

**FEDERAL RESERVE SYSTEM****12 CFR Part 243****[Regulation QQ; Docket No. R-1660]****RIN 7100-AF47****FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 381****RIN 3064-AE93****Resolution Plans Required**

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

**ACTION:** Final rule.

**SUMMARY:** The Board and the Corporation (together, the agencies) are jointly adopting this final rule implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). This final rule is intended to reflect improvements identified since the agencies finalized their joint resolution plan rule in November 2011 (2011 rule) and to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Through this final rule, the Board is also establishing risk-based categories for determining the application of the resolution planning requirement to certain U.S. and foreign banking organizations, consistent with section 401 of EGRRCPA. The final rule also extends the default resolution plan filing cycle, allows for more focused resolution plan submissions, and improves certain aspects of the resolution planning rule.

**DATES:** This rule is effective December 31, 2019.

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**I. Introduction***A. Background*

Section 165(d) of the Dodd-Frank Act<sup>1</sup> and the 2011 rule<sup>2</sup> require certain financial companies (covered companies) to report periodically to the agencies their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. The goal of the Dodd-Frank Act resolution planning process is to help ensure that a covered company's failure would not have serious adverse effects on financial stability in the United States. The Dodd-Frank Act and the 2011 rule require a covered company to submit a resolution plan for review by the agencies. The resolution planning process requires covered companies to demonstrate that they have adequately assessed the challenges that their structures and business activities pose to a rapid and orderly resolution in the event of material financial distress or failure and that they have taken action to address those challenges, including through the development of capabilities appropriate to the covered company's size and complexity.

Implementation of the 2011 rule has been an iterative process aimed at strengthening the resolvability and resolution planning capabilities of covered companies. Since finalization of the 2011 rule, the agencies have reviewed multiple resolution plan submissions and have provided feedback on individual resolution plans following their review by the agencies (firm-specific feedback) and guidance directed to groups of firms (general guidance) to assist covered companies in their development of subsequent resolution plan submissions.

EGRRCPA revised the resolution planning requirement as part of the changes the law made to application of the enhanced prudential standards in section 165 of the Dodd-Frank Act. Specifically, EGRRCPA raised the \$50 billion minimum asset threshold for general application of the resolution planning requirement to \$250 billion in total consolidated assets, and provided the Board with discretion to apply the resolution planning requirement to firms with \$100 billion or more and less than \$250 billion in total consolidated

<sup>1</sup> 12 U.S.C. 5365(d).

<sup>2</sup> 76 FR 67323 (November 1, 2011).

assets.<sup>3</sup> The threshold increase occurs in two stages. Immediately on the date of EGRRCPA's enactment, firms with total consolidated assets of less than \$100 billion (for foreign banking organizations, \$100 billion in total global assets) were no longer subject to the resolution planning requirement. Eighteen months after the date of EGRRCPA's enactment, the threshold increases to \$250 billion in total consolidated assets. However, EGRRCPA provides the Board with the authority to apply resolution planning requirements to firms with \$100 billion or more and less than \$250 billion in total consolidated assets. Specifically, under section 165(a)(2)(C) of the Dodd-Frank Act, as revised by EGRRCPA, the Board may, by order or rule, apply the resolution planning requirement to any firm or firms with total consolidated assets of \$100 billion (for foreign banking organizations, \$100 billion in total global assets) or more.<sup>4</sup>

In May 2019, the agencies invited comment on a proposal to amend and restate the 2011 rule (the proposed rule or proposal).<sup>5</sup> The proposed rule was intended to address amendments to the Dodd-Frank Act made by the EGRRCPA and improve certain aspects of the 2011 rule based on the agencies' experience implementing the 2011 rule since its adoption. The agencies are now finalizing the proposed rule, with certain changes based on public comments on the proposed rule, as described in detail below.

#### The Board's Tailoring Rules

Consistent with section 401 of EGRRCPA, the Board finalized two separate proposals to revise the framework for determining the prudential standards that should apply to large U.S. banking organizations (domestic tailoring rule)<sup>6</sup> and to large foreign banking organizations (FBO

tailoring rule<sup>7</sup> and together with the domestic tailoring rule, the tailoring rules). Among other provisions, the tailoring rules identify distinct standards applicable to firms for the purpose of calibrating requirements. The tailoring categories established in the tailoring rules are as follows:

- Category I standards will apply to:
  - Global systemically important bank holding companies (U.S. GSIBs),
  - Category II standards will apply to:
    - U.S. firms that are not subject to Category I standards with (a) \$700 billion or more in average total consolidated assets, or (b) \$100 billion or more in average total consolidated assets that have \$75 billion or more in average cross-jurisdictional activity, and
    - Foreign banking organizations with (a) \$700 billion or more in average combined U.S. assets,<sup>8</sup> or (b) \$100 billion or more in average combined U.S. assets that have \$75 billion or more in average cross-jurisdictional activity measured based on the foreign banking organization's combined U.S. operations.<sup>9</sup>

- Category III standards will apply to:
  - U.S. firms that are not subject to Category I or Category II standards with (a) \$250 billion or more in average total consolidated assets, or (b) \$100 billion or more in average total consolidated assets that have \$75 billion or more in any of the following risk-based indicators: Average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure, and
  - Foreign banking organizations that are not subject to Category II standards

<sup>7</sup> Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies, 84 FR 21988 (May 15, 2019). The Board's final rule is published elsewhere in this issue of the **Federal Register** and is also available on the Board's website at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-fr-notice-20191010a2.pdf>.

<sup>8</sup> Combined U.S. assets means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)), if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on the FR Y-7Q.

<sup>9</sup> The combined U.S. operations of a foreign banking organization include any U.S. subsidiaries (including any U.S. intermediate holding company), U.S. branches, and U.S. agencies. In addition, for a foreign banking organization that is not required to form a U.S. intermediate holding company, combined U.S. operations refer to its U.S. branch and agency network and the U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2), if applicable) and any subsidiaries of such U.S. subsidiaries.

with (a) \$250 billion or more in average combined U.S. assets, or (b) \$100 billion or more in average combined U.S. assets that have \$75 billion or more in any of the following risk-based indicators measured based on the combined U.S. operations: Average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure and

- Category IV standards will apply to:
  - U.S. firms with \$100 billion or more in average total consolidated assets that do not meet any of the thresholds specified for Categories I through III, and
  - Foreign banking organizations with \$100 billion or more in average combined U.S. assets that do not meet any of the thresholds specified for Categories II or III.

These categories form the basis for the final rule's framework for imposing resolution planning requirements, with adjustments where appropriate. The categories are also used to tailor the content of the resolution planning requirements, taking into account covered companies' particular geographic footprints, operations, and activities, as described below.

#### B. Overview of the Proposed Rule

Under the proposed rule, resolution planning requirements would have applied to (1) those firms that are statutorily required to submit resolution plans (*i.e.*, U.S. and foreign banking organizations with \$250 billion or more in total consolidated assets, the U.S. GSIBs, and any non-bank financial company designated by the Financial Stability Oversight Council (Council) for supervision by the Board) and (2) firms with total consolidated assets of \$100 billion or more and less than \$250 billion that would have been subject to Category II or III standards under the notices of proposed rulemaking for the tailoring rules. In particular, the Board would have applied resolution planning requirements to firms with total consolidated assets of \$100 billion or more and less than \$250 billion that would have had \$75 billion or more in any of the following four risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. In the case of a foreign banking organization, resolution planning requirements would only have applied if the firm also had combined U.S. assets equal to \$100 billion or more, and the risk-based indicators would have been measured based on the firm's combined U.S. operations.

The proposed rule would have divided firms subject to resolution

<sup>3</sup> EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a U.S. global systemically important bank (U.S. GSIB) under the Board's U.S. GSIB surcharge rule shall be considered a bank holding company with \$250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement. EGRRCPA section 401(f), Public Law 115 174, 132 Stat. 1296.

<sup>4</sup> 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). See also EGRRCPA section 401(g).

<sup>5</sup> 84 FR 21600 (May 14, 2019).

<sup>6</sup> Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies, 83 FR 61408 (November 29, 2018). The Board's final rule is published elsewhere in this issue of the **Federal Register** and is also available on the Board's website at <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-fr-notice-20191010a2.pdf>.

planning requirements into three categories for purposes of determining submission frequency and resolution plan content requirements. The U.S. GSIBs would have been required to submit a resolution plan every two years, alternating between full and targeted resolution plans. Firms subject to Category II or III standards under the notices of proposed rulemaking for the tailoring rules would have been required to submit a resolution plan every three years, alternating between full and targeted resolution plans. Other foreign banking organizations subject to the proposed rule but not subject to Category II or III standards would have been required to submit a resolution plan every three years, with their initial filing being a full resolution plan and each subsequent submission being a reduced resolution plan. The proposal would have generally maintained the same informational content requirements for full resolution plans as under the 2011 rule, but would have established a new process whereby covered companies could request a waiver from certain informational content requirements in their full resolution plans. Under the proposal, covered companies would have been required to include in targeted resolution plans and reduced resolution plans information about certain changes since their previous resolution plan submission. Targeted resolution plans would also have included information about certain resolution planning core elements and information responsive to the agencies' targeted information requests.

The proposed rule would also have made certain procedural changes to the provisions of the 2011 rule relating to the identification of critical operations. The proposal would have established formal processes for firms and the agencies to identify particular operations of covered companies as critical operations and to rescind prior critical operations identifications made by the agencies. In addition, the proposal would have specified a process for a covered company to request reconsideration of operations previously identified by the agencies as critical operations, and required that a covered company notify the agencies if it ceased to identify an operation as a critical operation.

## II. Overview of Comments

The agencies received and reviewed 14 comment letters on the proposed rule. Commenters included various financial services trade associations, covered companies, public interest groups, and individuals. In addition, the

agencies met with industry representatives at their request to discuss issues relating to the proposed rule. This section provides an overview of the general themes raised by commenters. Comments are addressed in further detail in the below sections describing the final rule, including any changes that the agencies have made to the proposed rule in response to comments.

### *General Support and Opposition*

A number of commenters generally supported the proposed rule. These commenters supported the proposed rule's efforts to tailor resolution planning requirements to a firm's size, complexity, and risk profile, and asserted that the proposed rule would preserve and improve upon key elements of resolution planning while enhancing transparency and meaningfully reducing burden.<sup>10</sup>

Several commenters raised concerns about the proposed rule. These commenters generally asserted that the proposed rule would inappropriately weaken financial regulations put in place after the 2008 financial crisis and thereby increase systemic risk. In addition, certain commenters asserted that the proposed rule inappropriately relied on burden reduction as a rationale for the proposed changes, was inconsistent with administrative law because the agencies did not provide sufficient justification for reducing the frequency and content of resolution plans, and was inconsistent with the Dodd-Frank Act. One commenter questioned whether firms would reallocate resources no longer needed to comply with the current rule to activities considered to be more beneficial, and whether any such benefit would accrue to the public at large. One commenter also asserted that the agencies should delay modifying the 2011 rule until it has been tested in an economic downturn, and another commenter asserted that the agencies should be cognizant of the effect of regulations on non-financial companies and small business lending. As further explained below, the final rule would continue to apply appropriate

<sup>10</sup> Certain commenters also made assertions that characterized the agencies' views of prior resolution plan submissions under the 2011 rule or the agencies' rationale for proposing certain changes to the 2011 rule. The agencies are not responding to or endorsing these assertions in this preamble. The agencies' views regarding individual resolution plans are communicated to covered companies following the agencies' review of those resolution plans. Separately, certain commenters proposed strengthening regulatory requirements that are unrelated to the resolution planning rule. These comments are outside the scope of this rulemaking.

requirements on firms based on the relative risk that a firm's failure would pose to U.S. financial stability, and would preserve and improve upon key elements of the resolution planning framework that were put in place after the 2008 financial crisis. The agencies believe that this approach is consistent with the Dodd-Frank Act, as amended by the EGRRCPA, which generally provides for the tailoring of enhanced prudential standards based on firms' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and other risk-related factors. Moreover, since the finalization of the 2011 rule, the agencies have reviewed multiple resolution plan submissions and have provided firm-specific feedback and general guidance to assist the covered companies in their development of subsequent resolution plan submissions. Consequently, covered companies' submissions and the agencies' firm-specific feedback and general guidance have matured over several resolution plan cycles, and the agencies believe this is an appropriate time to revise the 2011 rule to reflect improvements identified since it was originally adopted, including changes in the frequency and content of resolution plans, for the reasons stated in the proposal and this preamble.<sup>11</sup>

### *2019 and 2020 Plans*

The agencies received several comments from covered companies and industry representatives requesting clarification regarding resolution plan filing requirements for 2019 and 2020. On July 26, 2019, the agencies informed (1) covered companies with resolution plans due in December 2019 that their next resolution plan submission dates were extended to July 1, 2021 or such other date that may be specified when the agencies adopt the final rule and (2) Barclays PLC, Credit Suisse, Deutsche Bank AG, and UBS AG that the informational requirements for their July 2020 resolution plans may be limited to changes they have made to their 2018 resolution plans to address shortcomings identified in those resolution plans, and they are required to submit their next full resolution plans on July 1, 2021 or such other date that

<sup>11</sup> With respect to the timing of these changes, the agencies also note that, due to the effective date of section 401 of the EGRRCPA, the agencies believe it is important to complete revisions to the rule prior to the date that, pursuant to EGRRCPA, the resolution plan submission threshold increases to \$250 billion in total consolidated assets.

may be specified when the agencies adopt the final rule.<sup>12</sup>

#### *Comments Related to the Corporation's IDI Rule*

The agencies received several comments asserting that the filing cycle or resolution plan content requirements under the final rule should align with the requirements under the Corporation's rule requiring certain insured depository institutions to submit resolution plans (the IDI rule).<sup>13</sup> Some commenters also asserted that firms should be able to incorporate by reference information included in a resolution plan submitted pursuant to the IDI rule into a resolution plan submitted pursuant to the final rule. A commenter stated that the agencies should harmonize the informational content requirements for resolution plans under the final rule with resolution plans under the IDI rule for filers subject to Category III standards, and that doing so would permit these filers to focus their resolution planning efforts on a uniform resolution plan filing process.

The agencies have not modified the proposal on the basis of these comments. The agencies note that the final rule and the IDI rule are separate requirements with different purposes and goals, and that the IDI rule is administered by only the Corporation. In part because a resolution plan submitted pursuant to the IDI rule is submitted to only the Corporation, incorporating by reference such information into a resolution plan submitted pursuant to the final rule is more challenging than incorporation by reference of such information into a resolution plan submitted pursuant to the IDI rule. The agencies note that the Corporation has issued an advanced notice of proposed rulemaking regarding the IDI rule. That advanced notice of proposed rulemaking notes, “[t]o promote efficiency and reduce burden, the [Corporation] is encouraging the use of incorporation by reference to [resolution plan submissions required under section 165(d) of the Dodd-Frank Act] where practicable.”<sup>14</sup> As the Corporation works to amend the IDI rule, the Corporation will seek to reduce unnecessary duplication between the IDI rule and the final rule.

<sup>12</sup> See <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190726a.htm>; <https://www.fdic.gov/news/news/press/2019/pr19069.html>.

<sup>13</sup> 12 CFR 360.10.

<sup>14</sup> 84 FR 16620, 16625 (April 22, 2019).

#### *Firms Subject to Resolution Planning Requirements*

The agencies received several comments regarding the Board's proposed scope of application for the resolution planning requirement. Certain commenters supported the Board's proposal to rely on the risk-based indicators to identify those firms with \$100 billion or more and less than \$250 billion in total consolidated assets that would remain subject to resolution planning requirements under the final rule. However, some commenters recommended changes to the manner in which the risk-based indicators were proposed to be calculated or recommended that the Board further narrow the scope of coverage of the resolution planning requirement. Conversely, some commenters asserted that the proposed scope of coverage should be expanded so that more firms would be subject to the resolution planning requirement.

#### *Filing Cycle*

The agencies received comments in support of and opposed to the proposed filing cycle. Some commenters asserted that a less-than-annual requirement would allow sufficient time for covered companies to integrate firm-specific feedback, while other commenters raised concerns that significant changes to resolvability could occur between less frequent resolution plan submissions. Some commenters asserted that covered companies generally begin to prepare their resolution plans at least one year prior to submission and recommended related changes to the proposed filing cycle to enhance the predictability of the timing of producing a resolution plan. For example, these commenters asserted that the final rule should include a formal timeline for the agencies to provide firm-specific feedback to covered companies within one year following a resolution plan submission and advanced notice requirements when the agencies require submission of a full resolution plan or an interim update, or alter resolution plan submission dates.

#### *Informational Content*

Several commenters asserted that the proposal should further tailor informational content requirements among different categories and types of covered companies. Some of these commenters also expressed concern that certain covered companies within a category would have general guidance directed to them that is not appropriate for their category. Certain other commenters asserted that the proposed

targeted resolution plans and reduced resolution plans would contain inadequate information. Some commenters supported the inclusion of a process by which covered companies would be able to request waivers from certain informational content requirements for their full resolution plans and asserted that it would help to streamline resolution plan submissions. However, some other commenters opposed the proposed firm-initiated waiver request process and asserted that it was unnecessary or would be subject to abuse by covered companies.

#### *Critical Operations*

Numerous commenters asserted that the proposed timeline for identification and de-identification of a critical operation should be modified to provide covered companies with additional notice of new identifications prior to a resolution plan submission date. Some commenters asserted that the final rule should automatically exempt from the requirement to have a process for identifying critical operations any covered company that does not currently have an identified critical operation.

The comments on the proposed rule and the agencies' related responses are discussed in further detail below.

### **III. Final Rule**

#### *A. Identification of Firms Subject to the Resolution Planning Requirement and Filing Groups*

##### **1. Firms Subject to the Resolution Planning Requirement**

Following EGRRCPA, three types of firms are statutorily subject to the resolution planning requirement:

- U.S. and foreign banking organizations with \$250 billion or more in total consolidated assets,
- U.S. banking organizations identified as U.S. GSIBs, and
- Any designated nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act should be supervised by the Board.

As discussed in the proposal, following EGRRCPA, the Board has the authority to apply the resolution planning requirement to firms with \$100 billion or more and less than \$250 billion in total consolidated assets.<sup>15</sup> In the proposal, the Board proposed to apply the risk-based indicators established in the notices of proposed rulemaking for the tailoring rules to

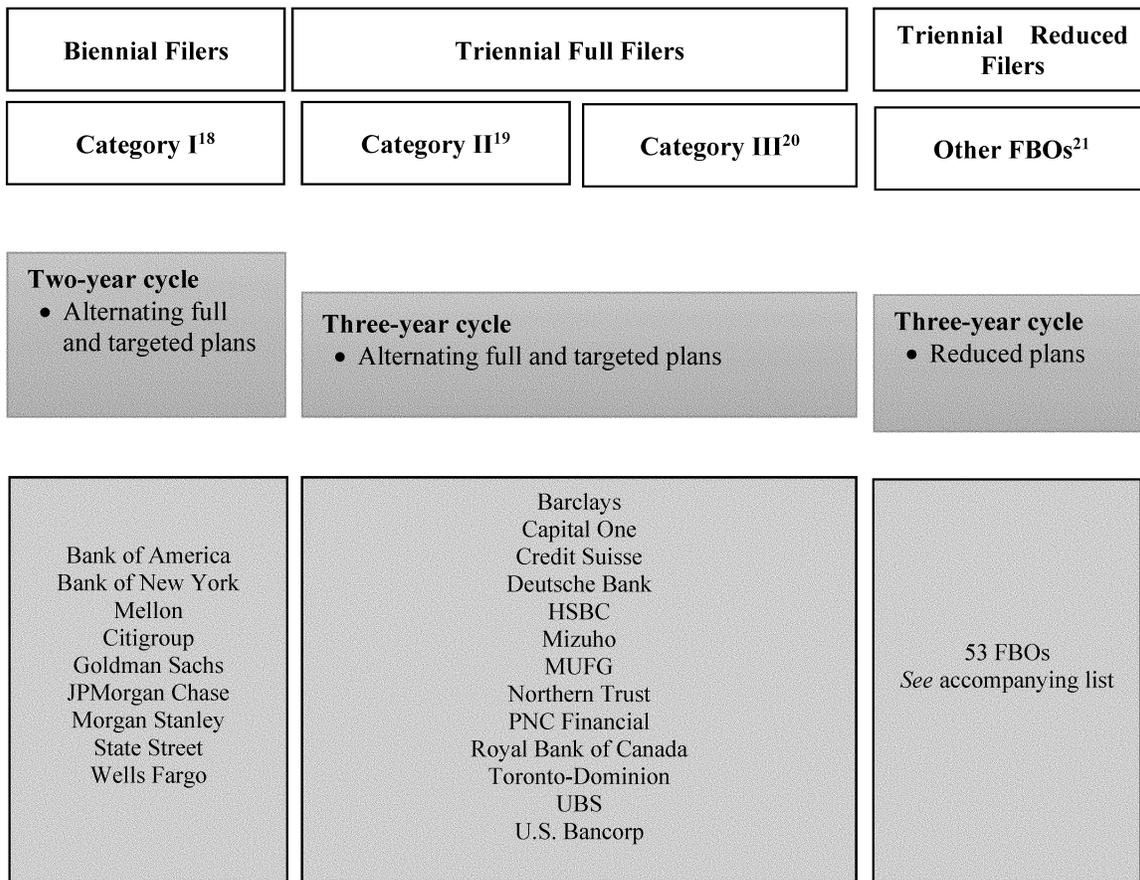
<sup>15</sup> 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). See also EGRRCPA section 401(g).

identify those U.S. firms with total consolidated assets equal to \$100 billion or more and less than \$250 billion that would be subject to a resolution planning requirement. Consistent with the notices of proposed rulemaking for the domestic tailoring rule, the Board proposed to apply resolution planning requirements to U.S. bank holding companies with (a) total consolidated assets equal to \$100 billion or more and less than \$250 billion and (b) \$75 billion

or more in any of the following risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure. Consistent with the notices of proposed rulemaking for the FBO tailoring rule, the Board proposed to apply resolution planning requirements to foreign banking organizations<sup>16</sup> with (a) total global assets equal to \$100 billion or more and less than \$250 billion, (b) combined

U.S. assets equal to \$100 billion or more, and (c) \$75 billion or more in any of the risk-based indicators measured based on combined U.S. operations. In addition, the agencies proposed to use the risk-based indicators to divide U.S. and foreign firms into groups for the purposes of determining the frequency and informational content of resolution plan filings.

**Expected Resolution Plan Filing Groups<sup>17</sup>**



Foreign banking organizations that are expected to be triennial reduced filers  
 Agricultural Bank of China

Australia and New Zealand Banking Group  
 Banco Bradesco

Banco De Sabadell  
 Banco Do Brasil  
 Banco Santander

<sup>16</sup> Consistent with the 2011 rule and the proposal, for purposes of the final rule, a foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary.

<sup>17</sup> Projected categories are based on data for Q1 2019. Actual categories will be based on 4-quarter averages. For certain measures for foreign banks, conservative assumptions were used to estimate incomplete data.

<sup>18</sup> Firms subject to Category I standards will be the U.S. GSIBs. Any future Council-designated

nonbank would file full and targeted plans on a two-year cycle, unless the agencies jointly determine the firm should file full and targeted plans on a three-year cycle.

<sup>19</sup> Firms subject to Category II standards will be: (1) U.S. firms with (a)  $\geq$ \$700b average total consolidated assets; or (b)  $\geq$ \$100b average total consolidated assets with  $\geq$ \$75b in average cross-jurisdictional activity and (2) foreign banking organizations (FBOs) with (a)  $\geq$ \$700b average combined U.S. assets; or (b)  $\geq$ \$100b average combined U.S. assets with  $\geq$ \$75b in average cross-jurisdictional activity.

<sup>20</sup> Firms subject to Category III standards will be: (1) U.S. firms with (a)  $\geq$ \$250b and  $<$ \$700b average

total consolidated assets; or (b)  $\geq$ \$100b average total consolidated assets with  $\geq$ \$75b in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure and (2) FBOs with (a)  $\geq$ \$250b and  $<$ \$700b average combined U.S. assets; or (b)  $\geq$ \$100b average combined U.S. assets with  $\geq$ \$75b in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure.

<sup>21</sup> Other FBOs subject to resolution planning pursuant to statute are FBOs with  $\geq$ \$250b global consolidated assets that are not subject to Category II or Category III standards.

Bank of China  
 Bank of Communications  
 Bank of Montreal  
 Bank of Nova Scotia  
 Bayerische Landesbank  
 BBVA Compass  
 BNP Paribas  
 BPCE Group  
 Caisse Federale de Credit Mutuel  
 Canadian Imperial Bank of Commerce  
 China Construction Bank Corporation  
 China Merchants Bank  
 CITIC Group Corporation  
 Commerzbank  
 Commonwealth Bank of Australia  
 Cooperative Rabobank  
 Credit Agricole Corporate and  
 Investment Bank  
 DNB Bank  
 DZ Bank  
 Erste Group Bank AG  
 Hana Financial Group  
 Industrial and Commercial Bank of  
 China  
 Industrial Bank of Korea  
 Intesa Sanpaolo  
 Itau Unibanco  
 KB Financial Group  
 KBC Bank  
 Landesbank Baden-Weurttemberg  
 Lloyds Banking Group  
 National Agricultural Cooperative  
 Federation  
 National Australia Bank  
 Nordea Group  
 Norinchukin Bank  
 Oversea-Chinese Banking Corporation  
 Shinhan Bank  
 Skandinaviska Enskilda Banken  
 Societe Generale  
 Standard Chartered Bank  
 State Bank of India  
 Sumitomo Mitsui Financial Group  
 Sumitomo Mitsui Trust Holdings  
 Svenska Handelsbanken  
 Swedbank  
 UniCredit Bank  
 United Overseas Bank  
 Westpac Banking Corporation  
 Woori Bank

In the proposal, the Board noted that the thresholds and risk-based indicators identified in the categories were designed to take into account an individual firm's particular activities and organizational footprint that may present significant challenges to an orderly resolution. The Board proposed to apply a uniform threshold of \$75 billion for each of these risk-based indicators, based on the degree of concentration this amount would represent for each firm and the proportion of the risk factor among all U.S. firms with \$100 billion or more in total consolidated assets that would be included by the threshold.

In the proposal, the Board noted that increased levels of cross-jurisdictional

activity could increase operational complexity and that it may be more difficult to resolve or unwind a firm's positions due to the multiple jurisdictions and regulatory authorities involved and potential legal or regulatory barriers to transferring financial resources across borders. Similarly, the Board noted that bank holding companies with significant nonbank assets would be more likely to be engaged in activities such as prime brokerage, or complex derivatives and capital markets activities. Where a firm has not engaged in planning to address these particular challenges, it is less likely the firm's resolution would proceed in an orderly manner without unduly impacting other firms. Regarding weighted short-term wholesale funding, the Board noted that firms particularly reliant on short-term funding sources may be more vulnerable to large-scale funding runs or "fire sale" effects on asset prices and therefore proposed to continue to apply resolution planning requirements to firms with higher levels of potential liquidity vulnerability, as measured by the firm's weighted short-term wholesale funding. Finally, the Board noted that where a firm's activities result in large off-balance sheet exposure, the firm may be more vulnerable to significant draws on capital and liquidity in times of stress. The proposal therefore would have continued to apply resolution planning requirements to firms with this risk-based indicator.

The agencies received several comments on the use of the four risk-based indicators and associated thresholds.<sup>22</sup> One commenter reiterated concerns that it described in its comment letter on the notices of proposed rulemaking for the tailoring rules and stated that its concerns regarding those notices applied equally to the proposed rule. Another commenter expressed general support for the risk-based indicator approach. Several commenters recommended changes to the calibration of U.S. assets and activity in the risk-based indicators for foreign banking organizations. One commenter argued against the inclusion

<sup>22</sup> This preamble responds to comments received on the proposed rule regarding the risk-based indicators. Responses to comments received on the notices of proposed rulemaking for the tailoring rules and additional information concerning the basis for the risk-based indicators established under the tailoring rules are included in the notices of final rulemaking for the tailoring rules. See Board Final Rule, "Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations" published elsewhere in this issue of the **Federal Register**.

of U.S. branches and agencies in the calculation of a foreign firm's combined U.S. assets or thresholds for risk-based indicators unless the operations of branches or agencies are significant to a critical operation. Instead, the commenter recommended that risk-based indicators be calculated consistent with how the strategic analysis requirements in the 2011 rule apply to U.S. branches, agencies, and offices. Another commenter argued against the use of U.S. branch assets in determining activity in risk-based indicators because branches are discrete entities from the U.S. intermediate holding companies and often have more stable funding.

The resolution planning requirement currently applies to a foreign banking organization's entire U.S. operations, including U.S. branches and agencies. U.S. branches and agencies constitute a significant share of these foreign banking organizations' presence in the United States. In addition, the agencies' experience reviewing resolution plans demonstrates that there are interconnections and dependencies between a foreign firm's U.S. branches, agencies, and offices and its U.S. subsidiaries, core business lines, and critical operations. The commenters' proposals to exclude certain U.S. branches, agencies, and offices from the calculation of the risk-based indicators or combined U.S. operations would not be consistent with the objective of measuring the full scope of potential risks to U.S. financial stability, including risks associated with operational complexity. Moreover, it is appropriate to tailor resolution planning requirements based on the size and complexity of a foreign firm's entire U.S. operations because the resolution planning requirement applies to a firm's entire U.S. operations. Accordingly, under the final rule, risk-based indicators and combined U.S. operations would be measured as proposed, including a foreign firm's U.S. branches, agencies, and offices.

Two commenters expressed concerns with the use of asset thresholds to determine a firm's category unless the asset threshold is indexed to inflation or total U.S. banking assets. As further explained in the notices of final rulemaking for the tailoring rules, the \$100 billion and \$250 billion size thresholds prescribed in the Dodd-Frank Act, as amended by EGRRCPA, are fixed by statute.<sup>23</sup> Indexing the other

<sup>23</sup> Section 165 of the Dodd-Frank Act does provide the Board with discretion to establish a minimum asset threshold above the statutory

thresholds would add complexity, a degree of uncertainty, and potential discontinuity to the framework. The Board acknowledges the thresholds should be reevaluated over time to ensure they appropriately reflect growth on a macroeconomic and industry-wide basis, as well as to continue to support the objectives of the final rule. The Board plans to accomplish this by periodically reviewing the thresholds under the tailoring rules and proposing changes through notice and comment process, rather than including an automatic adjustment of thresholds based on indexing.

Several commenters discussed the criteria for being subject to Category II standards. Two commenters supported the calibration of these criteria as proposed and asserted that no additional risk-based indicators should be used to determine whether a firm would be subject to Category II standards. These commenters opposed the use of additional risk-based indicators (e.g., weighted short-term wholesale funding, nonbank assets, or off balance-sheet exposure) and stated that such indicators would only be appropriate if the threshold were set to \$210 billion. Another commenter stated that the criteria for being subject to Category II standards should not be based on exceeding the threshold for cross-jurisdictional activity only.

As further explained in the notices of final rulemaking for the tailoring rules, significant cross-border activity can indicate heightened interconnectivity and operational complexity. Cross-jurisdictional activity can add operational complexity in normal times and complicate the ability of a firm to undergo an orderly resolution in times of stress, generating risks to financial stability in the United States. In addition, cross-jurisdictional activity may present increased challenges in resolution because there could be legal or regulatory restrictions that prevent the transfer of financial resources across borders where multiple jurisdictions and regulatory authorities are involved. The cross-jurisdictional activity indicator and threshold is intended to identify firms with significant cross-border activities. Accordingly, the tailoring rules apply Category II standards to domestic and foreign banking organizations with cross-jurisdictional activity of \$75 billion or more.

thresholds for some, but not all, enhanced prudential standards. However, the Board may only utilize this discretion pursuant to a recommendation by the Financial Stability Oversight Council in accordance with section 115 of the Dodd-Frank Act. 12 U.S.C. 5365(a)(2)(B).

#### Alternative Scoping and Tailoring Criteria

In the proposal, the Board also proposed an alternative approach for assessing the risk profile and systemic footprint of a U.S. banking organization and of a foreign banking organization's combined U.S. operations or U.S. intermediate holding company: Using a single, comprehensive score. The Board uses an identification methodology (scoring methodology) to identify a U.S. bank holding company as a U.S. GSIB and apply risk-based capital surcharges to these firms. The Board proposed using the same scoring methodology to determine whether to apply the resolution planning requirements to firms with \$100 billion or more and less than \$250 billion in total consolidated assets.<sup>24</sup> The agencies also proposed using this same scoring methodology to divide U.S. and foreign firms into groups to determine the frequency and informational content of resolution plan filings.

One commenter directed agency staff to comments on the alternative scoping criteria in relation to the notices of proposed rulemaking for the tailoring rules. The comment generally expressed support for the risk-based indicator methodology rather than the alternative methodology, which the commenter described as flawed conceptually and in calibration.

Under the tailoring rules, the Board finalized an indicators-based approach for applying Category II, III, or IV standards to the firms, as this approach provides a simple framework that supports the objectives of risk sensitivity and transparency. To determine whether a firm with total consolidated assets equal to \$100 billion or more and less than \$250 billion is subject to resolution planning requirements, the Board is finalizing the same indicators-based approach, requiring any such firm that is subject to Category II or III standards to submit resolution plans. As under the proposal, and as further described below, the agencies are similarly finalizing the indicators-based approach for determining the scope of resolution planning requirements for firms other

<sup>24</sup> As discussed in further detail in the proposal, the scoring methodology in the Board's regulations that is used to calculate a U.S. GSIB's capital surcharge includes two methods (12 CFR part 217, subpart H). The first method is based on the sum of a firm's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity (method 1). The second method is based on the sum of these same measures of risk, except that the substitutability measures are replaced with a measure of the firm's reliance on short-term wholesale funding (method 2).

than the U.S. GSIBs and nonbank financial companies supervised by the Board. The Board will continue to use the scoring methodology to apply Category I standards to a U.S. GSIB and, as under the proposal, the final rule relies on this identification for determining the scope of resolution planning requirements for these firms.

#### U.S. Covered Companies With \$100 Billion or More and Less Than \$250 Billion in Total Consolidated Assets

Under the proposed rule, resolution planning requirements would not have applied to U.S. firms with total consolidated assets of \$100 billion or more and less than \$250 billion whose activities did not exceed the threshold for any of the risk-based indicators (i.e., cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure). In the proposal, the Board noted that it was less likely that one of these firms' failure would present a risk of serious adverse effects on U.S. financial stability and that requiring a plan for rapid and orderly resolution in bankruptcy from such a firm may impose burden without sufficient corresponding benefit.

The Board received several comments on this aspect of the proposal. One commenter expressed support for not applying the resolution planning requirements to U.S. firms subject to Category IV standards. Other commenters stated that the Board should apply resolution planning requirements to all firms with \$100 billion or more and less than \$250 billion in total consolidated assets. A further commenter expressed concern that the proposal would not apply resolution planning requirements to any firm with less than \$250 billion in total consolidated assets. The commenter asserted that, instead, resolution planning should be required for all firms with more than \$100 billion in total consolidated assets because the Corporation's resolution authority under the Federal Deposit Insurance Act does not extend beyond a covered company's insured depository institution subsidiary, and that the resolution plan process under the final rule should be coordinated with the IDI rule. Another commenter expressed concerns about removing the resolution planning requirements for large regional banks, asserting that the agencies did not explain sufficiently the rationale for removing the requirement for U.S. firms subject to Category IV standards.

The Board is finalizing this aspect of the proposal as proposed. In response to comments on this aspect of the final

rule, the Board notes that the proposal and final rule would continue to apply resolution planning requirements to some firms with \$100 billion or more and less than \$250 billion in total consolidated assets.<sup>25</sup> As explained above, the final rule relies on the risk-based indicators to apply resolution planning requirements to firms in this group. The Board believes the risk-based indicators are an effective means for identifying those firms with total consolidated assets of \$100 billion or more and less than \$250 billion whose material financial distress or failure would pose a threat to U.S. financial stability, for the reasons described above, in the proposal, and in the proposed and final tailoring rules. Where a firm's activities in one or more of the risk-based indicators exceed the \$75 billion threshold, it is more likely that its failure could adversely affect U.S. financial stability; accordingly, the firm should be subject to resolution planning requirements. However, when a firm's activities do not exceed one or more of the risk-based indicators and its total consolidated assets are less than \$250 billion, it is less likely that the firm's failure would have serious adverse effects on U.S. financial stability and, accordingly, to impose resolution planning requirements on such a firm would not yield a sufficient corresponding benefit.

#### Foreign-Based Covered Companies With \$100 Billion or More and Less Than \$250 Billion in Total Global Assets

In the proposal, the Board proposed applying resolution planning requirements to foreign banking organizations with (a) total global assets equal to \$100 billion or more and less than \$250 billion, (b) combined U.S. assets equal to \$100 billion or more, and (c) \$75 billion or more in any of the following risk-based indicators measured based on combined U.S. operations: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. The Board noted in the proposal that it would no longer require resolution plan submissions from foreign banking organizations with total global assets equal to \$100 billion or more and less than \$250 billion where (a) the firm has combined U.S. assets below \$100 billion or (b) the firm does not have \$75 billion or more in any of

the risk-based indicators measured based on combined U.S. operations.

One commenter asserted that resolution planning requirements should be eliminated entirely for foreign firms with limited U.S. operations, regardless of their total global asset size, or, in the alternative, resolution planning requirements should apply to a foreign firm subject to Category IV standards only if it is a global systemically important financial institution. The commenter asserted that foreign firms should also be permitted to comply with resolution planning requirements pursuant to the final rule by certifying compliance with the home country resolution requirements.

The Board is finalizing this aspect of the proposal as proposed. The Board notes that the Dodd-Frank Act, as amended by EGRCPA, requires all foreign banking organizations with \$250 billion or more in total global assets to submit resolution plans, and a certification of home country compliance by itself would not satisfy this statutory standard. Moreover, as explained above, the Board believes that the risk-based indicators are an effective means for identifying those firms that should be subject to resolution planning requirements due to the potential effect on U.S. financial stability of their financial distress or failure.

#### Exiting Covered Company Status

The proposal would have updated the methodology for ascertaining when a firm ceased to be a covered company. With respect to a decrease in assets, under the proposal, a U.S. firm would have ceased to be a covered company when its total consolidated assets are less than \$250 billion based on total consolidated assets for each of the four most recent calendar quarters (and it is not otherwise subject to Category II or Category III standards based on the risk-based indicators identified above). A foreign banking organization that files quarterly reports on Form FR Y-7Q similarly would have been assessed on the basis of its total global assets for each of the four most recent calendar quarters. A foreign banking organization that files the Y-7Q report annually rather than quarterly would have been assessed based on its total global assets over two consecutive years. The agencies would have retained the discretion to jointly determine that a firm is no longer a covered company at an earlier time than it would be pursuant to its quarterly or annual reports. Under the proposal, firms that would have ceased to be, or to be treated as, bank holding companies or that were de-designated by the Council for

supervision by the Board would no longer have been covered companies and would not have had any further resolution planning requirements as of the effective date of the applicable action unless there were a subsequent change to their status. The agencies received no comments on this aspect of the proposal and are finalizing it as proposed, but have clarified in the final rule that a firm's total consolidated assets are determined on the basis of total consolidated assets as reported on each of its four most recent quarterly reports or two most recent annual reports.

#### 2. Filing Groups and Filing Cycle

The proposal would have divided covered companies into three groups of filers: (a) Biennial filers; (b) triennial full filers; and (c) triennial reduced filers. Under the proposal, all covered companies would have had a July 1 submission date, instead of the current division between July 1 and December 31.

The agencies received comments offering general support for the longer filing cycle and asserting that it would allow filers sufficient time to consider firm-specific feedback. The agencies also received comments suggesting that the current annual filing requirement be retained to reflect the potential for rapid changes to firms' structure and financial condition that may cause resolution plans to become outdated.

The agencies note that the annual submission requirement has been a challenging constraint for both the firms and the agencies. The annual requirement did not provide sufficient time for the agencies to review the resolution plans and develop useful firm-specific feedback or general guidance, and for the firms to consider that firm-specific feedback or general guidance in their next resolution plan submissions. Independent of the proposal, the agencies have extended the resolution plan filing deadlines over the past few submission cycles to provide at least two years between resolution plan submissions. Accordingly, the agencies are finalizing an extended filing cycle, consistent with the proposal and described in more detail below.

The agencies received one comment regarding the proposal to move the submission date to July 1 for all filers. The commenter suggested that the 2011 rule's December 31 submission date be retained for triennial full filers subject to Category III standards as this would allow more efficient allocation of resources for resolution planning and other supervisory activities. The

<sup>25</sup> For this purpose, total consolidated assets are determined under the tailoring rules. Accordingly, a firm has total consolidated assets of \$100 billion or more if the average of its total consolidated assets as reported on multiple regulatory reports, as specified in the tailoring rules, is \$100 billion or more.

agencies are finalizing the July 1 submission date as proposed. Having one resolution plan submission date will simplify administration of the final rule for filers and the agencies, such as when filers change filing groups.

#### Biennial Filers

In the proposal, the biennial filers would have comprised firms subject to Category I standards, or the U.S. GSIBs, as well as any nonbank financial company supervised by the Board that has not been jointly designated as a triennial full filer by the agencies. The agencies noted that any such designation of a nonbank financial company would be made taking into account the relevant facts and circumstances, including the degree of systemic risk posed by the particular covered company's failure.

Since the failure of a firm in this group would pose the most serious threat to U.S. financial stability, the proposal would have applied the most stringent resolution planning requirements to biennial filers in terms of both submission frequency and informational content. Under the proposed rule, the biennial filers would have been required to submit a resolution plan every two years, alternating between a full resolution plan, subject to the waiver option, and a targeted resolution plan. The agencies noted that the U.S. GSIBs' resolution plans had matured over time and these firms had taken meaningful steps to develop the foundational capabilities necessary for the implementation of their resolution strategies. In addition, in recent years, the agencies have provided extensions under the 2011 rule to provide the biennial filers with two years between resolution plan submissions, so formalization of a two-year cycle would be consistent with established practice.

The agencies received two comments on this aspect of the proposal. One commenter stated that the U.S. GSIBs should be required to submit full resolution plans every two years. Another commenter expressed general opposition to the two-year cycle and asserted that it would be insufficient to capture important information about firms' resolvability due to the speed with which changes can occur.

The agencies are finalizing this aspect of the proposal as proposed. After several rounds of resolution plans, firm-specific feedback, and general guidance, the U.S. GSIBs' resolution plans have matured over time, making more frequent submissions generally unnecessary. In addition, experience under the 2011 rule has shown that an

annual resolution plan submission schedule is too challenging a constraint for the reasons described above. The agencies note, however, that they retain the ability under the final rule to obtain key information between resolution plan submissions, including by requiring interim updates and receiving notices of extraordinary events, which will allow the agencies to remain informed of material developments affecting resolvability notwithstanding the less frequent filing cycle. The agencies also will have authority to require a full resolution plan instead of a targeted resolution plan and to move a resolution plan submission date.

#### Triennial Full Filers

The proposal identified the second filing group, triennial full filers, as firms subject to Category II or III standards under the notices of proposed rulemaking for the tailoring rules, as well as any nonbank financial company supervised by the Board that was designated as a triennial full filer by the agencies.

The agencies proposed that triennial full filers be on a three-year filing cycle rather than a two-year filing cycle because the failure of a triennial full filer would generally be less likely to pose a threat to U.S. financial stability as compared to the failure of a biennial filer. The proposal would have required triennial full filers to submit a resolution plan every three years, alternating between a full resolution plan and a targeted resolution plan.

The agencies received several comments on the proposed three-year filing cycle for triennial full filers. One commenter expressed support for the proposed three-year cycle, and alternating between full and targeted resolution plans for firms subject to Category III standards. Another commenter stated that these firms should be on a biennial schedule, alternating between full and targeted resolution plans. One commenter expressed general opposition to the three-year cycle and asserted that it would be insufficient to capture important information about firms' resolvability due to the speed at which change can occur. Another commenter stated that firms that would be triennial full filers under the proposal should be allowed to submit targeted resolution plans every three years, absent an extraordinary event.

The agencies are finalizing as proposed the three-year cycle for triennial full filers, alternating between full and targeted resolution plans. While the failure of a firm in this group could threaten U.S. financial stability, such

failure is less likely to threaten U.S. financial stability as compared to the failure of a biennial filer. Accordingly, it is appropriate to tailor this group's requirements relative to the requirements for biennial filers. Given these firms' size and complexity, the agencies have determined that a triennial schedule is appropriate. In addition, as with biennial filers, the agencies would retain authority to require interim updates and full resolution plans, and to move resolution plan submission dates, and firms would be required to submit notices of extraordinary events, which would allow the agencies to remain informed of material developments affecting resolvability that occur between resolution plan submissions.

The agencies are not adopting commenters' recommendation to limit all resolution plan submissions from triennial full filers to targeted resolution plans absent an extraordinary event because the agencies believe that, given the potential risks inherent in firms in this group and because firms and markets change over time, it is appropriate for these firms to submit a full resolution plan at least every six years. In addition, the agencies note that a firm may apply for a waiver from certain informational content requirements in its full resolution plan and incorporate by reference information in a prior submission that remains accurate in all respects that is material to the covered company's resolution plan, as described further below. These aspects of the final rule should appropriately tailor the burden of preparing a full resolution plan.

In the proposal, the agencies also noted that the proposed triennial full filer group would have included foreign banking organizations that had previously received detailed general guidance from the agencies.<sup>26</sup> These firms have taken important steps to enhance their resolvability and facilitate their orderly resolution in bankruptcy and have significantly reduced the size and risk profiles of their U.S. operations since the passage of the Dodd-Frank Act and in response to the implementation of Regulation YY,<sup>27</sup> although the failure of one of these firms could potentially pose a threat to U.S. financial stability. The agencies stated that it was appropriate that these firms be part of

<sup>26</sup> See, e.g., Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf>, <https://www.fdic.gov/resauthority/2018subguidance.pdf>.

<sup>27</sup> 12 CFR part 252.

the triennial full filer group and submit resolution plans on the three-year filing cycle because the preferred outcome for each of these foreign banking organizations is a successful home country resolution using a single point of entry resolution strategy, not the resolution strategy described in its U.S. resolution plan.

The agencies received one comment on this aspect of the proposal. The commenter asserted that the largest and most complex foreign banking organizations should submit resolution plans every two years, alternating between full and targeted resolution plans, because they pose similar risks to the U.S. financial system as the risks posed by the U.S. GSIBs. The commenter also stated that the rationale that these firms would be resolved through a home country single point of entry strategy was not compelling because the purpose of the resolution planning requirement is to plan for the failure of a U.S. entity.

The agencies note that the U.S. footprints of the larger and more complex foreign banking organizations are significantly smaller than those of, and do not present the same complexities as, the U.S. GSIBs. Consequently, while the failure of these operations may threaten the U.S. financial system, it is less likely than the failure of a U.S. GSIB, regardless of whether the global firm executes its preferred resolution strategy successfully. Accordingly, the agencies believe that a longer filing cycle is appropriate for these firms and are finalizing this aspect of the proposal as proposed.

#### Triennial Reduced Filers

The proposal identified a third group, triennial reduced filers, which would have consisted of any covered company that was not subject to Category I, II, or III standards and was not a nonbank financial company supervised by the Board. The proposal would have applied less stringent resolution planning requirements to firms in this group because they do not have the same size or complexity as firms that would have been subject to Category I, II, or III standards. Under the proposal, triennial reduced filers would have been required to submit reduced resolution plans every three years. The proposal also would have required a new triennial reduced filer to submit a full resolution plan as its initial submission and thereafter a reduced resolution plan every three years.

The agencies received one comment on this aspect of the proposal. The commenter asserted that some of the

larger triennial reduced filers should be on a biennial schedule, alternating between full and targeted resolution plans, and supported applying a longer filing cycle to the U.S. operations of certain smaller foreign firms.

The agencies are finalizing the triennial reduced filer group and related filing cycle as proposed. Given the limited scope of these firms' U.S. operations and activities, the agencies have determined that it is appropriate for triennial reduced filers to submit reduced resolution plans on a three-year cycle; this requirement will appropriately tailor burden for these firms while ensuring that the agencies remain apprised of changes that could materially affect the firms' resolvability or resolution strategies. In addition, the failure of the U.S. operations of one of these firms may threaten the U.S. financial system, but failure of these operations poses a lower risk than the failure of a biennial filer or triennial full filer. Nonetheless, the agencies retain the ability to obtain additional information between resolution plan submissions, as mentioned above, and to require any firm to submit a full resolution plan, as described below.

#### Moving Submission Dates, Changing Plan Content, and Requiring Interim Updates

The proposal would have provided the agencies the flexibility to move covered companies' submission dates. The proposal would have required the agencies to notify a covered company that had previously submitted a resolution plan at least 180 days prior to the new submission date. A new covered company would have received at least 12 months' notice prior to the new submission date. Consistent with the 2011 rule, the proposal also would have allowed agencies to require covered companies to provide interim updates within a reasonable amount of time. In addition, the proposal would have allowed the agencies to jointly require that a covered company submit a full resolution plan within a reasonable period of time.

The agencies received several comments on these aspects of the proposal. Commenters asserted that the final rule should provide a minimum of 12 months' notice prior to requiring a full resolution plan or an off-cycle submission and six or 12 months' notice prior to an interim update. Commenters also asserted that the agencies should clarify that a "reasonable amount of time" for prior notice of a full resolution plan submission would be at least 12 months' notice. These commenters generally asserted that their proposed

notice periods are necessary to provide covered companies with sufficient time to prepare their resolution plans.

The final rule contains certain changes from the proposal in response to these commenters. Under the final rule, the agencies will provide at least 12 months' notice prior to requiring a full resolution plan submission or an off-cycle submission (*i.e.*, a submission on a date other than the regularly scheduled date for the covered company's filing group).<sup>28</sup> The agencies believe that these changes will enhance the predictability of resolution plan submission dates, provide appropriate time for resolution plan preparation, and help facilitate covered companies' resource allocation decisions.

Consistent with the proposal and the 2011 rule, the final rule provides that the agencies may require a covered company to submit an interim update within a reasonable amount of time, as jointly determined by the agencies. An interim update is intended to be a flexible tool for the agencies to obtain information between resolution plan submission dates. When requiring an interim update, the agencies will specify the portions or aspects of a previously submitted resolution plan that a firm is required to update. Accordingly, the informational content requirements for an interim update are not fixed, making it difficult to identify a specific period that is necessary to prepare every interim update. While a six- or 12-month period may be appropriate in certain circumstances, a shorter time period may be appropriate in other circumstances, especially where an interim update would contain only limited information. Accordingly, the agencies do not believe that it would be appropriate to introduce a fixed notice period for an interim update.

The final rule provides that the agencies may require a covered company to submit a full resolution plan instead of a targeted or reduced resolution plan that the covered company is otherwise required to submit. The full resolution plan's submission date will be the submission date for the replaced targeted or reduced

<sup>28</sup> If the agencies were to require an off-cycle submission from a covered company, the covered company's next resolution plan submission date after the off-cycle submission date would be determined based on the off-cycle submission date. For example, if the agencies were to move a triennial full filer's submission date from July 1, 2027 to July 1, 2026, the covered company's next resolution plan submission date after July 1, 2026 would be July 1, 2029 (absent the agencies jointly moving the July 1, 2029 submission date). The agencies will consider the impact on the covered company's future resolution plan submission dates and any deadlines related to those submission dates when requiring an off-cycle submission.

resolution plan.<sup>29</sup> The submission of such a full resolution plan will not change the type of resolution plan that the covered company is otherwise thereafter required to submit.

The agencies do not expect to regularly exercise this authority. However, it may be necessary to require a full resolution plan instead of a targeted or reduced resolution plan under unusual circumstances, and the agencies have preserved this authority as a means for the agencies to receive additional information from firms when appropriate. The agencies could, for example, exercise their discretion to require a triennial reduced filer whose activities have evolved gradually (rather than as the result of a single material event) to submit full resolution plan in lieu of a reduced resolution plan if the aggregate effect of those changes might meaningfully increase the risk that the firm's failure could have serious adverse effects on U.S. financial stability.

## B. Resolution Plan Content

### 1. General Guidance and Firm-Specific Feedback

The preamble to the proposal specified that general guidance previously directed to specific full resolution plan filers concerning the content of their upcoming submissions would continue to be directed to those individual firms.

The agencies received several comments related to prior resolution planning general guidance and firm-specific feedback. Some commenters suggested that existing resolution planning general guidance directed to some firms should be consolidated and tailored among the different categories of firms, that any future general guidance be subject to notice and public comment, and that the agencies commit to providing firm-specific feedback on resolution plans and any general guidance no later than 12 months prior to a covered company's resolution plan submission date. These commenters asserted in particular that covered companies subject to Category II or III standards should not receive general guidance that is similar to the general guidance that is directed to the U.S. GSIBs, which are subject to Category I standards. A few commenters suggested that the agencies clarify to whom existing general guidance is directed,

<sup>29</sup> Accordingly, a firm could be required to submit a full resolution plan while the other members of the firm's filing group are required to submit targeted or reduced resolution plans on that submission date. Thereafter, the firm that was required to submit a full resolution plan will revert to its filing group's regular resolution plan type submission schedule.

and one commenter suggested incorporating existing general guidance into the final rule.

The final rule provides that, absent extenuating circumstances, the agencies will provide a firm with notice of any deficiency or shortcoming identified by the agencies and any other firm-specific feedback regarding its resolution plan no later than 12 months after the later of (1) the date when the firm submitted the resolution plan and (2) the date by which the firm was required to submit the resolution plan. The agencies recognize firms' strong interest in prompt firm-specific feedback from the agencies and in having sufficient time to respond thereto, and would expect to exercise their authority to provide such notice after the one-year period only when providing the notice within a year would be impractical due to circumstances outside the agencies' control. Absent extenuating circumstances, this approach will provide a firm with at least one year to consider any and all firm-specific feedback before it is next required to submit a resolution plan. However, the agencies would retain the authority to require a firm to submit within a shorter period a revised resolution plan that addresses deficiencies or an interim update.

In addition to firm-specific feedback that provides the agencies' views on a particular resolution plan,<sup>30</sup> the agencies may continue to issue general guidance regarding future resolution plan submissions. The firm-specific feedback letters sent to-date to firms are examples of the firm-specific feedback that the agencies will provide to firms within the 12-month period described in the previous paragraph. While both firm-specific feedback (other than a notice of a deficiency) and general guidance are meant to assist firms in preparing future resolution plans, general guidance outlines the agencies' expectations or priorities and articulates the agencies' general views regarding resolution plans more generally than firm-specific feedback, which presents the agencies' views on a particular resolution plan. The agencies will strive to provide final general guidance at least a year before the next resolution plan submission date of firms to which the general guidance is directed.

Existing general guidance, including its content and scope, is not modified by

<sup>30</sup> The agencies may provide the same or substantially similar firm-specific feedback to more than one firm. For example, some elements of firm-specific feedback provided to the U.S. GSIBs may be the same or substantially similar when certain aspects of their resolution plans are substantially similar.

the final rule. Accordingly, the detailed general guidance that certain foreign banking organizations have received from the agencies (FBO guidance)<sup>31</sup> continues to be directed to only those firms and is not directed to all triennial full filers as a result of the changes from the 2011 rule reflected in the final rule. Likewise, general guidance directed to certain domestic banking organizations (domestic guidance)<sup>32</sup> continues to be directed to only those domestic banking organizations to which it was directed prior to adoption of the final rule. Because general guidance sets forth non-binding expectations as opposed to rule-based requirements, the agencies do not believe that it is necessary or appropriate to incorporate all general guidance into the final rule.

The agencies sought and received public comment on the domestic guidance in 2018. The notice and comment process allowed the agencies to gain valuable insight, which led to improvements and clarifications in the final domestic guidance. Similar to the domestic guidance, the agencies intend to consolidate and request public comment in the near future on all aspects of the FBO guidance, including the informational content expectations and the subset of firms to which it is directed. The agencies expect that this process will lead to similar benefits for the FBO guidance. Similarly, the agencies intend to make any future general guidance concerning resolution planning available for public comment, and will endeavor to finalize any such general guidance at least one year prior to the submission date for the first resolution plan submission to which it would apply. The agencies will continue to provide firm-specific feedback on resolution plan submissions without first making that firm-specific feedback available for notice and comment.

### 2. Material Changes and Extraordinary Events

The proposal would have revised and clarified the requirements for filing a notice of material events to reflect the creation of a material changes definition. A material change would have been defined as any event,

<sup>31</sup> See Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf>, <https://www.fdic.gov/resauthority/2018subguidance.pdf>.

<sup>32</sup> See Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438, 1449 (February 4, 2019).

occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have a material effect on the resolvability of the covered company, the covered company's resolution strategy, or how the covered company's resolution strategy is implemented. Full, targeted, and reduced resolution plans would have been required to include information about material changes since a covered company's previously submitted resolution plan and changes the covered company made to its resolution plan in response.

Because of the broad definition of "material change," the agencies determined that a notice requirement triggered by the occurrence of a material change between resolution plan submissions was not appropriate and instead proposed the concept of an extraordinary event, which would have required such a notice. Under the proposed rule, a material merger, acquisition of assets or other similar transaction, or a fundamental change to a covered company's resolution strategy would have been an extraordinary event requiring notice to the agencies between resolution plan submissions.

One commenter supported the inclusion in the proposal of the terms "material change" and "extraordinary event," while another commenter expressed concern that the proposal put too much reliance on firms self-identifying material changes.

The final rule includes the proposed provisions regarding "material changes"<sup>33</sup> and "extraordinary events," with the clarification that a notice related to an extraordinary event must describe the event and explain how the event affects the resolvability of the firm. The agencies believe that firms can effectively identify these types of events, and note that the rule's

requirement that the board of directors (or delegee in the case of a foreign firm) approve each resolution plan should help ensure that firms take appropriate steps to identify material changes. In addition, the final rule has been revised from the proposal to require that a firm affirmatively state in its resolution plan that no material change has occurred since its prior resolution plan submission if the resolution plan does not identify any material changes. The agencies believe that this clarification will further help to ensure that firms give due attention to the requirement to identify material changes.

### 3. Full Resolution Plans

The proposal would not have generally modified the components or informational content requirements of a full resolution plan. Through numerous resolution plan submissions, the agencies and firms have gained familiarity with the format and content of the information required to be submitted pursuant to the 2011 rule. The agencies also recognize the utility of the existing informational content requirements for full resolution plans. Focus on these items has facilitated resolution plan and resolvability improvements, particularly by the largest and most complex firms.

Several commenters suggested that the proposal tailor the full resolution plan informational content requirements between categories of firms, as well as among domestic and foreign firms based on their relative risk to U.S. financial stability. One commenter suggested that the contents of a full resolution plan should be further tailored for foreign firms, focus on critical operations in the United States, and include U.S. branches in the firm's strategic analysis only if they are significant to a critical operation. The commenter also suggested that the agencies should revise the definition of "covered company" to clarify that the strategy for a foreign firm need only focus on resolution of its U.S. core business lines, critical operations, and material entities. The commenter also suggested that the agencies confirm that foreign firms that have filed resolution plans under the 2011 rule will not be subject to requirements that impose greater burdens than applied previously, and that any new requirements be based on the occurrence of extraordinary events.

The agencies are not changing the informational content requirements of a full resolution plan in the final rule from the proposal, other than requiring an affirmation that no material change has occurred, if applicable. With respect to differentiation of requirements

between domestic and foreign firms, section \_\_\_\_\_.5(a) of the final rule appropriately distinguishes between informational content requirements for domestic firms and foreign firms by focusing foreign firms' resolution plans on information related to their U.S. operations, consistent with the 2011 rule. The agencies do not believe that it is appropriate to limit resolution plan content to operations that are related to a critical operation because the Dodd-Frank Act's resolution planning requirement requires firms to plan generally for their rapid and orderly resolution. Similarly, nothing in the Dodd-Frank Act suggests that branches should be categorically excluded as suggested. However, the agencies note that, consistent with the 2011 rule, the final rule limits the strategic analysis requirements relating to material entities that are subject to an insolvency regime other than the Bankruptcy Code (including branches) by allowing covered companies to exclude such entities from their strategic analysis unless the entities have \$50 billion or more in total assets or conduct a critical operation. The agencies have found this limitation to appropriately capture the need for information about material entities that may affect U.S. financial stability and accordingly are retaining it under the final rule.

Although the informational content requirements for resolution plans are not differentiated among filing groups in the final rule, the firm-initiated waiver request process will enable further tailoring of the informational content requirements of full resolution plans based on the attributes and risks posed by a particular covered company and the content of firms' most recent submissions. In addition, the agencies will retain the authority to tailor informational content requirements through waivers on the agencies' own initiative and will continue to communicate their tailored expectations for individual firms' resolution plans through firm-specific feedback. Moreover, as explained in more detail below, under the final rule the firm-initiated waiver request process would be available only to triennial full filers and triennial reduced filers. As a result, the final rule would keep in place all informational content requirements for biennial filers' full resolution plans unless the agencies grant a waiver on their own initiative. As explained below, this change to the process for covered companies to request waivers reflects that among all categories of covered companies, biennial filers' material financial distress or failure

<sup>33</sup> As noted in the proposal, such changes include the identification of a new critical operation or core business line; the identification of a new material entity or the de-identification of a material entity; significant increases or decreases in the business, operations, or funding of a material entity; or changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis. Other such changes include material changes in operational and financial interconnectivity, both those that are intra-firm and external. Examples of such operational interconnectivity include reliance on affiliates for access to key financial market utilities or critical services, or significant reliance on the covered company by other firms for certain Payments, Clearing, and Settlement (PCS) services, including agent bank clearing or nostro account clearing, or government securities settlement services. Examples of such financial interconnectivity include a material entity becoming reliant on an affiliate as a source for funding or collateral, or the covered company becoming a major over-the-counter derivatives dealer.

would be most likely to pose risks to U.S. financial stability, so their full resolution plans should, as a general matter, be the most comprehensive. The agencies believe that this procedural change is also responsive to commenters' concerns about the degree of tailoring of informational content requirements between biennial filers and triennial full filers. Accordingly, the agencies believe that the final rule reflects appropriate tailoring of informational content among different categories of covered companies.

#### 4. Waivers of Informational Content Requirements

The proposal would have continued to permit the agencies to waive certain informational content requirements for one or more firms on the agencies' joint initiative, given that through a covered company's repeated resolution plan submissions, certain aspects of its resolution plan may reach a steady state or become less material such that regular updates would not be useful to the agencies in their review of the resolution plan. The proposal also introduced a process whereby a covered company that had previously submitted a resolution plan would have been able to apply for a waiver of certain informational content requirements of a full resolution plan. Under the proposal, firms would have been able to submit one waiver request per filing cycle, which would have included a public section containing the requirements sought to be waived. These requests would have been required to be submitted at least 15 months before the submission date and include all information necessary to support the request. A waiver request would have been automatically granted on the date that was nine months prior to the submission date for the resolution plan to which it related if the agencies did not jointly deny the waiver prior to that date. The proposal would have enabled the agencies to deny a waiver in their discretion.

Several commenters supported the firm-initiated waiver request process, noting that the process would help streamline submissions and that automatically approving waivers unless jointly denied would ensure that requests would not be unduly delayed. One of those commenters suggested that the waiver should be made automatic for filers that qualified to submit tailored resolution plans under the 2011 rule, while others, as discussed above, generally contended that different categories of filers should be subject to different levels of resolution plan informational content requirements.

Other commenters expressed concern that the firm-initiated waiver request process was unnecessary or would inappropriately reduce resolution plan content requirements, increase burden on the agencies, and be biased in favor of approval. One commenter suggested that waivers should be required to be approved by both agencies. This commenter was further concerned that the agencies could grant waivers for multiple submission cycles, effectively undermining the proposed rule's limit of one waiver request per submission cycle. Another commenter stated that providing for automatic approval of waivers when the agencies do not jointly deny them could result in the loss of important information based on the challenges of coordinating joint agency action.

The final rule retains both the agencies' ability to waive certain informational content requirements on their joint initiative and the firm-initiated waiver request process introduced in the proposal, with some modifications. In response to concerns raised about the firm-initiated waiver request process, and to suggestions that the agencies should take additional steps to tailor the informational content requirements between biennial filers and triennial full filers, the agencies have revised the process for covered companies to request waivers. The agencies have determined that the firm-initiated waiver process should not be extended to biennial filers in light of the additional risks that these firms present. Because the concerns noted above outweigh the advantages of a firm-initiated waiver process for biennial filers, the agencies are limiting firm-initiated waiver requests to triennial full filers and triennial reduced filers.<sup>34</sup> As under the 2011 rule, the agencies have the authority to jointly waive one or more of the resolution plan requirements on their own initiative for any firm, including any biennial filer. This procedural change will help to address these commenters' concerns by ensuring that, absent the agencies granting a waiver on their own initiative, all full resolution plan informational content requirements will remain in place for biennial filers, whose material financial distress or

failure would be most likely to pose a threat to U.S. financial stability.

The agencies believe that for triennial full filers and triennial reduced filers, waiver requests will be a useful means to tailor the informational content of resolution plans in a manner that will be both efficient for the agencies and transparent to the public and, accordingly, the final rule permits waiver requests from these firms.

Relative to the proposed rule, the final rule changes the procedure by which the agencies act on waiver requests. Under the proposal, a waiver request would have been automatically approved if the agencies did not jointly deny it before a certain date. Under the final rule, a waiver request is automatically denied if the agencies do not jointly approve it before a certain date. The agencies believe that this change from the proposal will be more consistent with other provisions of the final rule that require joint agency agreement. The agencies will nonetheless endeavor to respond to waiver requests in a timely manner.

Furthermore, safeguards are in place to ensure that firm-initiated waivers would not inappropriately reduce resolution plan content requirements or otherwise favor filers and that the firm-initiated waiver request process will not be unnecessarily burdensome for the agencies or inefficient. For example, firms can only request waivers for full resolution plans and firms can only submit one waiver request per full resolution plan submission. In addition, firm-initiated waivers are not permitted for some of the most critical informational content, including the core elements required for a targeted resolution plan, any information specifically required pursuant to section 165(d) of the Dodd-Frank Act, information about material changes, and information about deficiencies and shortcomings. Moreover, the timing for the agencies' processing of waiver requests has been structured to ensure that the agencies have sufficient opportunity to properly review and consider the requests.

This preamble describes below the kind of information that waiver requests should contain, which should help make the firm-initiated waiver request process more efficient and focused. Finally, notwithstanding the new firm-initiated waiver request process, the agencies have retained the ability under the final rule to obtain additional information in a timely manner through, for example, interim updates, notices of extraordinary events, and the ability to require off-cycle resolution plan submissions.

<sup>34</sup> Waiver requests will generally have limited application to triennial reduced filers under the final rule because waiver requests do not apply to a covered company's initial full resolution plan or reduced resolution plans. However, the firm-initiated waiver request process could apply to a triennial reduced filer if the agencies were to require it to submit a full resolution plan with at least 18 months' prior notice.

The agencies are also clarifying in the final rule that, while the agencies may waive requirements for one or more resolution plan submissions on their own initiative, firm-initiated waivers apply to the submission of only a single full resolution plan. The final rule also clarifies that the agencies may approve or deny a waiver request in whole or in part.

One commenter suggested changes to the firm-initiated waiver request process aimed at ensuring transparency and consistency in its application, including requirements that the agencies consider whether approved waivers should apply to similarly situated firms and that both the criteria used in waiver determinations and the agencies' waiver decisions be made public. To ensure transparency in the firm-initiated waiver request process, the agencies intend to make their decisions on waiver requests public, although the information made public may not be the complete response provided to a firm and would not include confidential information. The agencies also note that under the final rule they will be able to waive informational content requirements on their joint initiative, and they could elect to exercise this discretionary authority to waive informational content requirements for similarly situated firms if they deem it appropriate to do so. However, the final rule retains the agencies' ability to approve or deny waiver requests at their joint discretion. The proposal's preamble included clarifying examples of how the agencies expect to exercise this discretion to approve waivers in appropriate circumstances, and these examples also apply for the final rule. For example, a waiver may be appropriate to reduce informational content that would be of limited utility to the agencies, such as when the agencies have recently completed an in-depth review of a particular business line and are satisfied that they are in possession of current information relevant to a firm's ability to resolve that business line. More specifically, if the agencies have recently undertaken a comprehensive review of a firm's Payments, Clearing, and Settlement (PCS) activities, it may be appropriate to waive the requirement for that firm to submit information relevant to these activities in its next resolution plan submission. A waiver may also be appropriate for a firm that submitted a tailored resolution plan under the 2011 rule and requests a waiver that would limit the firm's required resolution plan content in a manner that is similar to the tailored resolution plan provisions.

Additional circumstances may arise under the final rule where it is appropriate to grant or deny waivers, and the agencies believe it is therefore appropriate to maintain a flexible standard under the final rule.

A covered company should provide all information necessary to support its waiver request, including an explanation of why approval of the request would be appropriate, why the information for which a waiver is sought would not be relevant to the agencies' review of the firm's resolution plan, and confirmation that the request meets the eligibility requirements for a waiver under the final rule (*i.e.*, that it is not a core element, not related to an identified deficiency that has not been adequately remedied, etc.). To ensure that the agencies have the information necessary to evaluate a waiver request, the final rule provides that covered companies would be required to explain why the information sought to be waived would not be relevant to the agencies' review of the covered company's next full resolution plan and why a waiver of the requirement would be appropriate. Failure to provide appropriate explanation or any information requested by the agencies in a timely manner could lead the agencies to deny a waiver request on the basis that insufficient explanation or a lack of information makes it impossible to determine that the information sought to be waived would not be relevant to their review of the resolution plan. A full resolution plan should specify content omitted due to a waiver request that was granted.

Two commenters suggested that the deadline for a waiver request to be jointly denied by the agencies should be moved from nine months to 12 months prior to the submission deadline to better align with filers' resolution plan preparation timelines. These commenters suggested that the rule should provide for waiver requests to be submitted 15 months prior to a full resolution plan submission date and allow the agencies 90 days within which to consider and act upon waiver requests, thereby reducing the time period for agency review from six months to 90 days.

The agencies recognize that a firm may require more than nine months to prepare a full resolution plan taking into account an approved waiver request. Therefore, the final rule provides that a waiver request is automatically denied on the date that is 12 months prior to the submission date for the resolution plan to which it related if the agencies do not jointly approve the waiver request prior to that date. However, the

agencies continue to believe that a minimum of six months is the appropriate period for the agencies to review a waiver request. Accordingly, the final rule requires a waiver request to be submitted at least 18 months before the related resolution plan submission date. If the agencies waive informational content requirements for one or more firms on the agencies' own initiative, the agencies will endeavor to provide those firms with notice of the waiver at least 12 months before their next resolution plan submission date.

#### 5. Targeted Resolution Plans

The proposal included a new type of resolution plan: A targeted resolution plan. The agencies proposed the targeted resolution plan to strike the appropriate balance between providing a means for the agencies to continue receiving updated information on structural or other changes that may impact a firm's resolution strategy while not requiring submission of information that remains largely unchanged since the previous submission. Under the proposed rule, the targeted resolution plan would have been a subset of a full resolution plan and would have included the following components: The information required to be included in a full resolution plan regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy (*i.e.*, the core elements); a description of material changes since the covered company's previously submitted resolution plan and changes the covered company has made to its resolution plan in response; a description of changes in response to firm-specific feedback provided by the agencies, general guidance issued by the agencies, or legal or regulatory changes; a public section; and information responsive to targeted areas of interest identified by the agencies at least 12 months prior to the submission.

The agencies received several comments regarding the proposed targeted resolution plan. One commenter asserted that the agencies should further tailor the contents of the targeted resolution plan based on firms' structures, business models, and activities in the risk-based indicators and that the targeted resolution plan requirement should apply differently to foreign filers subject to Category II or III standards. Another commenter expressed concern that the targeted resolution plan did not include

significant elements, such as booking and trading practices for derivatives, trading exposure limits, and relationships with counterparties, and that targeted resolution plans are untested. Another commenter expressed concerns that the proposal's requirement for biennial filers and triennial full filers to alternate between full and targeted resolution plans would not be sufficient to capture important information about resolvability given the speed with which firms can change. Another commenter suggested that the agencies clarify that targeted areas of interest identified by the agencies would not require information that is wider in scope or depth than the information required for a full resolution plan.

The agencies are finalizing the elements of the targeted resolution plan as proposed, other than requiring a firm to affirm that no material change has occurred, if applicable, and clarifying that a targeted information request will be made in writing.<sup>35</sup> Regarding the request for further tailoring of the targeted resolution plan requirement, the targeted resolution plan is already tailored to capture the core elements and key informational content most

<sup>35</sup> The proposal's preamble included clarifying examples of how the agencies expect firms to respond to the core elements informational content requirement, and these examples also apply for the final rule. For firms that have received general guidance from the agencies applicable to their upcoming submissions regarding capital, liquidity, and governance mechanisms, the targeted resolution plans should address these elements consistent with that general guidance. For example, a targeted resolution plan could discuss changes to a firm's methodology for modeling liquidity needs for its material entities during periods of financial stress, as well as changes to the firm's means for providing capital and liquidity to such entities as would be needed to successfully execute the firm's resolution strategy. These updates could, for example, involve changes to triggers upon which the firm relies to execute a recapitalization, including triggers based on capital or liquidity modeling. *See, e.g.,* Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies, 84 FR 1438, 1449 (February 4, 2019); Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf>, <https://www.fdic.gov/resauthority/2018subguidance.pdf>. The firms that received this general guidance would be expected to address Resolution Capital Adequacy and Positioning (RCAP), Resolution Liquidity Execution Need (RLEN), and governance mechanisms as part of their updates concerning capital, liquidity, and any plans for executing a recapitalization, respectively. A firm that has not received general guidance is required to describe the capital and liquidity needed to execute the firm's resolution strategy consistent with § \_\_.5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) of the final rule and, to the extent its resolution plan contemplates recapitalization, the covered company's plan for executing the recapitalization consistent with § \_\_.5(c)(5) of the final rule.

critical to helping ensure orderly resolution in bankruptcy, and to the extent additional tailoring is needed, the agencies can provide it through agency-initiated waivers and targeted information requests. Accordingly, the agencies believe that the final rule will facilitate appropriate tailoring of informational content requirements. The agencies also note that they will continue to communicate their tailored expectations for resolution plan content through firm-specific feedback.

Regarding commenters' concerns that the targeted resolution plan does not include certain important elements, the agencies have found, based on their experience reviewing resolution plans, that the information that would be contained in the proposed targeted resolution plan is the information that is most important to assessing firms' resolvability, including the information that has the tendency to change with the most frequency. While information about other topic areas may be relevant to resolvability, the agencies believe it is appropriate to receive this other information on a less frequent basis through full resolution plan submissions. The agencies note that targeted resolution plans must also address material changes. Accordingly, a covered company that experiences material changes relating to, for example, its booking and trading practices for derivatives, trading exposure limits, relationships with counterparties, or other activities or characteristics, would be required to include such information in its targeted resolution plan. In addition, the agencies have designed the targeted resolution plan to ensure that they will receive important information that would allow them to review and evaluate potential problem areas, including by allowing the agencies to require firms to respond to targeted information requests, while permitting less frequent submission of information that may have a tendency to remain materially unchanged over time. The agencies' ability to make targeted information requests, require full resolution plan submissions and interim updates, move resolution plan submission dates, and receive notices of extraordinary events provides further means for the agencies to receive additional information from these firms.

Regarding one commenter's request for clarification in relation to the targeted information requests element of the targeted resolution plan, consistent with the proposal, the agencies note that a targeted resolution plan is a subset of a full resolution plan. Accordingly, the information to be provided regarding

areas of focus within a targeted resolution plan would not require submission of information wider in scope than what a full resolution plan requires.

The agencies may, however, request information in greater depth than the firm chose to provide in prior submissions.

## 6. Reduced Resolution Plans

The proposal would have formalized the informational content requirements for the reduced resolution plan. For foreign banking organizations with relatively limited U.S. operations, the reduced resolution plan components were proposed to include: A description of (1) material changes experienced by the covered company since the filing of the covered company's previously submitted resolution plan and (2) changes to the strategic analysis that was presented in the firm's previously submitted resolution plan resulting from material changes, firm-specific feedback provided by the agencies, general guidance issued by the agencies, or legal or regulatory changes. Reduced resolution plans would also contain a public section. The agencies noted that receiving updates of this information would permit them to continue to monitor significant changes in a firm's structure or activities while appropriately focusing the informational components of these firms' resolution plans.

The agencies received several comments on the reduced resolution plan. One commenter suggested that reduced resolution plans would not provide the agencies sufficient information and that agencies may not be able to assess whether a change is material as a result of triennial reduced filers not filing full resolution plans after their initial submissions. Another commenter suggested that firms that had previously been resolution plan filers should not be required to submit a new full resolution plan upon once again becoming a covered company and a new triennial reduced filer. Another commenter suggested that the agencies clarify when triennial reduced filers would be required to submit full resolution plans under the final rule.

The agencies are finalizing the reduced resolution plan as proposed, other than requiring an affirmation that no material change has occurred, if applicable. Taking into account the relative degree of risk posed by these firms, the agencies believe that the reduced resolution plan as proposed generally would capture the information necessary for the agencies to assess triennial reduced filers' resolvability.

The material change requirement in the reduced resolution plan is designed to capture important information relevant to the firm's resolvability, its resolution strategy, and implementation of the resolution strategy. In addition, and as discussed above, the final rule has been revised from the proposal to require that a firm affirmatively state in its resolution plan that no material change has occurred since its prior resolution plan submission if the resolution plan does not identify any material change. The agencies believe this clarification will further help to ensure that firms give due attention to the requirement to identify material changes. Finally, the agencies' ability to require full resolution plan submissions and interim updates, move resolution plan submission dates, and receive notices of extraordinary events provides further means for the agencies to receive additional information from triennial reduced filers.

The final rule also retains the requirement that any firm that was not a covered company on the effective date of the final rule but becomes a triennial reduced filer after the effective date of the final rule submit a full resolution plan as its initial submission, even if the firm was at some point previously subject to resolution planning requirements (e.g., under the 2011 rule). There could be an extended period of time between a firm's previous full resolution plan submission and the time when it again becomes subject to the final rule, rendering the earlier full resolution plan less relevant to the firm's current operations, activities, and structure. The agencies note, however, that a firm would be able to incorporate by reference information from its prior resolution plan that meets the final rule's standard for incorporation by reference. In addition, the agencies are clarifying that full resolution plans filed under the 2011 rule by firms that would continue to be covered companies under the final rule and would be triennial reduced filers under the final rule would be grandfathered for purposes of determining compliance with the requirement that a triennial reduced filer's initial submission be a full resolution plan. Accordingly, those firms would be required to submit reduced resolution plans going forward but would not be required to resubmit a new full resolution plan absent other relevant changes in their circumstances (e.g., becoming subject to Category II or Category III standards).

#### 7. Tailored Resolution Plans

Under the 2011 rule, a tailored resolution plan was a means for certain

bank-centric firms to request that their resolution plan submissions focus on nonbank activities that may pose challenges to executing the firm's resolution strategy. Pursuant to the 2011 rule's tailored resolution plan notice requirement, firms were required to apply to the agencies to submit a tailored resolution plan rather than a full resolution plan every year that a submission was required. The agencies' proposal would have eliminated the tailored resolution plan in light of the introduction of the firm-initiated waiver request process and the targeted resolution plan as effective substitutes. The agencies also noted in the proposal that many of the covered companies that were eligible under the 2011 rule to file a tailored resolution plan would no longer be subject to the resolution planning requirement under the final rule or would become triennial reduced filers.

One commenter expressed concern regarding the proposal to eliminate the tailored resolution plan. In particular, the commenter stated that previous tailored resolution plan filers should be grandfathered so that they would not need to apply for a waiver to continue to submit similar submissions under the final rule. As an alternative, the commenter proposed that the agencies limit the scope of these firms' full and targeted resolution plan submissions to nonbank operations. Another commenter asserted that the proposal should be modified to allow for automatic waiver, upon request, from certain informational content requirements for filers that qualified to submit tailored resolution plans under the 2011 rule.

The agencies are finalizing the proposal to eliminate the tailored resolution plan type. As explained in the proposal, the agencies expect that the firm-initiated waiver request process and targeted resolution plan requirements will be effective substitutes for the tailored resolution plan and will allow the agencies to appropriately tailor informational content requirements, taking into account the relative mix of banking and non-banking activities for particular filers. Accordingly, the agencies believe that it is unnecessary to retain the tailored resolution plan in the final rule.

#### C. Critical Operations Methodology and Reconsideration Process

Under the final rule, and consistent with the 2011 rule, a critical operation is an operation the failure or discontinuance of which would pose a threat to the financial stability of the United States. The 2011 rule provides

for critical operations to be identified by the firms or at the agencies' joint direction. As part of their rule implementation and supervision efforts, the agencies have developed a process and methodology for jointly identifying critical operations and have made certain critical operations identifications. In recognition that financial markets and firms change over time, the agencies proposed establishing a periodic, comprehensive review of critical operations identifications by both the agencies and covered companies to ensure that resolution planning reflects current operations and markets and appropriately focuses on areas vital to financial stability.

#### 1. Identification by Covered Companies and Methodology Requirement

Many covered companies have incorporated into their resolution planning frameworks a procedure for identifying critical operations, and the agencies proposed requiring biennial filers and triennial full filers to maintain a process for identifying critical operations on a scale that reflected the nature, size, complexity, and scope of their operations. The proposal would have required this process for self-identification to occur at least as frequently as a covered company's resolution plan submission cycle and be documented in the covered company's corporate governance policies and procedures. In addition, the proposal would have established a process whereby firms that did not currently have identified critical operations could request a waiver from the requirement to maintain a self-identification process and methodology. Firms that self-identified a critical operation would have been required to notify the agencies if they ceased to identify an operation as a critical operation. Finally, the agencies proposed a conforming definitional change.<sup>36</sup>

Two commenters suggested that the agencies clarify that the requirement that firms have a process to self-identify critical operations is presumptively waived for any covered company that has previously submitted resolution plans and does not currently have an identified critical operation. Finally, one commenter recommended either eliminating or clarifying the use of the term "economic functions" in the

<sup>36</sup> The agencies proposed including a new definition, "identified critical operations," to clarify that critical operations can be identified by either the covered company or jointly identified by the agencies and that until such an operation has been identified by either method, the operation does not need to be addressed as a critical operation in a resolution plan.

agencies' description of a firm's methodology for identifying critical operations.

Consistent with the proposal, under the final rule, biennial filers and triennial full filers must establish and implement a process designed to identify their critical operations. However, after July 1, 2022, the final rule also requires a triennial reduced filer that has an identified critical operation to establish and implement a process designed to identify its critical operations. As under the proposal, in all cases, that process must contain a methodology and consider the nature, size, complexity, and scope of the covered company's operations.

Under the final rule, triennial reduced filers with identified critical operations will be required to establish and implement a process to identify critical operations, but only after they are required to submit their next resolution plans in 2022. Where a firm has an identified critical operation, it may be the case that it has additional critical operations such that a periodic review by the firm of its operations that is appropriate to the nature, size, complexity, and scope of its operations could be beneficial. This timing will provide the agencies the opportunity to complete their first joint review of critical operations under the final rule and triennial reduced filers with the opportunity to request reconsideration of any currently identified critical operation in anticipation of their next resolution plan submission.

Also consistent with the proposal, the final rule allows a covered company that has previously submitted a resolution plan and does not have an identified critical operation to request a waiver of the requirement to have a process and methodology to identify its critical operations if it does not have an identified critical operation as of the date the waiver request is submitted.<sup>37</sup> Under the proposal, the covered company would have needed to apply for such a waiver at least 15 months before the submission date for that

resolution plan, and waivers would have been automatically granted on the date that was nine months prior to the date that the resolution plan it relates to was due if the agencies did not jointly deny the waiver prior to that date.

Consistent with the changes to the firm-initiated waiver request process for informational content requirements, under the final rule, a request for a waiver from the critical operations process and methodology requirement will be automatically denied on a certain date unless the agencies have jointly approved it before that date. Requiring joint approval of waiver requests will be more consistent with other provisions of the final rule that require joint agency approval.

The agencies recognize that a firm may require more than nine months to prepare a resolution plan taking into account any critical operation the covered company newly identifies and, accordingly, a covered company may need to complete its process more than nine months before its next resolution plan is due. Therefore, the final rule provides that a waiver request is automatically denied on the date that is 12 months prior to the submission date for the resolution plan to which it related if the agencies do not jointly approve the waiver prior to that date. However, the agencies continue to believe that a minimum of six months is the appropriate period for the agencies to review a waiver request. Accordingly, the final rule requires a waiver request to be submitted at least 18 months before the submission date. This timing is consistent with the timing for firm-initiated waiver requests of informational content requirements under the final rule. However, to provide firms with an appropriate period to prepare a waiver request after the agencies' adoption of the final rule with respect to a resolution plan due on or before July 1, 2021, the final rule provides that a waiver request must be submitted at least 17 months before that submission date.

The proposal would have required a covered company to submit a waiver request with respect to each resolution plan submission. The agencies recognize that a covered company that does not have an identified critical operation and has been granted a waiver may not experience any changes between resolution plan submissions that would increase the likelihood of it having a critical operation. Accordingly, to balance the benefits of covered companies engaging in a process to identify their critical operations with the burden placed on covered companies, the final rule provides that

if a critical operations waiver request is granted, the waiver will remain effective until the covered company is required to submit its next full resolution plan. For example, if a triennial full filer submits a waiver request in connection with a full resolution plan that is due on or before July 1, 2024 and the request is approved, the waiver would be effective for the July 1, 2024 full resolution plan submission and the firm's next regularly scheduled targeted resolution plan due on or before July 1, 2027. To continue the effectiveness of the waiver, the covered company would need to submit a new waiver request at least 18 months before its next regularly scheduled full resolution plan due on or before July 1, 2030. Similarly, if a triennial full filer submits a waiver request in connection with a targeted resolution plan and the request is granted, the waiver would be effective for only that targeted resolution plan and not its next full resolution plan.

The agencies recognize a foreign firm may not first determine the category of standards to which it is subject (and, accordingly, whether it is a triennial full filer or a triennial reduced filer) until after the date by which a triennial full filer would need to submit a waiver request with respect to its resolution plan due on or before July 1, 2021. Therefore, the final rule exempts each foreign triennial full filer from the requirement to establish and implement a process and methodology designed to identify their critical operations with respect to its resolution plan due on or before July 1, 2021 if the foreign firm does not have an identified critical operation as of the date by which the waiver would have had to be submitted for this resolution plan submission (*i.e.*, 17 months before the resolution plan submission date).

In addition, the agencies are clarifying the final rule by eliminating usage of the term "economic function," as suggested by the commenter. However, consistent with the preamble to the proposed rule, the agencies note that the types of operations that may be critical operations include, but are not limited to, the core banking functions of deposit taking; lending; payments, clearing and settlement; custody; wholesale funding; and capital markets and investment activities. In general, an operation is most likely to be a critical operation of the firm where both (a) a market or activity engaged in by the firm is significant to U.S. financial stability and (b) the firm is a significant provider or participant in such a market or activity. Factors relevant for determining whether a market or activity is significant to U.S. financial stability, or

<sup>37</sup> The proposal's preamble included clarifying examples of why a waiver may be appropriate, and these examples also apply for the final rule. For example, for a covered company that has not experienced any significant changes in its business, operations, or organizational structure since its most recent resolution plan, a waiver request that so states, with reasonable supporting detail, could provide sufficient information for the agencies to evaluate the request. Alternatively, if one of a covered company's operations gained significant market share since it submitted its most recent resolution plan submission, the waiver request should include this information, a description of the operation, and a discussion of why this change would not warrant the development of a methodology for identifying critical operations.

whether a firm is a significant provider or participant in such a market or activity, may include substitutability, market concentration, interconnectedness, and the impact of cessation. The firm's analysis should focus on the significance of the activity to U.S. financial stability, not whether a particular activity is significant for a foreign parent or other foreign affiliates of the firm.<sup>38</sup> The process undertaken by a firm in completing such an analysis should be commensurate with the nature, size, complexity, and scope of its operations.<sup>39</sup>

## 2. Identification by Agencies and Requests for Reconsideration

Under the proposal, the agencies would have reviewed the operations of covered companies at least every six years to determine whether any new operations should be identified as critical or any prior identifications should be rescinded. The proposal provided that, when the agencies identified an operation as critical, the covered company would have been required to treat the operation as an identified critical operation in future resolution plans, unless the identification occurred within six months of a firm's resolution plan submission date. In addition, the proposal would have permitted a covered company to request that the agencies reconsider a jointly made critical operation identification. The agencies generally would have been required to complete their assessment of the request within 90 days after receipt of the request, if the request were made at least 270 days before the firm's next resolution plan submission deadline.

Commenters were generally supportive of efforts to codify the critical operations identification processes. Some commenters suggested that the agencies modify the timeline for de-identification of a critical operation identified by the agencies.<sup>40</sup> A commenter also suggested that the deadline for the agencies to be able to

identify a new critical operation be 12 months prior to a submission deadline, instead of six months, as proposed.

The agencies are adopting the proposed provisions related to the identification of critical operations by the agencies with revisions that address certain concerns raised by commenters.<sup>41</sup> Consistent with the proposal, the final rule permits the joint identification and rescission of critical operations by the agencies at any time and the agencies will review all identified critical operations and the operations of firms for consideration as critical operations at least every six years. The agencies recognize that a firm may require time to revise its resolution plan to take into account a newly identified critical operation. Therefore, consistent with commenters' feedback, a covered company will be required to treat a critical operation as an identified critical operation only if the joint identification is made at least 12 months before the resolution plan submission date. The agencies believe 12 months is a reasonable period for a firm to assess the identified critical operation and adjust its resolution plan. To align with this notice period, the agencies will endeavor to complete their first joint review under the final rule of the operations of covered companies at least 12 months prior to the 2021 resolution plan submission date.

Finally, the agencies are adopting a modified process whereby firms can request that the agencies reconsider a jointly identified critical operation. Under the final rule, a firm may request reconsideration of a jointly identified critical operation at any time. If a firm requests reconsideration at least 18 months prior to its next resolution plan submission date, the agencies will generally complete their review no later than 12 months before that resolution plan submission date. However, the agencies may request additional information, in which case the agencies will complete their review no later than the later of (a) 90 days after the submission of all requested information and (b) 12 months before the resolution plan submission date. This generally aligns the timing for requests for reconsideration with the timing under the final rule for waiver requests of the requirement to establish and implement a process designed to identify critical operations and firm-initiated waiver requests of informational content requirements.

The agencies retain discretion to defer consideration of a reconsideration

request submitted less than 18 months before a resolution plan submission date until after the covered company's next submission. If the agencies do not defer consideration of the reconsideration request, the agencies intend to communicate with the firm regarding the timing of the agencies' response. If the agencies defer consideration of a request submitted less than 18 months before a resolution plan submission date, the agencies will generally complete their review no later than 12 months before the next resolution plan submission date that follows that resolution plan submission date.

The agencies understand commenters' concerns regarding the de-identification timeline, and have revised and lengthened the process to provide covered companies with additional notice of new identifications prior to a resolution plan submission date. However, the agencies decline to adopt the commenters' request for an automatic rescission of a critical operations identification if a request is submitted at least 15 months before the firm's next resolution plan is due and the agencies have not acted within three months. A firm's initial request for de-identification may be incomplete or unclear, and critical operations identifications may raise complex issues that require substantial time to consider. Accordingly, the agencies may require more than 90 days to make an informed decision regarding whether an operation should be de-identified. The agencies believe the final rule adequately balances covered companies' need for certainty prior to a resolution plan submission date with the need to carefully assess critical operations identifications.

## D. Clarifications to the 2011 Rule

### 1. Resolution Strategy for Foreign-based Covered Companies

The 2011 rule does not specify the assumptions a foreign banking organization should make with respect to how resolution actions it takes outside of the United States should be addressed in its resolution plan. The proposal, consistent with general guidance that the agencies have previously provided,<sup>42</sup> would have

<sup>42</sup> See Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf>, p. 4, <https://www.fdic.gov/resauthority/2018subguidance.pdf>, p. 4 and <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180129a.htm>, <https://www.fdic.gov/news/news/press/2018/pr18006.html>.

<sup>38</sup> Where a firm's operation, such as U.S. dollar deposit taking, is significant to the firm, but the failure or discontinuance of that activity would not pose a threat to the financial stability of the United States, that operation would not be an identified critical operation under the final rule.

<sup>39</sup> For a foreign firm, the critical operations identification process and methodology should be commensurate with the nature, size, complexity, and scope of its U.S. operations.

<sup>40</sup> Specifically, the commenters suggested requiring a request for de-identification to be filed no later than 15 months before the next resolution plan submission is due; mandating that the agencies make a decision within 90 days of receipt of the request; and deeming the request approved if not denied by one year prior to the resolution plan submission date.

<sup>41</sup> The agencies are also adopting the proposed term, "identified critical operations."

clarified that covered companies that are foreign banking organizations should not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

One commenter asserted that the agencies should better align U.S. resolution planning with home country resolution strategy by recognizing the development of single point of entry strategies, total loss absorbing capacity, and other improved resolvability measures implemented by international banks. Although the agencies recognize that foreign banking organizations may have home-country resolution strategies under which U.S. entities are not planned to enter resolution, the Dodd-Frank Act requires firms to plan for the failure of their U.S. operations. General guidance and firm-specific feedback have taken into account resolution plan resolvability improvements made by foreign banking organizations. Accordingly, the final rule includes this clarification as proposed.

## 2. Covered Company in Multi-Tier Foreign Banking Organization Holding Companies

The definition of covered company in the 2011 rule includes the top tier entity in a multi-tier holding company structure of any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978. There is no benefit to the agencies in obtaining resolution plan information relating to a top tier holding company that is, for example, a government, sovereign entity, or family trust. The agencies previously addressed this issue on a case-by-case basis and proposed including a formal process in the proposal by which the agencies would identify a subsidiary in a multi-tiered FBO holding company structure to serve as the covered company that would be required to submit the resolution plan. The agencies did not receive comment on this provision and are adopting the clarification as proposed.

## 3. Removal of the Incompleteness Concept and Related Review

The 2011 rule includes a requirement that the agencies review a resolution plan within 60 days of submission and jointly inform the covered company if the resolution plan is informationally incomplete or additional information is required to facilitate review of the resolution plan. This process has not led to resubmissions in recent years, and

the proposal would have removed it. The agencies received one comment in support of this provision, and the agencies are removing the incompleteness concept and related review as proposed for the reasons stated in the proposal.

## 4. Assessment of New Covered Companies

The 2011 rule provides that covered company status for a foreign banking organization may be based on annual or quarterly reports, depending on availability of such reports, but does not clarify whether firms that file quarterly reports would be assessed for covered company status on a quarterly or annual basis. The proposal would have clarified that a foreign banking organization's status as a covered company would be assessed quarterly for foreign banking organizations that file the Federal Reserve's Form FR Y-7Q (FR Y-7Q) on a quarterly basis and annually for foreign banking organizations that file the Y-7Q on an annual basis only. In each case, the assessment would have been based on total consolidated assets as averaged over the preceding four calendar quarters as reported on the FR Y-7Q.

In addition, the proposal would also have addressed the process for assessing a firm whose assets have grown due to a merger, acquisition, combination, or similar transaction for covered company status. Under these circumstances, the agencies would have the discretion to alternatively consider, to the extent and in the manner the agencies jointly consider appropriate, the relevant assets reflected on the one or more of the four most recent reports of the pre-combination entities (the FR Y-9C in the case of a U.S. firm and the FR Y-7Q in the case of a foreign banking organization). The agencies did not receive comment on these provisions and are adopting the clarifications as proposed.

## 5. Timing of New Filings, Firms That Change Filing Categories

To address the new filing cycles for biennial, triennial full, and triennial reduced filers, the proposal included related modifications to the timing of the initial submission for new filers. The proposal also included a reservation of authority permitting the agencies to require the initial resolution plan earlier than the date of the filing group's next filing, so long as the submission deadline would have been at least 12 months from the date on which the agencies jointly determined to require the covered company to submit its resolution plan. Similarly, the

proposal specified the timing and type of resolution plan a firm would be required to submit if it changed groups (e.g., a triennial reduced filer becomes a triennial full filer or a triennial full filer becomes a triennial reduced filer). The agencies received no comments on these changes and are finalizing them as proposed with technical changes to clarify that the relevant date for these timing provisions is the date as of which the covered company became a covered company or a member of a filing group.

## 6. Clarification of the Mapping Expectations for Foreign Banking Organizations

The proposal would have amended the language governing the expectations regarding the mapping of intragroup interconnections and interdependencies by foreign banking organizations. The proposal also would have clarified that foreign banking organizations would be expected to map (a) the interconnections and interdependencies among their U.S. subsidiaries, branches, and agencies, (b) the interconnections and interdependencies between these U.S. entities and any critical operations and core business lines, and (c) the interconnections and interdependencies between these U.S. entities and any foreign-based affiliates. The agencies did not receive comment on these provisions and are adopting the clarifications regarding mapping expectations for foreign banking organizations as proposed.

## 7. Standard of Review

In reviewing resolution plans, the agencies have identified "deficiencies" and "shortcomings" in resolution plans and have issued firm-specific feedback letters to covered companies describing the rationale for the findings and suggesting potential alternatives for how the identified deficiencies and shortcomings could be addressed. While the agencies have defined these terms in a public statement,<sup>43</sup> they are not defined in the 2011 rule. To provide an opportunity for public comment on these terms and a clearer articulation of the standards the agencies apply in identifying deficiencies and shortcomings, the agencies proposed defining a deficiency and a shortcoming. In addition, the agencies proposed continuing to require a covered company that was assessed to have a deficiency to submit a revised resolution plan to the agencies addressing the deficiency within 90

<sup>43</sup> Resolution Plan Assessment Framework and Firm Determinations (2016), April 13, 2016, <https://www.fdic.gov/news/news/press/2016/pr16031a.pdf>.

days of receiving notice of the deficiency, consistent with the 2011 rule. The agencies received one comment in support of the proposal's timeline for requiring a firm to respond to a notice of deficiency, and the agencies are adopting the definitions of deficiency and shortcoming, and the related standard of review, as proposed.

#### 8. Deletion of "Deficiencies" Relating to Management Information Systems

The 2011 rule requires a resolution plan to include information about a covered company's management information systems, including a description and analysis of the system's "deficiencies, gaps or weaknesses" in the system's capabilities. The proposal would have deleted the term "deficiencies" from this informational content requirement solely to avoid confusion with the proposal's new definition of "deficiencies" in the proposal, and not to change the informational content requirement relating to a covered company's management information systems. The agencies did not receive comment on this provision and are adopting the clarification as proposed.

#### 9. Incorporation by Reference

Similar to the 2011 rule, the proposal would have continued to allow a covered company to incorporate by reference information from its previously submitted resolution plans, subject to certain restrictions. The proposal would have required the referenced information to remain accurate in all respects that are material to the covered company's resolution plan, and the incorporated information would remain subject to the contemporaneous certification requirement. The agencies intended that this clarification regarding the material accuracy of referenced information provide covered companies greater flexibility in their ability to incorporate by reference information, thereby reducing duplication and further streamlining the resolution planning process. One commenter supported this clarification and the proposed expanded ability of firms to utilize incorporation by reference, and the agencies are adopting the clarification as proposed.

#### E. Technical and Conforming Changes From the Proposal

In addition to the changes to the proposal described above, the final rule includes technical and conforming changes for purposes of clarity and consistency. For example, the final rule clarifies that firms are required to submit a resolution plan on or before

the applicable submission date. The technical and conforming changes have no substantive effect on the final rule as compared to the proposal.

#### F. Board Delegation of Authority

The Board has delegated to its Director of Supervision and Regulation, or his or her delegatee, in consultation with the General Counsel, or his or her delegatee, the authority to identify on behalf of the Board a holding company in a multi-tiered holding company to satisfy the requirements that apply to a covered company under the final rule, to the extent such identification is consistent with the criteria specified in the final rule and does not raise any significant legal, policy, or supervisory concerns.

#### IV. Effective Date and Transition Period

The effective date of the final rule is [60 days after publication in the **Federal Register**]. Financial institutions that are covered companies under the final rule are required to comply with the final rule beginning on the effective date.

The requirements for covered companies' initial resolution plans under the final rule will be determined based on their categorization under the tailoring rules on October 1, 2020, which is after the first date foreign banking organizations are required to submit reports including data for purposes of their categorization based on their combined U.S. operations under the tailoring rules.<sup>44</sup> In particular, firms that are covered companies as of the effective date of the final rule are required to submit their initial and subsequent resolution plans under the final rule as follows:

*Biennial filers (all firms subject to Category I standards):* Covered companies that are biennial filers on October 1, 2020 are required to submit their next resolution plans on or before July 1, 2021, unless a firm changes its filing group before July 1, 2021. This submission will be a targeted resolution plan. Thereafter, the biennial filers will alternate between filing full and targeted resolution plans on a biennial basis.

*Triennial full filers (all firms subject to Category II or Category III standards):* Covered companies that are triennial full filers on October 1, 2020 are required to submit targeted resolution plans on or before July 1, 2021, unless a firm changes its filing group before July 1, 2021. The proposal would have required these firms to submit a full resolution plan on or before July 1,

2021. The agencies recognize a foreign firm may not first determine the category of standards to which it is subject (and, accordingly, whether it is a triennial full filer or a triennial reduced filer) until after the date by which a triennial full filer would need to submit a firm-initiated waiver request of informational content requirements for a full resolution plan due on or before July 1, 2021. To provide clarity to covered companies during this transition period, the final rule requires all triennial full filers to submit a targeted resolution plan on or before July 1, 2021. Thereafter, the triennial full filers will alternate between filing full and targeted resolution plans on a triennial basis.

For firms with outstanding shortcomings or deficiencies, the agencies' expectations regarding remediation and related timelines established by the agencies continue to apply. For example, the four foreign banking organizations that received firm-specific feedback letters on December 20, 2018 (Barclays plc, Credit Suisse Group AG, Deutsche Bank AG, and UBS Group AG) are expected to address their shortcomings and complete their respective project plans by July 1, 2020, as provided in the agencies' firm-specific feedback letters. Consistent with prior communications to these firms, they are required to submit resolution plans on or before July 1, 2020 that may be limited to describing changes that the firms have made to their July 2018 resolution plans to address shortcomings identified in those resolution plans.<sup>45</sup>

Likewise, consistent with previous communications to Northern Trust Corporation, it is required to provide an interim update, as specified in the agencies' joint March 29, 2019 firm-specific feedback letter, concerning its projects to address the liquidity shortcoming identified in its 2015 resolution plan.

*Triennial reduced filers (all other filers):* Covered companies that are triennial reduced filers on October 1, 2020 must submit their initial reduced resolution plans under the final rule on

<sup>45</sup> As the final rule makes clear, the requirement to submit a resolution plan on or before July 1, 2020 does not affect the timing or type of resolution plans required to be submitted as described above. The applicable date for completion of the following activities remains July 1, 2020: (i) The resolvability enhancement initiatives identified in the agencies' 2018 firm-specific feedback letters, and (ii) any additional enhancement initiatives identified in the July 2018 resolution plan submission or in writing by firm management during the 2018 resolution plan review. In connection with their July 1, 2020 submissions, the firms should provide an update concerning these initiatives.

<sup>44</sup> Top-tier foreign banking organizations will report the FR Y-15 on behalf of their U.S. intermediate holding company and combined U.S. operations using data as of June 30, 2020.

or before July 1, 2022, unless a firm changes its filing group before July 1, 2022. Thereafter, they are required to submit reduced resolution plans on a triennial basis.

## V. Impact Analysis

The final rule will modify the expected costs imposed by the 2011 rule while seeking to preserve the benefits to U.S. financial stability provided by the 2011 rule. The economic effects of the final rule are driven by the changes in the reporting costs related to resolution plan submissions.

Consistent with EGRRCPA, the final rule changes the asset thresholds at which all firms are required to file resolution plans from \$50 billion to \$250 billion in total consolidated assets. The final rule also requires the submission of resolution plans by certain firms with \$100 billion or more and less than \$250 billion in total consolidated assets, including those that have certain risk-based indicators. As of March 31, 2019, firms with \$50 billion or more and less than \$100 billion in total consolidated assets accounted for less than 2 percent of total U.S. industry assets, and firms with \$100 billion or more and less than \$250 billion in total consolidated assets accounted for 18 percent of total U.S. industry assets.<sup>46</sup> The net impact of these threshold changes would reduce the number of U.S. filers from 23 to 12 and the number of foreign banking organization filers from 86 to 62.<sup>47</sup> This reduction in resolution plan filers decreases costs as fewer firms would be required to prepare plans.

The final rule also seeks to minimize the impact of this change on benefits to U.S. financial stability provided from resolution plan filings by maintaining filing requirements for certain firms with \$100 billion or more and less than \$250 billion in total consolidated assets, including those that have certain risk-based indicators.

The final rule also reduces the frequency of required resolution plan submissions for the remaining resolution plan filers, including the largest and most complex resolution plan filers, by extending the default filing cycle between resolution plan submissions. The final rule modifies the filing cycle to every two years for the U.S. GSIBs and certain systemically

important nonbank financial companies and to every three years for all other resolution plan filers. This change formalizes a practice that has developed over time to extend firms' resolution plan submission dates to allow at least two years between resolution plan submissions and should reduce costs.

In the August 2018 proposal to extend mandatory Reporting Requirements Associated with Regulation QQ, the estimate of total annual burden for resolution plan filings was estimated to be 1,137,797 hours for 111 resolution plan filers.<sup>48</sup> Since then, the number of resolution plan filers has declined to 109, with a current total annual burden of 1,066,086 hours.<sup>49</sup> Under the final rule, the revised estimated annual burden, incorporating proposed modifications to the resolution plan rule, is 425,525 hours.<sup>50</sup> At an estimated mean wage of \$56.05 per hour,<sup>51</sup> this reduction in the estimated burden hours has an estimated wage savings of approximately \$35,903,444 per year. Reductions in submission frequency and content could potentially reduce the preparedness of covered companies to execute a rapid and orderly resolution in the event of material financial distress or failure. However, this potential economic effect would be ameliorated by the agencies' authority to require a firm to submit a full resolution plan, interim update, or alter resolution plan submission dates. This authority would address circumstances where the agencies determine that waiting for a firm to submit on its regular submission cycle could present excess risk.

Finally, the final rule is expected to improve efficiency by streamlining the information requirements for the resolution plan submissions: The final rule includes a mechanism for certain firms to request a waiver from certain informational requirements in full resolution plan submissions; introduces a new, more focused resolution plan submission (*i.e.*, targeted resolution plan); and formalizes the conditions and content for reduced resolution plans. These resolution plan modifications are appropriate because the firms' resolution plans have matured and become more stable through multiple submissions. Further, the resolution

plan modifications should reduce the costs of preparing and reviewing the resolution plans without having a material impact on the benefits provided by the resolution plans.

In short, as detailed in this section, the proposal would provide estimated wage savings, to the institutions affected by it, totaling \$35,903,444 due to the reduction of an estimated 640,561 burden hours needed to comply with the final rule. Moreover, firms could reallocate the estimated 640,561 hours used to comply with the final rule to other activities considered to be more beneficial.<sup>52</sup> Thus, the total economic benefits of the proposal could be greater than the dollar amount estimated.

## VI. Regulatory Analysis

### A. Paperwork Reduction Act

Certain provisions of the final rule contain "collections of information" within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the final rule and determined that it would revise the reporting requirements that have been previously approved by the Board under OMB control number 7100–0346 (Reporting Requirements Associated with Regulation QQ; FR QQ). The Board's information collection will be extended for three years, with revision.

Since the original rule was adopted in 2011, the Board's PRA clearance has accounted for the entire burden associated with the rule even though the Board and the Corporation are both legally authorized to receive and review the Resolution Plans. The agencies have decided to now equally account for the burden associated with this final rule. As a result, the Corporation has submitted to OMB a request to implement, for three years, an information collection in connection with the final rule Resolution Plan submissions that accounts for half of the estimated burden associated with the final rule.

The Corporation has submitted its request to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of

<sup>46</sup> Assets as reported on form FR Y–9C for the quarter ending March 31, 2019.

<sup>47</sup> Upon enactment of EGRRCPA on May 24, 2018, firms with total consolidated assets of less than \$100 billion were automatically no longer subject to the resolution planning requirement, reducing the number of U.S. filers and foreign banking organizations filers.

<sup>48</sup> Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 83 FR 42296 (August 21, 2018).

<sup>49</sup> As of March 31, 2019.

<sup>50</sup> See Section VI.A. for estimated annual hourly burden details.

<sup>51</sup> Mean hourly wages retrieved from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages May 2017, published March 30, 2018 [https://www.bls.gov/oes/2017/may/oes\\_nat.htm](https://www.bls.gov/oes/2017/may/oes_nat.htm).

<sup>52</sup> A commenter asserted that firms would likely eliminate (and not repurpose) compliance jobs, resulting in cost savings to the firms, and that these savings will likely only benefit the firms' shareholders and executives. The agencies note that it is speculative how firms will utilize resources no longer needed to comply with the final rule.

OMB's implementing regulations (5 CFR 1320). The Corporation submitted the information collection requirements to OMB at the proposed rule stage. OMB filed a comment assigning the Corporation OMB control number 3064-0210 and requested that the Corporation make a submission to OMB after the proposed rule is finalized. The Board has reviewed the final rule under the

authority delegated to the Board by OMB. The agencies did not receive any comments on the PRA.

Proposed Information Collection

*Title of Information Collection:* Reporting Requirements Associated with Resolution Planning.

*Agency Form Number:* FR QQ.

*OMB Control Number:* 7100-0346.

*Frequency of Response:* Biennially, Triennially.

*Respondents:* Bank holding companies<sup>53</sup> with assets of \$250 billion or more, bank holding companies with \$100 billion or more with certain characteristics specified in the preamble, and nonbank financial firms designated by the Council for supervision by the Board.

FR QQ	Number of respondents <sup>54</sup>	Annual frequency	Estimated average hours per response	Estimated annual burden hours
<b>Current<sup>55</sup></b>				
Reduced Reporters .....	71	1	60	4,260
December Filers:				
Tailored Reporters:				
Domestic .....	12	1	9,000	108,000
Foreign .....	5	1	1,130	5,650
Full Reporters:				
Domestic .....	3	1	26,000	78,000
Foreign .....	6	1	2,000	12,000
Complex Filers:				
Domestic .....	8	1	<sup>56</sup> 79,522	636,176
Foreign .....	4	1	55,500	222,000
Current Total .....				1,066,086
<b>Final Rule</b>				
Triennial Reduced .....	53	1	20	1,060
Triennial Full:				
Complex Foreign .....	4	1	13,135	52,540
Foreign and Domestic .....	9	1	5,667	51,003
Biennial Filers:				
Domestic .....	8	1	40,115	320,920
Waivers <sup>57</sup> .....	2	1	1	2
Proposed Total .....				425,525
Change .....				-640,561

The agencies did not receive any comments on their proposed revisions to this information collection. Accordingly, with the exception of minor technical adjustments, the information collection revisions are adopted as proposed in the proposal and replicated in the chart above.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires that, in connection

with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.<sup>58</sup> However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" to

include banking organizations with total assets of less than or equal to \$600 million that are independently owned and operated or owned by a holding company with less than or equal to \$600 million in total assets.<sup>59</sup> For the reasons described below and under section 605(b) of the RFA, the agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities. As of March 31, 2019, there were 4,004

<sup>53</sup> This includes any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978, and meets the relevant total consolidated assets threshold.

<sup>54</sup> Of these respondents, none are small entities as defined by the Small Business Administration (*i.e.*, entities with less than \$600 million in total assets) [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards).

<sup>55</sup> As of March 31, 2019.

<sup>56</sup> This estimate captures the annual time that complex domestic filers will spend complying with this collection, given that these filers will only submit two resolution plans over the three-year

period covered by this notice. The estimate therefore represents two-thirds of the time these firms are estimated to spend on each resolution plan submission.

<sup>57</sup> The agencies cannot reasonably estimate how many of the firms that file resolution plans may submit waiver requests, nor how long it would take to prepare a waiver request. Accordingly, the agencies are including this line as a placeholder. To facilitate the split of the burden between the agencies, this placeholder has been adjusted to two estimated annual burden hours in the final rule.

<sup>58</sup> 5 U.S.C. 601 *et seq.*

<sup>59</sup> The SBA defines a small banking organization as having \$600 million or less in assets, where an

organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 as amended by Small Business Size Standards: Adjustment of Monetary-Based Size Standards for Inflation, 84 FR 34261 (July 18, 2019) (effective August 19, 2019). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the agencies use a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

insured depository institutions and approximately 3,198 bank holding companies that would fit the SBA's current definition of "small entity" for purposes of the RFA.

As discussed in detail above, section 165(d) of the Dodd-Frank Act requires certain financial companies to report periodically to the agencies their plans for rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure. This provision of the Dodd-Frank Act was amended by EGRRCPA in 2018. Specifically, EGRRCPA raised the \$50 billion minimum asset threshold for general application of the resolution planning requirement to \$250 billion in total consolidated assets, and provided the Board with discretion to apply the resolution planning requirement to firms with \$100 billion or more and less than \$250 billion in total consolidated assets. EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a U.S. GSIB under the Board's U.S. GSIB surcharge rule shall be considered a bank holding company with \$250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement.

In accordance with section 165(d) of the Dodd-Frank Act as amended by EGRRCPA, the Board is amending Regulation QQ<sup>60</sup> and the Corporation is amending part 381<sup>61</sup> to amend the requirement that a covered company periodically submit a resolution plan to the Board and Corporation.<sup>62</sup> The final rule also modifies the procedures for joint review of a resolution plan by the agencies. The reasons and justification for the final rule are described in the preamble.

As discussed in the preamble, the final rule applies to covered companies, which include only bank holding companies and foreign banking organizations with at least \$100 billion in total consolidated assets, and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. The assets of a covered company substantially exceed the \$600 million asset threshold under which a banking organization is considered a "small entity" under SBA regulations.<sup>63</sup>

The final rule also applies to a nonbank financial company designated by the Council for supervision by the Board under section 113 of the Dodd-Frank Act, regardless of such a company's asset size. As of the date of the adoption of the final rule, there are no such nonbank financial companies supervised by the Board. Although the asset size of nonbank financial companies may not be the sole determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is one consideration.<sup>64</sup> It therefore may be unlikely that a financial firm that is at or below the \$600 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act.

Because the final rule is not likely to apply to any company with assets of \$600 million or less, it is not expected to apply to any small entity for purposes of the RFA. The agencies do not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules.

In light of the foregoing, the Board and the Corporation certify that the final rule will not have a significant economic impact on a substantial number of small entities supervised.

#### *C. Riegle Community Development and Regulatory Improvement Act of 1994*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCRDIA),<sup>65</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date

on which the regulations are published in final form.<sup>66</sup>

Because the final rule would not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of the RCDRIA therefore does not apply.

#### *D. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act<sup>67</sup> requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner, and did not receive any comments on plain language.

#### *E. The Congressional Review Act*

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a "major" rule.<sup>68</sup> If a rule is deemed a "major rule" by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.<sup>69</sup>

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>70</sup>

The OMB has determined that the final rule is not a "major rule" within the meaning of the Congressional Review Act. As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

#### **Text of the Common Rules**

(All Agencies)

■ The text of the common rules appears below:

<sup>66</sup> 12 U.S.C. 4802.

<sup>67</sup> 12 U.S.C. 4809(a).

<sup>68</sup> 5 U.S.C. 801 *et seq.*

<sup>69</sup> 5 U.S.C. 801(a)(3).

<sup>70</sup> 5 U.S.C. 804(2).

<sup>60</sup> 12 CFR part 243.

<sup>61</sup> 12 CFR part 381.

<sup>62</sup> 12 U.S.C. 5365(d).

<sup>63</sup> The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the asset threshold for the application of the resolution planning requirements. 12 U.S.C.

5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

<sup>64</sup> 12 CFR 1310.11.

<sup>65</sup> 12 U.S.C. 4802(a).

**PART [ ]—RESOLUTION PLANS**

## Sec.

- \_\_\_ .1 Authority and scope.
- \_\_\_ .2 Definitions.
- \_\_\_ .3 Critical operations.
- \_\_\_ .4 Resolution plan required.
- \_\_\_ .5 Informational content of a full resolution plan.
- \_\_\_ .6 Informational content of a targeted resolution plan.
- \_\_\_ .7 Informational content of a reduced resolution plan.
- \_\_\_ .8 Review of resolution plans; resubmission of deficient resolution plans.
- \_\_\_ .9 Failure to cure deficiencies on resubmission of a resolution plan.
- \_\_\_ .10 Consultation.
- \_\_\_ .11 No limiting effect or private right of action; confidentiality of resolution plans.
- \_\_\_ .12 Enforcement.

**§ \_\_\_ .1 Authority and scope.**

(a) *Authority.* This part is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 1426–1427), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174, 132 Stat. 1296) (the *Dodd-Frank Act*), 12 U.S.C. 5365(d)(8), which requires the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (Corporation) to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act.

(b) *Scope.* This part applies to each covered company and establishes rules and requirements regarding the submission and content of a resolution plan, as well as procedures for review by the Board and Corporation of a resolution plan.

**§ \_\_\_ .2 Definitions.**

For purposes of this part:

*Bankruptcy Code* means Title 11 of the United States Code.

*Biennial filer* is defined in

§ \_\_\_ .4(a)(1).

*Category II banking organization* means a covered company that is a category II banking organization pursuant to § 252.5 of this title.

*Category III banking organization* means a covered company that is a category III banking organization pursuant to § 252.5 of this title.

*Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization, but does not include any organization, the majority of the voting securities of which are owned by the United States.

*Control.* A company controls another company when the first company, directly or indirectly, owns, or holds with power to vote, 25 percent or more of any class of the second company's outstanding voting securities.

*Core business lines* means those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value.

*Core elements* mean the information required to be included in a full resolution plan pursuant to § \_\_\_ .5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy.

*Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

*Covered company*—(1) *In general.* A covered company means:

- (i) Any nonbank financial company supervised by the Board;
- (ii) Any global systemically important BHC;

- (iii) Any bank holding company, as that term is defined in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and part 225 of this title (the Board's Regulation Y), that has \$250 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q of the companies that were party to the merger, acquisition, combination or similar transaction;

- (iv) Any foreign bank or company that is a bank holding company or is treated as a bank holding company under

section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and that has \$250 billion or more in total consolidated assets, as determined annually based on the foreign bank's or company's most recent annual or, as applicable, quarterly based on the average of the foreign bank's or company's four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q of the companies that were party to the merger, acquisition, combination or similar transaction; and

- (v) Any additional covered company as determined pursuant to § 243.13.

(2) *Cessation of covered company status for nonbank financial companies supervised by the Board and global systemically important BHCs.* Once a covered company meets the requirements described in paragraph (1)(i) or (ii) of this definition of covered company, the company shall remain a covered company until it no longer meets any of the requirements described in paragraph (1) of this definition of covered company.

(3) *Cessation of covered company status for other covered companies.* Once a company meets the requirements described in paragraph (1)(iii) or (iv) of this definition of covered company, the company shall remain a covered company until—

- (i) In the case of a covered company described in paragraph (1)(iii) of this definition of covered company or a covered company described in paragraph (1)(iv) of this definition of covered company that files quarterly Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, the company has reported total consolidated assets that are below \$250 billion for each of four consecutive quarters, as determined based on its total consolidated assets as reported on each of its four most recent Consolidated Financial Statements for Holding Companies on the Federal Reserve's Form FR Y–9C or Capital and

Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y-7Q, as applicable; or

(ii) In the case of a covered company described in paragraph (1)(iv) of this definition of covered company that does not file quarterly Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y-7Q, the company has reported total consolidated assets that are below \$250 billion for each of two consecutive years, as determined based on its total consolidated assets as reported on each of its two most recent annual Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y-7Q, or such earlier time as jointly determined by the Board and the Corporation.

(4) *Multi-tiered holding company*. In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company unless the Board and the Corporation jointly identify a different holding company to satisfy the requirements that apply to the covered company. In making this determination, the Board and the Corporation shall consider:

(i) The ownership structure of the foreign banking organization, including whether the foreign banking organization is owned or controlled by a foreign government;

(ii) Whether the action would be consistent with the purposes of this part; and

(iii) Any other factors that the Board and the Corporation determine are relevant.

(5) *Asset threshold for bank holding companies and foreign banking organizations*. The Board may, pursuant to a recommendation of the Council, raise any asset threshold specified in paragraph (1)(iii) or (iv) of this definition of covered company.

(6) *Exclusion*. A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a covered company hereunder.

*Critical operations* means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

*Deficiency* is defined in § \_\_\_\_\_.8(b).

*Depository institution* has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

*Foreign banking organization* means—

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

*Foreign-based covered company* means any covered company that is not incorporated or organized under the laws of the United States.

*Full resolution plan* means a full resolution plan described in § \_\_\_\_\_.5.

*Functionally regulated subsidiary* has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

*Global systemically important BHC* means a covered company that is a global systemically important BHC pursuant to § 252.5 of this title.

*Identified critical operations* means the critical operations of the covered company identified by the covered company or jointly identified by the Board and the Corporation under § \_\_\_\_\_.3(b)(2).

*Material change* means an event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on:

(1) The resolvability of the covered company;

(2) The covered company's resolution strategy; or

(3) How the covered company's resolution strategy is implemented. Such changes include, but are not limited to:

(i) The identification of a new critical operation or core business line;

(ii) The identification of a new material entity or the de-identification of a material entity;

(iii) Significant increases or decreases in the business, operations, or funding or interconnections of a material entity; or

(iv) Changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis.

*Material entity* means a subsidiary or foreign office of the covered company that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the covered company.

*Material financial distress* with regard to a covered company means that:

(1) The covered company has incurred, or is likely to incur, losses that

will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(2) The assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or

(3) The covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

*Nonbank financial company supervised by the Board* means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

*Rapid and orderly resolution* means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.

*Reduced resolution plan* means a reduced resolution plan described in § \_\_\_\_\_.7.

*Shortcoming* is defined in § \_\_\_\_\_.8(e).

*Subsidiary* means a company that is controlled by another company, and an indirect subsidiary is a company that is controlled by a subsidiary of a company.

*Targeted resolution plan* means a targeted resolution plan described in § \_\_\_\_\_.6.

*Triennial full filer* is defined in § \_\_\_\_\_.4(b)(1).

*Triennial reduced filer* is defined in § \_\_\_\_\_.4(c)(1).

*United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

### § \_\_\_\_\_.3 Critical operations.

(a) *Identification of critical operations by covered companies—(1) Process and methodology required.* (i) Each biennial filer and triennial full filer shall establish and implement a process designed to identify each of its critical operations. After July 1, 2022, each triennial reduced filer that has any identified critical operation shall establish and implement a process

designed to identify each of its critical operations. The scale of the process must be appropriate to the nature, size, complexity, and scope of the covered company's operations. The covered company must review its process periodically and update it as necessary to ensure its continued effectiveness. The covered company shall describe its process and how it is applied as part of its corporate governance relating to resolution planning under § \_\_\_\_\_.5(d)(1). The covered company must conduct the process described in this paragraph (a)(1) sufficiently in advance of its next resolution plan submission so that the covered company is prepared to submit the information required under §§ \_\_\_\_\_.5 through \_\_\_\_\_.7 for each identified critical operation.

(ii) The process required under paragraph (a)(1)(i) of this section must include a methodology for evaluating the covered company's participation in activities and markets that may be critical to the financial stability of the United States. The methodology must be designed, taking into account the nature, size, complexity, and scope of the covered company's operations, to identify and assess:

(A) The markets and activities in which the covered company participates or has operations;

(B) The significance of those markets and activities with respect to the financial stability of the United States; and

(C) The significance of the covered company as a provider or other participant in those markets and activities.

(2) *Waiver requests.* A covered company that has previously submitted a resolution plan under this part may request a waiver of the requirement to have a process and methodology under paragraph (a)(1) of this section by submitting a waiver request in accordance with this paragraph (a)(2) if the covered company does not have an identified critical operation as of the date it submits the waiver request.

(i) Each waiver request shall be divided into a public section and a confidential section. A covered company shall segregate and separately identify the public section from the confidential section. A covered company shall include in the confidential section of a waiver request its rationale for why a waiver of the requirement would be appropriate, including an explanation of why the process and methodology are not likely to identify any critical operation given its business model, operations, and organizational structure. A covered company shall describe in the public

section of a waiver request that it is seeking to waive the requirement.

(ii) Any waiver request must be made in writing no later than 18 months before the date by which the covered company is required to submit its next resolution plan. Notwithstanding the foregoing, with respect to any resolution plan that a covered company is required to submit on or before July 1, 2021, any waiver request must be made in writing no later than 17 months before that date.

(iii) The Board and Corporation may jointly approve or deny a waiver request in their discretion. Unless the Board and the Corporation have jointly approved a waiver request, the waiver request will be deemed denied on the date that is 12 months before the date by which the covered company is required to submit the resolution plan that immediately follows submission of the waiver request.

(iv) An approved waiver request under this paragraph (a)(2) is effective for the resolution plan submission that immediately follows submission of the waiver request and for any resolution plan submitted thereafter until, but not including, the covered company's next full resolution plan submission.

(3) *Limited exemption.* A foreign-based covered company is exempt from the requirement to have a process and methodology under paragraph (a)(1) of this section in connection with any requirement to submit a resolution plan on or before July 1, 2021 if the foreign-based covered company does not have an identified critical operation as of the date that is 17 months before the date by which the covered company is required to submit the resolution plan.

(b) *Joint identification of critical operations by the Board and the Corporation.* (1) The Board and the Corporation shall, not less frequently than every six years, jointly review the operations of covered companies to determine whether to jointly identify critical operations of any covered company in accordance with paragraph (b)(2) of this section, or to jointly rescind any currently effective joint identification in accordance with paragraph (b)(3) of this section.

(2) If the Board and the Corporation jointly identify a covered company's operation as a critical operation, the Board and the Corporation shall jointly notify the covered company in writing. A covered company is not required to include the information required under §§ \_\_\_\_\_.5 through \_\_\_\_\_.7 for the identified critical operation in any resolution plan that the covered company is required to submit within 12 months after the joint notification unless the operation had been identified

by the covered company as a critical operation on or before the date the Board and the Corporation jointly notified the covered company.

(3) The Board and the Corporation may jointly rescind a joint identification under paragraph (b)(2) of this section by providing the covered company with joint notice of the rescission. Upon the notification, the covered company is not required to include the information regarding the operation required for identified critical operations under §§ \_\_\_\_\_.5 through \_\_\_\_\_.7 in any subsequent resolution plan unless:

(i) The covered company identifies the operation as a critical operation; or

(ii) The Board and the Corporation subsequently provide a joint notification under paragraph (b)(2) of this section to the covered company regarding the operation.

(4) A joint notification provided by the Board and the Corporation to a covered company before [effective date of final rule] that identifies any of its operations as a critical operation and not previously jointly rescinded is deemed to be a joint identification under paragraph (b)(2) of this section.

(c) *Request for reconsideration of jointly identified critical operations.* A covered company may request that the Board and the Corporation reconsider a joint identification under paragraph (b)(2) of this section in accordance with this paragraph (c).

(1) *Written request for reconsideration.* The covered company must submit a written request for reconsideration to the Board and the Corporation that includes a clear and complete statement of all arguments and all relevant, material information that the covered company expects to have considered. If a covered company has previously requested reconsideration regarding the operation, the written request must also describe the material differences between the new request and the most recent prior request.

(2) *Timing.* (i) If a covered company submits a request for reconsideration on or before the date that is 18 months before the date by which it is required to submit its next resolution plan, the Board and the Corporation will complete their reconsideration no later than 12 months before the date by which the covered company is required to submit its next resolution plan. Notwithstanding the foregoing, if the Board and the Corporation jointly find that additional information from the covered company is required to complete their reconsideration, the Board and the Corporation will jointly request in writing the additional information from the covered company.

The Board and the Corporation will then complete their reconsideration no later than the later of:

(A) Ninety (90) days after receipt of all additional information from the covered company; and

(B) Twelve (12) months before the date by which the covered company is required to submit its next resolution plan.

(ii) If a covered company submits a request for reconsideration less than 18 months before the date by which it is required to submit its next resolution plan, the Board and the Corporation may, in their discretion, defer reconsideration of the joint identification until after the submission of that resolution plan, with the result that the covered company must include the identified critical operation in that resolution plan and the Board and the Corporation will complete their reconsideration in accordance with paragraph (c)(2)(i) of this section as though the covered company had submitted the request after the date by which the covered company is required to submit that resolution plan.

(3) *Joint communication following reconsideration.* The Board and the Corporation will communicate jointly the results of their reconsideration in writing to the covered company.

(d) *De-identification by covered company of self-identified critical operations.* A covered company may cease to include in its resolution plans the information required under §§ \_\_\_\_\_.5 through \_\_\_\_\_.7 regarding an operation previously identified only by the covered company (and not also jointly by the Board and the Corporation) as a critical operation only in accordance with this paragraph (d).

(1) *Notice of de-identification.* If a covered company ceases to identify an operation as a critical operation, the covered company must notify the Board and the Corporation of its de-identification. The notice must be in writing and include a clear and complete explanation of:

(i) Why the covered company previously identified the operation as a critical operation; and

(ii) Why the covered company no longer identifies the operation as a critical operation.

(2) *Timing.* Notwithstanding a covered company's de-identification, and unless otherwise notified in writing jointly by the Board and the Corporation, a covered company shall include the applicable information required under §§ \_\_\_\_\_.5 through § \_\_\_\_\_.7 regarding an operation previously identified by the covered company as a critical operation in any

resolution plan the covered company is required to submit during the period ending 12 months after the covered company notifies the Board and the Corporation in accordance with paragraph (d)(1) of this section.

(3) *No effect on joint identifications.* Neither a covered company's de-identification nor notice thereof under paragraph (d)(1) of this section rescinds a joint identification made by the Board and the Corporation under paragraph (b)(2) of this section.

#### § \_\_\_\_\_.4 Resolution plan required.

(a) *Biennial filers*—(1) *Group members.* Biennial filer means:

(i) Any global systemically important BHC; and

(ii) Any nonbank financial company supervised by the Board that has not been jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section or that has been jointly re-designated a biennial filer by the Board and the Corporation under paragraph (a)(2) of this section.

(2) *Nonbank financial companies.* The Board and the Corporation may jointly designate a nonbank financial company supervised by the Board as a triennial full filer in their discretion, taking into account facts and circumstances that each of the Board and the Corporation in its discretion determines to be relevant. The Board and the Corporation may in their discretion jointly re-designate as a biennial filer a nonbank financial company that the Board and the Corporation had previously designated as a triennial filer, taking into account facts and circumstances that each of the Board and the Corporation in its discretion determines to be relevant.

(3) *Frequency of submission.* Biennial filers shall each submit a resolution plan to the Board and the Corporation every two years.

(4) *Submission date.* Biennial filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(5) *Type of resolution plan required to be submitted.* Biennial filers shall alternate submitting a full resolution plan and a targeted resolution plan.

(6) *New covered companies that are biennial filers.* A company that becomes a covered company and a biennial filer after [effective date of final rule] shall submit a full resolution plan on or before the next date by which the other biennial filers are required to submit resolution plans pursuant to paragraph (a)(4) of this section that occurs no earlier than 12 months after the date as of which the company became a covered

company. The company's subsequent resolution plans shall be of the type required to be submitted by the other biennial filers.

(b) *Triennial full filers*—(1) *Group members.* Triennial full filer means:

(i) Any category II banking organization;

(ii) Any category III banking organization; and

(iii) Any nonbank financial company supervised by the Board that is jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section.

(2) *Frequency of submission.*

Triennial full filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial full filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(4) *Type of resolution plan required to be submitted.* Triennial full filers shall alternate submitting a full resolution plan and a targeted resolution plan.

(5) *New covered companies that are triennial full filers.* A company that becomes a covered company and a triennial full filer after [effective date of final rule] shall submit a full resolution plan on or before the next date by which the other triennial full filers are required to submit resolution plans pursuant to paragraph (b)(3) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be of the type required to be submitted by the other triennial full filers.

(c) *Triennial reduced filers*—(1) *Group members.* Triennial reduced filer means any covered company that is not a global systemically important BHC, nonbank financial company supervised by the Board, category II banking organization, or category III banking organization.

(2) *Frequency of submission.*

Triennial reduced filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial reduced filers shall submit their resolution plans on or before July 1 of each year in which a resolution plan is due.

(4) *Type of resolution plan required to be submitted.* Triennial reduced filers shall submit a reduced resolution plan.

(5) *New covered companies that are triennial reduced filers.* A company that becomes a covered company and a triennial reduced filer after December 31, 2019 shall submit a full resolution plan on or before the next date by which

the other triennial reduced filers are required to submit resolution plans pursuant to paragraph (c)(3) of this section that occurs no earlier than 12 months after the date as of which the company became a covered company. The company's subsequent resolution plans shall be reduced resolution plans.

(d) *General*—(1) *Changing filing groups*. If a covered company that is a member of a filing group specified in paragraphs (a) through (c) of this section (“original group filer”) becomes a member of a different filing group specified in paragraphs (a) through (c) of this section (“new group filer”), then the covered company shall submit its next resolution plan as follows:

(i) If the next date by which the original group filers are required to submit their next resolution plans is the same date by which the other new group filers are required to submit their next resolution plans and:

(A) That date is less than 12 months after the date as of which the covered company became a new group filer, the covered company shall submit its next resolution plan on or before that date. The resolution plan may be the type of resolution plan that the original group filers are required to submit on or before that date or the type of resolution plan that the other new group filers are required to submit on or before that date.

(B) That date is 12 months or more after the date as of which the covered company became a new group filer, the covered company shall submit on or before that date the type of resolution plan the other new group filers are required to submit on or before that date.

(ii) If the next date by which the original group filers are required to submit their next resolution plans is different from the date by which the new group filers are required to submit their next resolution plans, the covered company shall submit its next resolution plan on or before the next date by which the other new group filers are required to submit a resolution plan that occurs no earlier than 12 months after the date as of which the covered company became a new group filer. The covered company shall submit the type of resolution plan that the other new group filers are required to submit on or before the date the covered company is required to submit its next resolution plan.

(iii) Notwithstanding paragraph (d)(1)(i) or (ii) of this section, any triennial reduced filer that becomes a biennial filer or a triennial full filer shall submit a full resolution plan on or before the next date by which the other

new group filers are required to submit their next resolution plans that occurs no earlier than 12 months after the date as of which the covered company became a new group filer. After submitting a full resolution plan, the covered company shall submit, on or before the next date that the other new group filers are required to submit their next resolution plans, the type of resolution plan the other new group filers are required to submit on or before that date.

(2) *Altering submission dates*. Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly determine that a covered company shall submit its resolution plan on or before a date other than as provided in paragraphs (a) through (c) or paragraph (d)(1) of this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(2) no later than 12 months before the date by which the covered company is required to submit the resolution plan.

(3) *Authority to require interim updates*. The Board and the Corporation may jointly require that a covered company submit an update to a resolution plan submitted under this part, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall notify the covered company of its requirement to submit an update under this paragraph (d)(3) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(4) *Notice of extraordinary events*—(i) *In general*. Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after any material merger, acquisition of assets, or similar transaction or fundamental change to the covered company's resolution strategy. Such notice must describe the event and explain how the event affects the resolvability of the covered company. The covered company shall address any event with respect to which it has provided notice pursuant to this paragraph (d)(4)(i) in the following resolution plan submitted by the covered company.

(ii) *Exception*. A covered company shall not be required to submit a notice under paragraph (d)(4)(i) of this section if the date by which the covered company would be required to submit the notice under paragraph (d)(4)(i) of this section would be within 90 days before the date by which the covered company is required to submit a resolution plan under this section.

(5) *Authority to require a full resolution plan submission*.

Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly require a covered company to submit a full resolution plan instead of a targeted resolution plan or a reduced resolution plan that the covered company is otherwise required to submit under this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(5) no later than 12 months before the date by which the covered company is required to submit the full resolution plan. The date on or before which a full resolution plan must be submitted under this paragraph (d)(5) will be the date by which the covered company would otherwise be required to submit its upcoming targeted resolution plan or reduced resolution plan under paragraphs (a) through (c), or (d)(1) or (2) of this section. The requirement to submit a full resolution plan under this paragraph (d)(5) does not alter the type of resolution plan the covered company will subsequently be required to submit under this section.

(6) *Waivers*—(i) *Authority to waive requirements*. The Board and the Corporation may jointly waive one or more of the resolution plan requirements of § \_\_\_\_.5, § \_\_\_\_.6, or § \_\_\_\_.7 for one or more covered companies for any number of resolution plan submissions. A request pursuant to paragraph (d)(6)(ii) of this section is not required for the Board and Corporation to exercise their authority under this paragraph (d)(6)(i).

(ii) *Waiver requests by covered companies*. In connection with the submission of a full resolution plan, a triennial full filer or triennial reduced filer that has previously submitted a resolution plan under this part may request a waiver of one or more of the informational content requirements of § \_\_\_\_.5 in accordance with this paragraph (d)(6)(ii).

(A) A requirement to include any of the following information is not eligible for a waiver at the request of a triennial full filer or triennial reduced filer:

(1) Information specified in section 165(d)(1)(A) through (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A) through (C));

(2) Any core element;

(3) Information required to be included in the public section of a full resolution plan under § \_\_\_\_.11(c)(2);

(4) Information about the remediation of any previously identified deficiency or shortcoming unless the Board and the Corporation have jointly determined that the triennial full filer or triennial

reduced filer has satisfactorily remedied the deficiency or addressed the shortcoming before its submission of the waiver request; or

(5) Information about changes to the triennial full filer or triennial reduced filer's last submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Any material change experienced by the triennial full filer or triennial reduced filer since it submitted that resolution plan.

(B) Each waiver request shall be divided into a public section and a confidential section. A triennial full filer or triennial reduced filer shall segregate and separately identify the public section from the confidential section.

(1) The triennial full filer or triennial reduced filer shall include in the confidential section of a waiver request a clear and complete explanation of why:

(i) Each requirement sought to be waived is not a requirement described in paragraph (d)(6)(ii)(A) of this section;

(ii) The information sought to be waived would not be relevant to the Board's and Corporation's review of the triennial full filer or triennial reduced filer's next full resolution plan; and

(iii) A waiver of each requirement would be appropriate.

(2) The triennial full filer or triennial reduced filer shall include in the public section of a waiver request a list of the requirements that it is requesting be waived.

(C) A triennial full filer or triennial reduced filer may not make more than one waiver request for any full resolution plan submission and any waiver request must be made in writing no later than 18 months before the date by which the triennial full filer or triennial reduced filer is required to submit the full resolution plan.

(D) The Board and Corporation may jointly approve or deny a waiver request, in whole or in part, in their discretion. Unless the Board and the Corporation have jointly approved a waiver request, the waiver request will be deemed denied on the date that is 12 months before the date by which the triennial full filer or triennial reduced filer is required to submit the full resolution plan to which the waiver request relates.

(E) An approved waiver request under this paragraph (d)(6)(ii) is effective for only the full resolution plan that immediately follows submission of the waiver request.

(e) *Access to information.* In order to allow evaluation of a resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. In order to facilitate review of any waiver request by a covered company under § \_\_\_\_ .3(a)(2) or paragraph (d)(6)(ii) of this section, or any joint identification of a critical operation of a covered company under § \_\_\_\_ .3(b), each covered company must provide such information and access to personnel of the covered company as the Board and the Corporation jointly determine is necessary to evaluate the waiver request or whether the operation is a critical operation. The Board and the Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(f) *Board of directors approval of resolution plan.* Before submission of a resolution plan under paragraphs (a) through (c) of this section, the resolution plan of a covered company shall be approved by:

(1) The board of directors of the covered company and noted in the minutes; or

(2) In the case of a foreign-based covered company only, a delegate acting under the express authority of the board of directors of the covered company to approve the resolution plan.

(g) *Resolution plans provided to the Council.* The Board shall make the resolution plans and updates submitted by the covered company pursuant to this section available to the Council upon request.

(h) *Required and prohibited assumptions.* In preparing its resolution plan, a covered company shall:

(1) Take into account that the material financial distress or failure of the covered company may occur under the severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B);

(2) Not rely on the provision of extraordinary support by the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company, including any resolution actions taken outside the United States that would eliminate the need for any of

a covered company's U.S. subsidiaries to enter into resolution proceedings; and

(3) With respect to foreign banking organizations, not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

(i) *Point of contact.* Each covered company shall identify a senior management official at the covered company responsible for serving as a point of contact regarding the resolution plan of the covered company.

(j) *Incorporation of previously submitted resolution plan information by reference.* Any resolution plan submitted by a covered company may incorporate by reference information from a resolution plan previously submitted by the covered company to the Board and the Corporation, provided that:

(1) The resolution plan seeking to incorporate information by reference clearly indicates:

(i) The information the covered company is incorporating by reference; and

(ii) Which of the covered company's previously submitted resolution plan(s) originally contained the information the covered company is incorporating by reference and the specific location of the information in the covered company's previously submitted resolution plan; and

(2) The covered company certifies that the information the covered company is incorporating by reference remains accurate in all respects that are material to the covered company's resolution plan.

(k) *Initial resolution plans after effective date.* (1) Notwithstanding anything to the contrary in paragraphs (a) through (c) or (d)(1) of this section, each company that is a covered company as of December 31, 2019 is required to submit its initial resolution plan after December 31, 2019, as provided in this paragraph (k). The submission date and resolution plan type for each subsequent resolution plan will be determined pursuant to paragraphs (a) through (d) of this section.

(i) *Biennial filers.* Each covered company that is a biennial filer on October 1, 2020 and remains a biennial filer as of July 1, 2021, is required to submit a targeted resolution plan pursuant to paragraph (a)(4) of this section on or before July 1, 2021.

(ii) *Triennial full filers.* Each covered company that is a triennial full filer on October 1, 2020 and remains a triennial full filer as of July 1, 2021 is required

to submit a targeted resolution plan pursuant to paragraph (b)(3) of this section on or before July 1, 2021.

(iii) *Triennial reduced filers.* Each covered company that is a triennial reduced filer on October 1, 2020 and remains a triennial reduced filer as of July 1, 2022 is required to submit a reduced resolution plan pursuant to paragraph (c)(3) of this section on or before July 1, 2022.

(2) With respect to any company that is a covered company as of December 31, 2019, and changes filings groups specified in paragraphs (a) through (c) of this section after October 1, 2020 and before the date by which it would be required to submit a resolution plan under paragraph (k)(1) of this section, the requirements for its initial resolution plan after it changes filing groups will be determined pursuant to paragraph (d)(1) of this section.

(3) Notwithstanding anything to the contrary in this paragraph (k), a covered company that has been jointly directed by the Board and the Corporation before December 31, 2019, to submit a resolution plan on or before July 1, 2020 describing changes it has made to its most recent resolution plan submission to address each shortcoming the agencies identified in that resolution plan shall submit a responsive resolution plan on or before July 1, 2020 in addition to any resolution plan that such covered company is otherwise required to submit under this section. The requirement to submit such a resolution plan on or before July 1, 2020 does not alter the timing or type of resolution plan any such covered company is required to submit under this section after July 1, 2020.

#### **§ 5.5 Informational content of a full resolution plan.**

(a) *In general*—(1) *Domestic covered companies.* A full resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

(2) *Foreign-based covered companies.* A full resolution plan of a covered company that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is a foreign banking organization shall include:

(i) The information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries, branches and agencies, and identified

critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States. With respect to the information specified in paragraph (g) of this section, the resolution plan of a foreign-based covered company shall also identify, describe in detail, and map to legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches, and agencies, and between those entities and:

(A) The identified critical operations and core business lines of the foreign-based covered company; and

(B) Any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and identified critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

(b) *Executive summary.* Each full resolution plan of a covered company shall include an executive summary describing:

(1) The key elements of the covered company's strategic plan for rapid and orderly resolution in the event of material financial distress at or failure of the covered company;

(2) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred);

(3) Changes to the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(2) of this section; and

(4) Any actions taken by the covered company since filing of the previous resolution plan to improve the effectiveness of the covered company's resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to effective and timely execution of the resolution plan.

(c) *Strategic analysis.* Each full resolution plan shall include a strategic analysis describing the covered company's plan for rapid and orderly resolution in the event of material financial distress or failure of the covered company. Such analysis shall:

(1) Include detailed descriptions of the:

(i) Key assumptions and supporting analysis underlying the covered company's resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan;

(ii) Range of specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, and its identified critical operations and core business lines in the event of material financial distress or failure of the covered company;

(iii) Funding, liquidity and capital needs of, and resources available to, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines, in the ordinary course of business and in the event of material financial distress at or failure of the covered company;

(iv) Covered company's strategy for maintaining operations of, and funding for, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines;

(v) Covered company's strategy in the event of a failure or discontinuation of a material entity, core business line or identified critical operation, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States; provided, however, if any such material entity is subject to an insolvency regime other than the Bankruptcy Code, a covered company may exclude that entity from its strategic analysis unless that entity either has \$50 billion or more in total assets or conducts an identified critical operation; and

(vi) Covered company's strategy for ensuring that any insured depository institution subsidiary of the covered company will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution);

(2) Identify the time period(s) the covered company expects would be needed for the covered company to successfully execute each material aspect and step of the covered company's plan;

(3) Identify and describe any potential material weaknesses or impediments to effective and timely execution of the covered company's plan;

(4) Discuss the actions and steps the covered company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified by the covered company, including a timeline for the remedial or other mitigatory action; and

(5) Provide a detailed description of the processes the covered company employs for:

(i) Determining the current market values and marketability of the core business lines, identified critical operations, and material asset holdings of the covered company;

(ii) Assessing the feasibility of the covered company's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the covered company's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the covered company, its material entities, identified critical operations and core business lines.

(d) *Corporate governance relating to resolution planning.* Each full resolution plan shall:

(1) Include a detailed description of:

(i) How resolution planning is integrated into the corporate governance structure and processes of the covered company;

(ii) The covered company's policies, procedures, and internal controls governing preparation and approval of the covered company's resolution plan;

(iii) The identity and position of the senior management official(s) of the covered company that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the covered company's resolution plan and for the covered company's compliance with this part; and

(iv) The nature, extent, and frequency of reporting to senior executive officers and the board of directors of the covered company regarding the development, maintenance, and implementation of the covered company's resolution plan;

(2) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the covered company since the date of the covered company's most recently filed resolution plan to assess the viability of or improve the resolution plan of the covered company; and

(3) Identify and describe the relevant risk measures used by the covered company to report credit risk exposures both internally to its senior management and board of directors, as well as any

relevant risk measures reported externally to investors or to the covered company's appropriate Federal regulator.

(e) *Organizational structure and related information.* Each full resolution plan shall:

(1) Provide a detailed description of the covered company's organizational structure, including:

(i) A hierarchical list of all material entities within the covered company's organization (including legal entities that directly or indirectly hold such material entities) that:

(A) Identifies the direct holder and the percentage of voting and nonvoting equity of each legal entity and foreign office listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity and foreign office identified;

(ii) A mapping of the covered company's identified critical operations and core business lines, including material asset holdings and liabilities related to such identified critical operations and core business lines, to material entities;

(2) Provide an unconsolidated balance sheet for the covered company and a consolidating schedule for all material entities that are subject to consolidation by the covered company;

(3) Include a description of the material components of the liabilities of the covered company, its material entities, identified critical operations and core business lines that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, the secured and unsecured liabilities, and subordinated liabilities;

(4) Identify and describe the processes used by the covered company to:

(i) Determine to whom the covered company has pledged collateral;

(ii) Identify the person or entity that holds such collateral; and

(iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the covered company;

(5) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the covered company and its material entities, including a mapping to its identified critical operations and core business lines;

(6) Describe the practices of the covered company, its material entities and its core business lines related to the booking of trading and derivatives activities;

(7) Identify material hedges of the covered company, its material entities, and its core business lines related to trading and derivative activities, including a mapping to legal entity;

(8) Describe the hedging strategies of the covered company;

(9) Describe the process undertaken by the covered company to establish exposure limits;

(10) Identify the major counterparties of the covered company and describe the interconnections, interdependencies and relationships with such major counterparties;

(11) Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the covered company; and

(12) Identify each trading, payment, clearing, or settlement system of which the covered company, directly or indirectly, is a member and on which the covered company conducts a material number or value amount of trades or transactions. Map membership in each such system to the covered company's material entities, identified critical operations and core business lines.

(f) *Management information systems.*

(1) Each full resolution plan shall include:

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the covered company and its material entities. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application, service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to the material entities, identified critical operations and core business lines of the covered company that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the covered company, its material entities, identified critical operations and core business lines use to monitor the financial health, risks, and operation of the covered company, its material entities, identified critical operations and core business lines;

(iv) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and

applications identified in paragraph (f) of this section; and

(v) A description and analysis of:

(A) The capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company, and to the Board, the information and data underlying the resolution plan; and

(B) Any gaps or weaknesses in such capabilities, and a description of the actions the covered company intends to take to promptly address such gaps, or weaknesses, and the time frame for implementing such actions.

(2) The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy the requirements of paragraph (f)(1)(v) of this section. The Board will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

(g) *Interconnections and interdependencies.* To the extent not provided elsewhere in this part, each full resolution plan shall identify and map to the material entities the interconnections and interdependencies among the covered company and its material entities, and among the identified critical operations and core business lines of the covered company that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its identified critical operations or core business lines. Such interconnections and interdependencies may include:

(1) Common or shared personnel, facilities, or systems (including information technology platforms, management information systems, risk management systems, and accounting and recordkeeping systems);

(2) Capital, funding, or liquidity arrangements;

(3) Existing or contingent credit exposures;

(4) Cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions, and cross-affiliate netting agreements;

(5) Risk transfers; and

(6) Service level agreements.

(h) *Supervisory and regulatory information.* Each full resolution plan shall:

(1) Identify any:

(i) Federal, state, or foreign agency or authority (other than a Federal banking agency) with supervisory authority or responsibility for ensuring the safety and soundness of the covered company,

its material entities, identified critical operations and core business lines; and

(ii) Other Federal, state, or foreign agency or authority (other than a Federal banking agency) with significant supervisory or regulatory authority over the covered company, and its material entities and identified critical operations and core business lines.

(2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and identified critical operations or core business lines of the covered company; and

(3) Include contact information for each agency identified in paragraphs (h)(1) and (2) of this section.

#### § \_\_\_\_ .6 Informational content of a targeted resolution plan.

(a) *In general.* A targeted resolution plan is a subset of a full resolution plan and shall include core elements of a full resolution plan and information concerning key areas of focus as set forth in this section.

(b) *Targeted resolution plan content.* Each targeted resolution plan of a covered company shall include:

(1) The core elements;

(2) Such targeted information as the Board and Corporation may jointly identify pursuant to paragraph (c) of this section;

(3) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred); and

(4) A description of changes to the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(3) of this section.

(c) *Targeted information requests.* No less than 12 months before the date by which a covered company is required to submit a targeted resolution plan, the Board and Corporation may jointly identify in writing resolution-related key areas of focus, questions, and issues that must also be addressed in the covered company's targeted resolution plan.

(d) *Deemed incorporation by reference.* If a covered company does not include in its targeted resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted

resolution plan, such information from its previously submitted resolution plan are incorporated by reference into its targeted resolution plan.

#### § \_\_\_\_ .7 Informational content of a reduced resolution plan.

(a) *Reduced resolution plan content.* Each reduced resolution plan of a covered company shall include:

(1) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan (or affirmation that no such material change has occurred); and

(2) A description of changes to the strategic analysis that was presented in the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (a)(1) of this section.

(b) *Deemed incorporation by reference.* If a covered company does not include in its reduced resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted resolution plan, such information from its previously submitted resolution plan are incorporated by reference into its reduced resolution plan.

#### § \_\_\_\_ .8 Review of resolution plans; resubmission of deficient resolution plans.

(a) *Review of resolution plans.* The Board and Corporation will seek to coordinate their activities concerning the review of resolution plans, including planning for, reviewing, and assessing the resolution plans, as well as such activities that occur during the periods between resolution plan submissions.

(b) *Joint determination regarding deficient resolution plans.* If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under § \_\_\_\_ .4 is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation shall jointly notify the covered company in writing of such determination. Any joint notice provided under this paragraph (b) shall be provided pursuant to paragraph (f) of this section and shall identify the deficiencies identified by the Board and Corporation in the resolution plan. A deficiency is an aspect of a covered company's resolution plan that the

Board and Corporation jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the covered company's resolution plan.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (b) of this section, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company shall submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation, and that discusses in detail:

(1) The revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation;

(2) Any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and

(3) Why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

(d) *Extensions of time.* Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time period under this section. Each extension request shall be supported by a written statement of the covered company describing the basis and justification for the request.

(e) *Joint determination regarding shortcomings in resolution plans.* The Board and Corporation may also jointly identify one or more shortcomings in a covered company's resolution plan. A shortcoming is a weakness or gap that raises questions about the feasibility of a covered company's resolution plan, but does not rise to the level of a deficiency for both the Board and Corporation. If a shortcoming is not satisfactorily explained or addressed before or in the submission of the covered company's next resolution plan, it may be found to be a deficiency in the covered company's next resolution plan. The Board and the Corporation may identify an aspect of a covered company's resolution plan as a deficiency even if such aspect was not identified as a shortcoming in an earlier resolution plan submission.

(f) *Feedback.* Following their review of a resolution plan, the Board and the Corporation will jointly send a

notification to each covered company that identifies any deficiencies or shortcomings in the covered company's resolution plan (or confirms that no deficiencies or shortcomings were identified) and provides any feedback on the resolution plan. The Board and the Corporation will jointly send the notification no later than 12 months after the later of the date on which the covered company submitted the resolution plan and the date by which the covered company was required to submit the resolution plan, unless the Board and the Corporation jointly determine in their discretion that extenuating circumstances exist that require delay.

**§ \_\_\_\_.9 Failure to cure deficiencies on resubmission of a resolution plan.**

(a) *In general.* The Board and Corporation may jointly determine that a covered company or any subsidiary of a covered company shall be subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the covered company or the subsidiary if:

(1) The covered company fails to submit a revised resolution plan under § \_\_\_\_.8(c) within the required time period; or

(2) The Board and the Corporation jointly determine that a revised resolution plan submitted under § \_\_\_\_.8(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under § \_\_\_\_.8(b).

(b) *Duration of requirements or restrictions.* Any requirements or restrictions imposed on a covered company or a subsidiary thereof pursuant to paragraph (a) of this section shall cease to apply to the covered company or subsidiary, respectively, on the date that the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § \_\_\_\_.8(b).

(c) *Divestiture.* The Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as are jointly identified by the Board and Corporation if:

(1) The Board and Corporation have jointly determined that the covered company or a subsidiary thereof shall be subject to requirements or restrictions pursuant to paragraph (a) of this section; and

(2) The covered company has failed, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions under paragraph (a) of this section was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § \_\_\_\_.8(b); and

(3) The Board and Corporation jointly determine that the divestiture of such assets or operations is necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company was to fail.

**§ \_\_\_\_.10 Consultation.**

Before issuing any notice of deficiencies under § \_\_\_\_.8(b), determining to impose requirements or restrictions under § \_\_\_\_.9(a), or issuing a divestiture order pursuant to § \_\_\_\_.9(c) with respect to a covered company that is likely to have a significant impact on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board—

(a) Shall consult with each Council member that primarily supervises any such subsidiary; and

(b) May consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

**§ \_\_\_\_.11 No limiting effect or private right of action; confidentiality of resolution plans.**

(a) *No limiting effect on bankruptcy or other resolution proceedings.* A resolution plan submitted pursuant to this part shall not have any binding effect on:

(1) A court or trustee in a proceeding commenced under the Bankruptcy Code;

(2) A receiver appointed under title II of the Dodd-Frank Act (12 U.S.C. 5381 *et seq.*);

(3) A bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or

(4) Any other authority that is authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

(b) *No private right of action.* Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

(c) *Form of resolution plans—*(1) *Generally.* Each full, targeted, and

reduced resolution plan of a covered company shall be divided into a public section and a confidential section. Each covered company shall segregate and separately identify the public section from the confidential section.

(2) *Public section of full and targeted resolution plans.* The public section of a full or targeted resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

- (i) The names of material entities;
- (ii) A description of core business lines;
- (iii) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;
- (iv) A description of derivative activities and hedging activities;
- (v) A list of memberships in material payment, clearing and settlement systems;
- (vi) A description of foreign operations;
- (vii) The identities of material supervisory authorities;
- (viii) The identities of the principal officers;
- (ix) A description of the corporate governance structure and processes related to resolution planning;
- (x) A description of material management information systems; and
- (xi) A description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities, and its core business lines.

(3) *Public section of reduced resolution plans.* The public section of a reduced resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

- (i) The names of material entities;
- (ii) A description of core business lines;
- (iii) The identities of the principal officers; and
- (iv) A description, at a high level, of the covered company's resolution strategy, referencing the applicable resolution regimes for its material entities.

(d) *Confidential treatment of resolution plans.* (1) The confidentiality

of resolution plans and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules).

(2) Any covered company submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to section 18(x) of the Federal Deposit Insurance Act (12 U.S.C. 1828(x)).

#### § \_\_.12 Enforcement.

The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under § \_\_.9(a) or (c). The Board, in consultation with the Corporation, may take any action to address any violation of this part by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

[END OF COMMON TEXT]

#### List of Subjects

##### 12 CFR Part 243

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 381

Administrative practice and procedure, Banks, Banking, Holding

companies, Reporting and recordkeeping requirements, Resolution plans.

#### Adoption of the Common Rule Text

The adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

### BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

#### 12 CFR Chapter II

#### Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System revises part 243 to 12 CFR chapter II as set forth in the text of the common rule at the end of the preamble and further amends 12 CFR part 243 as follows:

### PART 243—RESOLUTION PLANS (REGULATION QQ)

■ 1. The authority citation for part 243 continues to read as follows:

**Authority:** 12 U.S.C. 5365.

■ 2. The heading of part 243 is revised to read as set forth above.

■ 3. In § 243.1, amend paragraph (a) by adding a sentence at the end to read as follows:

#### § 243.1 Authority and scope.

(a) \* \* \* The Board is also issuing this part pursuant to section 165(a)(2)(C) of the Dodd-Frank Act.

\* \* \* \* \*

■ 4. Add § 243.13 to read as follows:

#### § 243.13 Additional covered companies.

An additional covered company is any bank holding company or any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) that is:

(a) Identified as a category II banking organization pursuant to § 252.5 of this title;

(b) Identified as a category III banking organization pursuant to § 252.5 of this title; or

(c) Made subject to this part by order of the Board.

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Chapter III****Authority and Issuance**

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation revises part 381 to 12 CFR chapter III as set forth in the text of the common rule at the end of the preamble and further amends 12 part 381 as follows:

**PART 381—RESOLUTION PLANS**

- 5. The authority citation for part 381 continues to read as follows:

**Authority:** 12 U.S.C.5365(d).

**§ 381.2 [Amended]**

- 6. In § 381.2, in paragraph (1)(v) of the definition of “covered company”, add the words “of this title” after the phrase “pursuant to § 243.13”.

By order of the Board of Governors of the Federal Reserve System, October 23, 2019.

**Margaret McCloskey Shanks,**  
*Deputy Secretary of the Board.*

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 15, 2019.

**Annamarie H. Boyd,**  
*Assistant Executive Secretary.*

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