm becomes a specified firm. If a specified firm ceases to be subject to Category II or III standards, it will no longer be a specified firm, and this document would no longer apply to that firm.

In general, this document is organized around a number of key challenges in resolution (interaction with group resolution plan; capital; liquidity; governance mechanisms; operational; branches; legal entity rationalization and separability; and insured depository institution resolution (IDI), if applicable) that apply across resolution plans, depending on their strategy. Additional challenges or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan. In addition, each topic of this guidance is separated into expectations for a specified firm that adopts a U.S. single point of entry (U.S. SPOE) resolution strategy for its Plan and expectations for a specified firm that adopts a U.S. multiple point of entry (U.S. MPOE) resolution strategy for its Plan.[8]

Under the Rule, the agencies will review a Plan to determine if it satisfactorily addresses key potential challenges, including those specified below. If the agencies jointly decide that an aspect of a Plan presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the Plan, the agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code. The agencies may not take enforcement actions or issue findings based on this guidance.

II. Interaction With Group Resolution Plan

U.S. SPOE and U.S. MPOE

The agencies recognize that the preferred resolution outcome for the specified firms is often a successful SPOE home country resolution. Based on information available to the firm, a specified firm's Plan should describe: (i) the impact of executing the global resolution plan on U.S. operations, (ii) the extent of the specified firm's reliance on U.S. operations for execution of the global resolution plan, (iii) the extent of the specified firm's reliance on home country entities and operations for execution of the Plan, and (iv) any capabilities relied on to execute the U.S. resolution strategy that are different from those necessary to execute the global strategy. In addition, a specified firm's resolvability work in the United States should consider both the objectives of the firm's group-wide resolution strategy and the Rule. Efforts to enhance the resolvability of U.S. operations and entities should be as complementary as practicable to the group-wide resolution strategy, while complying with the Rule.

III. Capital

U.S. SPOE

The firm should have the capital capabilities necessary to execute its U.S. resolution strategy, including the modeling and estimation process described below.

Resolution Capital Adequacy and Positioning (RCAP). In order to help ensure that a firm's U.S. non-branch material entities[9] could be resolved in an orderly manner, the firm's U.S. IHC should have an adequate amount of loss-absorbing capacity to execute its U.S. resolution strategy. Thus, a firm's U.S. IHC should have outstanding a minimum amount of loss-absorbing capacity, including long-term debt, to help ensure that the firm has adequate capacity to meet that need at the U.S. IHC on a consolidated basis (IHC LAC).[10]

Proceeds from a firm's IHC LAC should be appropriately positioned between the U.S. IHC and the subsidiaries of the U.S. IHC that are material entities (U.S. IHC subsidiaries), consistent with any applicable rules requiring prepositioned resources at U.S. IDIs in the form of long-term debt. After adhering to any requirements related to prepositioning long-term debt at IDIs, the positioning of a firm's remaining IHC LAC should balance the certainty associated with pre-positioning loss absorbing capacity directly at U.S. IHC subsidiaries (internal LAC) with the flexibility provided by holding recapitalization resources at the U.S. IHC (contributable resources) to meet unanticipated losses at the U.S. IHC subsidiaries. That balance should take account of both pre-positioning at U.S. IHC subsidiaries and holding resources at the U.S. IHC, and the obstacles associated with each. With respect to material entities that are not subject to pre-positioning requirements, the firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary. The Plan should describe the positioning of internal LAC among the U.S. IHC and the U.S. IHC subsidiaries, along with analysis supporting such positioning.

Finally, to the extent that pre-positioned internal LAC at a U.S. IHC subsidiary is in the form of intercompany debt and there are one or more entities between the lender and the borrower, the firm should structure the instruments so as to ensure that the U.S. IHC subsidiary can be recapitalized.

Resolution Capital Execution Need (RCEN). To the extent necessitated by the firm's U.S. resolution strategy, U.S. non-branch material entities need to be recapitalized to a level that allows them to operate or be wound down in an orderly manner following the U.S. IHC bankruptcy filing. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC bankruptcy filing (RCEN). The firm's positioning of IHC LAC should be able to support the RCEN estimates.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,[11] consistent with the firm's resolution strategy for its U.S. operations. The

[8] The agencies recognize that the preferred resolution outcome for many specified firms is a successful home country resolution using a global SPOE resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent's resolution. However, because support from the foreign parent in stress cannot be ensured, the Rule provides that the U.S. resolution plan for specified firms must specifically address a scenario where the U.S. operations experience material financial distress, and the Plan cannot assume that the specified firm takes resolution actions outside the United States that would eliminate the need for any U.S. subsidiaries to enter resolution proceedings. *See* 12 CFR 243.4(h) and 381.4(h).

[9] The terms "material entities," "identified critical operations," and "core business lines" have the same meaning as in the Rule. The term "U.S. material entity" means any subsidiary, branch, or agency that is a material entity and is domiciled in the United States. The term "U.S. non-branch material entity" means a material entity organized or incorporated in the U.S. including, in all cases, the U.S. IHC. The term "U.S. IHC subsidiaries" means all U.S. non-branch material entities other than the U.S. IHC.

[10] Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 FR 8266 (Jan. 24, 2017); 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).

[11] The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.

RCEN methodology should be calibrated such that recapitalized U.S. IHC subsidiaries will have sufficient capital to maintain market confidence as required under the U.S resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for ''well-capitalized'' status and meet estimated additional capital needs throughout resolution. U.S. IHC subsidiaries that are not subject to capital requirements may be considered sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm's corporate governance processes and controls for the use of models and methodologies.

U.S. MPOE

N/A.

IV. Liquidity

U.S. SPOE

The firm should have the liquidity capabilities necessary to execute its U.S resolution strategy, including those described below. For resolution purposes, these capabilities should include having an appropriate model and process for estimating and maintaining sufficient liquidity at—or readily available from the U.S. IHC to—U.S. IHC subsidiaries, and a methodology for estimating the liquidity needed to successfully execute the U.S. resolution strategy, as described below.

Capabilities. A firm is expected to have a comprehensive understanding of funding sources, uses, and risks at material entities and identified critical operations, including how funding sources may be affected under stress. For example, a firm should have and describe its capabilities to:

(A) Evaluate the funding requirements necessary to perform identified critical operations, including shared and outsourced services and access to financial market utilities (FMUs); [12]

(B) Monitor liquidity reserves and relevant custodial arrangements by jurisdiction and material entity; [13]

(C) Routinely test funding and liquidity outflows and inflows for U.S. non-branch material entities at the legal entity level under a range of adverse stress scenarios, taking into account the effect on intra-day, overnight, and term funding flows between affiliates and across jurisdictions;

(D) Assess existing and potential restrictions on the transfer of liquidity between U.S. non-branch material entities; [14] and

(E) Develop contingency strategies to maintain funding for U.S. non-branch material entities and identified critical operations in the event of a disruption in the specified firm's current funding model.[15]

Resolution Liquidity Adequacy and Positioning (RLAP). With respect to RLAP, the firm should be able to measure the stand-alone liquidity position of each U.S. non-branch material entity—*i.e.,* the high-quality liquid assets (HQLA) at the U.S. non-branch material entity less net outflows to third parties and affiliates—and ensure that liquidity is readily available to meet any deficits. The RLAP model should cover a period of at least 30 days and reflect the idiosyncratic liquidity profile of the U.S. IHC and risk of each U.S. IHC subsidiary. The model should balance the reduction in frictions associated with holding liquidity directly at the U.S. IHC subsidiary with the flexibility provided by holding HQLA at the U.S. IHC or at a U.S. IHC subsidiary available to meet unanticipated outflows at other U.S. IHC subsidiaries.[16] The firm should not rely exclusively on either full pre-positioning or U.S. IHC contributable resources to execute its U.S. resolution strategy, unless it has only one U.S. IHC subsidiary that is an operating subsidiary.

The model [17] should ensure that on a consolidated basis the U.S. IHC holds sufficient HQLA to cover net liquidity outflows of the U.S. non-branch material entities. The model should also measure the stand-alone net liquidity positions of each U.S. non-branch material entity. The stand-alone net liquidity position of each U.S. non-branch material entity (HQLA less net outflows) should be measured using the firm's internal liquidity stress test assumptions and should treat inter-affiliate exposures in the same manner as third-party exposures. For example, an overnight unsecured exposure to a non-U.S. affiliate should be assumed to mature. Finally, the firm should not assume that a net liquidity surplus at any U.S. IHC subsidiary that is a depository institution could be moved to meet net liquidity deficits at an affiliate, or to augment U.S. IHC resources, consistent with Regulation W.

Additionally, the RLAP methodology should take into account for each of the U.S. IHC, U.S. IHC subsidiaries, and any branch that is a material entity:

(A) The daily contractual mismatches between their respective inflows and outflows;

(B) Their respective daily flows from movement of cash and collateral for all inter-affiliate transactions; and

(C) Their respective daily stressed liquidity flows and trapped liquidity as a result of actions taken by clients, counterparties, key FMUs, and foreign supervisors, among others.

In calculating its RLAP estimate, the U.S. IHC should calculate its liquidity position with respect to its foreign parent, branches and agencies, and other affiliates (together, affiliates) separately from its liquidity position with respect to third parties, and should not offset inflows from affiliated parties against outflows to external parties. In addition, a U.S. IHC should use cash-flow sources from its affiliates to offset cash-flow needs of its affiliates only to the extent that the term of the cash-flow source from its affiliates is the same as, or shorter than, the term of the cash-flow need of its affiliates.[18]

Resolution Liquidity Execution Need (RLEN). The firm should have a methodology for estimating the liquidity needed after the U.S. IHC's bankruptcy filing to stabilize any surviving U.S. IHC subsidiaries and to allow those entities to operate post-filing, in accordance with the U.S. strategy.

The firm's RLEN methodology should:

(A) Estimate the minimum operating liquidity (MOL) needed at each U.S. IHC subsidiary that is a material entity to ensure those entities could continue to operate, to the extent relied upon in the U.S. resolution strategy, after implementation of the U.S. resolution strategy and/or to support a wind-down strategy;

(B) Provide daily cash flow forecasts by U.S. IHC subsidiary to support estimation of peak funding needs to stabilize each entity under resolution;

(C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates for the U.S. IHC subsidiaries; and

[12] 12 CFR 252.156(g)(3).

[13] 12 CFR 252.156(g)(2).

[14] *Id.*

[15] 12 CFR 252.156(e).

[16] To the extent HQLA is held at the U.S. IHC or at a U.S. IHC subsidiary, the model should consider whether such funds are freely available. To be freely available, the HQLA must be free of legal, regulatory, contractual, and other restrictions on the ability of the material entity to liquidate, sell, or transfer the asset.

[17] ''Model'' refers to the set of calculations required by Regulation YY that estimate the U.S. IHC's liquidity position.

[18] The U.S. IHC should calculate its cash-flow sources from its affiliates consistent with the net internal stressed cash-flow need calculation in § 252.157(c)(2)(iv) of Regulation YY.

(D) Estimate the minimum amount of liquidity required at each U.S. IHC subsidiary to meet the MOL and peak needs noted above, which would inform the provision of financial resources from the foreign parent to the U.S. IHC, or if the foreign parent is unable or unwilling to provide such financial support, any preparatory resolution-related actions.

The MOL estimates should capture U.S. IHC subsidiaries' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that U.S. IHC subsidiaries could operate without disruption during the resolution.

The peak funding needs estimates should be projected for each U.S. IHC subsidiary and cover the length of time the firm expects it would take to stabilize that U.S. IHC subsidiary. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that U.S. IHC subsidiaries could operate through resolution consistent with regulatory requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, *i.e.,* the minimum amount of HQLA required to facilitate the execution of the firm's strategy for the U.S. IHC subsidiaries.

For nonsurviving U.S. IHC subsidiaries, the firm should provide analysis and an explanation of how the material entity's resolution could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability. For example, if a U.S. IHC subsidiary that is a broker-dealer is assumed to fail and enter resolution under the Securities Investor Protection Act, the firm should provide an analysis of the potential impacts on funding and asset markets and on prime brokerage clients, bearing in mind the objective of an orderly resolution.

U.S. MPOE

The firm should have the liquidity capabilities necessary to execute its U.S. resolution strategy. A Plan with a U.S. MPOE resolution strategy should include analysis and projections of a range of liquidity needs during resolution, including intraday; reflect likely failure and resolution scenarios; and consider the guidance on assumptions provided in Section X, Format and Structure of Plans; Assumptions.

V. Governance Mechanisms

U.S. SPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occur between the governing body of the U.S. operations (for example, the boards of the U.S. IHC or a U.S. subsidiary) and the foreign parent to facilitate the provision of financial support, or if not forthcoming, any preparatory resolution-related actions to facilitate an orderly resolution.

Playbooks, Foreign Parent Support, and Triggers. Governance playbooks should detail the board and senior management actions of U.S. non-branch material entities that would be needed under the firm's U.S. resolution strategy. The governance playbooks should also include a discussion of:

(A) The firm's proposed U.S. communications strategy, both internal and external; [19]

(B) The fiduciary responsibilities of the applicable board(s) of directors or other similar governing bodies and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken;

(C) Potential conflicts of interest, including interlocking boards of directors;

(D) Any employee retention policy; and

(E) Any other limitations on the authority of the U.S. IHC and the U.S. IHC subsidiary boards and senior management to implement the U.S. resolution strategy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for each entity whose governing body would need to act under the firm's U.S. resolution strategy.

In order to meet liquidity needs at the U.S. non-branch material entities, the firm may either fully pre-position liquidity in the U.S. non-branch material entities or develop a mechanism for planned foreign parent support, of any amount not pre-positioned, for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed and as informed by the firm's RLEN estimates and liquidity positioning. To the extent the preferred global resolution strategy for the firm is a home country SPOE resolution, the mechanism should be designed so as to not interfere with the execution of that strategy. The Plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent. The sufficiency of the liquidity should be informed by the firm's RLAP and RLEN estimates for the U.S. non-branch material entities. Additionally, the Plan should include analysis of the potential challenges to the planned foreign parent support mechanism and associated mitigants. Where applicable, the analysis should discuss applicable non-U.S. law and cross-border legal challenges (*e.g.,* challenges related to enforcing contracts governed by foreign law). The analysis should identify the mitigant(s) to such challenges that the firm considers most effective.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for:

(A) The escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy. The triggers should:

i. Identify when and under what conditions the U.S. material entities would transition from business-as-usual (BAU) conditions to a stress period; and

ii. Take into consideration changes in the foreign parent's condition from BAU conditions through resolution.

(B) The escalation of information to and discussions with the appropriate governing bodies to confirm whether the governing bodies are able and willing to provide financial resources to support U.S. operations.

i. Triggers should be based on the firm's methodology for forecasting the liquidity and capital needed to facilitate the U.S. strategy. For example, triggers may be established that reflect U.S. non-branch material entities' financial resources approaching RCEN/RLEN estimates, with corresponding actions to confirm the foreign parent's financial capability and willingness to provide sufficient support.

Corresponding escalation procedures, actions, and timeframes should be constructed so that breach of the triggers will allow prerequisite actions to be completed. For example, breach of the triggers needs to occur early enough to

[19] External communications include those with U.S. and foreign authorities and other external stakeholders, such as any large depositors.

provide for communication, coordination, and confirmation of the provision of resources from the foreign parent.

Support Within the United States. If the Plan provides for the provision of capital and liquidity by a U.S. material entity (*e.g.,* the U.S. IHC) to its U.S. affiliates prior to the U.S. IHC's bankruptcy filing (Support), the Plan should also include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to providing the Support. Specifically, the analysis should identify potential legal obstacles and explain how the firm would seek to ensure that Support would be provided as planned. Legal obstacles include claims of fraudulent transfer, preference, breach of fiduciary duty, and any other applicable legal theory identified by the firm. The analysis also should include related claims that may prevent or delay an effective recapitalization, such as equitable claims to enjoin the transfer (*e.g.,* imposition of a constructive trust by the court). The analysis should apply the actions contemplated in the Plan regarding each element of the claim, the anticipated timing for commencement and resolution of the claims, and the extent to which adjudication of such claim could affect execution of the firm's U.S. resolution strategy. The analysis should include mitigants to the potential challenges to the planned Support. The Plan should identify the mitigant(s) to such challenges that the firm considers most effective.

Furthermore, the Plan should describe key motions to be filed at the initiation of any bankruptcy proceeding related to (as appropriate) asset sales and other non-routine matters.

U.S. MPOE

A firm should identify the governance mechanisms that would ensure that communication and coordination occur between the governing body of the U.S. operations (for example, the boards of the U.S. IHC or a U.S. subsidiary) and the foreign parent to facilitate any preparatory resolution-related actions to facilitate an orderly resolution. The Plan should also detail the board and senior management actions of U.S. material entities that would be needed under the firm's U.S. resolution strategy.

The firm should be prepared to increase communication and coordination at the appropriate time in order to mitigate financial, operational, legal, and regulatory vulnerabilities. To facilitate this communication and coordination, the firm should establish clearly identified triggers linked to specific actions for the escalation of information to U.S. senior management, U.S. risk committee and U.S. governing bodies to potentially take the corresponding actions as the U.S. operations experience material financial distress, leading eventually to the decision to implement the U.S. resolution strategy. The triggers should:

(A) Identify when and under what conditions the U.S. material entities would transition from BAU conditions to a stress period.

(B) Take into consideration changes in the foreign parent's condition from BAU conditions through resolution.

VI. Operational

U.S. SPOE

Payment, Clearing, and Settlement Activities Framework. Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,[20] or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution under its U.S. resolution strategy through a framework to support such access by:

- Identifying clients,[21] FMUs, and agent banks as key from the firm's perspective for the firm's U.S. material entities, identified critical operations, and core business lines, using both quantitative (volume and value) [22] and qualitative criteria;
- Mapping U.S. material entities, identified critical operations, core business lines, and key clients of the firm's U.S. operations to both key FMUs and key agent banks; and
- Developing a playbook for each key FMU and key agent bank essential to an orderly resolution under its U.S. resolution strategy that reflects the firm's role(s) as a user and/or provider of PCS services.

The framework should address direct relationships (*e.g.,* a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations in the United States, or a firm's contractual relationship with an agent bank) and indirect relationships (*e.g.,* a firm's provision of clients with access to the relevant FMU or agent bank through the firm's membership in or relationship with that FMU or agent bank, or a firm's U.S. affiliate and branch provision of U.S. material entities and key clients of the firm's U.S. operations with access to an FMU or agent bank). The framework also should address the potential impact of any disruption to, curtailment of, or termination of such direct and indirect relationships on the firm's U.S. material entities, identified critical operations, and core business lines, as well as any corresponding impact on key clients of the firm's U.S. operations.

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and key clients of the firm's U.S. operations in maintaining continued access to PCS services in the period leading up to and including the firm's resolution under its U.S. resolution strategy.

Each playbook should provide analysis of the financial and operational impact to the firm's U.S. material entities and key clients of the firm's U.S. operations due to adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's U.S. material entities, identified critical operations and core business lines, and key clients of the firm's U.S. operations, while the firm is in resolution under its U.S. resolution strategy. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its U.S. resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients of the firm's U.S. operations, and playbooks should reflect any feedback received during such ongoing outreach.

Content Related to Users of PCS Services. Individual key FMU and key agent bank playbooks should include:

[20] A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of a financial market utility (FMU) through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations (*e.g.,* payment services or custody services).

[21] For purposes of this section, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and any related credit or liquidity offered in connection with those services.

[22] In identifying entities as key, examples of quantitative criteria may include: for a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of cash and securities settled, and extensions of intraday credit.

• Description of the firm's relationship as a user, including through indirect access, with the key FMU or key agent bank and the identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that use those PCS services;

• Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution under its U.S. resolution strategy,[23] the operational and financial impact of such actions on the firm's U.S. material entities, identified critical operations, and core business lines, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and

• Discussion of PCS-related liquidity sources and uses in BAU, in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by U.S. material entity.

○ *PCS Liquidity Sources:* These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and prefunded amounts of key clients of the firm's U.S. operations in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (*e.g.,* facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in all currencies relevant to the firm's participation, including placements of firm liquidity at central banks, key FMUs, and key agent banks.

○ *PCS Liquidity Uses:* These may include margin and prefunding by the firm and key clients of the firm's U.S. operations, and intraday extensions of credit, including incremental amounts required during resolution.

○ *Intraday Liquidity Inflows and Outflows:* The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should describe any account features that might restrict the firm's ready access to its liquidity sources.

Content Related to Providers of PCS Services.[24] Individual key FMU and key agent bank playbooks should include:

• Identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;

• Identification and mapping of PCS services to key clients of the firm's U.S. operations to whom the firm's U.S. material entities, identified critical operations, and core business lines provide such PCS services and any related credit or liquidity offered in connection with such services;

• Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to key clients of the firm's U.S. operations, including the viability of transferring activity and any related assets of key clients of the firm's U.S. operations, as well as any alternative arrangements that would allow the key clients of the firm's U.S. operations continued access to PCS services if the firm could no longer provide such access (*e.g.,* due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;

• Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients of the firm's U.S. operations, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as (i) requiring key clients of the firm's U.S. operations to designate or appropriately pre-position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (*e.g.,* direct members of key FMUs) or any similar custodial arrangements that allow ready access to funds for such obligations in all relevant currencies of key clients of the firm's U.S. operations; (ii) delaying or restricting PCS activity of key clients of the firm's U.S. operations; and (iii) restricting, imposing conditions upon (*e.g.,* requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients of the firm's U.S. operations; and

• Descriptions of how the firm will communicate to key clients of the firm's U.S. operations the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients of the firm's U.S. operations (*e.g.,* due to BAU usage of that access and/or related intraday credit or liquidity of the key client of the firm's U.S. operations), and the expected timing and form of such communication.

Capabilities. The firm is expected to have and describe capabilities to understand, for each U.S. material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. The firm should be able to:

• Track the following items by (i) U.S. material entity and, (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:

○ PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;[25]

○ Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;[26]

○ Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and[27]

○ Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external);[28]

• Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations;[29]

• Develop contingency arrangements in the event of such adverse actions;[30] and

• Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

Managing, Identifying, and Valuing Collateral. The firm is expected to have

---

[23] Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

[24] Where a firm is a provider of PCS services through the firm's own operations in the United States, the firm is expected to produce a playbook for the U.S. material entities that provide those services, addressing each of the items described under ''Content Related to Providers of PCS Services,'' which include contingency arrangements to permit the firm's key clients of the firm's U.S. operations to maintain continued access to PCS services.

[25] 12 CFR 243.5(e)(12) and 381.5(e)(12).

[26] *Id.*

[27] 12 CFR 252.156(g).

[28] 12 CFR 243.5(f)(l)(i) and 381.5(f)(1)(i).

[29] 12 CFR 252.156(e).

[30] *Id.*

and describe its capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post to external parties and affiliates. Specifically, the firm should:

• Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms—not just those terms that may be impacted in an adverse economic environment—across contract types, business lines, legal entities, and jurisdictions;

• Be able to track both collateral sources (*i.e.,* counterparties that have pledged collateral) and uses (*i.e.,* counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;

• Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;

• Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;

• Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and

• Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.[31]

In addition, as of the conclusion of any business day, the firm should be able to:

• Identify the legal entity and geographic jurisdiction where counterparty collateral is held;

• Document all netting and re-hypothecation arrangements with affiliates and external parties, by legal entity; and

• Track and manage collateral requirements associated with counterparty credit risk exposures between affiliates, including foreign branches.

At least on a quarterly basis, the firm should be able to:

• Review the material terms and provisions of International Swaps and Derivatives Association Master Agreements and the Credit Support Annexes, such as termination events, for triggers that may be breached as a result of changes in market conditions;

• Identify legal and operational differences and potential challenges in managing collateral within specific jurisdictions, agreement types, counterparty types, collateral forms, or other distinguishing characteristics; and

• Forecast changes in collateral requirements and cash and non-cash collateral flows under a variety of stress scenarios.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the U.S. resolution strategy and how frequently the firm would need to produce the information, with the appropriate level of granularity. The firm should have the capabilities to produce the following types of information, as applicable, in a timely manner and describe these capabilities in the Plan:

• Financial statements for each material entity (at least monthly);

• External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;

• Gross and net risk positions with internal and external counterparties;

• Guarantees, cross holdings, financial commitments and other transactions between material entities;

• Data to facilitate third-party valuation of assets and businesses, including risk metrics;

• Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);

• Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);

• Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;

• Licenses and memberships to all exchanges and value transfer networks, including FMUs;

• Key management and support personnel, including dual-hatted employees, and any associated retention agreements;

• Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and

• Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations[32] or core business lines, or are material to the execution of the resolution strategy, and robust arrangements to support the continuity of shared and outsourced services, including, without limitation, appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or core business lines, or are material to the execution of the resolution strategy. Examples may include personnel, facilities, systems, data warehouses, intellectual property, and counsel and consultants involved in the preparation for and filing of bankruptcy. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements.

If a material entity provides shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a

[31] The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

[32] "Shared services that support identified critical operations" or "critical shared services" are those that support identified critical operations conducted in whole or in material part in the United States.

material entity providing shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy, is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should:

(A) Maintain an identification of all shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy;

(B) Maintain a mapping of how/where these services support its core business lines and identified critical operations;

(C) Incorporate such mapping into legal entity rationalization criteria and implementation efforts; and

(D) Mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all shared services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate appropriate terms and conditions to:

(A) Prevent automatic termination upon certain resolution-related events and

(B) Achieve continued provision of such services during resolution.[33]

The firm should also store SLAs in a central repository or repositories located in or immediately accessible from the U.S. at all times, including in resolution (and subject to enforceable access arrangements) in a searchable format. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's U.S. resolution strategy) in such entities sufficient to cover contract costs, consistent with the U.S. resolution strategy. The firm should demonstrate that such working capital is held in a manner that ensures its availability for its intended purpose.

The firm should identify all critical service providers and outsourced services that support identified critical operations or core business lines, or are material to the execution of the resolution strategy, and identify any that could not be promptly substituted. The firm should:

(A) Evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance, and

(B) Update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

Qualified Financial Contracts. The Plan should reflect the current state of how the early termination of qualified financial contracts could impact the resolution of the firm's U.S. operations, including potential termination of any contracts that are not subject to contractual or regulatory stays of cross-default rights. Specifically, the Plan is expected to reflect the firm's progress regarding contractual stays in qualified financial contracts as of the date the firm submits its Plan or as of a specified earlier date. A firm that has adhered to the International Swaps and Derivatives Association's (ISDA) 2018 U.S. Resolution Stay Protocol or its antecedent, ISDA's 2015 Universal Resolution Stay Protocol (together, the Protocols) should discuss the extent of the firm's adherence to the Protocols in its Plan (and may also discuss the impact on U.S. operations of the firm's adherence to ISDA's 2016 Jurisdictional Modular Protocol on its non-U.S. operations). A Plan should also explain the firm's processes for entering bilateral contracts with third-party entities that do not adhere to the Protocols and provide examples of the contractual language that is used under those circumstances.

U.S. MPOE

Payment, Clearing, and Settlement Activities Capabilities. The firm is expected to have and describe capabilities to understand, for each U.S. material entity, the obligations and exposures associated with PCS activities, including contractual obligations and commitments. For example, firms should be able to:

- As users of PCS services:
  - ○ Track the following items by: (i) U.S. material entity; and (ii) with respect to customers, counterparties, and agents and service providers, location and jurisdiction:
    - ▪ PCS activities, with each activity mapped to the relevant material entities, identified critical operations, and core business lines;
    - ▪ Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;
    - ▪ Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and
    - ▪ Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).
  - ○ Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations;
  - ○ Develop contingency arrangements in the event of such adverse actions; and
  - ○ Quantify the liquidity needs and operational capacity required to meet all PCS obligations, including intraday requirements.
- As providers of PCS services:
  - ○ Identify their PCS clients of their U.S operations and the services they provide to these clients, including volumes and values of transactions;
  - ○ Quantify and explain time-sensitive payments; and
  - ○ Quantify and explain intraday credit provided.

Managing, Identifying and Valuing Collateral. The firm is expected to have and describe its capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post to external parties and affiliates, including tracking collateral received, pledged, and available at the CUSIP level and measuring exposures.

Management Information Systems. The firm should have the management information systems (MIS) capabilities to readily produce data on a U.S. legal entity basis (including any U.S. branch) and have controls to ensure data integrity and reliability. The firm also should perform a detailed analysis of the specific types of financial and risk data that would be required to execute the U.S. resolution strategy. The firm should have the capabilities to produce the following types of information, as applicable, in a timely manner and describe these capabilities in the Plan:

- Financial statements for each material entity (at least monthly);
- External and inter-affiliate credit exposures, both on- and off-balance sheet, by type of exposure, counterparty, maturity, and gross payable and receivable;

[33] The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the United States.

• Gross and net risk positions with internal and external counterparties;
• Guarantees, cross holdings, financial commitments and other transactions between material entities;
• Data to facilitate third-party valuation of assets and businesses, including risk metrics;
• Key third-party contracts, including the provider, provider's location, service(s) provided, legal entities that are a party to or a beneficiary of the contract, and key contractual rights (for example, termination and change in control clauses);
• Legal agreement information, including parties to the agreement and key terms and interdependencies (for example, change in control, collateralization, governing law, termination events, guarantees, and cross-default provisions);
• Service level agreements between affiliates, including the service(s) provided, the legal entity providing the service, legal entities receiving the service, and any termination/transferability provisions;
• Licenses and memberships to all exchanges and value transfer networks, including FMUs;
• Key management and support personnel, including dual-hatted employees, and any associated retention agreements;
• Agreements and other legal documents related to property, including facilities, technology systems, software, and intellectual property rights. The information should include ownership, physical location, where the property is managed and names of legal entities and lines of business that the property supports; and
• Updated legal records for domestic and foreign entities, including entity type and purpose (for example, holding company, bank, broker dealer, and service entity), jurisdiction(s), ownership, and regulator(s).

Shared and Outsourced Services. The firm should maintain robust arrangements to support the continuity of shared and outsourced services that support any identified critical operations, or are material to the execution of the U.S. resolution strategy, including appropriate plans to retain key personnel relevant to the execution of the firm's strategy. For example, specified firms should evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical operations or are material to the execution of the U.S. resolution strategy. Examples may include personnel, facilities, systems, data warehouses, intellectual property, and counsel and consultants involved in the preparation for and filing of bankruptcy. Specified firms also should maintain current cost estimates for implementing such strategies and contingency arrangements. If a material entity provides shared services that support identified critical operations,[34] or are material to the execution of the U.S. resolution strategy, and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations, or are material to the execution of the U.S. resolution strategy, is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should:

(A) Maintain an identification of all shared services that support identified critical operations or are material to the execution of the U.S. resolution strategy, and

(B) Mitigate identified continuity risks through establishment of SLAs for all shared services supporting identified critical operations or are material to the execution of the U.S. resolution strategy. SLAs should fully describe the services provided and incorporate appropriate terms and conditions to:

(A) Prevent automatic termination upon certain resolution-related events; and

(B) Achieve continued provision of such services during resolution.[35]

The firm should identify all critical service providers and outsourced services that support identified critical operations or are material to the execution of the U.S. resolution strategy. Any of these services that cannot be promptly substituted should be identified in a firm's Plan. The firm should:

(A) Evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance; and

(B) Update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services.

Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services.

VII. Branches

U.S. SPOE & U.S. MPOE

Continuity of Operations. If the Plan assumes that federal or state regulators, as applicable, do not take possession of any U.S. branch that is a material entity, the Plan should support that assumption.

For any U.S. branch that is a material entity, the Plan should describe and demonstrate how the branch would continue to facilitate FMU access for identified critical operations and meet funding needs. For such a U.S. branch, the Plan should describe how it would meet supervisory requirements imposed by state regulators or the appropriate Federal banking agency, as appropriate, including maintaining a net due to position and complying with heightened asset maintenance requirements.[36] In addition, the Plan should describe how such a U.S. branch's third-party creditors would be protected such that the state regulator or appropriate Federal banking agency would allow the branch to continue operations.

Impact of the Cessation of Operations. The Plan should provide an analysis of the impact of the cessation of operations of any U.S. branch that is a material entity on the firm's FMU access and identified critical operations, even if such scenario is not contemplated as part of the U.S. resolution strategy. The analysis should include a description of how identified critical operations could be transferred to a U.S. IHC subsidiary or sold in resolution, the obstacles presented by the cessation of shared services that support identified critical operations provided by any U.S. branch that is a material entity, and mitigants that could address such obstacles in a timely manner.

---

[34] This should be interpreted to include data access and intellectual property rights.

[35] The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the United States.

[36] Firms should take into consideration historical practice, by applicable regulators, regarding asset maintenance requirements imposed during stress.

VIII. Legal Entity Rationalization and Separability

Legal Entity Rationalization

U.S. SPOE

Legal Entity Rationalization Criteria (LER Criteria). A firm should develop and implement legal entity rationalization criteria that support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution. LER Criteria should consider the best alignment of legal entities and business lines to improve the resolvability of U.S. operations under different market conditions. LER Criteria should govern the corporate structure and arrangements between the U.S. subsidiaries and U.S. branches in a way that facilitates resolvability of the firm's U.S. operations as the firm's U.S. activities, technology, business models, or geographic footprint change over time.

Specifically, application of the criteria should:

(A) Ensure that the allocation of activities across the firm's U.S. branches and U.S. nonbranch material entities support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution;

(B) Facilitate the recapitalization and liquidity support of U.S. IHC subsidiaries, as required by the firm's U.S. resolution strategy. Such criteria should include clean lines of ownership and clean funding pathways between the foreign parent, the U.S. IHC, and U.S. IHC subsidiaries;

(C) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution in the United States, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(D) Adequately protect U.S. subsidiary IDIs from risks arising from the activities of any nonbank U.S. subsidiaries (other than those that are subsidiaries of an IDI); and

(E) Minimize complexity that could impede an orderly resolution in the United States and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing the firm's U.S. structure and operations on a continuous basis. Finally, the Plan should include a description of the firm's legal entity rationalization governance process.

U.S. MPOE

Legal Entity Structure. A firm should maintain a legal entity structure that supports the firm's U.S. resolution strategy and minimizes risk to U.S. financial stability in the event of the resolution of the firm's U.S. operations. The firm should consider factors such as business activities; banking group structures and booking models and practices; and potential sales, transfers, or wind-downs during resolution. The Plan should describe how the firm's U.S. legal entity structure aligns core business lines and any identified critical operations with the firm's material entities to support the firm's U.S. resolution strategy. To the extent a material entity IDI relies upon an affiliate that is not the IDI's subsidiary during resolution of its U.S. entities, including for the provision of shared services, the firm should discuss its rationale for the legal entity structure and associated resolution risks and potential mitigants.

The firm's corporate structure and arrangements among U.S. legal entities should be considered and maintained in a way that facilitates the firm's resolvability as its activities, technology, business models, or geographic footprint change over time.

Separability

U.S. SPOE

Separability. The firm should identify discrete U.S. operations that could be sold or transferred in resolution, with the objective of providing optionality in resolution under different market conditions.

A firm's separability options should be actionable, and impediments to their projected mitigation strategies should be identified in advance. Firms should consider potential consequences for U.S. financial stability of executing each option, taking into consideration impacts on counterparties, creditors, clients, depositors, and markets for specific assets. The level of detail and analysis should vary based on a firm's risk profile and scope of operations. Additionally, information systems should be robust enough to produce the required data and information needed to execute separability options.

Further, the firm should have, and be able to demonstrate, the capability to populate in a timely manner a data room with information pertinent to a potential divestiture of the identified separability options (including, but not limited to, carve-out financial statements, valuation analysis, and a legal risk assessment). Within the Plan, the firm should demonstrate how the firm's LER Criteria and implementation efforts support meeting the separability-related guidance above. The Plan should also provide the separability analysis noted above.

U.S. MPOE

A Plan should include options for the sale, transfer, or disposal of U.S. significant assets, portfolios, legal entities, or business lines in resolution that may be executed in a reasonable period of time. For each option, supporting analysis should include: an execution plan that includes an estimated time frame for implementation, a description of any impediments to execution of the option, and mitigation strategies to address those impediments; a description of the assumptions underpinning the option; a financial impact assessment that describes the impact of executing the option; and an identified critical operation impact assessment that describes how execution of the option may affect the provision of any identified critical operation. Information systems should be robust enough to produce the required data and information needed to execute the options.

IX. Insured Depository Institution Resolution

U.S. MPOE

Least-cost requirement analysis. If the Plan includes a strategy that contemplates the separate resolution of a U.S. IDI that is a material entity, the Plan should explain how the resolution could be achieved in a manner that is consistent with the overall objective of the Plan to substantially mitigate the risk that the failure of the specified firm would have serious adverse effects on financial stability in the United States while also complying with the statutory and regulatory requirements governing IDI resolution.

This explanation does not include an expectation that firms provide a complete least-cost analysis. A complete least-cost analysis would, for example, include a comparison of the preferred strategy for resolving an IDI that is a material entity against every other possible resolution method available for that IDI.

To explain how a firm's preferred strategy could potentially enable the FDIC to resolve the failed bank in a manner consistent with the FDIC's statutory least-cost requirement, the firm could instead compare the estimated costs to the DIF of the firm's preferred resolution strategy to a payout liquidation and, for strategies involving

a BDI, explain how the inclusion or exclusion of uninsured deposits within the BDI would impact the estimated overall costs to the DIF.

Firms should address the following matters as applicable to their strategy:

- *Payout Liquidation:* If the Plan envisions a payout liquidation for the IDI, with or without use of a Deposit Insurance National Bank or a paying agent, the Plan should explain how the deposit payout and asset liquidation process would be executed in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability.
- *P&A Transaction:* If the Plan assumes a weekend P&A strategy, the plan should first demonstrate the ready availability of this option under severely adverse economic scenario, assuming that markets are functioning and competitors are in a position to take on business. The Plan may demonstrate a weekend P&A strategy is available by discussing evidence of several potential buyers supported by information indicating that these potential buyers could reasonably be expected to have sufficient financial resources to complete the transaction in a severely adverse scenario and the expertise to incorporate the business of the failed bank. The plan should also address how such a merger can be completed with these potential acquirers considering any applicable approvals that would be required for the proposed transaction. Additionally, a P&A strategy should explain how it either (1) results in no loss to the DIF or (2) despite its resulting in a loss to the DIF, the loss is less than would be incurred through a payout liquidation.
- *All-Deposit BDI:* If the Plan contemplates a strategy involving an all-deposit BDI, the Plan should include an analysis that shows that the incremental estimated cost to the DIF of transferring all uninsured deposits to the BDI is offset by the preservation of franchise value and other benefits connected to the uninsured deposits (such as the franchise value derived from retaining full banking relationships).
- *BDI with Partial Uninsured Deposit Transfers:* A Plan may demonstrate the feasibility of a strategy involving a BDI that assumes (1) all insured deposits or (2) only a portion of uninsured deposits (*e.g.* an advance dividend to uninsured depositors for a portion of their deposit claim) by showing that the incremental estimated cost to the DIF of transferring the portion of uninsured deposits to the BDI is offset by the preservation of franchise value connected to those uninsured deposits (such as the franchise value derived from retaining full banking relationships).

In all cases, the Plan should discuss how the implementation of the Plan's resolution strategy, including the impact on any depositors whose accounts are not transferred in whole or in part to a BDI, would not be likely to create the risk of serious adverse effects on U.S. financial stability.

Valuation. Regardless of the strategy chosen, the Plan should demonstrate reasonable and well-supported assumptions that support the valuation of the failed IDI's assets and business franchise under the firm's preferred strategy that are drawn from comparable transactions or other inputs observable in the marketplace. A firm's franchise value is generally understood to be the value of the bank as an operating company relative to the value of the firm's individual assets minus its liabilities. In assessing the franchise value of the firm's business, the Plan could provide support through relevant inputs such as the revenue generated by the account relationships; the efficiencies in administrative costs associated with servicing large deposits/large relationships; the elimination of barriers to entry or the reduction in customer acquisition costs; growth history and prospects for the products or business activity; market trading or sales multiples; or any other factors the firm believes appropriate. Asset values should be representative of the bank's asset mix under the appropriate economic conditions and of sufficient distress as to result in failure.

Exit from BDI. A Plan should include a discussion of the eventual exit from the BDI. A Plan could support the feasibility of an exit strategy by, for example, describing an actionable process, based on historical precedent or otherwise supportable projections, that winds down certain businesses, includes the sale of assets and the transfer of deposits to one or multiple acquirers, or culminates in a capital markets transaction, such as an initial public offering or a private placement of securities.

X. Format and Structure of Plans; Assumptions

U.S. SPOE & U.S. MPOE

Format of Plan

Executive Summary. The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's strategy for an orderly resolution. In addition, the executive summary should include a discussion of the firm's assessment of any impediments to the firm's U.S. resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its strategy for an orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative).

Appendices. The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

Public Section. The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

Other Informational Requirements. The Plan must comply with all other informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

Guidance Regarding Assumptions

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.
2. The firm must submit a Plan that does not rely on the provision of extraordinary support by the United States or any other government to the firm or its subsidiaries to prevent the failure of the firm.[37] The firm should not submit a Plan that assumes the use of the systemic risk exception to the least-cost test in the event of a failure of an IDI requiring resolution under the FDI Act.
3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.
4. The Plan should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which the Plan is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.
5. The U.S. resolution strategy may be based on an idiosyncratic event or action, including a series of

[37] 12 CFR 243.4(h)(2) and 381.4(h)(2).

compounding events. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

6. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (*i.e.,* the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer).

7. For a firm that adopts a U.S. MPOE resolution strategy, the Plan should demonstrate and describe how the failure event(s) results in material financial distress of the U.S. operations.[38] In particular, the Plan should consider the likelihood that there would be a diminution of the firm's liquidity buffer in the stress period prior to filing for bankruptcy from high unexpected outflows of deposits and increased liquidity requirements from counterparties. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the covered company or its material legal entity subsidiaries prior to the final recognition of losses, the demonstration and description of material financial distress may also include depletion of capital. Therefore, the Plan should also consider the likelihood of the depletion of capital.

8. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.

9. The Plan should support any assumptions that the firm will have access to the Discount Window and/or other borrowings during the period immediately prior to entering bankruptcy. To the extent the firm assumes use of the Discount Window, Federal Home Loan Banks, and/or other borrowings, the Plan should support that assumption with a discussion of the operational testing conducted to facilitate access in a stress environment, placement of collateral, and the amount of funding accessible to the firm. The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections. The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the U.S. resolution strategy. It should also include statements of projected sources and uses of funds for the interim periods. The pro forma financial statements and accompanying notes in the Plan should clearly evidence the failure trigger event; the Plan's assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

Material Entities. Material entities should encompass those entities, including subsidiaries, branches and agencies (collectively, Offices), which are significant to the activities of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

1. Any Office, wherever located, that is significant to the activities of an identified critical operation.

2. Any Office, wherever located, whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.

3. Any Office, wherever located, that would provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.

4. Any Office, wherever located, that is engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.

5. Any Office, wherever located, engaged in asset custody or asset management that are significant to the activities of an identified critical operation.

6. Any Office, wherever located, holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the U.S. resolution strategy, and explain how the Plan addresses the actions and forbearances. The Plan should describe the consequences for the firm's U.S. resolution strategy if specific actions in each jurisdiction were not taken, delayed, or forgone, as relevant.

XI. Public Section

U.S. SPOE & U.S. MPOE

The purpose of the public section is to inform the public's understanding of the firm's U.S. resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy).

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the agencies have identified in prior plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the Plan is not binding on a bankruptcy court or other resolution authority and

[38] See Section 11(c)(5) of the FDI Act, codified at 11 U.S.C. 1821(c)(5), which details grounds for appointing the FDIC as conservator or receiver of an IDI.

that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 9, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–18186 Filed 8–14–24; 8:45 am]

BILLING CODE 6210–01–P; 6714–01–P