Office of Inspector General

# The FDIC's Orderly Liquidation Authority

September 2023 EVAL-23-004

Evaluation Report

**Audits, Evaluations, and Cyber**

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# NOTICE

Pursuant to Pub. L. 117-263, section 5274, non-governmental organizations and business entities identified in this report have the opportunity to submit a written response for the purpose of clarifying or providing additional context to any specific reference. Comments must be submitted to comments@fdicoig.gov within 30 days of the report publication date as reflected on our public website. Any comments will be appended to this report and posted on our public website. We request that submissions be Section 508 compliant and free from any proprietary or otherwise sensitive information.

Office of Inspector General

# Executive Summary

## The FDIC's Orderly Liquidation Authority


During the financial crisis that began in 2008, a large investment bank failed. Further, another large investment bank and a large insurance company were in danger of failing. Since these three companies were not insured by the Federal Deposit Insurance Corporation (FDIC), they were not eligible for FDIC resolution. Along with these companies, three of the nation's largest commercial banking organizations came close to failing. In response to the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (DFA) in part to clearly assign responsibility for the resolution of systemically important financial companies (SIFC) to the FDIC.

Before the enactment of the DFA, the FDIC only had the authority to resolve FDIC-insured depository institutions. Title II of the DFA, *Orderly Liquidation Authority* (OLA) aimed to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States (U.S.) in a manner that mitigates such risk and minimizes moral hazard. Although the FDIC may only be called upon to implement its OLA responsibilities in limited circumstances, the FDIC must ensure that it can execute those responsibilities effectively when needed.

Our evaluation objective was to determine whether the FDIC maintained a consistent focus on implementing the OLA program and established key elements to execute the OLA under the DFA, including: (1) comprehensive policies and procedures; (2) defined roles and responsibilities; (3) necessary resources; (4) regular monitoring of results; and (5) integration with the Agency's crisis readiness and response planning.

### Results

We determined that the FDIC has made progress in implementing elements of its OLA program, including progress in OLA resolution planning for the global SIFCs based in the U.S. However, we found that in the more than 12 years since the enactment of the DFA, the FDIC has not maintained a consistent focus on maturing the OLA program and has not fully established key elements to execute its OLA responsibilities. Specifically:

1. **Consistent focus on OLA.** While the enactment of the DFA in 2010 provided the FDIC with a broad new mandate to resolve SIFCs, we found that, since the enactment of the DFA, the FDIC's focus on other important, but competing, priorities delayed maturity of the OLA program.

2. **OLA Policies and Procedures.** The FDIC has made significant progress in developing high-level policies and procedures for the execution of an OLA resolution of a systemically important bank holding company. However, it has not completed operational-level policies and procedures, nor identified how it would need to adjust its policies and procedures for an OLA resolution of other types of SIFCs. In addition, the FDIC has not developed two regulations required by the DFA or completed policies and procedures for ongoing OLA resolution planning activities.

3. **OLA Roles and Responsibilities**. The FDIC has not fully defined governance and individual practitioner-level roles and responsibilities related to the execution of an OLA resolution.

4. **OLA Resources, Training, and Exercises.** The FDIC needs to obtain additional staff resources to plan for an OLA resolution, and to fully identify and document the staff and contractor resources necessary to execute an OLA resolution. In addition, the FDIC needs to enhance OLA-related training and exercises to regularly ensure that personnel have the skills needed to execute an OLA resolution.

5. **Monitoring of OLA Activities.** The FDIC does not have adequate monitoring mechanisms in place to ensure it promptly implements the OLA program and consistently measures, monitors, and reports on the OLA program status and results.

6. **Crisis Readiness-Related Planning.** The FDIC has not documented a readiness plan for executing OLA resolution authorities in a financial crisis scenario involving concurrent failures of multiple SIFCs.

Absent a consistent focus and fully established key elements for executing the OLA, the FDIC may not be able to readily meet the OLA requirements for every type of SIFC the FDIC might be required to resolve. If the FDIC were unable to resolve a SIFC, the banking sector and the stability of the U.S. and global financial systems could be severely affected.

## Recommendations

We are making 17 recommendations to improve key elements for executing the FDIC's OLA responsibilities. Specifically, we recommend that the FDIC maintain a consistent focus on the OLA program; develop and maintain comprehensive OLA policies, procedures, and resolution planning documents for all entities designated as systemically important under the DFA; establish an action plan for the timely implementation of additional rules or regulations necessary to meet OLA requirements; and ensure interdivisional governance over OLA resolution planning. We also recommend that the FDIC establish a process for identifying and preparing staff for key OLA resolution governance roles and responsibilities; assess resources and skill sets needed to plan for and execute an OLA resolution; and regularly conduct OLA training and exercises.

In addition, we recommend that the FDIC establish metrics, reviews, and a tracking mechanism to improve monitoring of the OLA program and regularly update Agency executives on the overall status of the OLA program. Finally, we recommend that the FDIC develop a readiness plan for a financial crisis scenario, to include the resolution of multiple concurrent SIFC failures.

The FDIC concurred with all 17 recommendations and proposed corrective actions that were sufficient to address the intent of the recommendations. Therefore, we consider these recommendations to be resolved and open pending completion of the corrective actions. The FDIC plans to complete all corrective actions by December 31, 2025.

# Contents

**September 28, 2023**

**Subject** ***The FDIC's Orderly Liquidation Authority***

During the financial crisis that began in 2008, a large investment bank worth $60 billion failed. Further, another large investment bank worth $20 billion and a large insurance company worth $147 billion were in danger of failing. Along with these companies, three of the nation's largest commercial banking organizations came close to failing. The failure or potential failure of these and other large complex financial companies created severe stress on the global financial system, resulted in taxpayer-funded bailouts for many companies and significant losses to the United States (U.S.) economy[1] and exposed gaps and weaknesses in the supervision and regulation of the U.S. financial system. These gaps identified the need for new authorities and tools to manage the failure of a large financial company in a way designed to avoid taxpayer-funded bailouts and mitigate the potential for such failures to threaten the stability of the financial system.

In response to the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[2] (DFA) in part to clearly assign authority for the resolution of systemically important financial companies (SIFC) to the Federal Deposit Insurance Corporation (FDIC). According to the FDIC, a SIFC is "any entity that meets the statutory definition of "financial company"[3] and for which a determination is made that, among other things, the resolution or insolvency of the entity under the otherwise applicable Federal or State law would have serious adverse effects on U.S. financial stability.

Before the enactment of the DFA, the FDIC's resolution authority was limited to FDIC-insured depository institutions (IDI) in accordance with the Federal Deposit Insurance Act (FDI Act).[4] Previously, SIFCs were generally subject to resolution under the U.S. Bankruptcy Code and were not eligible for FDIC resolution. However,

[1] According to the FDIC study, *Crisis and Response: An FDIC History, 2008-2013* (November 2017), the U.S. Government Accountability Office (GAO) and others have estimated that the cumulative net cost to the U.S. economy associated with the 2008 financial crisis could range from more than $10 trillion to $14 trillion, adjusted for inflation.
[2] 12 U.S.C. § 5301, et seq.
[3] 12 U.S.C. § 5381(a)(11).
[4] 12 U.S.C. § 1821(d).

Title II of the DFA, *Orderly Liquidation Authority* (OLA),[5] aimed to close this gap by establishing OLA as an alternative to bankruptcy for resolving a SIFC. Title II provides that the purpose of the OLA is "to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard."[6] Under the OLA, the FDIC would act as the receiver for a SIFC.[7]

The FDIC's readiness to perform its responsibilities under the OLA supports two FDIC Mission Essential Functions: "making large and complex financial institutions resolvable"[8] and "managing receiverships."[9] The FDIC must be ready to execute these responsibilities effectively when needed to ensure the continued financial stability of the U.S.

In March 2023, two large regional banks,[10] Silicon Valley Bank and Signature Bank, failed. After receiving a recommendation from the boards of the FDIC and the Board of Governors of the Federal Reserve System (FRB), and consulting with the President, the U.S. Secretary of the Department of the Treasury (Treasury Secretary) determined that both failures represented a systemic risk to U.S. financial stability. However, the DFA specifically excludes IDIs, such as these two regional banks, from resolution under the OLA.[11] Therefore, the failures were subject to FDIC resolution under the FDI Act, which was outside the scope of this evaluation report.

Our evaluation objective was to determine whether the FDIC maintained a consistent focus on implementing the OLA program and established key elements to execute the OLA under the DFA, including: (1) comprehensive policies and procedures; (2) defined roles and responsibilities; (3) necessary resources; (4) regular monitoring of results; and (5) integration with the Agency's crisis readiness and response planning. We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Appendix 1 presents our evaluation objective, scope, and methodology. Appendix 3 contains a glossary of terms used in this report.

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[5] 12 U.S.C. §§ 5381–5394.
[6] 12 U.S.C. § 5384(a).
[7] The FDIC's powers and duties as receiver include, among other things, managing and selling assets, determining and paying valid claims, and accounting and recordkeeping for the failed SIFC. 12 U.S.C. § 5390.
[8] The FDIC added "making large and complex financial institutions resolvable" to its mission since enactment of the DFA in 2010.
[9] FDIC Mission, Vision, and Values. https://www.fdic.gov/about/strategic-plans/strategic/mission.html
[10] The FDIC Chairman defined regional banks as having assets between $50 billion and $500 billion in a speech on October 16, 2019. https://www.fdic.gov/news/speeches/2019/spoct1619.pdf
[11] 12 U.S.C. § 5381(a)(8)(B).

# BACKGROUND

The DFA defines the term "financial company" to include the following four types of companies.[12] Any financial company meeting this definition could be covered under OLA if the company's failure meets the systemic risk requirements of the DFA.[13]

i. A bank holding company (BHC).[14] For example, U.S. BHCs and U.S. top-tier intermediate holding companies[15] of foreign banking organizations (FBO).
ii. A nonbank financial company supervised by the FRB. For example, systemically important brokers or dealers,[16] or insurance companies.
iii. Any company that the FRB determines is predominantly engaged in activities financial in nature or incidental thereto. For example, systemically important financial market utilities (FMU),[17] which include central counterparties (CCP).[18]
iv. Any subsidiary of a company, in i. through iii., that the FRB determines is predominantly engaged in activities that are financial in nature or incidental thereto, other than an IDI or an insurance company.

[12] 12 U.S.C. § 5381(a)(11)(B).
[13] The DFA refers to any such company as a "covered financial company," which does not include an IDI. 12 U.S.C. § 5381(a)(8).
[14] A BHC is any company that has control over any bank or over any company that is or becomes a BHC. 12 U.S.C. § 1841(a).
[15] According to the Federal Financial Institutions Examination Council National Information Center, an intermediate holding company is a company established or designated by a foreign banking organization as its U.S. intermediate holding company under 12 C.F.R. Part 252, Subpart O. An intermediate holding company is both a holding company of a smaller group of companies and a subsidiary of a larger group of companies.
[16] The Securities Exchange Act of 1934 defines a "broker" as any person engaged in the business of effecting transactions in securities for the account of others, and a "dealer" as any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise. 15 U.S.C. § 78c(a).
[17] An FMU is any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person. 12 U.S.C. § 5462(6).
[18] A CCP is a type of FMU and is a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets either by guaranteeing trades or novating contracts. 12 C.F.R. § 3.2; 12 C.F.R. § 1240.2.

U.S. organizations that identify SIFCs include the FRB for BHCs and the Financial Stability Oversight Council (FSOC)[19] for nonbank financial companies[20] and FMUs.[21] In addition, the Financial Stability Board (FSB),[22] in consultation with the Basel Committee on Banking Supervision and national authorities, annually identifies and publishes a list of Global Systemically Important Bank (GSIB) holding companies.[23] The most recent list, which the FSB published in November 2022, comprised 30 BHCs, including eight U.S. BHCs.[24] FSOC is responsible for designating nonbank financial companies and FMUs as systemically important.[25] As of August 2023, FSOC designated eight FMUs as systemically important. There are currently no FSOC-designated systemically important insurance companies. FSOC has never designated any brokers or dealers as systemically important.

**Systemic Risk Determination Process Under the OLA**

The DFA gives the FDIC authority to be a receiver for any financial company that meets the systemic risk determination requirements of the DFA.[26] Initiation of the OLA requires the FRB, along with the appropriate financial regulatory agency,[27] to make a written recommendation to the Treasury Secretary that the FDIC should be appointed receiver of the failing SIFC based on eight criteria under Section 203(a) of

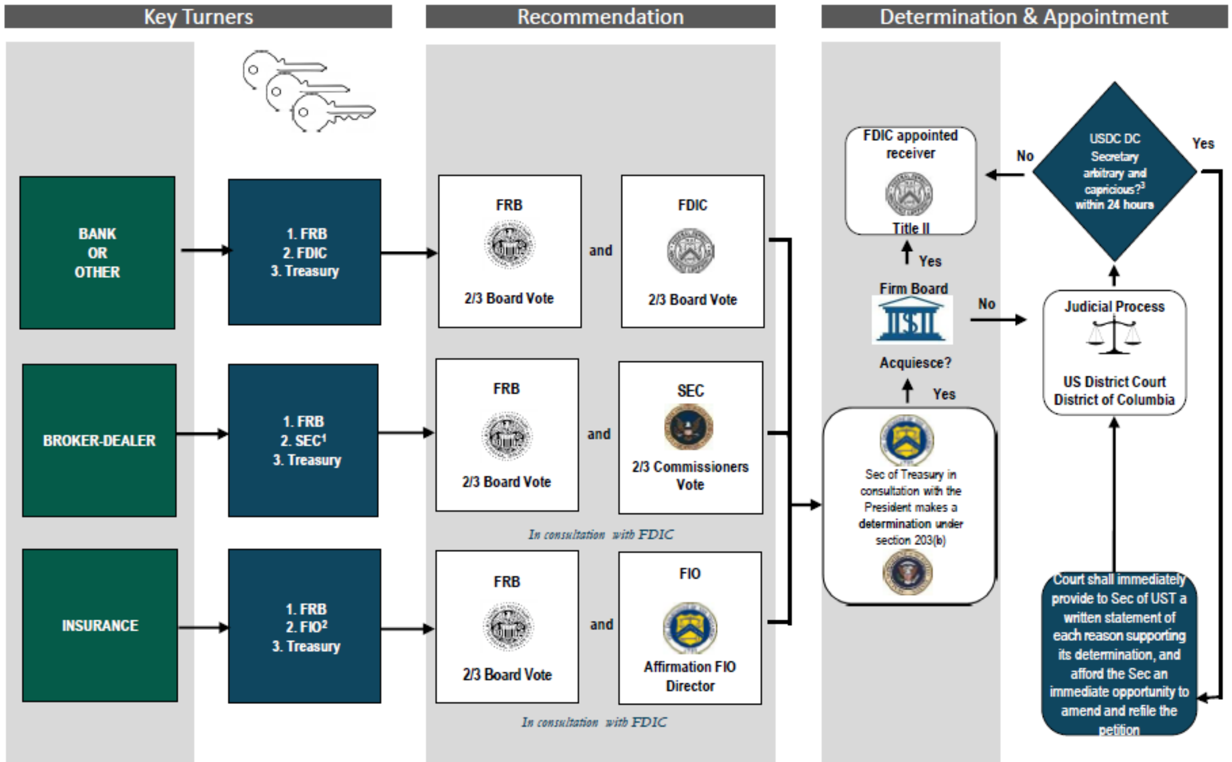
[19] FSOC is a collaborative body chaired by the Treasury Secretary that brings together the knowledge of the U.S. Federal financial regulators, an independent insurance expert appointed by the President of the U.S., and state regulators. The FDIC Chairman is a member of FSOC.
[20] The DFA gives FSOC the authority to require FRB supervision and regulation of nonbank financial companies that could pose a threat to U.S. financial stability. 12 U.S.C. § 5323.
[21] The DFA gives FSOC the authority to designate FMUs that are, or are likely to become, systemically important. 12 U.S.C. § 5463.
[22] The FSB is an international body that coordinates the work of national financial authorities and international standard-setting bodies and develops and promotes the implementation of effective regulatory, supervisory, and other financial sector policies in the interest of financial stability. https://www.fsb.org/wp-content/uploads/FSB-Charter-with-revised-Annex-FINAL.pdf.
[23] The Basel Committee on Banking Supervision assessment methodology for identifying a GSIB requires a sample of banks to report a set of indicators to national supervisory authorities. These indicators are aggregated and used to calculate a score for the banks in the sample. Banks above a cut-off score are designated as GSIBs, after considering supervisory judgment regarding the global systemic impact of the bank's distress or failure. https://www.bis.org/bcbs/gsib/.
[24] The most recent FSB list of 30 GSIBs is at https://www.fsb.org/wp-content/uploads/P211122.pdf.
[25] 12 U.S.C. § 5323; 12 U.S.C. §5463.
[26] 12 U.S.C. § 5382(a), 12 U.S.C. § 5383.
[27] The appropriate financial regulatory agency is determined based on the largest subsidiary as measured by total assets, including the Securities and Exchange Commission (SEC) for broker-dealers, the Federal Insurance Office (FIO) for insurance companies, or the FRB and the FDIC for all other covered financial companies. 12 U.S.C. § 5383(a)(1).

the DFA.[28] Upon receipt of the recommendation, the Treasury Secretary makes a systemic risk determination in consultation with the U.S. President as to whether to appoint the FDIC as receiver.[29] Once the Treasury Secretary makes a determination, the Treasury Secretary seeks the consent of the financial company's Board of Directors to appoint the FDIC as receiver. If the company's Board of Directors does not give consent, the Treasury Secretary files a petition in Federal district court seeking an order authorizing the appointment.[30]

See Figure 1 below for an overview of the systemic risk determination process under the OLA.

[28] These eight criteria are: (1) An evaluation of whether the financial company is in default or in danger of default; (2) a description of the effect that the default of the financial company would have on financial stability in the United States (U.S.); (3) a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities; (4) a recommendation regarding the nature and the extent of actions to be taken under Title II regarding the financial company; (5) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company; (6) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company; (7) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and (8) an evaluation of whether the company satisfies the definition of a financial company under the DFA. 12 U.S.C. § 5383(a)(2).
[29] 12 U.S.C. § 5383(b).
[30] The U.S. District Court for the District of Columbia's review of the Treasury Secretary's determination is limited to a 24-hour review period. 12 U.S.C. § 5382(a)(1)(A)(v).

**Figure 1: Systemic Risk Determination Process Under the OLA**




[1] The Securities & Exchange Commission is a key-turner in the case of a broker-dealer, or in which the largest U.S. subsidiary of a financial company is a broker-dealer.
[2] The Federal Insurance Office is a key-turner in the case of an insurance company, or in which the largest U.S. subsidiary of a financial company is an insurance company.
[3] The USDC DC's review is limited to the Secretary's determination that (1) the covered financial company is in *default or in danger of default* and (2) the covered financial company satisfies the *definition of a financial company* under section 201(a)(11)

**Source:** FDIC depiction of the systemic risk determination process under the OLA.

The systemic risk determination process is also informally known as the "Three Keys" process and the FRB, the appropriate financial regulatory agency, and the Treasury Secretary are informally referred to as "key turners."[31]

Once appointed, the FDIC's receivership can remain in place for up to 3 years. The FDIC can extend the receivership for two more 1-year terms to complete any ongoing litigation or other proceeding.

### History of the FDIC's OLA Resolution Planning

Since the enactment of the DFA more than 12 years ago, the FDIC has changed its organizational structure for implementing its statutory responsibilities under the

[31] The "Three Keys" are the Treasury Secretary, the FRB, and the FDIC, SEC, or FIO, based on the applicable failing financial company.

OLA.[32] Initially, in August 2010, the FDIC Board of Directors[33] established the Office of Complex Financial Institutions (OCFI) to serve as the responsible component for implementing the FDIC's systemic resolution authorities under the DFA. OCFI's three core functions were:

- **Monitoring** - Responsible for monitoring risk within and across large, complex financial companies for back-up supervisory and resolution readiness purposes. The FDIC transferred monitoring responsibilities from OCFI to the FDIC's Division of Risk Management Supervision (RMS) in March 2013.
- **Systemic Resolution Planning and Implementation** - Responsible for reviewing Title I resolution plans required under the DFA[34] and resolution plans submitted by IDIs under a rule issued under the FDI Act.[35]
- **International Coordination** - Responsible for coordinating with regulators overseas regarding challenges with cross-border resolutions.

The FDIC Board intended for OCFI to coordinate with other FDIC Divisions and Offices to implement its systemic resolution authorities under the DFA. Therefore, the responsibilities for supervision and resolution of SIFCs spread across the FDIC's OCFI, Division of Resolutions and Receiverships (DRR), and RMS. OCFI was responsible for resolution strategy, planning, and international outreach and coordination. The DRR Complex Financial Institutions branch was responsible for certain operational matters related to implementing an OLA resolution. The RMS Complex Financial Institutions and Large Bank Supervision branches were responsible for institution monitoring and supervision, and supported OLA resolution planning efforts.

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[32] See Appendix 4 for a Timeline of Key Events for OLA during the period July 2010-January 2023.

[33] The FDIC Board of Directors is the governing body of the FDIC and manages operations to fulfill the Agency's mission. Each member of the five-person Board is appointed by the President and confirmed by the Senate. https://www.fdic.gov/about/

[34] Title I, *Financial Stability*, of the DFA, as amended, requires nonbank financial companies supervised by the FRB, and bank holding companies with total consolidated assets of $250 billion or more, to submit periodically a plan for rapid and orderly resolution in the event of material financial distress or failure to the FDIC, the FRB, and FSOC. These Title I plans, which are also known as Section 165(d) plans, must demonstrate that the firm could be resolved under the Bankruptcy Code, which is the preferred resolution method, without severe adverse consequences for the financial system. The FDIC and FRB must review and provide feedback to the SIFC on each submitted plan. 12 U.S.C. § 5365.

[35] FDIC Rules and Regulations require IDIs with $50 billion or more in total assets to prepare a plan for how the IDI can be resolved under the FDI Act. 12 C.F.R. § 360.10. CISR reviews these resolution plans for IDIs with $100 billion or more in total assets. Since 2019, a moratorium has been in effect on plan requirements for IDIs with under $100 billion in total assets.

In June 2019, the FDIC Board established the Division of Complex Institution Supervision and Resolution (CISR), which combined the operations of the former OCFI with the DRR and RMS branches responsible for supervision, monitoring, resolution planning, and resolution execution for large complex financial institutions.[36] The purpose of the reorganization was to simplify and centralize in one Division, CISR, the FDIC's organizational structure for the supervision and resolution of SIFCs and other large and complex financial institutions.[37] The newly created CISR organization has four branches: Resolution Readiness, Systemic Risk, Institution Risk, and Operations. Resolution Readiness, Systemic Risk, and Institution Risk branches have the primary responsibility for supervision or resolution of SIFCs, while the Operations branch provides operational support to all CISR branches.

The FDIC also established the Systemic Resolution Advisory Committee (SRAC) in 2011.[38] The purpose of the SRAC is to advise and make recommendations to the FDIC on a broad range of issues regarding the resolution of a SIFC under the DFA. For example, the SRAC advises the FDIC on:

- The effects on financial stability and economic conditions resulting from the failure of a SIFC;
- The ways in which specific resolution strategies would affect stakeholders and their customers;
- The tools available to the FDIC to wind down the operations of a failed SIFC; and
- The tools needed to assist in cross-border relations with foreign regulators and governments when a SIFC has international operations.

As of the November 2022 meeting, the SRAC had 17 members comprised of former Government officials and experts from the private sector and academia with experience managing complex firms; administering bankruptcies; and working in the legal system, accounting field, and academia. The SRAC charter states that the committee will not exceed 20 members.

[36] The FDIC generally defines large and complex financial institutions as SIFCs and IDIs with assets above $100 billion. According to the FDIC, large and complex financial institutions have distinct regulatory requirements and their size, complexity, and risk profile warrant specialized supervisory processes, preplanning under the FDI Act or the OLA, and focused cross-border coordination.
[37] CISR has supervisory responsibilities for large and complex financial institutions when the FDIC is not the primary Federal regulatory authority. CISR has resolution responsibilities for all large and complex financial institutions with assets above $100 billion.
[38] The SRAC met most recently in November 2022.

### The FDIC's Process for OLA Resolution Planning

The FDIC is responsible for performing general and institution-specific resolution planning to prepare for executing the OLA. General resolution planning involves developing resolution strategies for each type of institution that could be subject to the OLA. Institution-specific resolution planning involves developing more detailed strategies for an individual institution. For institution-specific planning, the FDIC drafts Institution-Specific Strategic Plans (ISSP) based on SIFC-developed Title I resolution plans, IDI resolution plans, and Recovery Plans.[39] The ISSP contains an analysis of strategic alternatives that the FDIC could use in a systemic resolution conducted under the OLA.[40]

Although it has never been used, senior CISR officials stated that the single point of entry (SPOE) strategy is the FDIC's preferred strategy for conducting an OLA resolution.[41] The SPOE strategy document states that the Treasury Secretary would appoint the FDIC as receiver for the top-tier U.S. holding company.[42] The FDIC would then organize a bridge financial company (BFC) and transfer assets of the top-tier U.S. holding company into the BFC. The BFC would continue to provide the holding company functions of the covered financial company. The holding company's subsidiaries would remain open, allowing them to continue operations and avoid the disruption that would otherwise go along with their closings, thus reducing disruptions to the financial system and the risk of spillover effects to counterparties.[43]

To implement the SPOE strategy, the FDIC has developed its Systemic Resolution Framework, Interim Final Draft (SRF). The SRF is organized into three tiers as identified in Figure 2 below.

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[39] A recovery plan identifies triggers and options for responding to a wide range of severe internal and external stress scenarios to restore a covered bank that is in recovery to financial strength and viability in a timely manner. 12 C.F.R. Part 30 Appendix E.

[40] According to the FDIC, an ISSP includes essential resolution-focused information for a firm, a summary of key resolution considerations and challenges, including critical operations and potential systemic risks, and a detailed discussion of strategic options in resolution, building upon the strategies and additional options contained in the Title I plans.

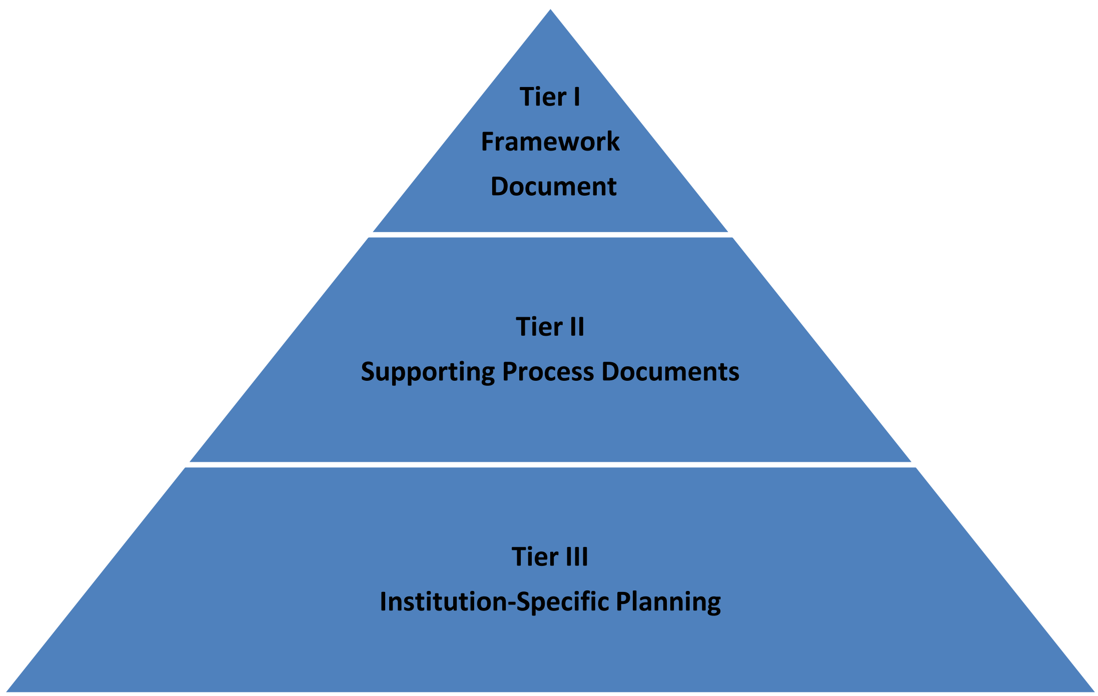
[41] In December 2013, the FDIC published the *Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy*, in the Federal Register. https://www.federalregister.gov/documents/2013/12/18/2013-30057/resolution-of-systemically-important-financial-institutions-the-single-point-of-entry-strategy.

[42] A top-tier holding company is a holding company that is not a subsidiary of another company.

[43] Counterparty means the party on the other side of a transaction.

- Tier I of the framework is the Systemic Resolution Framework Document, Interim Final Draft (SRFD),[44] which defines the overall structure and organization of the SPOE strategy, and the primary actions and key decisions needed to respond to the potential failure of a SIFC and to carry out its resolution.
- Tier II of the framework consists of the supporting documents needed by FDIC staff to execute or advance operational processes within 64 primary actions. Supporting documents consist of playbooks, process documents, templates, and reference documents.
- Tier III of the framework consists of the institution-specific planning documents – FDIC-prepared ISSPs based on the Title I Plans, IDI plans, and Recovery Plans – and institution-level cross-border coordination.

**Figure 2: Systemic Resolution Framework, Interim Final Draft**




**Source:** OIG analysis of the FDIC Systemic Resolution Framework, Interim Final Draft, at the time of our evaluation. According to senior CISR officials, this framework is under review and subject to revision.

[44] At the time of our evaluation, the current SRFD version was the Systemic Resolution Framework Document, Interim Final Draft (April 2020).

The SRFD summarizes each of 64 **primary actions** (including 12 governance actions) needed to carry out the resolution process, grouped by **phase** and **functional area**.

**Primary Actions (including Governance Actions)**

Primary actions are the core, highest level steps that must be to be taken by the FDIC in connection with preparing for and executing an OLA resolution following the onset of stress in a specific SIFC. Twelve of the steps identified among the primary actions are categorized as governance actions. Governance actions are decisions made, or actions taken, at senior levels of the FDIC. Each governance action is supported by work performed in the preceding primary actions, and each governance action is necessary to inform or authorize work in the subsequent primary actions.

Primary actions are organized in the SRFD by phases and present a general chronological ordering of the systemic resolution process. However, the SRFD states that many of the primary actions would occur concurrently, overlap, or depend on the completion of another primary action or decision. Some examples of primary actions include evaluating potential resolution strategies and engaging external advisors, submitting required congressional reports, and making determinations on creditor claims.

**Phases of an OLA Resolution**

The FDIC has organized the OLA resolution strategy into eight phases covering the life cycle of the resolution continuum, ranging from planning to post-exit. Table 1 below describes the phases of an OLA resolution.

**Table 1: Phases of an OLA Resolution**

| Phase | Trigger | Key FDIC Governance Decision |
|---|---|---|
| 1. Planning/ Business-as-Usual | Ongoing Operations | • None - Ongoing monitoring, planning and preparation for systemic resolution |
| 2. Watch/Alert | Material Stress Event | • Form a response team |
| 3. Heightened Monitoring and Resolution Planning | Increased Risk of Non-Viability | • Establish internal governance structure for managing the resolution; start engagement with key domestic and foreign authorities; and the failing SIFC<br>• Start engagement with external resources, including contractors, consultants, and advisors, as appropriate<br>• Deploy onsite resolution resources, as needed, and coordinate due diligence gathered to prepare for resolution, including BFC board and Chief Executive Officer selection |
| 4. Determination | Failure Anticipated | • Determine if use of OLA is appropriate and if so, determine appropriate resolution strategy, and use of the Orderly Liquidation Fund<br>• Confirm U.S. and foreign host authority expectations for anticipated actions to be taken during resolution weekend and immediate stabilization |
| 5. Entry into Resolution | FDIC Appointed Receiver | • Approve formation of the BFC, establish receivership governance and BFC oversight structure, and deploy onsite liaison and support team<br>• Issue public statements in coordination with U.S. and foreign host authorities and BFC |
| 6. Stabilization | Markets Open | • Oversee BFC stabilization activity, including compliance with Receivership Controls provisions[(a)] |
| 7. Restructuring and Exit | Liquidity Stabilized/Transition to Restructuring | • Approve BFC strategic/business plan<br>• Terminate BFC status or determine to extend BFC status, as necessary |
| 8. Post Exit | Bridge Terminated/Exit from Resolution | • Terminate receivership or determine to extend receivership, as necessary |

**Source:** OIG Analysis of the FDIC Systemic Resolution Framework, Interim Final Draft, at the time of our evaluation. According to senior CISR officials, this framework is under review and subject to revision.
[(a)]The Receivership Controls provisions, included in an appendix to the BFC Articles of Association, establish specified FDIC requirements and limitations on the BFC.

### Functional Areas

The SRFD defines functional areas as "groupings of subject matter and related processes and tasks needed to execute a systemic resolution." Each functional area represents a distinct body of work and area of responsibility. Functional areas with synergies of purpose, responsibility, and staffing are grouped into four pillars.

According to the SRFD, pillars organize related and interdependent processes and tasks within different functional areas and provide for more efficient allocation of staff resources and skill sets. Table 2 below shows the functional area groupings by pillar and the FDIC Division or Office responsible for the functional area.

**Table 2: Functional Area Groupings by Pillar**

| Pillar | Functional Areas | Responsible FDIC Division or Office |
|---|---|---|
| Coordination and Communication | External Coordination | CISR |
| | External Communications | Office of Communications |
| Financial Condition and Strategy | Capital | CISR |
| | Liquidity | CISR |
| | Strategy Analysis | CISR |
| Bridge Operations | Bridge Transaction | Legal Division |
| | Funding Operations | Division of Finance |
| | Operational Continuity | CISR |
| | Restructuring | CISR |
| | Valuation | CISR |
| Receivership Management | Claims | CISR |
| | Investigations and Record Management | Legal Division |
| | Accounting | DRR |
| | Litigation | Legal Division |
| | Asset Management | CISR |

**Source**: OIG Analysis of the FDIC Systemic Resolution Framework, Interim Final Draft, at the time of our evaluation. According to senior CISR officials, this framework is under review and subject to revision.

### FDIC Divisions and Offices Participating in OLA Planning and Execution

The SRFD identifies CISR as the FDIC Division responsible for maintaining the SRF. CISR is also responsible for 9 of the 15 functional areas of an OLA resolution as shown in Table 2. However, other FDIC Divisions and Offices have primary responsibility for various aspects of resolution planning and execution. For example, the Legal Division prepares the agreements the FDIC uses to establish the BFCs, the Division of Finance accounts for the Orderly Liquidation Fund (OLF),[45] DRR accounts for the Receivership, and the Office of Communications manages external communications regarding the resolution process. The SRFD also identifies the supporting roles of the FDIC Chairman's Office, the Division of Insurance and Research, and the Office of Legislative Affairs during an OLA resolution.

[45] The DFA established the OLF at the Treasury as a liquidity facility that the FDIC may draw upon, subject to terms set by the Treasury, to lend to the financial company in receivership. 12 U.S.C. § 5390(n).

## FDIC Coordination Activities for OLA

### U.S. Interagency Coordination in OLA Planning

According to senior CISR officials, the FDIC uses the FSOC designations as an indicator of which non-GSIB institutions might have systemic risk and therefore should be a focus of OLA resolution planning efforts. While FSOC designates which U.S. FMUs are systemically important, the FDIC is responsible for planning for, and if necessary executing, the resolution of a systemically important U.S. FMU. However, the FDIC does not supervise any of the FSOC-designated FMUs. That oversight is primarily the responsibility of the U.S. Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or the FRB. Therefore, the FDIC must coordinate with these agencies for its OLA planning related to FMUs, including CCPs.

### International Coordination in OLA Planning

The FDIC participates in Crisis Management Groups (CMG) for institution-specific planning for institutions that are considered systematically important in more than one country. Further, the FDIC co-chairs the CMGs for the eight U.S. GSIBs with the FRB. A CMG is a cooperative structure formed to enhance preparedness and planning, as well as facilitate crisis management, recovery, and resolution of a SIFC.

The FDIC also participates in cross-border interagency dialogue on resolution policy matters organized by the Treasury Department, which provides venues for the U.S. agencies (FDIC, FRB, Office of the Comptroller of the Currency, SEC and CFTC) to discuss regulatory cooperation with their counterparts in the European Banking Union, and since 2018, the United Kingdom (UK). For example, according to the 2021 FDIC Annual Report, since 2017, the FDIC has been part of a regular series of senior-level meetings to discuss CCP resolution. These meetings include senior officials from the FDIC, CFTC, SEC, FRB, and the UK to share views on CCP resolution. In addition, the FDIC Chairman currently serves as the Chair of the FSB's Resolution Steering Group. The mandate of this group is to develop, issue, and maintain standards and guidance for SIFC resolution, monitor resolvability and crisis preparedness, help build trust between home and host authorities, and serve as a knowledge-sharing forum for resolution authorities and other authorities with a role in crisis management.

The FDIC also conducts international coordination for OLA planning through the Trilateral Principal Level Exercise (TPLE). The TPLE, launched in 2016, is an ongoing program consisting of authorities from the European Banking Union, the UK, and the U.S., to foster and enhance a common understanding regarding respective resolution regimes and decision-making processes, policies, potential resolution strategies, and the expected coordination channels between authorities domestically and internationally to help with orderly resolution of a SIFC. The TPLE consists of regular exercises and exchanges among the principals of key financial sector authorities to enhance understanding of each jurisdiction's resolution regime for GSIBs and to strengthen coordination on cross-border resolution. The latest TPLE principals-level exercise was in April 2022, hosted by the FDIC.

**Prior OIG Coverage of the FDIC's OLA**

The OIG has conducted the following prior reviews of the FDIC's OLA program and activities:

AUD-14-001, *The FDIC's Progress in Implementing Systemic Resolution Authorities under the Dodd-Frank Act* (November 2013). The objective of this performance audit was to determine the progress made by the FDIC in implementing the DFA authorities associated with monitoring systemically important financial institutions, and resolving one, should that be necessary. The OIG report made six recommendations intended to better position the FDIC to face future challenges and successfully carry out its systemic resolution responsibilities under the DFA. In general, the recommendations were aimed at enhancing the FDIC's long-term strategic planning efforts, strengthening coordination among FDIC Divisions, and building out the FDIC's infrastructure to support systemic resolution activities. The OIG closed the six recommendations in 2014 based on the FDIC's corrective action plans.

- EVAL-17-003, *The FDIC's Risk Monitoring of Systemically Important Institutions' Proximity and Speed to Default or Danger of Default* (January 2017). The objective of this evaluation was to determine the FDIC's progress in developing criteria and a process for assessing systemically important financial institutions' proximity and speed to default or danger of default, so that the FDIC could undertake necessary preparatory actions for their resolution. The OIG report made three recommendations to improve documentation for the FDIC's Systemic Monitoring System for assessing the proximity and speed to default, and to independently evaluate the output of the system's automated tool. The OIG closed the three recommendations in 2017 based on the FDIC's corrective action plans.

# EVALUATION RESULTS

We determined that the FDIC has made progress in implementing elements of its OLA program, including progress in OLA resolution planning for the global SIFCs based in the U.S. However, we found that in the more than 12 years since the enactment of the DFA, the FDIC has not maintained a consistent focus on maturing the OLA program and has not fully established key elements to execute its OLA responsibilities. Specifically, the FDIC has not: (1) completed policies and procedures; (2) fully defined OLA roles and responsibilities; (3) ensured it has all needed resources, training, and exercises to plan for or to execute an OLA resolution; (4) developed adequate monitoring mechanisms to ensure it promptly implements the OLA program and consistently measures, monitors, and reports on the OLA program status and results; and (5) developed a readiness plan for executing OLA resolution authorities in a financial crisis scenario.

Absent a consistent focus and fully established key elements for executing the OLA, the FDIC may not be able to readily meet the OLA requirements for every type of SIFC the FDIC might be required to resolve. If the FDIC were unable to resolve a SIFC, it could severely affect the banking sector and the stability of the U.S. and global financial systems.

## The FDIC Has Not Maintained a Consistent Focus on Maturing the OLA Program

The enactment of the DFA in 2010 provided the FDIC with a broad new mandate to resolve SIFCs through the implementation of the OLA. This significant new responsibility required sustained focus to ensure that the FDIC established key elements to plan for and execute the OLA program, when needed. However, we found that the FDIC has not maintained a consistent focus on maturing the OLA program.

In response to a request from the FDIC Chairman, in 2013 the OIG conducted an audit to determine the progress made by the FDIC in implementing the DFA authorities associated with monitoring SIFIs, and resolving one, should that be necessary. In our report, *The FDIC's Progress in Implementing Systemic Resolution Authorities under the Dodd-Frank Act*, (AUD-14-001),[46] we found that the FDIC had made significant progress at that time towards implementing its systemic resolution authorities under the DFA. However, we concluded that the FDIC needed to do more work to establish a robust corporate-wide capability for executing resolution

[46] https://www.fdicoig.gov/reports/audits-and-evaluations/fdics-progress-implementing-systemic-resolution.

strategies, including the SPOE strategy. The OIG made six recommendations to the FDIC Chairman that would better position the FDIC to face future challenges and successfully carry out its systemic resolution authorities under the DFA. The report's recommendations were intended to help the FDIC advance the OLA program by:

- Enhancing the FDIC's long-term strategic planning efforts to measure progress and mature readiness;
- Developing policies and procedures for key OLA processes;
- Defining the roles and responsibilities, logistics, and preparation activities for OLA execution;
- Strengthening OLA coordination among FDIC divisions and offices;
- Identifying and maintaining sufficient staff resources and skill sets; and
- Facilitating internal and external information sharing.

As a result of the OIG's recommendations, in February 2014, the FDIC prepared strategic plans intended to ensure that ongoing and planned systemic resolution-related projects and performance measures were aligned to longer-term goals. The FDIC also committed to developing annual plans that would include longer-term strategic goals to address priorities that extended beyond the one-year planning horizon. However, during our current evaluation we found that that the FDIC has not fully addressed the following initiatives to which the FDIC committed in the 2014 OCFI Strategic Plan:

- Developing resolution plans for all designated SIFCs;
- Fully defining and documenting preparation activities, logistics, interdivisional roles and responsibilities and resources to execute an OLA resolution;
- Facilitating interdivisional communication, cooperation, and implementation process development;
- Standardizing and codifying the documentation of OLA implementation planning efforts; and
- Developing firm-specific implementation plans.

These initiatives remain incomplete because the FDIC has not maintained a consistent focus to ensure readiness to implement its systemic resolution authority, as agreed to in response to the OIG audit.

The FDIC's focus on other important, but competing, priorities delayed maturity of the OLA program. Specifically, after issuance of the SRFD in 2015, the FDIC's efforts to mature its OLA program slowed. According to senior CISR officials, during the 2015 to 2016 timeframe, the FDIC prioritized the performance of Title I resolution plan review activities over OLA planning activities, slowing progress on the Title II work. The Title I efforts included reviewing plans within deadlines that required prompt attention.[47] Therefore, senior FDIC executives decided that a majority of the resources of OCFI would focus on reviewing firms' Title I plan submissions and following up on FDIC recommendations to firms, with less focus on Title II work. The 2016 FDIC annual report stated that in April 2016, the FDIC and FRB jointly completed their review of, and provided firm-specific feedback on, the eight GSIB Title I resolution plans submitted in July 2015. The report also stated that during 2016, the FDIC and FRB reviewed Title I resolution plans submitted in 2015 by 122 other large bank holding companies, four FBOs, and three nonbank firms.

Senior CISR officials indicated that OCFI continued to develop OLA-related ISSPs and other updates from 2017 to 2019. Of note, in October 2018, the FDIC conducted a multi-division operational exercise focusing on the primary initial actions for a GSIB failure using draft guidance and templates. However, the FDIC's overall progress in maturing the OLA during those years was limited. In 2019, the FDIC recognized the shortcomings of its existing organizational structure and made a strategic decision to consolidate systemic resolution responsibilities into one division, CISR. According to the former FDIC Chairman who presided at the time, the reorganization was intended to improve coordination, consistency, and accountability and to address the duplicative functions, management challenges, and employee retention issues that the former fragmented structure produced.

Even after the creation of CISR, the FDIC continued to experience challenges in advancing the OLA program. A previous OIG report, *The FDIC's Implementation of Enterprise Risk Management*,[48] concluded that the FDIC did not use an Enterprise Risk Management[49] approach when it created CISR. Specifically, the report found that not all members of the FDIC's leadership team were involved in the risk assessment process related to the creation of CISR. The report stated that as a result, there was no assurance that the risks related to the reorganization were considered at the enterprise level by senior officials responsible for program operations and mission-support functions.

A senior CISR official stated that while the overall effect of the reorganization had been positive for the FDIC since the Division was formed, it resulted in setbacks in the OLA program as the FDIC revised processes and documentation to reflect the

[47] Per regulations in place at that time, the FDIC and FRB were to review Title I resolution plans within 60 days of submission. 12 C.F.R. § 381.5(a) (2014).
[48] OIG Report EVAL-20-005, *The FDIC's Implementation of Enterprise Risk Management* (July 2020). https://www.fdicoig.gov/sites/default/files/reports/2022-08/EVAL-20-005.pdf
[49] Enterprise risk management is an agency wide approach to addressing the full spectrum of internal and external risks facing an agency.

new organizational structure and OLA roles and responsibilities. In addition, senior CISR officials informed us that from 2020 to 2022, CISR focused significant resources on the development of a Regional Bank Resolution Framework[50] and related process guides under the FDI Act. They stated that FDIC senior leadership, due to the Covid-19 pandemic, determined that regional banks presented a higher risk of failure than SIFCs, and that the FDIC's readiness to resolve regional banks was less mature than it was for GSIBs under the SRFD. As a result, the FDIC shifted resources that otherwise would have been devoted to Title II efforts, which created additional setbacks in maturing the OLA program, by slowing progress on the completion of OLA policies and procedures and related OLA work.

Further, according to a senior CISR official, increasing CISR staff resources had been a challenge as a result of significant staff departures. Specifically, the official stated that in 2020 and 2021, for every two people CISR hired, approximately one person departed the Division.

Nonetheless, the FDIC could have ensured it had adequate resources in place to complete OLA-related policies and procedures in conjunction with other competing priorities. Furthermore, the FDIC has been eligible to receive reimbursement from FSOC for OLA-related implementation expenses since the enactment of the DFA, to compensate the FDIC for some of the cost of developing its OLA program.[51] According to the FDIC Division of Finance, as of December 2022, FSOC had reimbursed the FDIC $64 million for OLA implementation-related expenses since 2010. As discussed later in this report, the FDIC should obtain the staff resources needed to mature the OLA resolution planning program.

In February 2022, CISR established its *Strategic Plan 2022-2024,* which included goals and objectives that support the OLA program. However, it is not a strategic plan specific to OLA, which could help ensure priority focus on maturing the OLA program regardless of changes internal or external to the FDIC. This distinction is important because CISR's existing strategic plan acknowledges that changes in U.S. or FDIC leadership could reprioritize FDIC and divisional goals and objectives, and the resources available to execute on such goals.

Because the FDIC has not maintained a consistent focus on implementing the OLA program, and did not use an enterprise risk management approach in forming CISR, it is now more than 12 years since the enactment of the DFA, and the OLA program

[50] The FDIC's Regional Bank Resolution Framework identifies the policies and procedures for resolving a large regional IDI under the FDI Act.

[51] The DFA requires FSOC to reimburse the FDIC for reasonable OLA implementation expenses, including "costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities." 12 U.S.C. § 5390(n)(10).

is not mature. The FDIC still has not completed important initiatives identified in its 2014 strategic planning, which would support the maturity of OLA activities. As discussed below in this report, the FDIC:

- Has not completed the policies and procedures needed for the OLA program;
- Has not fully defined the roles and responsibilities for executing OLA;
- Needs to enhance OLA resources, training, and exercises;
- Needs to improve monitoring of OLA results; and
- Should integrate a financial crisis scenario into OLA resolution planning.

**Recommendation**

We recommend that the Acting Director, CISR:

1. Establish and maintain a consistent focus on the Orderly Liquidation Authority program in the Division of Complex Institution Supervision and Resolution strategic planning, to include a roadmap with established milestones for ensuring that the FDIC promptly matures the Orderly Liquidation Authority program.

## The FDIC Does Not Have Complete Policies and Procedures for Its OLA Program

The Government Accountability Office (GAO) *Standards for Internal Control in the Federal Government*[52] provides managers criteria for designing, implementing, and operating an effective internal control system.[53] These standards require management to clearly document internal controls in directives, administrative policies, or operating manuals relevant to the agency. Further, management should document in policies each unit's responsibility for operational processes and may further define policies through day-to-day procedures. Documentation supports operations by providing evidence that controls are identified, capable of being communicated to those responsible for their performance, and capable of being monitored and evaluated by the agency.

The FDIC uses the three tiers of the SRF as outlined earlier in Figure 1 – Framework level (Tier I), Operational level (Tier II) and Institution-Specific level (Tier III) policies, procedures, and guidance. However, while the FDIC substantially completed Tier I

[52] GAO*, Standards for Internal Control in the Federal Government* (GAO-14-704G) (September 2014).
[53] An internal control system is a continuous built-in component of operations, effected by people, that provides reasonable assurance that an entity's objectives will be achieved.

OLA policies and procedures for GSIBs in the SRFD, the Tier I guidance is not complete for systemically important nonbank financial companies and FMUs. The FDIC also has incomplete Tier II and Tier III policies, procedures, or products for all of the types of SIFCs the FDIC could be responsible for resolving under OLA. Further, the FDIC has not developed two regulations required by the OLA or completed policies and procedures for "business-as-usual" OLA resolution planning.[54] As identified earlier in this report, senior CISR officials indicated that competing priorities in the 2015 to 2016 and 2020 to 2022 timeframes impacted OLA planning. The FDIC did not maintain adequate focus and resources to sufficiently advance the OLA program during these periods, which delayed the completion of OLA policies and procedures.

***Incomplete Framework Level Guidance for Systemically Important Nonbank Financial Companies and FMUs***

The FDIC has made significant progress in developing Tier 1 of the SRF for GSIBs by developing the SRFD policy document in 2015, updating the policy in 2020, and establishing a goal for another update to be completed in 2023.[55] The FDIC designed the SRFD to provide a high-level framework for FDIC actions in planning, organizing, and conducting the resolution of a SIFC under the OLA, with a focus on GSIBs.

The April 2020 SRFD states, "[w]hile the SRFD is designed to be generally applicable to any type of financial institution that may be subject to an OLA resolution, and to a variety of resolution scenarios, it has been drafted with a primary focus on the resolution of U.S. GSIBs using a SPOE resolution strategy." In addition, the April 2020 SRFD acknowledged that, "the processes described in the SRFD would likely need to be adjusted for other types of entities, such as broker-dealers, FMUs, or for scenarios in which the SPOE strategy is not optimal due to the degree of losses at one or more material legal entities[56] (which may require a multiple point of entry (MPOE) strategy)."[57] However, the FDIC had not documented an adjusted framework to facilitate execution of a resolution of systemically important FMUs (including CCPs), nonbank financial companies such as independent broker-dealers and insurance companies, or for execution of an MPOE resolution strategy.

[54] According to the SRFD, the term "business-as-usual" refers to the ongoing daily operations required during the period prior to a material stress event, including risk monitoring and strategic resolution planning, operational readiness planning, and receivership management planning.
[55] CISR established a 2022 Divisional objective to review and update the SRFD primary actions.
[56] A material legal entity is an entity that is significant to the activities of a critical operation or core business line.
[57] In an MPOE resolution strategy, more than one of the material legal entities of the SIFC would be resolved, either under an ordinary U.S. insolvency proceeding or under the OLA, though others might remain open and operating for at least some period of time. Examples of ordinary U.S. insolvency proceedings include those administered under the Bankruptcy Code, FDI Act, Securities Investor Protection Act, and State Banking or Insurance Law.

Senior CISR officials acknowledged the need to build out the framework for nonbank financial company resolutions in the February 2022 FDIC Risk Inventory. The Risk Inventory indicated that if the FDIC does not establish a framework for resolution of nonbank financial companies, including large or systemically important CCPs, broker-dealers, asset managers, and insurance companies, then failure of such an institution may cause systemic disruption to the financial system. Senior CISR officials also identified the need to develop capabilities for nonbank financial companies subject to OLA in the 2022 CISR Divisional goals and objectives.

The FDIC had drafted interagency resolution framework documents for CCPs and broker-dealers, including the draft *U.S. First Day Plan* (February 2022) for CCPs and the draft *Broker-Dealer Week 1 Implementation Process* (January 2021) for broker-dealers. In addition, senior CISR officials stated that through early 2020, the FDIC developed a preliminary draft strategy outline and a work plan for resolving an insurance holding company. However, the FDIC placed this strategic planning work on hold to focus on Regional Bank Resolution Framework planning. As a result, the FDIC still has not fully developed the framework for nonbank financial company resolutions.

In October 2019, CISR proposed activities to explore how the SRFD would be modified to address an MPOE strategy; however, CISR has not yet modified the SRFD to address an MPOE strategy. As an alternative, senior CISR officials stated that they would rely on existing processes and procedures, notably the Regional Bank Resolution Framework to facilitate an IDI resolution under an MPOE strategy. However, in the event that an MPOE strategy is necessary for a resolution, absent policies and procedures detailing a plan of how the SRFD would be modified or a documented MPOE strategy, the FDIC risks not being adequately prepared to resolve a SIFC. Further, the Treasury recommended in its 2018 report on OLA[58] that the FDIC finalize its notice regarding the SPOE strategy to clearly document circumstances, if any, under which the FDIC does not believe SPOE would be the preferred resolution method.[59] An MPOE strategy would be one of these circumstances.

[58] U.S. Department of the Treasury, *Orderly Liquidation Authority and Bankruptcy Reform*, (February 21, 2018), https://home.treasury.gov/sites/default/files/2018-02/OLA_REPORT.pdf.

[59] Senior CISR officials stated that the FDIC deferred this recommendation and incorporated it into a 2022 CISR Divisional objective to finalize a draft paper documenting the FDIC's approach to resolution under DFA Title II. According to senior CISR officials, as of December 2022, CISR had developed the draft paper and was awaiting review from the FDIC Chairman's office.

### *Incomplete Operational/Process-Level Guides for Resolving All Types of SIFCs*

The FDIC has not completed all of the supporting process documents and guides needed to implement Tier II of the framework for all types of SIFCs, including GSIBs. According to senior CISR officials, these process documents would "fulsomely describe the underlying operational steps needed to effectively execute a functional area. They are, effectively, manuals for distinct resolution processes." However, the FDIC has not yet completed a standardized process guide for any of the 15 functional areas in the SRFD focused on GSIBs.[60] We also found that the FDIC has not completed the supporting documents and process guides for the nonbank financial companies and FMUs the FDIC may be responsible for resolving.

The FDIC had drafted some process level supporting documents for some functional areas, with varying levels of completion. For example, the FDIC created draft procedures and templates related to establishing a BFC, such as a Post Appointment Board Case and related attachments, and developed an OLF Funding Playbook and OLF Accounting entries. The FDIC also maintained a draft template and procedures for the systemic risk determination process; however, the FDIC's procedures do not describe the process and documentation required for SEC or Federal Insurance Office (FIO) consultation with the FDIC when the FDIC is not a key-turner.

An FDIC internal presentation in May 2021 to the CISR Director indicated that the FDIC would be a consultant, rather than a key-turner, for two of the eight U.S. GSIBs that are investment banks, and for four FBOs. Further, the Treasury recommended in its 2018 report on OLA that the Treasury, FRB, FDIC, SEC, and FIO, as appropriate, more clearly define the statutory tests for determining when a financial company is in "default or in danger of default," a key element of the systemic risk determination process. The agencies have not yet agreed on the clarification needed for the statutory tests, and therefore, the FDIC's draft procedures do not reflect a clarification in this important area.

In another example, the FDIC has not developed procedures for expedited relief for certain secured claims outside of the claims process, as required by OLA.[61] The FDIC's draft Claims Administration Project Operating Plan (February 2013) contemplated a secured/priority claims task force, which would handle such claims on an expedited basis. FDIC officials stated that the FDIC would create more specific procedures to address this provision through future development of a non-deposit claims process guide, but the FDIC has not yet completed this process

[60] See Table 2 for a list of the 15 functional areas.
[61] 12 U.S.C. § 5390(a)(5).

guide. Senior CISR officials indicated that the need for these procedures may be limited. They stated that in a resolution scenario involving a bridge entity, the FDIC's plan would be to transfer secured liabilities to the bridge entity.

In addition, the FDIC has not consistently integrated the available process level supporting documents with the SRFD, or standardized, organized, and formalized them to provide a cohesive approach for executing a resolution. We found notations of needed action items in these documents indicating that more work is necessary to fully develop those OLA procedures and templates. A majority of the OLA guidance documents provided to us were marked as draft, and did not consistently provide evidence of senior management review and approval.

Per the FDIC's Goals and Objectives for 2022, CISR intended to develop a project plan by December 2022 for creating the OLA process-level guides. The FDIC then intended to use that project plan to develop the process guides in 2023, which would defer implementation of this key OLA guidance until 2023 or later. During our evaluation, the FDIC could not provide a current and complete inventory of the existing key process-level procedure documents (e.g., manuals, playbooks, templates, job aids, etc.). Senior CISR officials indicated that the FDIC was working to develop document management tools and processes for management of key resolution documents, such as OLA-related legal documents and templates.

***Incomplete Institution-Level Planning for Nonbank and FMU SIFCs***

The FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions* (October 2014)[62] recommends robust and credible Recovery and Resolution Plans be in place for all global SIFCs and for any other firm that its home authority assesses could affect financial stability in the event of its failure. The Key Attributes also recommend that CMGs be established for all GSIBs and any FMUs determined to be systemically important in more than one country, to support institution-specific cross-border coordination.

The FDIC developed Tier III procedures for preparing an ISSP, the FDIC's current OLA resolution plan for a SIFC, and is developing procedures for preparing the new Resolvability Assessment and Strategic Plan, which is an updated institution-specific resolution planning document.

[62] FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions* (October 2014) sets out the core elements that the FSB considers to be necessary for an effective resolution regime. The FDIC is not required to follow the Key Attributes, but FDIC personnel have identified the document as relevant criteria for FDIC OLA resolution planning.

Senior CISR officials stated that the FDIC has prepared ISSPs for each of the eight U.S.-based GSIBs.[63] However, they acknowledged that while the FDIC has initiated plans for all five CCPs designated as systematically important by FSOC, they had not completed these plans as of December 2022. Further they had not begun OLA institution-level plans for the three other FSOC-designated systemically important FMUs that are not CCPs. The FDIC is not a primary federal regulator for CCPs, and there is currently no requirement for CCPs to submit standardized resolution planning documents similar to the Title I resolution plans submitted by GSIBs. Senior CISR officials stated that these limitations challenged the FDIC's ability to obtain information needed for institution-specific CCP resolution planning. Senior CISR officials further stated that institution-specific planning for CCPs has been less robust because the policy and strategic framework for CCP resolution is less mature domestically and globally.

Senior CISR officials also stated that the FDIC had completed information-sharing templates for the two CFTC-supervised CCPs that are systemically important FMUs, and had received information from both CCPs. We reviewed the template for one of these CCPs and it included a request for information in four areas:

- Firm structure and activities;
- Key clearing participants, guaranty fund contributions and client data;
- Loss mitigation, recovery and wind-down; and
- Interconnections and service providers.

For the three SEC-supervised CCPs that are systemically important FMUs, senior CISR officials stated that the FDIC had not completed the development of institution-specific templates, but had outlined the type of information needed for resolution planning and had provided that information to the SEC. Senior CISR officials emphasized that while coordination with other U.S. regulators to obtain information from CCPs helps address challenges for CCP OLA resolution planning, it is not an equivalent substitute for a resolution plan requirement for CCPs comparable to the Title I resolution plan requirement for GSIBs. Senior CISR officials indicated that the FDIC had recently developed and presented to the CCP primary federal regulators proposed options to obtain additional information needed for CCP resolution planning, including options for these regulators to establish new regulations for CCP reporting requirements. A February 2022 CCP resolution planning document provided by the FDIC emphasized that a CCP resolution could occur very quickly, making such advance planning imperative.

[63] The OIG did not test or evaluate the eight ISSPs. See Appendix 1 for more details on the evaluation objective, scope, and methodology.

The FDIC did not have recent institution-specific planning for any independent broker-dealers or insurance holding companies that the FDIC might be responsible for resolving under the OLA.[64] Senior CISR officials stated that priorities for institution-specific planning are based upon risk assessments from the industry and the FDIC. The three insurance firms FSOC previously designated as systemically important have since been determined to no longer pose systemic risk. Specifically, a Federal court overturned the designation of one insurance company in March 2016 and FSOC rescinded the designation of the other two during the period 2017 to 2018.[65] Therefore, FDIC officials stated that the FDIC ceased institution-specific planning for these insurance companies after their designations were removed.

Lastly, senior CISR officials stated that the FDIC co-chairs CMGs for all eight U.S.-based GSIBs, and the three U.S.-based CCPs included on the list of CCPs that are systemically important in more than one country, as published on the FSB website.[66] Senior CISR officials indicated that CISR is developing a formal procedure to document the existing GSIB CMG practices and processes and plans to develop a formal procedure for conducting the CCP CMGs.

### *The FDIC Has Not Completed Policies and Procedures for Business-As-Usual OLA Resolution Planning*

The FDIC has not completed policies and procedures for the FDIC's business-as-usual OLA resolution planning, which would include policies and procedures for maintaining the SRFD, related process guides, and other supporting documents as well as the review and approval process for such documents. CISR had a 2022 Performance Objective 9.1 to improve internal governance, including business-as-usual OLA policies and procedures, by preparing an inventory of existing policies and procedures and a gap analysis of those that were missing. In January 2023, senior CISR officials stated they met their goal by preparing the inventory of existing OLA policies and procedures and documenting what procedure documents they still needed to complete. We did not evaluate the FDIC's inventory and gap analysis as they were prepared after the conclusion of our evaluation fieldwork.

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[64] FDIC officials stated that the FDIC performs resolution planning for insurance companies and broker-dealers that are material subsidiaries of a GSIB as part of the FDIC's institution-specific strategic planning for the GSIB.
[65] There are currently no insurance companies designated by FSOC as covered companies under the DFA.
[66] https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/derivatives-markets-and-central-counterparties-2/

**Recommendations**

We recommend that the Acting Director, CISR:

2. Develop and consistently maintain comprehensive Orderly Liquidation Authority policies and procedures for systemically important financial companies, to include:
    a. Tier I policies and procedures for framework-level activities.
    b. Tier II policies and procedures for operational process-level activities.
    c. Tier III policies and procedures for institution-specific planning activities.
    d. Other operational program policies and procedures for Orderly Liquidation Authority resolution planning activities.

3. Apply Tier III policies and procedures to develop and consistently maintain institution-specific resolution planning documents for all nonbank financial companies and financial market utilities designated by the Financial Stability Oversight Council as systemically important.

***The FDIC Has Not Developed Two of the Regulations Required by the OLA***

The FDIC had developed multiple rules and regulations related to the OLA, with the most recent being a rule established jointly with the SEC in August 2020 applicable to the orderly liquidation of covered brokers and dealers in accordance with 12 U.S.C. § 5385(h) of the DFA.[67] However, we found that the FDIC has not yet completed the following OLA requirements to prescribe a correlating rule or regulation. Specifically:

- 12 U.S.C. § 5390(o)(6) requires the FDIC, in consultation with the Secretary, to prescribe regulations to implement assessments of U.S. financial companies, if such assessments are needed, to pay in full obligations issued by the FDIC to the Treasury.

- 12 U.S.C. § 5393(d) requires the FDIC and the FRB, in consultation with FSOC, to jointly prescribe rules or regulations to administer and carry out a ban on activities by senior executives and directors of failed SIFCs if they have violated a law, regulation, or certain agency orders; or participated in "any unsafe or unsound practice" in connection with a financial company; or breached their fiduciary duties. Specifically, the DFA authorizes the FDIC or FRB, as applicable, to "prohibit any further participation by such person, in

[67] 12 C.F.R. Part 380 *Covered Broker-Dealer Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (August 2020).

> any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years."[68]

The FDIC was unable to provide evidence of a comprehensive and current requirements mapping to ensure that the FDIC addressed all key OLA requirements outlined in the DFA. This analysis would have been a critical part of outlining expectations and justifications for key requirements that are not yet in place. The FDIC prepared an analysis of some DFA requirements related to the establishment of rules and regulations, but had not updated this analysis since 2015 to reflect the current state of the requirements.

FDIC Legal Division personnel stated that the DFA does not have a deadline by which the FDIC must prescribe these two regulations. However, more than 12 years since the enactment of the DFA, it is reasonable to expect that the FDIC would have addressed these DFA requirements. Further, the Treasury recommended in its 2018 report on OLA that the FDIC develop a strategy for expediting the OLF industry-wide backstop assessment required by 12 U.S.C. § 5390(o). The FDIC would address this assessment in one of the two required regulations that has not yet been developed. Specifically, the Treasury recommended that the FDIC charge any assessments of U.S. financial companies as soon as reasonably possible, to ensure prompt and complete reimbursement of the OLF. The obligation to impose assessments would protect taxpayers from bearing the losses from the liquidation of a failed financial company.

Senior CISR officials stated the FDIC has not developed a regulation implementing 12 U.S.C. § 5390(o) because any assessments under that provision would relate to the post-failure phases of an OLA resolution. However, since the DFA requires the FDIC to coordinate with FSOC to establish a risk matrix based on five risk factors to use for imposing assessments,[69] an established regulation would provide clarity on that coordination and the factors to be considered in the matrix. With respect to the regulation required by 12 U.S.C. 5393(d), senior CISR officials stated that FDIC and FRB staff had initial discussions about the issue and developed initial drafts of regulatory text, but the agencies did not pursue a rule given other priorities. In the event of a Title II resolution of a SIFC (which has not yet occurred), there would be a

[68] 12 U.S.C. § 5393(c)(1).

[69] DFA Section 210(o)(4) *Risk-Based Assessment Considerations*, requires the FDIC to use a risk matrix in imposing assessments, taking into account the recommendation that FSOC shall make on the risk matrix. In recommending or establishing such risk matrix, FSOC and the FDIC, respectively, shall take into account five risk-related factors, which are described in this section. 12 U.S.C. § 5390(o)(4).

high level of uncertainty; therefore, readily available OLA regulations would enhance the FDIC's ability to respond quickly in an OLA resolution. Moreover, the additional regulations would support accountability, which the FDIC Chairman has emphasized is essential to minimizing moral hazard and promoting market discipline.[70]

**Recommendation**

We recommend that the Acting Director, CISR:

4. Establish an action plan for promptly developing and issuing rules and regulations required by the Dodd-Frank Act, including:

    a. In consultation with the U.S. Secretary of the Treasury, rules or regulations to meet the requirements of 12 U.S.C. § 5390(o)(6).
    b. In coordination with the FRB, and in consultation with FSOC, rules or regulations to meet the requirements of 12 U.S.C. § 5393(d).

***The FDIC Did Not Maintain Adequate Governance over the OLA Program***

The FDIC did not sustain an interdivisional group responsible for oversight of OLA implementation activities, which is critical to provide multiple perspectives on the systemic resolution process. The FDIC formed an interdivisional Complex Financial Institutions Coordination Group in May 2013, responsible for guidance and oversight and creating accountability across the FDIC for the OLA resolution planning program and other complex financial institution-related activities. However, the FDIC disbanded the Complex Financial Institutions Coordination Group in 2016, after the FDIC vetted the initial draft SRFD. Senior CISR officials subsequently designated an informal "Readiness Committee" to provide oversight of OLA resolution planning, but the FDIC established no charter to document the committee's responsibilities and did not maintain minutes to record its activities.

The FDIC chartered a Resolution Legal Documents Committee in July 2022. The Committee, which is comprised of CISR and DRR officials and advised by Legal Division officials, is responsible for reviewing and approving changes to all resolution transaction documents, BFC formation, and orderly liquidation funding documents. CISR also chartered a Risk and Readiness Committee in June 2022.[71] While not defined in that charter, senior CISR officials stated that the Risk and Readiness Committee was responsible for reviewing the development of OLA procedural

[70] FDIC Chairman Gruenberg, *A Progress Report on the Resolution of Systemically Important Financial Institutions* (May 2015). https://archive.fdic.gov/view/fdic/1718

[71] The FDIC established the Resolution Legal Documents Committee and the Risk and Readiness Committee during the course of our evaluation.

documents, such as the SRFD and related process guides. However, this committee is not interdivisional, and the committee charter does not describe those review responsibilities. As multiple FDIC Divisions and Offices are critical to the systemic resolution process, including the Division of Finance, DRR, the Legal Division, Office of Communications, and the Office of Legislative Affairs, it is important for the FDIC to ensure it has an interdivisional perspective and obtains feedback on the SRFD and related process guides.

**Recommendation**

We recommend that the FDIC Chairman:

5. Ensure regular interdivisional oversight of the Orderly Liquidation Authority program and related products.

***The FDIC Has Reduced Ability to Execute an OLA Resolution Effectively***

The FDIC has not yet conducted an OLA resolution, which creates uncertainty about the FDIC's ability to execute an OLA resolution effectively. Incomplete OLA policies and procedures increase this uncertainty and reduce the predictability of the resolution process. In addition, although there are currently no designated broker-dealers or insurance companies, the FDIC cannot control when the Treasury Secretary may determine a failing broker-dealer or insurance company represents a systemic risk. Without policies and procedures adjusted as appropriate for these nonbank financial companies, the FDIC risks not being prepared to resolve these institutions effectively under the OLA.

Senior CISR officials indicated that the FDIC could perform an OLA resolution with existing documentation because the incomplete guidance would not be necessary for applying Title II authority and executing a resolution. On the other hand, FDIC officials told us that they need to build out the process guides, which would describe in a consistent format the processes for performing each functional area needed in a Title II resolution at the individual practitioner level.

Fully documented policies and procedures are fundamental to an entity effectively achieving its objectives. Specifically, the GAO S*tandards for Internal Control in the Federal Government* recommend management develop and document policies and procedures to help management monitor activities and personnel implement their assigned responsibilities. When changes in personnel or operational processes occur, management should review the related policies and procedures for continued relevance and effectiveness in achieving the entity's objectives. Further, the FDIC *Crisis Readiness and Response Framework* (July 2021) (CRRF) includes the development of readiness policies and procedures as a key principle for complex planning scenarios in a crisis, which would include an OLA resolution.

Additionally, a significant number of employees in Divisions and Offices with key OLA resolution execution responsibilities are eligible to retire over the next 5 years. Incomplete policies and procedures reduce the FDIC's ability to ensure the adequate transfer of knowledge to personnel replacing staff who retire. Table 3 below depicts the percentage of FDIC employees with OLA responsibilities eligible to retire by 2022 and 2027.

**Table 3: FDIC Employee Retirement Eligibility Percentages**

| Division/Office | Percent of Staff Eligible for Retirement by Year | |
|---|---|---|
| | 2022 | 2027 |
| Division of Complex Institution Supervision and Resolution | 15.14 | 35.92 |
| Legal Division | 39.14 | 50.00 |
| Division of Finance | 38.57 | 49.29 |
| Division of Resolutions and Receiverships | 35.59 | 53.82 |
| Office of Communications | 24.24 | 45.45 |
| Office of Legislative Affairs | 44.44 | 55.56 |

**Source:** OIG analysis of FDIC retirement data for FDIC Divisions and Offices with OLA Primary Action Responsibilities.

## The FDIC Has Not Defined Certain Roles and Responsibilities for the Execution of an OLA Resolution

The FDIC has not fully defined and assigned roles and responsibilities for the governance structure over an OLA resolution, and has not fully defined individual practitioner level roles and responsibilities for OLA execution.

### *Governance of a Systemic Resolution*

The GAO *Standards for Internal Control in the Federal Government* recommend an oversight structure to fulfill responsibilities set forth by applicable laws and regulations, relevant government guidance, and feedback from key stakeholders. These standards also recommend that members of the oversight body should have specialized skills to enable discussion, offer constructive criticism to management, and make appropriate oversight decisions.

The April 2020 SRFD states that governance of a systemic resolution, including key decisions and actions, is ultimately the responsibility of the FDIC's Board, Chairman, and senior executives. However, at various points during a systemic resolution, the FDIC would establish internal governance structures to support decision-making. Accordingly, the April 2020 SRFD also identifies a prototype internal governance structure that the FDIC might deploy for executing an OLA resolution and explains how governance might evolve over the systemic resolution timeline.

The SRFD provides the following overview of the key components for this prototype internal governance structure, which include an Executive Advisory and Oversight Group (EAOG), a Tactical Project Manager, an Onsite Liaison, Bridge Leadership, and Functional Area Teams:

- The EAOG would be comprised of senior leaders and trusted advisors in the FDIC, including from CISR, DRR, FDIC General Counsel, communications, an Onsite Liaison, and others as needed. It would be responsible for advising the FDIC Chairman and Board, as well as directing and allocating FDIC resources in support of the resolution.
- The Tactical Project Manager would be an FDIC executive with resolution planning expertise, responsible for overall project management of systemic resolution processes across functional areas, including interdivisional coordination and staffing. Senior CISR officials added that the Tactical Project Manager would be someone from CISR.
- The Onsite Liaison would be a senior trusted advisor with FDIC institutional knowledge, whose primary responsibility would be prioritizing and escalating issues as appropriate between the FDIC and BFC management, including providing real-time feedback to support decision-making. The role would be supported by onsite CISR staff and contractor resources as needed. Senior CISR officials added that the Onsite Liaison would be someone who had direct access to the FDIC Chairman.
- The Bridge Leadership would be comprised of individuals selected and approved by the FDIC, who are responsible for the day-to-day operations of the BFC, including stabilizing and maintaining critical operations. The BFC management would also be responsible for developing business plans and addressing other requirements to implement the FDIC's resolution strategy.
- The Functional Area Teams would more than likely be comprised of FDIC divisions and offices management, supported by other staff (subject matter experts) and contractors. They would be responsible for carrying out the specific functions needed to execute the resolution strategy.

Senior CISR officials stated that since the FDIC conceived the EAOG as a prospective entity, it did not presently have a specific draft charter or other draft organizing documents. In addition, the FDIC intentionally did not strictly define the EAOG, to accommodate what may be differing preferences, styles, and personnel as FDIC leadership changes across years and administrations.

Regarding personnel for the various governance positions, the SRFD states that, “Further work is expected to better define and specify roles and responsibilities and when candidates will be selected for these positions." A senior CISR official added that the FDIC intended to assign the roles of the Tactical Project Manager and the Onsite Liaison to specific positions when a resolution event occurs. The official stated that the FDIC intended to develop a resolution management process guide, that would address governance of these roles and would provide more information on the characteristics of the roles and how the FDIC would assign the roles.

As a result, although the SRFD identified certain roles and responsibilities within the resolution governance structure, the FDIC has not identified the potential positions that would comprise the EAOG, the Tactical Project Manager, or the Onsite Liaison during a resolution. The FDIC CRRF identifies the importance of developing and maintaining a roster of potential staff to fill key roles in a crisis, which can help ensure these personnel receive the requisite training to execute their responsibilities in exercises or in an actual resolution, if needed.

Senior CISR officials stated that the FDIC designed the governance framework to be flexible, to conform to the requirements of the unique resolution and expectations of leadership at the time of a resolution. However, the FDIC must be ready to execute its statutory responsibilities under the OLA at any time, notwithstanding leadership changes. In addition, a SIFC failure could occur quickly, which might not allow the FDIC time to fully define and assign key governance roles and responsibilities in the midst of a resolution. Identifying positions in advance would facilitate the FDIC’s ability to test the ability of individuals to execute these roles through exercises.

**Recommendation**

We recommend the Acting Director, CISR:

6. Establish a process for identifying and preparing staff who would be responsible for key Orderly Liquidation Authority resolution governance roles, such as the Executive Advisory and Oversight Group, the Tactical Project Manager, and the Onsite Liaison, to include:
    a. Completing planned guidance and/or preparing a charter that will define in more detail the key resolution governance roles and responsibilities.
    b. Maintaining a roster of potential staff for key resolution governance roles.

c. Informing potential staff for the key resolution governance roles of their respective Orderly Liquidation Authority resolution responsibilities.

***Practitioner-Level Roles and Responsibilities for Executing an OLA Resolution***

The GAO *Standards for Internal Control in the Federal Government* recommend management consider the overall responsibilities assigned to each unit, determine the key roles necessary to fulfill the assigned responsibilities, establish the key roles, assign responsibilities to key roles, and delegate authority to achieve the entity's objectives.

The FDIC has described in the SRFD the business unit-level OLA execution key roles and responsibilities for multiple FDIC Divisions and Offices. However, it needs to enhance the SRFD by identifying the supporting roles and responsibilities for the Division of Depositor and Consumer Protection (DCP) in the systemic risk determination process.[72]

In addition, the FDIC needs to further define the roles and responsibilities at the individual practitioner level. For example, the FDIC has not fully defined the assignment of process-level roles and responsibilities for some receivership-related actions between CISR and DRR. Senior CISR officials stated that the functions where the FDIC would most likely need to further specify and clarify DRR support were generally those in the Receivership Management area, including claims, investigations, accounting, and asset management. In addition, senior FDIC officials stated that the FDIC had developed a DRR-CISR Operational Responsibilities Matrix and related memoranda for FDI Act resolutions. The FDIC intends to update this FDI Act resolution coordination matrix in 2023 to incorporate OLA resolution responsibilities.[73]

FDIC Legal Division personnel also indicated that the FDIC needs to further define the roles and responsibilities related to its investigations process for an OLA resolution. They stated that CISR, DRR, and other stakeholders were in the process of developing additional materials relevant to the resolution of a large bank under the FDI Act. When complete, these materials will address the roles and responsibilities

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[72] According to senior CISR officials, DCP would be consulted with respect to the systemic risk determination recommendation factor in DFA Section 203(a)(2)(C), which requires "a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities." 12 U.S.C. § 5383(a)(2)(C)

[73] In July 2022, the FDIC established a Resolution Readiness Coordinating Committee, comprised of CISR and DRR officials. The Committee is responsible for obtaining approval for adjustments to the allocation of resolution roles and responsibilities in the DRR-CISR Matrix Memos; identifying areas for cross-divisional collaboration; and approving and steering cross-divisional resolution readiness projects.

for the investigation and pursuit of claims; collection and preservation of, and access to, failed institution records and data; and claims ownership and assignment issues. Legal Division personnel expected the FDIC could adapt these materials in some cases to investigations in connection with an OLA resolution. Nevertheless, it will be important for the FDIC to further define the roles and responsibilities specific to the investigations process for an OLA resolution.

As identified earlier in this report, the FDIC prioritized the development of process guides for the Regional Bank Resolution Framework over the development of the process guides for the SRF. When completed, the standardized OLA-related process guides would fully define the operational roles and responsibilities for an OLA resolution at the individual practitioner level. Senior CISR officials stated that the Regional Bank Resolution Framework process guides would facilitate preparation of the OLA-related process guides, and in some cases the guidance may be the same. However, the FDIC should have ensured it promptly performed both its FDI Act and OLA resolution planning responsibilities.

The April 2020 SRFD states that the supporting documents, such as the OLA process guides, which contain more detailed procedures are "needed by FDIC staff to execute or advance processes within primary actions." Such documents are fundamental elements of the SRF. Until the FDIC completes the supporting OLA policies, procedures, and related guidance documents that fully define OLA roles and responsibilities at the operational level, key personnel may not have ready access to the tools needed to clearly understand and effectively execute their roles and responsibilities in an OLA resolution event.

**Recommendation**

We recommend the Acting Director, CISR:

7. Ensure the completed Tier I and II policies, procedures, and related guidance documents fully define the applicable Orderly Liquidation Authority roles and responsibilities of each FDIC Division and Office.

## The FDIC Needs to Enhance OLA Resources, Training, and Exercises to Plan for and Execute an OLA Resolution

The FDIC needs to obtain additional staff resources to plan for an OLA resolution, and fully identify and document the staff and contractor resources necessary for a resolution team to execute an OLA resolution. The FDIC also needs to enhance

OLA-related training and exercises to ensure that staff and contractor resources have the skills needed to execute an OLA resolution.

***The FDIC Needs Additional Resources and Skill Sets for OLA Resolution Planning***

The GAO *Standards for Internal Control in the Federal Government* recommend management recruit, develop, and retain competent personnel to achieve the entity's objectives. The FDIC CRRF states that planning "provides a mechanism for identifying resource gaps, which inform both Division and Office budget requests to meet resource needs."

In 2022, senior CISR officials identified the need for significant additional staff resources for resolution planning and developed proposals to obtain more FDIC personnel as part of the 2022-2023 FDIC budgeting process. According to documents provided by CISR officials, at least 30 of these personnel would directly benefit OLA resolution planning by assisting with OLA institution-specific resolution planning. The new personnel would include seven specialists with CCP-specific knowledge and skill sets. CISR's budget analysis also acknowledged that "the staffing number may need to be revisited upon full staffing and if the CISR resolution portfolio continues to grow."

FDIC Directive 1500.07 *Crisis Readiness and Response Program* (July 2021) requires Divisions and Offices to identify specialized knowledge, skills, and abilities needed by FDIC personnel to successfully execute the response activities outlined in their readiness plans. CISR Directive 2021-001, *Learning and Professional Development Policy* (March 2021), states that the CISR Knowledge Management Program will maintain CISR Core Competencies and Skills Assessments for each Branch, Sub-Branch, and Section that will be used to determine individual employee knowledge gaps and developmental needs along with individual training requests. In accordance with this Directive, CISR documented a list of core competencies and related skills relevant to OLA resolution readiness.

In addition, CISR established a Divisional objective for 2021 to conduct a staff survey to identify skills and developmental needs. To address this goal, CISR conducted a voluntary staff skills and development survey in 2021 for employees to self-identify skills and competencies in which they sought further development, potentially through training and exercises. CISR officials stated that the survey was intended to supplement the developmental discussions held between supervisors and their staff. The survey identified opportunities for further development of OLA-related knowledge in many areas, including the systemic risk determination process, resolution management, receivership management, and systemically important

FMUs. CISR had another Divisional objective for 2021 to create a professional development plan based on the results of this survey.

However, CISR officials stated the development survey was voluntary and only 16 percent of staff responded; therefore, the results of the 2021 survey were not representative of CISR’s Resolution Readiness Branch staff views. CISR did not conduct a staff skills survey for 2022, but senior CISR officials stated CISR had formed a Learning and Professional Development Committee, which would consider the overall outcomes for all CISR branches from the 2021 Skills and Development Survey to build a CISR Professional Development Plan in 2023. According to senior CISR officials, that plan would address skills needed to execute the OLA. To ensure the plan adequately incorporates OLA-related development needs, CISR should revise its training policy to support greater survey participation and conduct a representative staff survey of OLA-related skills and developmental needs.

**Recommendations**

We recommend the Acting Director, CISR:

8. Ensure the FDIC establishes a timeframe to obtain, and then obtains, the staff resources needed to mature the Orderly Liquidation Authority resolution planning program.

9. Conduct and document a representative survey or other assessment of the Orderly Liquidation Authority-related skill sets existing or needed within the Division of Complex Institution Supervision and Resolution and ensure the Division’s Professional Development Plan incorporates the results.

***The FDIC Needs to Identify and Document Resolution Team Resources for OLA Execution***

According to the FDIC CRRF, a response team or task force is a key component of a crisis response structure. The SRFD (April 2020) identifies a response team and functional area teams as key components of a resolution governance structure. The SRFD states that the response team will be comprised of both CISR Risk Assessment and Resolution Readiness staff, to include both subject matter experts and individuals with familiarity with the subject firm. The SRFD states that the functional area teams would likely be comprised of FDIC Division and Office management, supported by other staff subject matter experts and contractors, and would be responsible for carrying out the specific functions needed to execute the resolution strategy.

We found that the FDIC has not documented a staffing analysis to identify the baseline level of FDIC and contractor resources that might be needed for a response team or functional area teams to execute an OLA resolution. Understanding the general size and composition of such teams would facilitate faster resource allocation decisions in a crisis failure environment. It would also facilitate the identification of the positions that would potentially comprise the resolution team to ensure personnel in those positions understand how they would need to respond to an actual failure.

Senior CISR officials stated that the FDIC informally evaluated the number and composition of the staff needed for the most critical functions of a resolution through the simulations the FDIC conducted. Those officials also stated that they planned to perform a more comprehensive staffing analysis as part of developing the OLA-specific process guides but as of July 2022 had not done so. Senior CISR officials expected the OLA analysis would benefit from the FDIC's recent staffing analysis for Regional Bank resolutions under the FDI Act. In general, these officials indicated that the execution of an OLA resolution under the SPOE strategy would rely heavily on the resources of the failing institution and on contractor personnel, thus requiring a limited number of FDIC personnel to be involved. An FDIC OLA operational exercise document from 2018 stated that "[i]nitial staffing analysis showed over 100 FDIC and contractor staff required for claims process." A senior CISR official stated that the forthcoming OLA process guides would contain a more detailed accounting of the key contract needs for each phase of the resolution process.

**Recommendation**

We recommend the Acting Director, CISR:

10. Conduct and document an assessment of the level of staff and contractor resources needed for a baseline Orderly Liquidation Authority resolution execution team.

### *The FDIC Needs to Enhance OLA-Related Training*

The GAO *Standards for Internal Control in the Federal Government* recommend management enable individuals to develop competencies appropriate for key roles and tailor training based on the needs of the role. FDIC Directive 1500.07 states that crisis readiness training should include the identification of FDIC personnel with specialized knowledge, skills, and abilities needed to execute successfully the response activities outlined in their readiness plans. Training requirements should be made available to staff to ensure personnel are prepared to execute the duties and tasks identified in their readiness plans.

We found that CISR required mandatory annual staff training through its Course of Study Core Curriculum but had not yet included OLA-related elements into the Core Curriculum. In June 2022, senior CISR officials stated that CISR and the FDIC's Corporate University were developing the 2022 Core Curriculum for delivery in the second half of 2022, which would include elements related to OLA resolution planning and strategies. CISR subsequently extended the milestone to begin this training until March 2023.

Senior CISR officials stated that CISR would track staff participation in the Core Curriculum using the FDIC's learning management system. However, CISR does not have a process for linking OLA-related functional training in a measurable way to the OLA resolution framework and related processes. The absence of such a process was due in part to the fact that the FDIC did not yet have the comprehensive OLA policies, procedures, and process guides in place that would facilitate a more structured OLA training regimen. This type of linkage would help CISR ensure that it provides regular training on important OLA resolution functions to personnel in key roles. As indicated through a CISR Divisional objective for 2022, CISR intends to develop a schedule for providing adequate training once CISR completes policies and procedures for key program areas.

The FDIC CRRF states that each plan developed under the CRRF should define the training requirements necessary to enable assigned personnel to carry out the tasks described in the plan, and it recommends plan-specific training every 2 years. Although the SRFD is not a plan developed under the CRRF, it is a significant plan for ensuring FDIC crisis readiness. The SRFD does not document training requirements, and the FDIC has not otherwise established a documented process for periodic plan-specific training for positions with key roles in the SRFD. Senior CISR officials indicated that the most recent general SRFD training occurred in conjunction with the rollout of the updated SRFD in April 2020, and that additional training on the SRFD would occur in 2023 in conjunction with the update to the SRFD.

**Recommendation**

We recommend the Acting Director, CISR:

11. Regularly conduct and document Orderly Liquidation Authority general and functional training and ensure that training is clearly linked to the key components of the systemic resolution framework and processes.

### *The FDIC Needs to Enhance OLA-Related Exercises*

FDIC Directive 1500.07 states that the FDIC should periodically conduct readiness tests and exercises to ensure employees are familiar with plan operations, understand their roles and responsibilities, and can readily execute plans. The Directive states that exercises should simulate real-world scenarios and involve potential threats and realistic crisis or incident scenarios. Exercises can help the FDIC assess the adequacy of the resources and skill sets needed to execute an OLA resolution, and can provide feedback on the quality of OLA-related training.

As of January 2023, CISR needed to finalize its Discussion, Exercise, and Simulation program[74] for resolution readiness assessment and testing activities and fully implement the program in regard to OLA-related operational exercises. The draft exercise program proposal document dated August 2020 identified a target of one institution-specific tabletop exercise[75] per quarter and at least one simulation exercise[76] every 2 years, but no more than one per year. However, the program proposal does not distinguish between exercises related to an FDI Act resolution of a large bank and an OLA resolution of a SIFC. Senior CISR officials indicated that the FDIC had prioritized exercises to focus on institutions with higher risk or potential resolution challenges; therefore, recent exercises focused more on regional banks. CISR records indicated that, since January 2020, the FDIC had conducted only two institution-specific OLA exercises for SIFCs: one in September 2021 and the other in October 2022.

The FDIC also has not held an OLA simulation exercise since 2020, when the FDIC conducted exercises in two key OLA resolution functional areas. The FDIC simulated the preparation of BFC formation documents for a hypothetical GSIB failure in April 2020. In addition, the FDIC, in coordination with the Treasury, simulated execution of orderly liquidation procedures in May 2020, supplemented by an internal FDIC simulation exercise in September 2020. The FDIC also participated in a test of another key OLA function, cross-border coordination, through a TPLE exercise in October and November 2020 simulating the hypothetical failure of a foreign GSIB. During the exercise, the participants discussed whether the U.S. operations of the simulated company presented a systemic risk to U.S. financial

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[74] CISR's draft Discussion, Exercise, and Simulation Program document (August 2020) states that the program's goal is "to continue to build crisis preparedness, readiness, and capabilities with a focus on developing, testing, evaluating, and improving specific processes for decision-making and executing a resolution at staff and principal levels."
[75] CISR exercise program documentation notes that a tabletop exercise is used to identify resolution readiness, process, and information gaps and assess, evaluate, test, and confirm processes and procedures.
[76] CISR exercise program documentation notes that a simulation exercise is used to explore known information and to identify unknown information to prepare best for future challenges. It generally involves a higher level of resource commitment than a tabletop exercise.

stability, but determined that it did not. The FDIC subsequently participated in the next TPLE simulation exercise in June 2023.[77] This exercise was the first OLA simulation exercise in over 2 years, which is beyond the desired 2-year cadence articulated in the draft exercise program proposal. The FDIC has targeted the next FDIC internal OLA simulation exercise for 2024. In addition, although the FDIC indicated that contract resources are significant to the OLA resolution process and had established contracts for key OLA-related activities, the FDIC's recent OLA exercises included only limited involvement by key contractor personnel.

The systemic risk determination process is critical to a speedy determination of whether to execute an OLA resolution.[78] As of December 2022, the FDIC had not conducted a recent exercise fully simulating the execution of the systemic risk determination process. Such an exercise would simulate and validate the FDIC's ability to quickly and thoroughly develop the documentation supporting the eight decision factors the DFA requires the FDIC to consider in the systemic risk determination process.[79]

A senior CISR official indicated that the FDIC had not yet conducted an exercise for the new FDIC Board Members to become familiar with documents such as a simulated systemic risk determination process board case. However, FDIC officials stated that FDIC personnel had repeatedly reviewed the systemic risk determination process with the relevant agencies, and CISR and Legal Division personnel had also educated external parties on the process in meetings such as the annual CMG meetings. To further prepare for a systemic risk determination, CISR established a Divisional objective for 2022 to develop a proposal for regular U.S. interagency engagement on OLA resolution, such as activities involving the systemic risk determination process. According to the CISR *Goals and Objectives Tracker* for December 2022, CISR completed the proposal and related agenda and planned to begin outreach after the November 2022 SRAC meeting.[80]

CISR had a Divisional objective for 2022 to complete three institution-specific staff exercises and a functional exercise to test and validate the Regional Bank Resolution Framework process guides. As identified earlier in this report, the FDIC

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[77] A document summarizing the exercise indicated that it involved a scenario in which resolution under OLA was necessary to maintain financial stability.
[78] In its *United States Financial System Stability Assessment* (August 2020), the International Monetary Fund (IMF) emphasized the importance of such an exercise. The IMF stated, "(c)onsidering the increased role of the Treasury Secretary in activating important crisis response tools (some of them still untested), it is critical to decisive crisis action that the modalities for the interactions between the Treasury and the FBAs [Federal Banking Agencies] be operationalized, documented, and regularly reviewed and tested."
[79] 12 U.S.C. § 5383(a)(2).
[80] We did not confirm whether the FDIC conducted this outreach as planned, since it relates to a period outside of the evaluation scope.

has not yet completed the process guides for the SRF. Therefore, the FDIC focused institution-specific exercise resources on assessing resolution capabilities for FDI Act resolutions of large regional banks. Although there would be some crossover benefits from regional bank-related exercises for SIFC resolution planning, it is important that the FDIC conduct regular exercises of significant resolution processes and procedures that are unique to OLA, such as the systemic risk determination process and non-deposit claims procedures for a failed financial company.

Because the FDIC has not had the opportunity to test the effectiveness of its SRF for an actual SIFC failure, it is very important for the FDIC to ensure it maintains access to the skilled staff and contractor resources needed to successfully execute an OLA resolution. Regular training and exercises on key components of the SRF would help assess the level and quality of those resources, and the ability of those resources to quickly and effectively execute an OLA resolution when needed.

**Recommendation**

We recommend the Acting Director, CISR:

12. Complete and implement the operational exercise program for significant Orderly Liquidation Authority-related activities, such as the systemic risk determination process, and ensure key contractor resources and FDIC Board Members are included in exercises.

## Monitoring of the OLA Program Needs Improvement

The FDIC does not have adequate monitoring mechanisms in place to ensure it promptly implements the OLA program and consistently measures, monitors, and reports on the OLA program status and results. Accordingly, the FDIC needs to improve performance monitoring, conduct and follow up on separate evaluations, and track key recommendations from after-action results.

The GAO *Standards for Internal Control in the Federal Government* recommend management monitor the internal control system and evaluate the results to make informed decisions and assess performance in achieving key objectives and addressing risks. Specifically, these standards state:

- Management should define objectives in specific and measurable terms and determine whether performance measures for the defined objectives are appropriate for evaluating the entity's performance in achieving those objectives.

- Management should establish and operate monitoring activities to assess the quality of performance over time and promptly resolve the findings of audits and other reviews.

Further, FDIC Directive 1500.07, *Crisis Readiness and Response Program* recommends development of after-action reports for exercises to support any appropriate follow-on actions needed to address significant recommendations.

***Performance Monitoring and Reporting Needs Improvement***

The FDIC had processes to monitor and report performance on Division and Agency-level goals and objectives related to OLA program activities. However, these monitoring and reporting activities did not ensure OLA resolution planning activities had consistently and promptly progressed since the enactment of the DFA nor did they provide a clear picture of the overall status of the OLA program.

**CISR Goals and Objectives Related to OLA**. CISR currently links OLA goals and objectives to strategic priorities in the CISR 2022-2024 Strategic Plan. CISR develops its goals and objectives annually and includes milestone dates for each objective for tracking purposes. Senior CISR officials stated that, beginning in April 2022, CISR began tracking and reporting goals to CISR leadership using a quarterly report.[81] Further, in July 2022, when our evaluation was ongoing, and as noted earlier, the FDIC established new oversight committees to govern OLA program activities.[82]

However, while the CISR goals and objectives were designed to monitor the progress of specific Title II activities, they did not collectively provide a perspective on the overall status or maturity of the FDIC OLA program. In addition, CISR objectives included ones targeted at *establishing* OLA resolution planning activities and documents. For example, CISR objectives for 2022 included preparing a project plan for developing Title II process guides; identifying an inventory of written policies and procedures; conducting a data gap analysis for nonbank financial companies to facilitate monitoring capabilities; and developing a proposal to conduct horizontal risk analysis of other systemic nonbank financial companies in the CISR portfolio. While CISR had developed milestones by which to address these objectives, internal and external stakeholders would reasonably expect that such planning activities and

[81] The evaluation team reviewed the second quarter 2022 quarterly report to determine the status of the CISR goals and objectives for 2022.
[82] CISR formally chartered a Resolution Readiness Coordinating Committee and a Risk and Readiness Committee with responsibilities related to OLA activities such as oversight of OLA resolution planning, Resolvability Assessment and Strategic Plans, and the development of resolution strategies for nonbank financial companies.

documents would already be fully established and inventoried more than 12 years since the enactment of the DFA.

**FDIC Goals and Objectives Related to OLA**. During 2015, the FDIC established a new OLA-specific FDIC annual performance goal (APG) to "[e]nsure the FDIC's operational readiness to resolve a large, complex financial institution using the orderly liquidation authority in Title II of the DFA."[83] The FDIC has continued this OLA-related APG, with slight wording changes, through 2022.

A key target for reaching this goal, identified in the FDIC Annual Report 2015,[84] was to "Update and refine firm-specific resolutions [*sic*] plans and strategies and develop operational procedures for the administration of a Title II receivership." The FDIC reported this milestone as achieved, in part because the FDIC had developed the initial SRFD. The 2015 annual report did not clearly reflect the overall status of the OLA program, which still lacked the process-level procedures needed for the SRF, and the resolution strategies needed for an OLA resolution of a systemically important nonbank financial company or FMU.

As shown in Table 4 below, status information in the FDIC Annual Reports illustrates that the FDIC made limited progress in developing the OLA process guides and the resolution strategies for nonbank financial companies and FMUs during the 8-year period from 2015 through 2022.

[83] The FDIC's Annual Performance Plan sets out specific APGs for each of the FDIC's three major business lines and the FDIC reports its performance results for these APGs to the public in its Annual Report.
[84] FDIC Annual Report 2015.

**Table 4: FDIC Annual Report Status of Process Document Development and Nonbank and FMU Resolution Planning**

| Annual Report Years | Process Document Status | Nonbank and FMU Resolution Planning Status |
|---|---|---|
| 2015-2016 | Not discussed. | **Preliminary work has begun** developing resolution strategies for the nonbank firms and systemically important FMUs, particularly CCPs. |
| 2017-2018 | The FDIC **is developing** process documents to facilitate implementation of the framework in a Title II resolution. | **Preliminary work continues** in the development of resolution strategies for the nonbank resolution plan filers (2017 only)[(a)] and FMUs, particularly CCPs. |
| 2019-2022 | The FDIC **continues to build out** process documents to facilitate the implementation of the framework in a Title II resolution. | **Work continues** in the development of resolution strategies for FMUs, particularly CCPs. |

**Source:** OIG review of FDIC Annual Reports.

(a) As of October 17, 2018, there are no longer any FSOC-designated nonbank financial companies. https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations

The limited information reported for these items in the respective FDIC Annual Reports was not sufficient for external stakeholders to understand the overall status of the OLA program, or the change in the program since the prior year. Specifically, until the FDIC has completed its systemic resolution process guidance and developed resolution strategies for systemically important FMUs and other potentially systemic nonbank financial companies, the FDIC may not be able to readily achieve its current APG to "ensure the FDIC's operational readiness to administer the resolution of large, complex financial institutions, including those designated as systemically important."

**OLA Program Performance Measures**. While the FDIC and CISR had developed an APG, and performance targets and measures related to multiple OLA program activities, the FDIC has not developed long-term metrics and a clear definition of success that would facilitate consistent measuring, monitoring, and reporting on the overall status of the OLA program over time. Best practices for good program management recommend defining metrics (including key performance indicators) and procedures to measure the benefits of a program.[85] Such metrics could address key readiness items identified in the FDIC CRRF, such as the status of readiness plans, policies and procedures, training activities, processes subjected to exercises, and outstanding significant action items from exercises.

**Recommendation**

We recommend that the Acting Director, CISR:

13. Establish key performance metrics for the Orderly Liquidation Authority program with which the FDIC can measure and monitor the overall status of the program.

**Other Reporting on the OLA Program**. FDIC Directive 1500.07 indicates that the FDIC should provide reports and programmatic updates to the FDIC Chairperson and Operating Committee,[86] at a minimum annually, to communicate progress on overall Agency-wide crisis readiness. According to the directive, the Operating Committee is responsible for oversight and coordination of crisis readiness, including: assessing risks and identifying additional planning, training, and exercise needs based on new or emerging risks. However, the FDIC did not regularly report the status of the OLA resolution readiness program to the Operating Committee. Such reporting might help the FDIC further mature the OLA program by providing FDIC senior executives an overall status of the OLA resolution readiness and enlisting support for additional planning, training, and exercise resources.

**Recommendation**

We recommend that the Acting Director, CISR:

14. Ensure the FDIC regularly updates the FDIC Operating Committee and the FDIC Chairman on the overall status of the Orderly Liquidation Authority program.

***The FDIC Should Conduct Separate Evaluations***

The GAO *Standards for Internal Control in the Federal Government* recommend management use separate evaluations periodically, based on an assessment of risk,

[85] Project Management Institute, Global Standard, *The Standard for Program Management* (Fourth Edition, 2017). These standards provide guidance on principles, practices, and activities of program management that are generally recognized to support good program management practices.
[86] The Operating Committee is comprised of Division/Office Directors and Deputies to the Chairman who meet periodically to address cross-cutting issues, share information about risks, resolve issues, and determine next steps.

to monitor the design and operating effectiveness of the internal control system at a specific time or of a specific function or process.

The FDIC has not conducted any internal reviews of OLA-related resolution planning activities since the enactment of the DFA more than 12 years ago. Internal reviews are a means of detecting, reporting, and monitoring areas for improvement in OLA resolution planning activities. Both RMS and DRR have established a practice of conducting periodic internal reviews of Division activities. A senior CISR official indicated that OCFI, and its successor CISR, did not request the needed operational staff resources for conducting internal reviews until 2022, as a result of other Division priorities, and the limited staffing hindered the ability to perform such reviews.

Specifically, the official stated that at its inception, CISR was allocated only one full-time employee in the risk and internal review area, and that additional staff for internal review work was not allocated until after a CISR review of CISR Operations Branch staffing needs. CISR developed an *Internal Control Policies and Procedures Manual* (March 2022) that describes the process for conducting three types of internal reviews to evaluate the efficiency and effectiveness of CISR operations. The FDIC should develop a plan for ensuring that CISR maintains sufficient personnel to conduct operational, control, and compliance reviews of the OLA program, as appropriate, in accordance with this Manual.

**Recommendation**

We recommend that the Acting Director, CISR:

15. Ensure the Division of Complex Institution Supervision and Resolution maintains the necessary staff and establishes a plan for conducting regular internal reviews of Orderly Liquidation Authority resolution planning activities.

***After-Action Report Follow-up Requires Improvement***

The GAO *Standards for Internal Control in the Federal Government* recommend management evaluate control deficiencies identified by the ongoing monitoring of the internal control system as well as any separate evaluations performed by both internal and external sources.

FDIC officials prepared an after-action report for each of the seven OLA-related exercises or simulations we reviewed for years 2018 to 2022. While these reports identified actions needed to improve the OLA program, the FDIC does not use a consistent format to document the after-action results or identify and track recommendations resulting from these exercises to facilitate implementation of needed improvements, such as recommended action items from exercises in 2020 and earlier. Specifically, as of December 2022, the FDIC had not yet implemented some recommendations related to updating bridge formation templates and preparing or updating OLA process guidance. For example, the after-action report for the TPLE simulation exercise in 2020 recommended that TPLE Playbooks be more straightforward, operational, and user-friendly, and be regularly reviewed and updated, if needed. We found that the FDIC, in coordination with the other Federal Banking Agencies, had not yet updated the U.S. Cross-Border Resolution Playbook (2019) to address that recommendation.[87]

The FDIC CRRF, developed after the exercises described above, provides a template that FDIC personnel can use to consistently document after-action results, identify personnel responsible for addressing recommendations, and track the resolution of related recommendations. Without a consistent mechanism to track and monitor the status of significant recommendations from exercises, key action items or lessons learned from exercises might go unimplemented, such as pertinent updates to operational guidance, playbooks, and templates necessary for an effective OLA resolution.

**Recommendation**

We recommend that the Acting Director, CISR:

16. Establish a mechanism to track and monitor the implementation of significant current and future recommended action items from internal and external exercises or actual resolution events.

## The FDIC Should Integrate a Financial Crisis Scenario into OLA Resolution Planning

FDIC Directive 1500.07, *Crisis Readiness and Response Program* (July 2021) states that the FDIC's Crisis Readiness and Response Program involves all elements of the preparedness cycle, including integrated planning for future crises. In support of this directive, the FDIC developed the CRRF (July 2021), which contains provisions applicable to all components of the FDIC to ensure that the FDIC can carry out its mission during any crisis, regardless of scope or cause. Chapter 8 of the CRRF, *Readiness Activities*, identifies a continuous improvement cycle of ongoing tasks,

[87] Senior CISR officials subsequently stated that the updates were completed in 2023, in preparation for the 2023 TPLE cross-border simulation exercise. As the updates were made after the fieldwork for this evaluation, the OIG did not review the updates.

such as planning, training, exercises, and evaluation, which helps ensure that the FDIC is prepared to respond to the full range of threats facing the Agency. The CRRF describes a process that the FDIC can use to develop a readiness plan based on a realistic worst-case planning scenario with a potential impact on FDIC mission or operations.

The FDIC had integrated certain OLA readiness products and activities into Agency-wide crisis readiness and response planning. For example:

- The FDIC documented in the SRFD the business unit-level roles and responsibilities across FDIC Divisions and Offices involved in the systemic resolution process and identified the SRFD as an Agency-wide crisis readiness plan in the FDIC's Crisis Readiness and Response Information Repository.

- CISR personnel responsible for OLA planning and exercises met and coordinated quarterly with personnel from the FDIC DOA Crisis Readiness and Response Section, and the FDIC identified three OLA-related exercises in the FDIC's Crisis Readiness and Response Information Repository.

However, the FDIC has not documented a readiness plan for executing OLA resolution authorities in a financial crisis scenario involving concurrent failures of multiple SIFCs. The FDIC study, *Crisis and Response: An FDIC History, 2008-2013* (November 2017), summarizing the FDIC's actions during the most recent financial and banking crisis starting in 2008, described how such a scenario has already occurred. That crisis included the financial distress of three large financial companies for which the FDIC recommended a systemic risk exception under the FDIC Improvement Act,[88] within a 4-month period, in order to avoid or mitigate the serious adverse effects that the failure of these companies would have on economic conditions or financial stability. The study concluded that the FDIC was challenged by the speed and severity of the prior banking crisis, which exceeded expectations, and acknowledged the reality that the magnitude and speed of banking crises are unpredictable. As a result, the study emphasized that readiness planning is

[88] Pub. L. No. 102-242, § 141 (1991), codified at 12 U.S.C. § 1823(c)(4)(G). A systemic risk exception allows the FDIC to provide extraordinary assistance authorized in the systemic risk provision of the FDI Act if the Treasury Secretary, in consultation with the President and upon written recommendation of the FDIC and the FRB, determines that compliance with certain cost and loss limitations in 12 U.S.C. § 1823(c)(4) would have serious adverse effects on economic conditions or financial stability and that such assistance would avoid or mitigate these systemic effects. Such a determination exempts the FDIC from the FDI Act's least-cost resolution requirement, which generally requires the FDIC to use the least costly method when assisting an IDI and prohibits the FDIC from increasing losses to the Deposit Insurance Fund by protecting creditors and uninsured depositors of an IDI.

essential, and that because crises can occur quickly, it is helpful to have a roadmap for increasing key resources and infrastructure when needed. A readiness plan for multiple SIFC resolutions would facilitate such a roadmap.

Further, according to the transcript of the SRAC meeting in April 2016,[89] three SRAC members questioned whether there were constraints on the FDIC's ability to address more than one SIFC failure at a time. An FDIC Associate Director, OCFI, responded that "getting to how we would operate multiple resolutions at the same time is something that we are going to layer into our frame going forward." However, the most recent SRFD (April 2020) still did not describe how the FDIC might address multiple OLA resolutions.

According to the transcript of the SRAC meeting in October 2020,[90] one SRAC member, a former FRB Chairman, stated that a concern he often heard was that various resolution approaches may work when there is a single firm under stress but it is unclear how the approaches will work in a generalized crisis where many firms are under stress. He indicated that the FDIC might need scenario planning to consider the FDIC resources needed in such a situation. The CISR Director at that time acknowledged that the FDIC had to prepare for a scenario where multiple financial companies experience the same problem at the same time. Lastly, according to the transcript of the SRAC meeting in November 2022, two SRAC members indicated a belief that the next major crisis event would most likely affect multiple institutions simultaneously and asked about the FDIC's abilities in such a scenario.

An International Monetary Fund (IMF) report in 2020 assessing the U.S. financial sector[91] determined that FSOC and the Federal Banking Agencies (FBAs), both of which include the FDIC, should intensify crisis preparedness activities. In particular, the IMF recommended that the FBAs assess and prepare potential mitigating actions for a case in which several larger institutions will need to simultaneously activate their recovery or contingency funding plans. The IMF identified this recommendation as a high priority for immediate attention. While the recommendation is not specific to an OLA resolution, it emphasizes the importance of advance planning for a financial crisis scenario, which the IMF indicated could involve concurrent financial stresses at multiple large financial companies but might also originate from new types of failure and in new types of financial or nonfinancial firms. The IMF

[89] https://www.fdic.gov/about/advisory-committees/systemic-resolutions/pdfs/2016-04-14-transcript.pdf.
[90] https://www.fdic.gov/about/advisory-committees/systemic-resolutions/pdfs/2020-10-01-transcript.pdf.
[91] International Monetary Fund, *United States Financial Sector Assessment Program Technical Note - Financial Crisis Preparedness and Deposit Insurance* (August 2020). https://www.imf.org/en/Publications/CR/Issues/2020/08/07/United-States-Financial-Sector-Assessment-Program-Technical-Note-Financial-Crisis-49654.

concluded that it is critical to crisis preparedness and prompt, decisive, and effective action in crisis, that the interactions between the Treasury and the FBAs under the DFA and FDI Act be operationalized, documented, regularly reviewed, and tested. A crisis readiness plan would facilitate these efforts, and the FDIC should coordinate with the Treasury and other FBAs in the development of such a plan.

Senior CISR officials described to us how such a crisis scenario might affect the FDIC. Specifically, they stated that the FDIC's SPOE resolution strategy and supporting operational framework are intended to minimize the use of FDIC personnel and maximize the use of the financial and other resources, including the personnel, systems, and services, of the institution being resolved. In addition, they indicated that the FDIC had access to a pool of executives capable of running and restructuring a SIFC during the resolution process. However, the FDIC had not experienced a real-world test of its ability to draw from this pool for one SIFC failure, much less multiple SIFC failures.

Senior CISR officials believe the SPOE strategy and SRFD are scalable to accommodate multiple institution failures, and that the FDIC is responsible for OLA resolution processes that require a relatively limited FDIC operational footprint. They stated that the FDIC might need to adjust certain aspects of the processes if there were multiple failures, such as the content of public messaging about the failures, but there would not be a fundamentally different approach to the institution-specific approaches developed for each firm. Specifically, the SPOE would remain the baseline strategy for each firm. However, we found that the FDIC had not formally documented the aspects of the resolution processes that the FDIC may need to alter to scale the SRF for a financial crisis scenario. As described above, statements by SRAC members emphasized the importance of clarifying how the FDIC would address such a scenario.

Without this clarity, the FDIC may not be able to readily address a scenario involving concurrent SIFC failures, potentially also in conjunction with large regional bank failures, such as the recent back-to-back failures of Silicon Valley Bank and Signature Bank. A documented financial crisis readiness plan could provide the FDIC assurance that it has considered and planned for the contingencies inherent in a scenario involving concurrent failures in each of these areas. Such contingencies might otherwise significantly challenge the FDIC's available resources and ability to successfully resolve failing financial companies. The contagion effect from such a scenario could negatively affect U.S. financial stability.

In addition, *The CISR 2022-2024 Strategic Plan* contains a strategic priority to *Enhance Credibility and Transparency*, through fostering public confidence by enhancing the transparency of its capabilities and capacity for resolving large complex financial institutions and systemically important nonbank financial companies.[92] A financial crisis readiness plan, which the FDIC could describe in the FDIC Annual Report and discuss in the periodic public SRAC meetings, would support this goal by enhancing transparency regarding the FDIC's capabilities for resolving multiple SIFCs in a financial crisis scenario.

**Recommendation**

We recommend the Acting Director, CISR:

17. Develop an FDIC readiness plan for a financial crisis, to include a scenario that involves the resolution of multiple concurrent failures of systemically important financial companies.

## Conclusions

The findings we identified in this evaluation were similar to the findings we identified in our prior report, *The FDIC's Progress in Implementing Systemic Resolution Authorities under the Dodd-Frank Act* (AUD-14-001). Specifically, in this evaluation we found the FDIC:

- Has not maintained a consistent focus on maturing the OLA program;
- Has not completed policies and procedures for key processes associated with the implementation of systemic resolution authorities;
- Has not fully defined roles and responsibilities for executing an OLA resolution;
- Needs to enhance OLA resources, training, and exercises to plan for and execute an OLA resolution; and
- Does not have adequate monitoring mechanisms in place to ensure it promptly implements the OLA program and consistently measures, monitors, and reports on the OLA program status and results.

In addition, the FDIC should take action to further plan for a financial crisis scenario involving multiple SIFC resolutions.

We recognize that the FDIC has made progress in implementing elements of its OLA program since the enactment of the DFA, including progress in OLA resolution planning for the global SIFCs based in the U.S. However, the FDIC must continue to mature its OLA program by implementing the recommendations in this report. Doing so will help address the risks facing the FDIC and support the FDIC's APG to

[92] The *CISR 2022-2024 Strategic Plan* includes FMUs, such as CCPs, in the definition of nonbank financial companies.

"ensure the FDIC's operational readiness to administer the resolution of large, complex financial institutions, including those designated as systemically important." If the FDIC were unable to resolve a SIFC, it could severely affect the banking sector and the stability of the U.S. and global financial systems.

## FDIC COMMENTS AND OIG EVALUATION

The FDIC's Acting Director of CISR provided a written response to a draft of this report. The response is presented in its entirety in Appendix 5.

In its response, the FDIC concurred with all 17 report recommendations. The FDIC's proposed corrective actions were sufficient to address the intent of all recommendations, and the FDIC plans to complete corrective actions for these recommendations by December 31, 2025. We consider all 17 recommendations to be resolved.

All recommendations in this report will remain open until we confirm that corrective actions have been completed and the actions are responsive. A summary of the FDIC's corrective actions is contained in Appendix 6.

**Objective**

To determine whether the FDIC maintained a consistent focus on implementing the OLA program and established key elements to execute the OLA under the DFA, including: (1) comprehensive policies and procedures; (2) defined roles and responsibilities; (3) necessary resources; (4) regular monitoring of results; and (5) integration with the Agency's crisis readiness and response planning.

We conducted this evaluation from April 2022 through June 2023 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (December 2020). Evaluation team members were based at the OIG offices in Arlington, Virginia and Dallas, Texas.

**Scope and Methodology**

The scope of the evaluation included the FDIC's policies and procedures, governance structure, roles, responsibilities, and activities related to the planning for, and execution of, an OLA resolution. The scope also included the FDIC strategic plans, goals and objectives, and crisis readiness activities relevant to OLA. The scope of our work generally included the status of FDIC OLA readiness activities through July 2022. As necessary, we obtained updated information from the FDIC to document the status of FDIC OLA activities through June 2023.

To address our evaluation objective, we performed the following procedures:

- Interviewed, or obtained and reviewed documentation from, FDIC Officials and personnel in the following Divisions and Offices with primary ownership of responsibilities for planning for and executing an OLA resolution, as identified in the SRFD (April 2020):
  - Division of Complex Institution Supervision and Resolution
  - Division of Finance
  - Division of Resolutions and Receiverships
  - Legal Division
  - Office of Communications
  - Office of Legislative Affairs

- Reviewed documentation to understand responsibilities relative to internal coordination between FDIC Divisions and Offices, and external coordination between the FDIC, other U.S. Regulators, and financial regulators in foreign countries. These documents included:
  - FDIC Committee Charters

        - Charter of the Complex Financial Institutions Coordination Group
        - Resolution Readiness Coordinating Committee Charter
    - FDIC Coordination Policies and Procedures
        - Memorandum of Understanding between the Secretary of the Treasury and the FDIC
        - CISR, DRR, RMS Principles of Coordination and Collaboration
        - U.S. Cross-Border Resolution Playbook
        - United States Home Authority Coordination Summary

- Reviewed FDIC Risk Inventory reports as of March 2022 and July 2022 to determine whether the FDIC adequately reflected risks relevant to the OLA program.

- Reviewed the Systemic Resolution Framework Document, Interim Final Draft (April 2020) to gain an understanding of the FDIC's overall process for an OLA resolution.

- Reviewed and analyzed available OLA-related policy and procedure documents to determine:
    - Whether they were draft or final, and indicated a review and approval process, and
    - Which part of the SRF they supported.

- Reviewed the following FDIC Crisis Readiness Directive and Guidance and discussed the FDIC Crisis Readiness and Response Program with Division of Administration officials.
    - FDIC Crisis Readiness and Response Framework (July 19, 2021).
    - FDIC Directive 1500.07, Crisis Readiness and Response Program (July 2, 2021).

- Reviewed the status of recommendations from prior FDIC OIG Reports on the FDIC's OLA resolution readiness:
    - AUD-14-001, *The FDIC's Progress in Implementing Systemic Resolution Authorities under the Dodd-Frank Act* (November 2013).
    - EVAL-17-003, *The FDIC's Risk Monitoring of Systemically Important Institutions' Proximity and Speed to Default or Danger of Default* (January 2017).

- Reviewed and analyzed the results and recommendations of the following external reports related to OLA resolution readiness:

- International Monetary Fund, *United States Financial System Stability Assessment* (August 2020) (IMF Country Report No.20/242). International Monetary Fund, *United States Financial Sector Assessment Program Technical Note - Financial Crisis Preparedness and Deposit Insurance* (August 2020) (IMF Country Report No. 20/245).
- The Department of the Treasury: *Orderly Liquidation Authority and Bankruptcy Reform* (February 2018).

- Coordinated with OIG Office of General Counsel to understand the DFA and key OLA Requirements.

We reviewed the GAO *Standards for Internal Controls in the Federal Government* (GAO-14-704G) (September 2014) to identify key elements the FDIC would need to execute the OLA under the DFA. These internal control standards define specific components and principles necessary to an entity's oversight body, management, and other personnel, that provide reasonable assurance that the objectives will be achieved. We identified the key elements from the following principles:

- Principle 2 – The oversight body should oversee the entity's internal control system.
- Principle 3 - Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.
- Principle 4 – Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
- Principle 10 – Management should design control activities to achieve objectives and respond to risks.
- Principle 12 – Management should implement control activities through policies.
- Principle 16 - Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.

## Appendix 2 — Acronyms and Abbreviations

| | |
|---|---|
| APG | Annual Performance Goal |
| BFC | Bridge Financial Company |
| BHC | Bank Holding Company |
| CCP | Central Counterparty |
| C.F.R. | Code of Federal Regulations |
| CFTC | Commodity Futures Trading Commission |
| CISR | Division of Complex Institution Supervision and Resolution |
| CMG | Crisis Management Group |
| CRRF | Crisis Readiness and Response Framework |
| DCP | Division of Depositor and Consumer Protection |
| DFA | Dodd-Frank Wall Street Reform and Consumer Protection Act |
| DRR | Division of Resolutions and Receiverships |
| EAOG | Executive Advisory and Oversight Group |
| FBA | Federal Banking Agency |
| FBO | Foreign Banking Organization |
| FDI Act | Federal Deposit Insurance Act |
| FDIC | Federal Deposit Insurance Corporation |
| FIO | Federal Insurance Office |
| FMU | Financial Market Utility |
| FRB | Board of Governors of the Federal Reserve System |
| FSB | Financial Stability Board |
| FSOC | Financial Stability Oversight Council |
| GAO | Government Accountability Office |
| GSIB | Global Systemically Important Bank |
| IDI | Insured Depository Institution |
| IMF | International Monetary Fund |
| ISSP | Institution Specific Strategic Plan |
| MPOE | Multiple Point of Entry |
| OCFI | Office of Complex Financial Institutions |
| OIG | Office of Inspector General |
| OLA | Orderly Liquidation Authority |
| OLF | Orderly Liquidation Fund |
| RMS | Division of Risk Management Supervision |
| SEC | Securities and Exchange Commission |
| SIFC | Systemically Important Financial Company |
| SPOE | Single Point of Entry |
| SRAC | Systemic Resolution Advisory Committee |

## Appendix 2 — Acronyms and Abbreviations

| | |
|---|---|
| SRF | Systemic Resolution Framework, Interim Final Draft |
| SRFD | Systemic Resolution Framework Document, Interim Final Draft |
| TPLE | Trilateral Principle Level Exercise |
| Treasury | United States Department of the Treasury |
| Treasury Secretary | Secretary of the United States Department of the Treasury |
| UK | United Kingdom |
| U.S. | United States |
| U.S.C. | United States Code |

# Glossary of Terms

| Term | Definition |
| --- | --- |
| Bank Holding Company (BHC) | A BHC is any company that has control over any bank or over any company that is or becomes a BHC. 12 U.S.C. § 1841(a). |
| Broker | The Securities Exchange Act of 1934 defines a "broker" as any person engaged in the business of effecting transactions in securities for the account of others. 15 U.S.C. § 78c. |
| Business-as-Usual | According to the SRFD, the term "business-as-usual" refers to the ongoing daily operations required during the period prior to a material stress event, including risk monitoring and strategic resolution planning, operational readiness planning, and receivership management planning. |
| Central Counter Party (CCP) | A CCP is a type of FMU and is a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets either by guaranteeing trades or novating contracts. 12 C.F.R. § 3.2; 12 C.F.R. § 1240.2. |
| Counterparty | Counterparty means the party on the other side of a transaction. |
| Dealer | The Securities Exchange Act of 1934 defines a "dealer" as any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise. 15 U.S.C. § 78c. |
| Enterprise Risk Management | Enterprise risk management is an agency-wide approach to addressing the full spectrum of internal and external risks facing an agency. |
| Financial Market Utility (FMU) | An FMU is any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person. 12 U.S.C. § 5462(6). The DFA gives FSOC the authority to designate FMUs that are, or are likely to become, systemically important. 12 U.S.C. § 5463. |
| Intermediate Holding Company | According to the Federal Financial Institutions Examination Council National Information Center, an intermediate holding company is a company established or designated by a foreign banking organization as its U.S. intermediate holding company under 12 C.F.R. Part 252, Subpart O. An intermediate holding company is both a holding company of a smaller group of companies and a subsidiary of a larger group of companies. |

| Term | Definition |
|---|---|
| Internal Control System | An internal control system is a continuous built-in component of operations, effected by people, that provides reasonable assurance that an entity's objectives will be achieved. |
| Large and Complex Financial Institution | The FDIC generally defines large and complex financial institutions as SIFCs and IDIs with assets above $100 billion. According to the FDIC, large and complex financial institutions have distinct regulatory requirements and their size, complexity, and risk profile warrant specialized supervisory processes, preplanning under the FDI Act or the OLA, and focused cross-border coordination. |
| Material Legal Entity | A material legal entity is an entity that is significant to the activities of a critical operation or core business line. |
| Multiple Point of Entry Strategy (MPOE) | In an MPOE resolution strategy, more than one of the material legal entities of the SIFC would be resolved, either under an ordinary U.S. insolvency proceeding or under the OLA, though others might remain open and operating for at least some period of time. Examples of ordinary U.S. insolvency proceedings include those administered under the Bankruptcy Code, FDI Act, Securities Investor Protection Act, and State Banking or Insurance Law. |
| Orderly Liquidation Fund (OLF) | The DFA established the OLF at the Treasury as a liquidity facility that the FDIC may draw upon, subject to terms set by the Treasury, to lend to the financial company in receivership. 12 U.S.C. § 5390(n). |
| Receiver | The FDIC's powers and duties as receiver include, among other things, managing and selling assets, determining and paying valid claims, and accounting and recordkeeping for the failed SIFC. 12 U.S.C. § 5390. |
| Receivership Management Controls Provisions | The Receivership Controls provisions, included as an appendix to the BFC Articles of Association, establish specified FDIC requirements and limitations on the BFC. |
| Recovery Plan | A recovery plan identifies triggers and options for responding to a wide range of severe internal and external stress scenarios to restore a covered bank that is in recovery to financial strength and viability in a timely manner. 12 C.F.R. Part 30 Appendix E. |
| Regional Bank | The FDIC Chairman defined regional banks as having assets between $50 billion and $500 billion in a speech on October 16, 2019. |
| Resolve | Resolve means to manage the orderly failure of a financial firm. |

| Date | Key Event |
|---|---|
| 7/2010 | Congress enacts the *Dodd Frank Wall Street Reform and Consumer Protection Act.* |
| 8/2010 | The FDIC creates the Office of Complex Financial Institutions (OCFI) for implementing systemic resolution authorities under the DFA. |
| 6/2011 | The FDIC creates the Systemic Resolution Advisory Committee (SRAC). |
| 7/2011 | FDIC Chairman Sheila Bair departs the FDIC, succeeded by Martin Gruenberg as Acting Chairman. |
| 11/2011 | The Financial Stability Board identifies the initial list of Global Systemically Important Banks. |
| 1/2012 | The FDIC co-hosts the initial Crisis Management Group (CMG) annual meetings for U.S. GSIBs. |
| 7/2012 | The Financial Stability Oversight Council identifies the initial list of Systemically Important Financial Market Utilities. |
| 11/2012 | Martin Gruenberg becomes the FDIC Chairman. |
| 3/2013 | OCFI is reorganized. FDIC management moves the OCFI Monitoring staff and functions to RMS, concluding that it would be more effective and efficient to use RMS's existing infrastructure for this activity. |
| 11/2013 | FDIC OIG issues report AUD-14-001, *The FDIC's Progress in Implementing Systemic Resolution Authorities under the Dodd Frank Act*. The OIG makes six recommendations aimed at enhancing the FDIC's long-term strategic planning efforts, strengthening coordination among FDIC divisions, and building out OCFI's infrastructure to support systemic resolution activities. |
| 12/2013 | The FDIC publishes in the Federal Register the Single Point of Entry resolution strategy, which describes a proposed strategy for implementing the Orderly Liquidation Authority. |
| 2/2014 | OCFI establishes a Title II Implementation Initiative in response to the 2013 OIG report AUD-14-001. |
| 3/2014 | DRR Complex Financial Institutions Branch-establishes a 2014-2017 Strategic Plan in response to the 2013 FDIC OIG report AUD-14-001. |
| 10/2014 | The FDIC hosts a principals-level meeting between U.S. and UK authorities to discuss cross-border GSIB resolution strategies and coordination. |
| 7/2015 | The International Monetary Fund issues the 2015 U.S. Financial Sector Assessment Program, Financial System Stability Assessment report on the U.S., including a technical note on U.S. implementation of the Key Attributes of Effective Resolution |

| Date | Key Event |
|---|---|
| | Regimes for the Banking and Insurance Sectors. The FDIC provided information for the assessment. |
| 12/2015 | The FDIC conducts an internal operational discussion exercise with FDIC senior executives of its Systemic Resolution Framework. The exercise focuses on the steps to prepare for a resolution and to facilitate the immediate stabilization of a failed SIFC. |
| 4/2016 | SRAC meeting. The FDIC describes the Systemic Resolution Framework. The agenda includes a Title II Orderly Liquidation update, operational planning, and cross-border work programs. |
| 9/2016 | The FDIC conducts a second internal operational discussion exercise, with FDIC senior executives, of its Systemic Resolution Framework. This exercise focuses on options for governance of the SIFC being resolved, on options for governance within the FDIC, and on operational processes that may be needed to exit from resolution. |
| 10/2016 | The FDIC participates in the first meeting of the Trilateral Principals Level Exercise (TPLE) authorities, building off of the 2014 meeting between U.S. and UK officials, to discuss cross-border GSIB resolution planning and coordination. |
| 12/2017 | The Single Resolution Board and the FDIC announce they signed a Cooperation Arrangement. The purpose of this arrangement is to provide a basis for the exchange of information and cooperation in resolution planning and the implementation of such planning for financial institutions with operations in the European Banking Union as well as the U.S. |
| 4/2018 | Meeting of the TPLE authorities, to-discuss cross border GSIB resolution planning and coordination. |
| 6/2018 | Jelena McWilliams becomes the FDIC Chairman. |
| 6/2018 | U.S. Resolvability Assessment Process (RAP) letter to the Financial Stability Board (FSB), reporting for the initial 2017-2018 cycle (annual thereafter). The FSB uses this process to track progress towards resolvability for GSIBs and to inform the FSB's annual resolvability report. |
| 10/2018 | The FDIC conducts a one-day internal exercise focused on primary initial actions for a GSIB failure – FDIC Governance, including Bridge Financial Company formation; OLF Funding operations; and Receivership Management. |
| 12/2018 | SRAC meeting. The agenda includes a Title II Orderly Liquidation update and cross-border resolution implementation. |
| 4/2019 | The FDIC hosts senior officials representing resolution, regulatory and supervisory authorities, central banks, and finance ministries in the U.S., the UK, and the European Banking Union. The meeting is held as part of a series of planned exercises (TPLE) to enhance understanding of resolution regimes for GSIBs and to strengthen coordination on cross-border resolution. |

| Date | Key Event |
|---|---|
| 6/2019 | The FDIC announces the establishment of the Division of Complex Institution Supervision and Resolution (CISR) (effective July 2019), which combines the operations of the former OCFI with the DRR and RMS branches responsible for supervision, monitoring, resolution planning, and resolution execution for large complex financial institutions. |
| 4-5/2020 | The FDIC and FRB hold the Spring 2020 U.S. GSIB CMG meetings virtually, due to the pandemic. The FDIC stated that prior meetings were in person. |
| 4/2020 | The FDIC updates the Systemic Resolution Framework Document, Interim Final Draft to reflect the CISR reorganization. |
| 4/2020 | CISR and the Legal Division conduct a one-day bridge formation simulation exercise that focuses on preparing the legal templates to form a Bridge Financial Company (BFC). |
| 5/2020 | CISR finalizes its formal structure. |
| 5/2020 | The FDIC and U.S. Treasury hold a one-day interagency simulation exercise focused on access to and accounting for the Orderly Liquidation Fund. |
| 8/2020 | The FDIC and SEC publish a Joint Rule governing covered broker-dealer provisions under Title II of the DFA. |
| 8/2020 | The International Monetary Fund issues the 2020 U.S. Financial Sector Assessment Program, Financial System Stability Assessment report on the U.S., including a technical note on Financial Crisis Preparedness and Deposit Insurance. The FDIC provided information for the assessment. |
| 10/2020 | SRAC meeting. The agenda includes Resolution Planning under OLA, including a framework for GSIBs and resolution planning for broker-dealers and CCPs. |
| 10-11/2020 | The FDIC participates in a senior staff-level multi-day cross-border resolution simulation conducted with staff from multiple agencies from the U.S., UK, and European Banking Union. |
| 1/2021 | John Conneely is appointed as Director of CISR, replacing Ricardo Delfin. |
| 4/2021 | Virtual meeting of the TPLE authorities, to discuss cross border GSIB resolution planning and coordination. |
| 2/2022 | FDIC Chairman Jelena McWilliams departs the FDIC, succeeded by Martin Gruenberg as Acting Chairman. |
| 2/2022 | CISR develops a Strategic Plan for the period 2022-2024, which contains goals and objectives focused on governance and processes for orderly liquidation authority readiness. |

| Date | Key Event |
|---|---|
| 4/2022 | The heads of resolution, regulatory, and supervisory authorities, central banks, and finance ministries of the U.S., the UK, and the European Banking Union participate in a TPLE. |
| 11/2022 | SRAC meeting. The agenda includes the integration of supervision and resolution within CISR; Title II resolution planning and public transparency; and CCP resolution challenges. |
| 1/2023 | Acting Chairman Martin Gruenberg is appointed Chairman of the FDIC. |

**Federal Deposit Insurance Corporation**

## MEMO

**TO:** Terry L. Gibson
Assistant Inspector General for Audits, Evaluations, and Cyber

**FROM:** Jim McGraw
Acting Director
Division of Complex Institution Supervision and Resolution (CISR)

JAMES MCGRAW
Digitally signed by JAMES MCGRAW
Date: 2023.09.18 13:52:39 -04'00'

**CC:** Jenny Traille
Acting Senior Deputy Director, CISR

Ryan Tetrick
Deputy Director, Resolution Readiness Branch, CISR

Krista Hughes
Deputy Director, Operations Branch, CISR

**DATE:** September 18, 2023

**RE:** Management Response to the Draft Evaluation Report Entitled, *The FDIC's Orderly Liquidation Authority* (2022-004)

Thank you for the opportunity to review and comment on the subject draft evaluation report (OLA Draft Evaluation Report) issued by the Office of Inspector General (OIG) on August 9, 2023. The Report details the evaluation conducted of the Federal Deposit Insurance Corporation's (FDIC) readiness to exercise the orderly liquidation authority (OLA) established pursuant to Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The FDIC's readiness to execute a Title II resolution of a systemically important financial company (SIFI) is critical to our mission, and as such we have placed a high priority on this important responsibility and have devoted considerable resources and attention in order to position the FDIC to exercise the authority if called upon to do so. We are committed to continuing to improve and mature our framework for the orderly resolution of a SIFI.

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We would like to recognize the effort by your team to identify useful areas for improvement. We agree with the report recommendations that identify steps that can support readiness for this challenge, including the need to further mature the program by strengthening governance over the program, improving internal process documentation, further specifying roles and responsibilities, enhancing training, and allocating additional resources to this important work.

Since the passage of the Dodd-Frank Act in 2010, the FDIC has been developing its capability for resolving SIFIs in a manner that meets the goals of the Act. The FDIC stands ready to use its orderly liquidation authorities, if necessary, to resolve a SIFI in a manner consistent with the objectives of the Dodd-Frank Act. The FDIC therefore expects to conduct such a resolution in a way that maintains the stability of the U.S. financial system, while mitigating moral hazard and promoting market discipline by holding owners and management responsible for the failure accountable, and assuring that losses are born by creditors and shareholders, without imposing a cost on U.S. taxpayers. In collaboration with authorities domestically and around the world, the FDIC is a leader in strategic readiness for the resolution of a systemically important financial company. Now, 13 years after the passage of the Dodd-Frank Act, the FDIC has important work to do to assure that, on an ongoing basis, this strategic readiness is part of a mature program that maintains well-documented and well-maintained processes, procedures, and staffing resources that are ready to undertake the work if called upon to do so.

In 2019, the FDIC undertook an important step to improve its organizational framework for this responsibility by establishing the Division of Complex Institution Supervision and Resolution (CISR). By uniting the FDIC's supervisory and readiness responsibilities for large, complex financial institutions in a single Division, the FDIC created opportunities for important coordination and synergies in its approach. This major organizational change underscored the FDIC's commitment to the work that is the subject of the OLA Draft Evaluation Report.

The quality and quantity of the achievements by the FDIC in establishing its strategic readiness for execution of its resolution responsibilities under the Dodd-Frank Act demonstrates the FDIC's ongoing commitment to this important work throughout the 13 years since the passage of the Act. The FDIC worked urgently to establish and implement a Title II resolution planning program, beginning with the formation of the Office of Complex Financial Institutions (OCFI), a new unit reporting directly to the Chairman, promptly upon the passage of the Dodd-Frank Act. In addition to establishing OCFI and CISR, work to implement this responsibility has spanned the FDIC, and has also involved engaging with a wide range of external authorities and stakeholders outside the FDIC in venues both public and private. The high priority placed on this work is also reflected in annual FDIC Corporate Performance Goals

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year after year, and through frequent Chairman and Board level engagement in strategic, policy, and operational events and exercises focused on SIFI resolution, which continue to occur on a regular basis.

Appendix 4 in the Report provides a small sample of work that has been completed in implementing the authority, and notes certain developments in each year since the passage of the Dodd-Frank Act. The following list of material achievements to date demonstrates the comprehensive body of work supporting this program area:

- Development of a robust regulatory framework, including the regulations required to undertake a resolution through the orderly liquidation authority;
- Development, global socialization, and operationalization of the single point of entry strategy, supported by a well-developed regulatory and policy framework and advances in Title I resolution planning processes;
- Development and continued update of the Systemic Resolution Framework Document, providing a comprehensive operational process for conducting a Title II resolution for one or more institutions;
- Implementation of realistic, large-scale simulations covering the most critical functions needed to perform a Global Systemically Important Bank (GSIB) Title II resolution, including Bridge Financial Company formation and governance, deployment of the Orderly Liquidation Fund, firm-specific exercises and cross-border coordination, in collaboration with senior officials and subject matters experts inside and outside the FDIC;
- Establishment of an ongoing exercise and simulation program through which numerous tabletops and simulations have been conducted for the purposes of evaluating processes, testing competencies, and training;
- Coordination of supervisory and Title I planning processes with Title II planning processes to identify obstacles and mitigants to resolution of SIFIs on a firm-specific basis;
- Completion of thorough institution-specific planning documents for the Title II resolution of each domestic GSIB;
- Jointly hosting, with the Federal Reserve, Crisis Management Groups (CMGs) annually with robust agendas to address cross-border issues relevant to Title II resolution of all eight domestic GSIBs, including development of an annual, practical cross-border workshop for staff of host authorities;
- Establishment of the Trilateral Principal Level Exercise Program (TPLE) and ongoing, regular engagement with principals across U.S. authorities with roles in SIFI supervision and resolution, and with their counterparts in key foreign jurisdictions to address strategic issues and practice coordination in a GSIB Title II resolution;

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- Initial development and continued update of institution-specific planning documents for the Title II resolution of the five central counterparties (CCPs) that have been designated as systemically important by the Financial Stability Oversight Council (FSOC);
- Jointly hosting, with the relevant supervisory authorities, CMGs for the three U.S. CCPs that have been identified by the Financial Stability Board (FSB) as systemically important in more than one jurisdiction;
- Establishment of a principal-level meeting series, since 2017, regarding CCP resolution in the U.S. and UK, with participation from the Bank of England, Commodity Futures Trading Commission, Securities and Exchange Commission, and Federal Reserve Board;
- Establishment of and regular, public engagement with the Systemic Resolution Advisory Committee (SRAC), to provide advice and recommendations on a broad range of issues regarding the resolution of SIFIs pursuant to the Dodd-Frank Act, including effects on financial stability, market understanding of the authorities available to the FDIC to facilitate an orderly resolution of a covered company, and the application of such authorities to nonbank financial entities;
- Contribution to and leadership of key FSB workstreams through the work of the Resolution Steering Group and its sector-specific subgroups, including, for example, bail-in execution; loss-absorbing capacity, liquidity in resolution and continuity of access the Financial Market Infrastructure (FMI) intermediaries by firms in resolution; and
- Leadership in the development of global CCP resolution strategic planning and guidance, working through the FSB with relevant domestic and foreign authorities (supervisors, resolution authorities, and finance ministries) from Group of 20 (G20) jurisdictions.

The progress made to date has been recognized by parties with specific expertise in this area, including the International Monetary Fund (IMF) following its review of the FDIC's Title II resolution program[1], and the FDIC has made its work in this area subject to public scrutiny by a wide range of noted experts through meetings of the SRAC. In addition, credit rating agencies covering GSIB holding company debt have observed the impact of this work, and incorporate

[1] In its 2021 thematic review, *United States Financial Sector Assessment Program Technical Note – Financial Crisis Preparedness and Deposit Insurance (August, 2020),* the International Monetary Fund concluded that "After a decade of resolution planning, the development of the U.S. resolution regime is more advanced than in other major economies. This regime, together with the strong track record of the deposit insurance system (DIS) for banks and the federal banking agencies' (FBAs) preparation for resolution, provide a strong foundation for crisis preparedness." https://www.imf.org/en/Publications/CR/Issues/2020/08/07/United-States-Financial-Sector-Assessment-Program-Technical-Note-Financial-Crisis-49654, at p.53.

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the expectation of the use of OLA in the event of a failure of one of the institutions in their ratings[2].

The work has continued with an appropriate level of urgency since the passage of the Dodd-Frank Act, and throughout a period that spanned significant economic changes, the COVID-19 pandemic, changes in leadership, and recent large regional bank failures. The FDIC is committed to continuing its focus to improve and mature our readiness in the years to come.

While the FDIC has made great strides in strategic readiness over the years, we have also self-identified areas for improvement as part of the FDIC's Strategic Plans, Annual Performance Plans, and CISR's strategic goals. Many of the recommendations in the Report validate these objectives, emphasize their importance, or identify additional ways in which the FDIC can further establish appropriate governance over this work and strengthen its supporting documentation.

We also will continue to build upon our resolution strengths by continuing to engage in simulation exercises to help us further clarify roles and responsibilities, further improve our processes, and ensure that staff and all stakeholders are prepared in times of crisis. We will continue to prioritize accountability for Title II implementation within our strategic planning and governance structure. We believe that our existing body of work, the robust series of Title II exercises and simulations we have previously conducted, and our recent experience with concurrent large bank failures put us in a strong position to carry forward these recommendations. We will continue to identify – and seek to expand - appropriate opportunities to increase transparency around this work, including through communications with our stakeholders, including the public.

The draft report contains 17 recommendations, one of which is addressed to the Chairman and the remaining 16 to the Acting Director, CISR. FDIC management concurs with the recommendations. Notably, CISR has already initiated action to address 12 of the Report's recommendations. This work will continue to be part of our ongoing strategic initiatives and will be further prioritized over the next several years, for completion in accordance with the FDIC's priorities and for long-term maintenance. A summary of management's planned corrective action and estimated completion dates follows.

[2] E.g., Moody's Rating Action 14 Nov. 2013, removing ratings uplift from U.S. government support for bank holding company debt of eight U.S. G-SIBs. "We believe that US Bank regulators have made substantive progress in establishing a credible framework to resolve a large, failing bank."

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**Recommendation 1:**

Establish and maintain a strategic focus on the Orderly Liquidation Authority program in the Division of Complex Institution Supervision and Resolution strategic planning, to include a roadmap with established milestones for ensuring that the FDIC promptly matures the Orderly Liquidation Authority program.

**Management Decision:** Concur

**Corrective Action:** The FDIC is committed to further strengthening the OLA program, and efforts to do so, will be embedded in our established annual goal-setting mechanisms, namely FDIC Performance Goals, which are corporate-wide, and our divisional goals and objectives. Where appropriate, goals will include multi-year timelines and interim milestones. These goals will continue be tracked and monitored for timely completion.

**Estimated Completion Date:** 2024 Goals and Objectives will be established by March 31, 2024

**Recommendation 2:**

Develop and consistently maintain comprehensive Orderly Liquidation Authority policies and procedures for systemically important financial companies, to include:

a. Tier I policies and procedures for framework-level activities.
b. Tier II policies and procedures for operational process-level activities.
c. Tier III policies and procedures for institution-specific planning activities.
d. Other operational program policies and procedures for Orderly Liquidation Authority resolution planning activities.

**Management Decision:** Concur

**Corrective Action:** All Tier I, Tier II, and Tier III documents noted are either in the drafting stage or near completion with respect to domestic GSIBs.

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These policies and procedures include:

- Tier I: The Systemic Resolution Framework Document (SRFD), was initially completed in 2016, and most recently updated in 2022; a further update will be completed and approved through the Acting Director, CISR by December 31, 2023; transition to an inter-divisional review of the SRFD will be accomplished through the interdivisional process established in Corrective Action 5.
- Tier II: Process Guides are in the drafting process; complete drafts for each functional area will be reviewed and approved through Deputy Director, CISR-Resolution Readiness Branch (RRB) by December 31, 2023.
- Tier III: Institution-Specific Strategic Plans for U.S. GSIBs have been completed and are in the process of being updated and improved. These updated Institution Specific Strategic Plans will be completed by December 31, 2024. A revised and consistent format for these institution-specific documents will be approved by Deputy Director, RRB, by December 31, 2024.
- Other operational program policies and procedures are referenced in other Action Items with completion dates established. See Corrective Actions for Recommendations 3, 6, 12, and 13
- Tier I and Tier II policies and procedures for GSIBs will also be augmented to address the approach to non-bank financial companies.

**Estimated Completion Date:** Development of process for approval and maintenance of Tier I, II and III process documents as described above: December 31, 2024. Augmented Tier I and Tier II policies and procedures addressing the approach to non-bank financial companies: December 31, 2025.

**Recommendation 3:**

Apply Tier III policies and procedures to develop and consistently maintain institution-specific resolution planning documents for all non-bank financial companies and financial market utilities designated by the Financial Stability Oversight Council as systemically important.

**Management Decision:** Concur

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**Corrective Action:** CISR has established a 2023 Divisional Goal and Objective to develop and refine Title II resolution strategies for financial market utilities, including central counterparties (CCPs), and establish an ongoing review process to maintain these strategy documents. CISR staff are currently in the process of developing and updating institution-specific planning documents for each of the five systemically important CCPs.

CISR will evaluate the most effective approach to developing institution-specific planning documents for designated non-CCP financial market utilities and expand the ongoing review process to include any other non-bank financial companies designated by FSOC as systemically important.

**Estimated Completion Date:** March 31, 2025

**Recommendation 4:**

Establish an action plan for promptly developing and issuing rules and regulations required by the Dodd-Frank Act, including:

a. In consultation with the U.S. Secretary of the Treasury, rules or regulations to meet the requirements of 12 U.S.C. § 5390(o)(6).
b. In coordination with the FRB, and in consultation with the FSOC, rules or regulations to meet the requirements of 12 U.S.C. § 5393(d).

**Management Decision:** Concur

**Corrective Action:** The FDIC will establish action plans to address these rules.

**Estimated Completion Date:** March 31, 2024

**Recommendation 5:**

Ensure regular interdivisional oversight of the Orderly Liquidation Authority program and related products.

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**Management Decision:** Concur

**Corrective Action:** The FDIC will establish an approach to interdivisional oversight and coordination of the OLA Program and for review and, where appropriate, approval of critical products and other key activities and developments within the program.

**Estimated Completion Date:** Oversight framework developed by December 31, 2024

**Recommendation 6:**

Establish a process for identifying and preparing staff who would be responsible for key Orderly Liquidation Authority resolution governance roles, such as the Executive Advisory and Oversight Group, the Tactical Project Manager, and the Onsite Liaison, to include:

a. Completing planned guidance and/or preparing a charter that will define in more detail the key resolution governance roles and responsibilities.
b. Maintaining a roster of potential staff for key resolution governance roles.
c. Informing potential staff for the key resolution governance roles of their respective Orderly Liquidation Authority resolution responsibilities.

**Management Decision:** Concur

**Corrective Action:** The functions described in this Recommendation are roles described in the Tier I SRFD document. A proposed Tier II process document, outlining the roles and responsibilities and process for designating potential staff for governance roles, will be presented for interdivisional oversight and feedback as described in Corrective Action 5.

**Estimated Completion date:** June 30, 2025

**Recommendation 7:**

Ensure the completed Tier I and II policies, procedures, and related guidance documents fully define the applicable Orderly Liquidation Authority roles and responsibilities of each FDIC Division and Office.

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**Management Decision:** Concur

**Corrective Action:** CISR will further specify applicable OLA roles and responsibilities of each FDIC Division and Office in its Tier I and II Policies and procedures, and confirm such roles through the inter-divisional process described in Corrective Action for Recommendation 5. Refer also to Corrective Actions for Recommendation 2 and Recommendation 6.

**Estimated Completion Date:** June 30, 2025

**Recommendation 8:**

Ensure the FDIC establishes a timeframe to obtain, and then obtains, the staff resources needed to mature the Orderly Liquidation Authority resolution planning program.

**Management Decision:** Concur

**Corrective Action:** CISR Management has identified the resource needs, with appropriate budget approvals granted in 2022 and 2023. Hiring is in process. Any additional needs responsive to recommendations in this report will be addressed in the mid-year 2024 budget cycle. Resource needs to support the OLA program will continue to be evaluated on an ongoing basis, and will consider attrition, employee retention, and succession planning as part of CISR's existing operations and human resources functions.

**Estimated Completion Date:** March 31, 2025

**Recommendation 9:**

Conduct and document a representative survey or other assessment of the Orderly Liquidation Authority-related skill sets existing or needed within the Division of Complex Institution Supervision and Resolution and ensure the division's Professional Development Plan incorporates the results.

**Management Decision:** Concur

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**Corrective Action:** CISR will evaluate Orderly Liquidation Authority-related core competencies and skills to ensure that our learning and development plans build on existing skills sets.

**Estimated Completion Date:** September 30, 2024

**Recommendation 10:**

Conduct and document an assessment of the level of staff and contractor resources needed for a baseline Orderly Liquidation Authority resolution execution team.

**Management Decision:** Concur

**Corrective Action:** CISR is developing Tier II procedures which will include additional detail regarding FDIC staff estimates, to carry out Orderly Liquidation Authority operational activities. The procedures also will include detail on anticipated contractor needs.

**Estimated Completion Date:** March 31, 2024

**Recommendation 11:**

Establish, conduct and document general and functional Orderly Liquidation Authority-related training that links to the key components of the systemic resolution framework and processes.

**Management Decision:** Concur

**Corrective Action:** The development of the Division of Complex Institution Supervision and Resolution Core Curriculum is in process, through which the Division will establish general and functional training that covers the key components of the systemic resolution framework, and make these resources available on an ongoing basis.

**Estimated Completion Date:** September 30, 2025

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**Recommendation 12:**

Complete and implement the operational exercise program for significant Orderly Liquidation Authority-related activities, such as the systemic risk determination process, and ensure key contractor resources and board members are included in exercises.

**Management Decision:** Concur

**Corrective Action:** CISR will establish policies and procedures related to our exercise program, which will address exercises and related activities to include all appropriate stakeholders, including contractors and board members. CISR will continue to ensure that exercises are included as part of the annual goal-setting process, as discussed in the Corrective Action for Recommendation 1.

**Estimated Completion Date:** December 31, 2024

**Recommendation 13:**

Establish key performance metrics for the Orderly Liquidation Authority program with which the FDIC can measure and monitor the overall status of the program.

**Management Decision:** Concur

**Corrective Action:** CISR is developing an ongoing methodology, using key performance metrics, to assess the execution readiness status for OLA. CISR will then develop procedures describing the methodology and approach to evaluation.

**Estimated Completion Date:** June 30, 2024

**Recommendation 14:**

Ensure the FDIC regularly updates the FDIC Operating Committee and the FDIC Chairman on the overall status of the Orderly Liquidation Authority program.

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**Management Decision:** Concur

**Corrective Action:** OLA Program status updates will be provided to the FDIC Operating Committee and to the Chairman semi-annually.

**Estimated Completion Date:** Initiate briefings to Chairman/Operating Committee: June 30, 2024

**Recommendation 15:**

Ensure the Division of Complex Institution Supervision and Resolution maintains the necessary staff and establishes a plan for conducting regular internal reviews of Orderly Liquidation Authority resolution planning activities.

**Management Decision:** Concur

**Corrective Action:** CISR Management understands the importance of a robust risk management and internal control program. In May 2023, CISR hired an Assistant Director responsible for Risk Management and Internal Controls. We are developing a staffing plan to address the resource needs for a fulsome enterprise risk management program to include regular internal reviews.

**Estimated Completion Date:** June 30, 2024

**Recommendation 16:**

Establish a mechanism to track and monitor the implementation of significant current and future recommended action items from internal and external exercises or actual resolution events.

**Management Decision:** Concur

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**Corrective Action:** CISR will develop a mechanism to track and monitor the implementation of the outcomes of exercises and lessons learned from resolution activities.

**Estimated Completion Date:** September 30, 2024

**Recommendation 17:**

Develop an FDIC readiness plan for a financial crisis, to include a scenario that involves the resolution of multiple concurrent failures of systemically important financial companies.

**Management Decision:** Concur

**Corrective Action:** The Systemic Resolution Framework Document and Process Guides, which serve as Tier I and Tier II policies and procedures, respectively, referenced in the Corrective Action for Recommendation 2, will include additional detail for application to multiple failures.

**Estimated Completion Date:** March 30, 2025

## Appendix 6 Summary of the FDIC's Corrective Actions

This table presents management's response to the recommendations in the report and the status of the recommendations as of the date of report issuance.

| Rec. No. | Corrective Action: Taken or Planned | Expected Completion Date | Monetary Benefits | Resolved:[a] Yes or No | Open or Closed[b] |
|---|---|---|---|---|---|
| 1 | The FDIC is committed to further strengthening the OLA program, and efforts to do so, will be embedded in CISR's established annual goal-setting mechanisms, namely FDIC Performance Goals, which are corporate-wide, and CISR divisional goals and objectives. Where appropriate, goals will include multi-year timelines and interim milestones. These goals will continue be tracked and monitored for timely completion. | March 31, 2024 | $0 | Yes | Open |
| 2 | All Tier I, Tier II, and Tier III documents noted are either in the drafting stage or near completion with respect to domestic GSIBs, including: | | $0 | Yes | Open |
| | • Tier I: CISR will further update the SRFD, and once completed, it will be approved through the Acting Director CISR. | December 31, 2023 | | | |
| | • Tier II: CISR will complete drafts for process guides of each functional area that will be reviewed and approved through the Deputy Director, CISR Resolution Readiness Branch. | December 31, 2023 | | | |
| | • Tier III: CISR will complete updates to GSIB ISSPs and approve a revised and consistent format for these documents through the Deputy Director, CISR Resolution Readiness Branch. | December 31, 2024 | | | |
| | CISR will develop a process for approval and maintenance of Tier I, II and III process documents. | December 31, 2024 | | | |
| | CISR will augment Tier I and II policies and procedures to address the approach to non-bank financial companies. | December 31, 2025 | | | |
| 3 | CISR has established a 2023 Divisional Goal and Objective to develop and refine Title II resolution | March 31, 2025 | $0 | Yes | Open |

| Rec. No. | Corrective Action: Taken or Planned | Expected Completion Date | Monetary Benefits | Resolved:[a] Yes or No | Open or Closed[b] |
|---|---|---|---|---|---|
| | strategies for financial market utilities, including central counterparties (CCPs), and establish an ongoing review process to maintain these strategy documents. CISR staff are currently in the process of developing and updating institution-specific planning documents for each of the five systemically important CCPs.<br><br>CISR will evaluate the most effective approach to developing institution-specific planning documents for designated non-CCP financial market utilities and expand the ongoing review process to include any other non-bank financial companies designated by FSOC as systemically important. | | | | |
| 4 | The FDIC will establish action plans to address rules required by the Dodd-Frank Act, including:<br>a. In consultation with the U.S. Secretary of the Treasury, 12 U.S.C. § 5390(o)(6).<br>b. In coordination with the FRB, and in consultation with the FSOC,12 U.S.C. § 5393(d). | March 31, 2024 | $0 | Yes | Open |
| 5 | The FDIC will establish an approach to interdivisional oversight and coordination of the OLA Program and for review and, where appropriate, approval of critical products and other key activities and developments within the program. | December 31, 2024 | $0 | Yes | Open |
| 6 | CISR proposed a Tier II process document, outlining the roles and responsibilities and process for designating potential staff for governance roles, which will be presented for interdivisional oversight and feedback as described in Corrective Action 5. | June 30, 2025 | $0 | Yes | Open |
| 7 | CISR will further specify applicable OLA roles and responsibilities of each FDIC Division and Office in its Tier I and II Policies and procedures, and | June 30, 2025 | $0 | Yes | Open |

| Rec. No. | Corrective Action: Taken or Planned | Expected Completion Date | Monetary Benefits | Resolved:[a] Yes or No | Open or Closed[b] |
|---|---|---|---|---|---|
| | confirm such roles through the inter-divisional process described in Corrective Action for Recommendation 5. Refer to Corrective Actions for Recommendation 2 and Recommendation 6. | | | | |
| 8 | CISR Management has identified the resource needs, with appropriate budget approvals granted in 2022 and 2023. Hiring is in process. Any additional needs responsive to recommendations in this report will be addressed in the mid-year 2024 budget cycle. Resource needs to support the OLA program will continue to be evaluated on an ongoing basis, and will consider attrition, employee retention, and succession planning as part of CISR's existing operations and human resources functions. | March 31, 2025 | $0 | Yes | Open |
| 9 | CISR will evaluate OLA-related core competencies and skills to ensure that its learning and development plans build on existing skills sets. | September 30, 2024 | $0 | Yes | Open |
| 10 | CISR is developing Tier II procedures which will include additional detail regarding FDIC staff estimates, to carry out OLA operational activities. The procedures also will include detail on anticipated contractor needs. | March 31, 2024 | $0 | Yes | Open |
| 11 | The development of the CISR Core Curriculum is in process, through which the Division will establish general and functional training that covers the key components of the systemic resolution framework, and make these resources available on an ongoing basis. | September 30, 2025 | $0 | Yes | Open |
| 12 | CISR will establish policies and procedures related to its exercise program, which will address exercises and related activities to include all appropriate stakeholders, including contractors and board members. CISR will continue to ensure that exercises are included as part of the annual goal-setting process, as | December 31, 2024 | $0 | Yes | Open |

| Rec. No. | Corrective Action: Taken or Planned | Expected Completion Date | Monetary Benefits | Resolved:[a] Yes or No | Open or Closed[b] |
|---|---|---|---|---|---|
| | discussed in the Corrective Action for Recommendation 1. | | | | |
| 13 | CISR is developing an ongoing methodology, using key performance metrics, to assess the execution readiness status for OLA. CISR will then develop procedures describing the methodology and approach to evaluation. | June 30, 2024 | $0 | Yes | Open |
| 14 | CISR will provide OLA Program status updates to the FDIC Operating Committee and to the Chairman semi-annually. | June 30, 2024 | $0 | Yes | Open |
| 15 | CISR Management understands the importance of a robust risk management and internal control program. In May 2023, CISR hired an Assistant Director responsible for Risk Management and Internal Controls. CISR is developing a staffing plan to address the resource needs for a fulsome enterprise risk management program to include regular internal reviews. | June 30, 2024 | $0 | Yes | Open |
| 16 | CISR will develop a mechanism to track and monitor the implementation of the outcomes of exercises and lessons learned from resolution activities. | September 30, 2024 | $0 | Yes | Open |
| 17 | The Systemic Resolution Framework Document and Process Guides, which serve as Tier I and Tier II policies and procedures, respectively, referenced in the Corrective Action for Recommendation 2, will include additional detail for application to multiple failures. | March 30, 2025 | $0 | Yes | Open |

[a] Recommendations are resolved when —

1. Management concurs with the recommendation, and the OIG agrees the planned corrective action is consistent with the recommendation.
2. Management does not concur with the recommendation, but the OIG agrees that the proposed corrective action meets the intent of the recommendation.
3. For recommendations that include monetary benefits, management agrees to the full amount of OIG monetary benefits or provides an alternative amount and the OIG agrees with that amount.

[b] Recommendations will be closed when the OIG confirms that corrective actions have been completed and are responsive.

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The OIG's mission is to prevent, deter, and detect waste, fraud, abuse, and misconduct in FDIC programs and operations; and to promote economy, efficiency, and effectiveness at the agency.

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