

FEDERAL RESERVE SYSTEM

12 CFR Part 225

Regulation Y; Docket No. [●]

RIN [●]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064-AD77

RESOLUTION PLANS AND CREDIT EXPOSURE REPORTS REQUIRED.

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

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board and the Corporation request comment on this proposed rule that implements the requirements in Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) regarding resolution plans and credit exposure reports. Section 165(d) requires each nonbank financial company supervised by the Board and each bank holding company with assets of \$50 billion or more to report periodically to the Board, the Corporation, and the Financial Stability Oversight Council (the “Council”) (i) the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, and (ii) the nature and extent of credit exposures of such company to significant bank holding companies and significant nonbank financial companies and the nature and extent of the credit exposures of significant bank holding companies and significant nonbank financial companies to such company. Section 165(d)(8) of the Dodd-Frank Act requires the Board and the FDIC to jointly issue final rules implementing section 165(d) by not later than January 21, 2012.

DATES: Comments should be received on or before [●].

ADDRESSES: Comments should be directed to:

Board: You may submit comments, identified by Docket No. [●] and RIN no. [●], by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board's website at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Street, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

Corporation: You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Agency Web site:** <http://www.FDIC.gov/regulations/laws/federal/propose.html>

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, **Federal Deposit Insurance Corporation**, 550 17th Street, NW, Washington, DC 20429.
- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- **E-mail:** comments@FDIC.gov.

Instructions: Comments submitted must include “FDIC” and “RIN 3064-AD77.” Comments received will be posted without change to

<http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Board: Barbara J. Bouchard, Senior Associate Director, (202) 452-3072, or Avery I. Belka, Counsel, (202) 736-5691, Division of Banking Regulation and Supervision; or Dominic A. Labitzky, Senior Attorney, (202) 452-3428, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

Corporation: Joseph Fellerman, Senior Program Analyst, (202) 898-6591, Office of Complex Financial Institutions, Richard T. Aboussie, Associate General Counsel, (703) 562-2452, David N. Wall, Assistant General Counsel, (703) 562-2440, Mark A. Thompson, Counsel, (703) 562-2529, or Mark G. Flanigan, Counsel, (202) 898-7426 Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background.

To promote financial stability, section 165(d) of the Dodd-Frank Act requires each nonbank financial company supervised by the Board and each bank holding company with total consolidated assets of \$50 billion or more to periodically submit to the Board, the Corporation

and the Council a plan for such company's rapid and orderly resolution in the event of material financial distress or failure, and a report on the nature and extent of credit exposures of such company to significant bank holding companies and significant nonbank financial companies and the nature and extent of credit exposures of significant bank holding companies and significant nonbank financial companies to such company.¹ This proposed rule would implement the resolution plan and credit exposure reporting requirements set forth in section 165(d) of the Dodd-Frank Act.

Section 165(d) provides regulators with the ability to conduct advance resolution planning for a covered company. As demonstrated by the Corporation's experience in failed bank resolutions, as well as the Board's and the Corporation's experience in the recent crisis, advance planning is critical for an efficient resolution of a company subject to the proposed rule.² Advance planning has long been a component of resiliency and recovery planning by financial companies. The Dodd-Frank Act requires that certain financial companies incorporate resolution planning into their overall business planning processes. In preparing for an orderly liquidation under Title II of the Dodd-Frank Act of a financial company, the Corporation will have access to the information included in such company's resolution plan. Advance knowledge of and access to this information will be a vital element in the Corporation's resolution planning for such a company. The resolution plan will help regulators to better understand a firm's business and how that entity may be resolved, and will also enhance the regulators' understanding of foreign operations in an effort to develop a comprehensive and coordinated resolution strategy for a cross-border firm.

¹ See generally 12 U.S.C. § 5365(d).

² The ability to undertake advance planning for the resolution of any financial institution, from small banks to globally active financial companies, is a precondition for effective crisis management and resolution.

The Dodd-Frank Act requires each company covered by the proposed rule to produce a resolution plan, or “living will,” that includes information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company; full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company; identification of the cross-guarantees tied to different securities; identification of major counterparties; a process for determining to whom the collateral of the company is pledged; and any other information that the Board and the Corporation jointly require by rule or order. The proposed rule would require a strategic analysis by the covered company of how it can be resolved under Title 11 of the U.S. Code (the “Bankruptcy Code”) in a way that would not pose systemic risk to the financial system. In doing so, the company must map its business lines to material legal entities and provide integrated analyses of its corporate structure; credit and other exposures; funding, capital and cash flows; the domestic and foreign jurisdictions in which it operates; supporting information systems for core business lines; and critical operations. The credit exposure reports required by the statute will also provide important information critical to ongoing risk management and advance planning processes by identifying the company’s significant credit exposures and other key information across the entity and its related entities.

II. Overview of Proposed Rule.

Section 165(d)(8) of the Dodd-Frank Act requires the Board and the Corporation to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act. The proposed rule applies to each “Covered Company”, which term includes any bank holding company with \$50 billion or more in total consolidated assets, as determined based on the

average of the company's four most recent Consolidated Financial Statements for Bank Holding Companies as reported on the Federal Reserve's FR Y-9C. It also 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 1978³ and that had \$50 billion or more in total consolidated assets, as determined based on the foreign bank's or company's most recent annual or, as applicable, the average of the four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y-7Q. In addition, a "Covered Company" includes any nonbank financial company 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 Dodd-Frank Act requires that, in applying the requirements of section 165(d) to any foreign nonbank financial company supervised by the Board or any foreign-based bank holding company, the Board give due regard to the principle of national treatment and equality of competitive opportunity and take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.⁴

The proposed rule requires that each Covered Company periodically submit to the Board and Corporation (i) a plan for the rapid and orderly resolution of the Covered Company under the Bankruptcy Code in the event of material financial distress or failure of the Covered Company ("Resolution Plan"); and (ii) a report on the nature and extent to which the Covered Company has credit exposure to other significant nonbank financial companies and significant bank holding companies and on the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to the Covered

³ 12 U.S.C. 3106(a).

⁴ 12 U.S.C. 5365(b)(2).

Company (“Credit Exposure Report”). The proposal would establish rules and requirements regarding the submission and content of a Resolution Plan and a Credit Exposure Report, as well as procedures and standards for review by the Board and Corporation of a Resolution Plan. The Board would make such reports available to the Council upon request.

Section-by-Section Analysis

Definitions. Section _____.2 of the proposed rule defines certain terms, including “rapid and orderly resolution,” “material financial distress,” “core business lines,” “critical operations” and “material entities,” which are key definitions in the proposed rule.

“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 outside 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.⁵ Under the proposed rule each Resolution Plan submitted should provide for the rapid and orderly resolution of the Covered Company.

“Material financial distress” with regard to a Covered Company means that: (i) 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; (ii) the assets of the Covered Company are, or are likely to be, less than its obligations to creditors and others; or (iii) 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.

⁵ If an entity is subject to an insolvency regime other than the Bankruptcy Code, the analysis should be in reference to that applicable regime.

Under the proposed rule, each Resolution Plan submitted should provide for the rapid and orderly resolution of the Covered Company in the event of material financial distress or failure of the Covered Company. The Resolution Plan also should take into consideration that the event of material financial distress may be idiosyncratic or may occur at a time when financial markets, or other significant companies, are also under stress.

“Core business lines” means those business lines, including associated operations, services, functions and support that, in the firm’s view, upon failure would result in a material loss of revenue, profit, or franchise value. The Resolution Plan should address how the resolution of the Covered Company will affect the core business lines.

“Critical operations” are those operations, including associated services, functions and support that, in the view of the Covered Company or as jointly directed by the Board and the Corporation, upon a failure of, or discontinuance of such operations, would likely result in a disruption to the U.S. economy or financial markets. The Resolution Plan should address and provide for the continuation and funding of critical operations.

“Material entity” means a subsidiary or foreign office of the Covered Company that is significant to the activities of a critical operation or core business line.

Resolution Plan required. Section _____.3 of the proposed rule requires each Covered Company to submit a Resolution Plan within 180 days of the effective date of the final rule, or within 180 days of such later date as the company becomes a Covered Company.

The proposed rule specifies the minimum content of a Resolution Plan. The Board and the Corporation recognize that plans will vary by company and, in their evaluation of plans, will take into account variances among companies in their core business lines, critical operations,

foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors.

After the initial Resolution Plan is submitted, each Covered Company would be required to submit a new Resolution Plan no later than 90 days after the end of each calendar year.

A Covered Company would be required to file an updated Resolution Plan within a time period specified by the Board and the Corporation, but no later than 45 days after any event, occurrence, change in conditions or circumstances or change which results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the Covered Company. An update should describe the event, any material effects that the event may have on the Resolution Plan and any actions the Covered Company has taken or will take to address such material effects.

Material changes may include, but are not limited to, any of the following—

(A) A significant acquisition, or series of such acquisitions, by the Covered Company;

(B) A significant sale, other divestiture, or series of such transactions, by the Covered Company;

(C) A discontinuation of the business of, or dissipation of the assets of the Covered Company, a material entity, core business line or critical operation;

(D) The bankruptcy or insolvency of a material entity;

(E) A material reorganization of the Covered Company;

(F) The loss of a material servicing subsidiary or material servicing contract;

(G) The unavailability or loss of a significant correspondent or counterparty relationship, source of funding or liquidity utilized by the Covered Company, a material entity, a core business line or critical operation;

(H) The transfer or relocation of 5 percent or more of the total consolidated United States (domestic) assets of the Covered Company to a location(s) outside of the United States;

(I) A reduction in the market capitalization or book value of the consolidated capital of 5 percent or more of the Covered Company as of the end of the previous calendar yearend; or

(J) The transfer, termination, suspension or revocation of any material license or other regulatory authorization required to conduct a core business line or critical operation.

Upon request, the Board and the Corporation may waive a requirement that a Covered Company file an update of a Resolution Plan. The Board and the Corporation may also require an update for any other reason, more frequent submissions or updates, and may extend the time period that a Covered Company has to submit its Resolution Plan or update.

The board of directors of the Covered Company would be required to approve the initial and each annual Resolution Plan filed. A delegee of the board of directors of the Covered Company, rather than the board of directors of the Covered Company, may approve updates to a Resolution Plan. In the case of a foreign-based Covered Company, a delegee of the board of the directors of such organization may approve the initial Resolution Plan and any updates to a Resolution Plan.

Informational Content of a Resolution Plan. Subpart _____.4 of the proposed rule sets forth the minimum informational content requirements of a Resolution Plan. A Covered Company that is domiciled in the United States would be required to provide information with regard to both its U.S. operations and its foreign operations. A foreign-based Covered Company would be required to provide information regarding its U.S. operations, an explanation of how resolution planning for its U.S. operations is integrated into the foreign-based Covered Company's overall contingency planning process and information regarding the interconnections and interdependencies among its U.S. operations and its foreign-based operations.

Each Resolution Plan would be required to contain an executive summary, a strategic analysis of the plan's components, a description of the Covered Company's corporate governance structure for resolution planning, information regarding the Covered Company's overall organization structure and related information, information regarding the Covered Company's management information systems, a description of interconnections and interdependencies among the Covered Company and its material entities, and supervisory and regulatory information.

The executive summary should summarize the key elements of the Covered Company's strategic plan, material changes from the most recently filed plan, and any actions taken by the Covered Company to improve the effectiveness of the Resolution Plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the plan.

The strategic analysis of how the resolution plan can be implemented to facilitate a rapid and orderly resolution is the foundation for any credible plan. The strategic analysis should describe the Covered Company's critical thinking detailing how, in practice, it could be resolved

under the Bankruptcy Code. As a result, the strategic analysis should include the analytical support for the plan, its key assumptions, 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. The strategic analysis should include detailed information as to how, in the event of material financial distress or failure of the Covered Company, a reorganization or liquidation of the Covered Company (or, in the case of a Covered Company that is incorporated or organized in a jurisdiction outside the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code could 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. The strategic analysis of the Covered Company's resolution plan must also identify the 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, critical operations and core business lines in the event of material financial distress or failure of the Covered Company.

Funding, liquidity, support functions, and other resources, including capital resources, should be identified and mapped to the Covered Company's material entities, core business lines and critical operations. The Covered Company's strategy for maintaining and funding the critical operations and core business lines in an environment of material financial distress and in the implementation and execution of its resolution plan should be provided and mapped to its material entities. The Covered Company's strategic analysis should demonstrate how such resources would be utilized to facilitate an orderly resolution in an environment of material financial distress. The Covered Company should also provide its strategy in the event of a

failure or discontinuation of a material entity, core business line or 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 company and the United States. In addition, a Covered Company would be required to provide its strategy for ensuring that any insured depository institution subsidiary 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).

The analytical mapping of the core business lines and critical operations of the Covered Company and the mapping of funding, liquidity, critical service support, and other resources to legal entities should demonstrate how those core business lines and critical operations could be resolved and transferred to potential acquirers. This analysis should demonstrate how these critical elements of the business operations could survive in an environment of material financial distress as well as the failure or insolvency of one or more entities within the Covered Company. This is particularly important for internal as well as external service level agreements that provide the business services essential for continued operation of the core business lines and critical operations.

The description of the Covered Company's corporate governance structure for resolution planning should include information regarding how resolution planning is integrated into the corporate governance structure and processes of the Covered Company and identify the senior management official that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the Resolution Plan and for the Covered Company's compliance with the proposed rule. The requirements in the proposed rule are minimums and the size of the corporate governance structure is expected to vary based upon the size and complexity of the

Covered Company. For the largest and most complex companies, it may be necessary to establish a central planning function that is headed by a senior management official. Such official would report to the Chief Risk Officer or Chief Executive Officer and periodic reports on resolution planning would be made to the board of directors.

The information regarding the Covered Company's overall organization structure and related information should include a hierarchical list of all material entities, jurisdictional and ownership information. This information should be mapped to core business lines and critical operations. An unconsolidated balance sheet for the Covered Company and a consolidating schedule for all entities that are subject to consolidation should be provided. The Resolution Plan should include information regarding material assets, liabilities, derivatives, hedges, capital and funding sources and major counterparties. Material assets and liabilities should be mapped to material entities along with location information. An analysis of whether the bankruptcy of a major counterparty would likely have an adverse effect on and result in the material financial distress or failure of the Covered Company should also be included. Trading, payment, clearing and settlement systems utilized by the Covered Company should be identified. The Covered Company would not need to identify trading, payment, clearing and settlement systems that are immaterial in resolution planning, such as a local check clearing house.

For a Covered Company with foreign operations, the plan should identify the extent of the risks related to its foreign operations and the Covered Company's strategy for addressing such risks. These elements of the Resolution Plan should take into consideration, and address through practical responses, the complications created by differing national laws, regulations, and policies. This analysis should include a mapping of core business lines and critical operations to legal entities operating in or with assets, liabilities, operations, or service providers

located in foreign jurisdictions. The continued ability to maintain core business lines and critical operations in these foreign jurisdictions during material financial distress and insolvency proceedings should be evaluated and practical steps identified to address weaknesses or vulnerabilities.

The proposed rule requires the Covered Company to provide information regarding its management information systems supporting its core business lines and critical operations, including information regarding the legal ownership of such systems as well as associated software, licenses, patents and other intellectual property. The analysis and practical steps that are identified by the Covered Company should address the continued availability of the key management information systems that support core business lines and critical operations both within the United States and in foreign jurisdictions.

The proposed rule also requires the Covered Company to provide a description of interconnections and interdependencies among the Covered Company and its material entities and affiliates, and among the 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 critical operations or core business lines. As noted above, the continued availability of key services and supporting business operations to core business lines and critical operations in an environment of material financial distress and after insolvency should be a focus of resolution planning. Steps to ensure that service level agreements for such services, whether provided by internal or external service providers, survive insolvency should be demonstrated in the Resolution Plan.

The plan should identify the Covered Company's supervisory authorities and regulators, including information identifying any foreign agency or authority with supervisory authority over material foreign-based subsidiaries or operations.

The proposed rule requires the Resolution Plan to include a description of the Covered Company's processes and systems to collect, maintain, and report the information and other data underlying the Resolution Plan. The Resolution Plan should identify any deficiencies in such processes and systems and discuss plans to remedy such deficiencies. The Covered Company should, within a reasonable period of time after the effective date of the rule as determined by the Board and the Corporation, be able to demonstrate its capability to promptly produce, in a format acceptable to the Board and the Corporation, the data underlying the key aspects of the Resolution Plan. A covered company should also identify any deficiencies in its systems and processes to collect, maintain, and report such information and discuss its plans to remedy such deficiencies.

Informational content of a Credit Exposure Report. Subpart _____.5 of the proposed rule requires each Covered Company to submit to the Board and the Corporation a Credit Exposure Report on a quarterly basis. Each Credit Exposure Report is required to set forth the nature and extent of credit exposures of such company to significant bank holding companies and significant nonbank financial companies as well as the credit exposures of significant bank holding companies and significant nonbank financial companies to such company. The proposed rule specifies the credit exposures to be reported.

A Credit Exposure Report submitted by a Covered Company that is a company incorporated or organized in a country other than the United States (other than a bank holding

company) or that is a foreign banking organization would be required to include only information with respect to its subsidiaries and operations that are domiciled in the United States.

With regard to the proposed content of the Credit Exposure Reports, the Board and the Corporation note that there are several other initiatives underway or contemplated, such as the data to support the Board's single counterparty credit exposure limits and stress testing responsibilities under the Dodd-Frank Act. The Board and the Corporation will ensure that data collected through these other initiatives and the Credit Exposure Report will be coordinated and harmonized to the extent possible so as to minimize redundant data collections and allow maximum data quality. It is anticipated that proposed reporting requirements associated with this and other regulations under the Dodd-Frank Act, will be issued for public comment later this year and will provide additional clarity around the definition of credit exposure for each asset class listed in Subpart ____5.

Review of Resolution Plans; resubmission of deficient Resolutions Plans. Subpart ____6 of the proposed rule sets forth procedures regarding the review of Resolution Plans. As proposed, when a Covered Company submits a Resolution Plan, the Resolution Plan will be reviewed initially to determine whether it appears to contain the elements set forth in the proposed rule and to be informationally complete. Within 60 calendar days of receiving a Resolution Plan, the Board and the Corporation will determine and acknowledge whether the Resolution Plan satisfies the minimum informational requirements and should be accepted for further review. If the Board and the Corporation determine that a Resolution Plan is informationally incomplete or that substantial additional information is necessary to facilitate further review, the Board and the Corporation will inform the Covered Company in writing of the area(s) in which the Resolution Plan is informationally incomplete or with respect to which

additional information is required. The Covered Company would be required to resubmit an informationally complete Resolution Plan or such additional information as jointly requested to facilitate review of the Resolution Plan no later than 30 days after receiving such notice or such other time period as the Board and Corporation may jointly determine.

After a Resolution Plan is accepted for review, the Board and Corporation would review the plan for its compliance with the requirements of the proposed rule. If, following such review, the Board and the Corporation jointly determine that the Resolution Plan of a Covered Company submitted under this subpart is not credible or would not facilitate an orderly resolution of the Covered Company under the Bankruptcy Code, the Board and Corporation would jointly notify the Covered Company in writing of such determination. Such notice would identify the aspects of the Resolution Plan that the Board and Corporation jointly determined to be deficient and request the resubmission of a Resolution Plan that remedies the deficiencies of the Resolution Plan.

Within 90 days of receiving such notice of deficiencies, or such shorter or longer period as the Board and Corporation may jointly determine, a Covered Company would be required to submit a revised Resolution Plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation. The revised Resolution Plan would be required to discuss in detail: (i) the revisions made by the Covered Company to address the deficiencies jointly identified by the Board and the Corporation; (ii) 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 (iii) 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.

Upon a written request by a Covered Company, the Board and Corporation may jointly extend the time to resubmit a revised Resolution Plan. Any extension request would have to be supported by a written statement of the company describing the basis and justification for the request.

Failure to cure deficiencies on resubmission of a Resolution Plan. Subpart _____.7 provides that, if the Covered Company fails to submit a revised Resolution Plan or the Board and the Corporation jointly determine that a revised Resolution Plan submitted does not adequately remedy the deficiencies identified by the Board and the Corporation, then the Board and Corporation may jointly subject a Covered Company or any subsidiary of a Covered Company to more stringent capital, leverage, or liquidity requirements, or restrictions on growth, activities, or operations. Any such requirements or restrictions shall apply to the Covered Company or subsidiary, respectively, until the Board and the Corporation jointly determine the Covered Company has submitted a revised Resolution Plan that adequately remedies the deficiencies identified. In addition, if the Covered Company fails, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions was made, to submit a revised Resolution Plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation, then the Board and Corporation, in consultation with the Council, may jointly, by order, direct the Covered Company to divest such assets or operations as the Board and Corporation jointly determine necessary to facilitate an orderly resolution of the Covered Company under the Bankruptcy Code in the event the company were to fail.

Consultation. Subpart _____.8 of the proposed rule provides that, prior to issuing any notice of deficiencies, determining to impose requirements or restrictions on a Covered Company, or issuing a divestiture order with respect to a Covered Company that is likely to have a significant effect on a functionally regulated subsidiary or a depository institution subsidiary of the Covered Company, the Board shall consult with each Council member that primarily supervises any such subsidiary and may consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

No limiting effect or private right of action; confidentiality of Resolution Plans and Credit Exposure Reports. Subpart _____.9 of the proposed rule provides that a Resolution Plan submitted shall not have any binding effect on: (i) a court or trustee in a proceeding commenced under the Bankruptcy Code; (ii) a receiver appointed under Title II of the Dodd-Frank Act, 12 U.S.C. § 5381 *et seq.*; (iii) a bridge financial company chartered pursuant to 12 U.S.C. § 5390(h); or (iv) 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.

The proposed rule further provides that nothing in the rule creates or is intended to create a private right of action based on a Resolution Plan prepared or submitted under this subpart or based on any action taken by the Board or the Corporation with respect to any Resolution Plan submitted under this subpart.

Any Covered Company submitting a Resolution Plan or Credit Exposure Report that desires confidential treatment of the information submitted must file a request for confidential treatment in the manner set forth in the proposed rule.

Enforcement. Subpart _____.10 of the proposed rule provides that the Board and Corporation may jointly enforce an order jointly issued under section _____.7(a) or _____.7(c) of the proposed rule. Furthermore, the Board, in consultation with the Corporation, may address any violation of the rule by a Covered Company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

III. Request for Comments

The Board and the Corporation seek comment on all aspects of the proposed rule, including the following:

Scope

Should a Covered Company for purposes of the rule be defined as any bank holding company that had \$50 billion or more in total consolidated assets, based on the average of the Covered Company's *four* most recent Consolidated Financial Statements? Should the average be calculated over a shorter period of time (e.g. two quarters)? Why might an alternative method for defining the \$50 billion asset threshold be more appropriate? What alternative approaches to prescribing asset thresholds for the purpose of defining a "Covered Company" should be considered?

Definitions

1. What terms defined by the proposal require further clarification and how should they be defined?
2. What other terms used in the proposal should the Board and Corporation define?

Strategic Analysis

1. What additional elements of strategic analysis should be included in the Covered Company's Resolution Plan? Are there any elements listed in the rule that create an unnecessary burden or that should not be included in the Covered Company's Resolution Plan?
2. How can the requirements regarding the strategic analysis be improved to provide additional clarity?
3. What are the types of strategies that should be described regarding the manner and extent to which a depository institution could be protected from the risks arising from the activities of its nonbank affiliates?

Governance

1. What additional resolution planning governance and oversight requirements should the proposed rule include?
2. What alternative governance requirements might exist that would ensure that a Covered Company places adequate importance and attention on resolution planning?

Informational Elements

1. What additional informational elements should the proposal require as part of a Resolution Plan? What impediments attend collection and production of the informational elements identified by the proposal? What impediments apply to collection and production of additional informational elements you have identified?
2. Do the informational elements described in the proposal capture the correct types of information for resolution planning? Are any of the informational elements identified in the proposal not necessary?
3. Which of the information elements described in the proposal could be clarified?

4. To the extent any of the informational elements identified in the proposed rule are not readily available, identify the burden of or impediment to (e.g. technology limits, confidentiality concerns, etc.) obtaining and reporting such information? What changes could the Board and Corporation make to the proposal to reduce burdens and impediments?
5. Should any informational elements be required to be available on an “on demand” basis? What impediments apply to making such information available on demand?
6. What is the burden related to producing an unconsolidated balance sheet and providing consolidating schedules? What alternatives could the Board and Corporation include in the proposal to reduce that burden?

Foreign—based Organizations

1. The proposal would require foreign companies that are bank holding companies or are treated as bank holding companies under the International Banking Act and that have at least \$50 billion in worldwide assets to prepare resolution plans and credit exposure reports with respect only to their U.S.-domiciled subsidiaries and operations. What are the issues that arise with respect to foreign banking organizations that would be subject to the proposed rule? What alternative means could the Board and Corporation employ to implement the resolution plan and credit exposure report requirements of the Dodd-Frank Act with respect to foreign banking organizations?
2. To the extent that foreign jurisdictions do not impose a recovery or resolution plan requirement on a foreign-based Covered Company, how should the proposed Resolution Plan related to U.S. operations be linked to the contingency planning process of the Covered Company?

Process

1. Are the proposed timelines for Resolution Plan and Credit Exposure Report submission (i.e. initial, annual and interim updates) adequate for the Covered Company to develop and submit the information required by the proposed rule? If not, what timelines would be appropriate?
2. With regard to the provision of the proposed rule that would require a Covered Company to update its Resolution Plan upon a material event, occurrence, or change, should the rule provide greater specificity (e.g., in terms of a dollar amount or percentage of assets acquired or disposed of in a significant transaction)?
3. Are there explicit factors the Board and the Corporation should consider in determining whether a Resolution Plan is not credible or would not facilitate an orderly resolution under Title 11 of the United States Code?

Credit Exposure Reports

1. Are the elements proposed for inclusion in the Credit Exposure Reports sufficiently clear? What further clarification would be appropriate? Is there other information that would provide a clearer picture of the credit exposures associated with a Covered Company?
2. Does the proposal adequately capture cross-border exposures?
3. What other types of credit exposures should be covered by the proposed rule?

IV. Administrative Law Matters

A. Paperwork Reduction Act Analysis

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

- (a) Whether the collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- (b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be addressed to:

Board: You may submit comments, identified by the Docket number, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* regs.comments@federalreserve.gov. Include docket number in the subject

line of the message.

- *FAX*: 202–452–3819 or 202–452–3102.
- *Mail*: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board’s Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board’s Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by facsimile to 202–395–6974, Attention: Federal Banking Agency Desk Officer.

B. Proposed Information Collection

Title of Information Collection: Resolution Plans and Credit Exposure Reports

Frequency of Response: Varied—some requirements are done at least quarterly, some at least annually, and some are event-generated.

Affected Public:

Bank holding companies, foreign banking organizations, and nonbank financial companies

Abstract: The information collection requirements are found in subparts .3, .4, .5, and .6 of the proposed rule. These requirements would implement the resolution plan and credit exposure reporting requirements set forth in Section 165(d) of the Dodd-Frank Act. Since the Board

supervises all of the respondents, the Board will take all of the paperwork burden associated with this information collection.

Subpart .3 sets forth the requirements for resolution plans to be filed initially, annually, and on an interim basis following material events. Subpart .4 details the information to be included in the resolution plans. Organizational structure information required in Subpart .4 may be incorporated by reference to information previously reported to the Board (FR Y-6, Annual Report of Bank Holding Companies; FR Y-7, Annual Report of Foreign Banking Organizations; and FR Y-10, Report of Changes in Organizational Structure; OMB No. 7100-0297). Subpart .5 details the information to be provided in the Credit Exposure Reports. Subpart .6 includes a written request for institutions to request an extension of time to resubmit the resolution plan where additional information is necessary, or deficiencies have been identified by the agencies.

Estimated Burden

The burden associated with this collection of information may be summarized as follows:

	Number of Respondents	Annual Frequency	Hourly Estimate	Total Hours
Initial Paperwork Burden				
Initial Resolution Plan	124	1	7,200	892,800
Additional Information Requests	24	2	1,000	48,000
Credit Exposure Report initial	124	1	3,200	396,800
Total				1,337,600
Ongoing Paperwork Burden				
Annual Resolution Plan	124	1	800	99,200
Interim Updates to Resolution Plan	12	1	800	9,600
Request for Extension to Resubmit	24	1	1	24
Credit Exposure Report ongoing	124	4	320	158,720
Total				267,544

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment.⁶ The proposed rule would apply only to nonbank financial companies determined to be systemically important by the Council and subjected to supervision by the Board, and bank holding companies with \$50 billion or greater in total consolidated assets. With respect to a nonbank financial company, the proposed rule would apply only to such a company that is designated as systemically important because material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company could pose a threat to the financial stability of the United States. Although company's size is one of several factors to be considered by the Council in determining whether a nonbank financial company is systemically important, a small company is not likely to have such extensive or significant business operations as to pose a threat to the U.S. financial system. As a result, it is unlikely that the proposed rule will apply to a substantial number of small entities. Therefore, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis under the RFA is not required.

C. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board and the Corporation have sought to present the proposed rule in a simple and straightforward manner. The Board and the

⁶ See 5 U.S.C. 603, 604 and 605.

Corporation invite comment on how to make the proposed rule easier to understand. For example:

- Is the material organized to suit your needs? If not, how could they present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

**D. The Treasury and General Government Appropriations Act, 1999—
Assessment of Federal Regulations and Policies on Families**

The Corporation has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects

12 CFR Part 360

[Resolution and receiverships, Holding companies, Reporting and recordkeeping requirements.]

12 CFR Part 225

[Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.]

Adoption of Common Rule

The adoption of the proposed 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 stated in the common preamble, the Board proposes to amend Regulation Y, 12 CFR Part 225, as set forth below:

Proposed Rules

The Board proposes to adopt rules under part 225 of Title 12, Chapter II of the Code of Federal regulations, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (Regulation Y)

1. The Authority citation for part 225 shall read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1851, 1972(1), 3106, 3108, 3310, 3331-3351, 3907, 3909, and 5365; 15 U.S.C. 6801 and 6805.

2. Add Subpart [●] to part 225 to read as follows:

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

The Corporation proposes to amend part 360 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 360 – RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101-73, 103 Stat. 357, 12 U.S.C. 5365(d).

2. Add subpart [●] to part 360 to read as follows:

SUBPART [●] — RESOLUTION PLANS AND CREDIT EXPOSURE REPORTS.

Sec.

[---].1 Authority and scope.

[---].2 Definitions.

[---].3 Resolution Plan required.

[---].4 Informational content of a Resolution Plan.

[---].5 Credit Exposure Report required and informational content.

[---].6 Review of Resolution Plans; resubmission of deficient Resolution Plans.

[---].7 Failure to cure deficiencies on resubmission of a Resolution Plan.

[---].8 Consultation.

[---].9 No limiting effect or private right of action; confidentiality of Resolution Plans and Credit Exposure Reports.

[---].10 Enforcement.

[---].1 Authority and scope.

(a) Authority. This subpart is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. No. 111-203, 124 Stat. 1376, 1426-1427), 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 subpart applies to each Covered Company and:

(1) Requires that each Covered Company periodically submit to the Board and Corporation:

(i) A report regarding the plan of the Covered Company for rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress at or failure of the Covered Company (Resolution Plan); and

(ii) A report on the nature and extent to which:

(A) The Covered Company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) Other significant nonbank financial companies and significant bank holding companies have credit exposure to the Covered Company (Credit Exposure Report); and

(2) Establishes rules and requirements regarding the submission and content of a Resolution Plan and a Credit Exposure Report, as well as procedures and standards for review by the Board and Corporation of a Resolution Plan.

[---].2 Definitions.

For purposes of this subpart:

(a) Bankruptcy Code means Title 11 of the United States Code.

(b) Company includes any bank, corporation, general or limited partnership, limited liability company, association or similar organization or business trust. The term company does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(b) 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.

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

(d) Covered Company. (1) In general. A “Covered Company” means:

(i) Any nonbank financial company supervised by the Board;

(ii) 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 the Board’s Regulation Y (12 CFR part 225), that had \$50 billion or more in total consolidated assets, as determined based on the average of the company’s four most recent Consolidated Financial Statements for Bank Holding Companies as reported on the Federal Reserve’s FR Y-9C; and

(iii) 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 had \$50 billion or more in total consolidated assets, as determined based on the foreign bank’s or company’s most recent annual or, as applicable, the average of the four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve’s Form FR Y-7Q.

(2) 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 (d)(1)(ii) or (iii).

(3) Exclusion. A bridge financial company chartered pursuant to 12 U.S.C. § 5390(h) shall not be deemed to be a Covered Company hereunder.

(e) Critical operations means those operations of the Covered Company, including associated services, functions and support, that, in the view of the Covered Company or as jointly directed by the Board and the Corporation, upon a failure of, or discontinuance of such operations, would likely result in a disruption to the U.S. economy or financial markets.

(f) 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.

(g) 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.

(h) 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)).

(i) Material entity means a subsidiary or foreign office of the Covered Company that is significant to the activities of a critical operation or core business line (as defined in this subpart).

(j) 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.

(k) 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.

(l) 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 outside 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.

(m) Significant bank holding company has the meaning given such term by rule of the Board pursuant to section 102(a)(7) of the Dodd-Frank Act, 12 U.S.C. § 5311(a)(7). [For Board regulation, “has the meaning given to such term by section 225.302(c) of the Board’s Regulation Y (12 CFR 225.302(c))”.]

(n) Significant company means a significant bank holding company or a significant nonbank financial company.

(o) Significant nonbank financial company has the meaning given such term by rule of the Board pursuant to section 102(a)(7) of the Dodd-Frank Act, 12 U.S.C. § 5311(a)(7). [For Board regulation, “has the meaning given to such term by section 225.302(b) of the Board’s Regulation Y (12 CFR 225.302(b)).”]

(p) Subsidiary means a bank or other company that is controlled by another company and an indirect subsidiary is a bank or other company that is controlled by a subsidiary of a company.

[---].3 Resolution Plan required.

(a) Initial and Annual Resolution Plans Required.— Within 180 days of the effective date of this subpart, or such later date as a company becomes a Covered Company, each Covered Company shall submit a Resolution Plan to the Board and the Corporation. Thereafter, each Covered Company shall submit a Resolution Plan to the Board and the Corporation no later than 90 days after the end of each calendar year.

(b) Interim updates following material events.—(1) In general. Each Covered Company shall file with the Board and the Corporation an updated Resolution Plan within a time period specified by the Board and the Corporation, but no later than 45 days after any event, occurrence, change in conditions or circumstances or other change which results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the Covered Company.

(2) Exception. A Covered Company shall not be required to file an updated Resolution Plan under paragraph (1) if the date on which the Covered Company would be required to submit the updated Resolution Plan under paragraph (1) would be within 90 days prior to the date on which the Covered Company is required to file an annual Resolution Plan under paragraph (a).

(c) Authority to require more frequent submissions or extend time period.—

Notwithstanding paragraph (b)(1), the Board and Corporation may jointly:

(1) Require that a Covered Company submit a Resolution Plan more frequently than required pursuant to paragraph (a), or provide an interim update to any Resolution Plan submitted pursuant to paragraph (a) under circumstances other than those listed in paragraph (b);

(2) Extend the time period that a Covered Company has to submit a Resolution Plan under paragraphs (a) and (b); and

(3) Waive the requirement that a Covered Company submit an update to a Resolution Plan.

(d) Access to information— In order to allow evaluation of the 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 Plan. The Agencies will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(e) Board of directors approval of Resolution Plan.—Prior to submission of a Resolution Plan under paragraph (a) 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 delegee acting under the express authority of the board of directors of the Covered Company to approve the Resolution Plan.

(f) 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.

[---].4 Informational content of a Resolution Plan.

(a) In general.—(1) Domestic Covered Companies. The Resolution Plan of a Covered Company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (i) 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.—The Resolution Plan of a Covered Company that is organized or incorporated in a jurisdiction outside 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 (i) of this section with respect to the subsidiaries, branches and agencies, and 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), 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 critical operations and core business lines of the foreign-based Covered Company and any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and 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.

(3) Required and prohibited assumptions.—In preparing its plan for rapid and orderly resolution in the event of material financial distress or failure required by this subpart, a Covered Company shall:

(i) Take into account that such material financial distress or failure of the Covered Company may occur at a time when financial markets, or other significant companies, are also under stress and that the material financial distress of the Covered Company may be the result of a range of stresses experienced by the Covered Company; and

(ii) 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.

(b) Executive summary.—Each 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) Material changes to the Covered Company’s Resolution Plan from the company’s most recently filed Resolution Plan (including an updated Resolution Plan submitted under section [---].3(b).

(3) 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 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, and its material entities and its 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 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 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 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; 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 proposed 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, 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 and critical operations and core business lines.

(d) Corporate governance relating to resolution planning.—Each 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 are 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 subpart; and

(iv) The nature, extent, and frequency of reporting to senior executive officers and the board of directors of the Covered Company on the development, maintenance, and implementation of the Covered Company's Resolution Plan;

(2) Describe the capabilities of the Covered Company's processes and systems to collect, maintain, and report the information and other data underlying the Resolution Plan to senior executive officers and the board of directors of the Covered Company;

(3) 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

(4) 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 Resolution Plan shall—

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

(i) A hierarchical list of all material legal entities, including but not limited to material entities within the Covered Company's organization 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 critical operations and core business lines, including material asset holdings and liabilities related to such 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 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, its 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) 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 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;

(12) Identify each system on which the Covered Company conducts a material number or value amount of trades. Map membership in each such system to the Covered Company's material entities and critical operations and core business lines; and

(13) Identify each 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 transactions. Map membership in each such system to the Covered Company's material entities and critical operations and core business lines.

(f) Management information systems.—Each Resolution Plan shall include —

(1) 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, its material entities, including a mapping to its critical operations and core business lines;

(2) An identification of the legal owner of the systems identified in subpart (1) above, service level agreements related thereto and any software and systems licenses or associated intellectual property, including a mapping thereof to the material entities and critical operations and core business lines of the Covered Company that use or rely on such intellectual property;

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

(4) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified in paragraph (1).

(g) Interconnections and interdependencies. To the extent not elsewhere provided, identify and map to the material entities the interconnections and interdependencies among the Covered Company and its material entities, and among the 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 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 Resolution Plan shall—
- (1) Identify any:
 - (i) Federal, state, or foreign agency or authority with supervisory authority or responsibility for ensuring the safety and soundness of the Covered Company, its material entities, 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 critical operations and core business lines.
 - (2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and critical operations or core business lines of the Covered Company; and
 - (3) Include contact information for each agency identified in paragraphs (1) and (2).
 - (i) Contact information. Each Resolution Plan shall—
 - (1) 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; and
 - (2) Include contact information for the material entities and critical operations and core business lines of the Covered Company.

(j) Incorporation of previously submitted Resolution Plan informational elements by reference. An update to a Resolution Plan submitted by a Covered Company under section [---].3(b) may incorporate by reference informational elements (but not strategic analysis or executive summary elements) 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 informational elements by reference clearly indicates:

(i) the informational element 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

(2) The Covered Company certifies that the information the Covered Company is incorporating by reference remains accurate.

(k) Data Production Capabilities.—

Within a reasonable period of time following the effective date of this subpart, as jointly determined by the Board and the Corporation, the Covered Company shall demonstrate its capability to promptly produce, in a format acceptable to the Board and the Corporation, the data underlying the key aspects of the Resolution Plan of the Covered Company.

(l) Exemptions. The Board and the Corporation may jointly exempt a Covered Company from one or more of the requirements of this section.

[---].5 Informational content of a Credit Exposure Report.

(a) Quarterly Credit Exposure Report Required.—(1) In general. No later than 30 days after the end of each calendar quarter, each Covered Company shall submit to the Board and the

Corporation a Credit Exposure Report, in the manner and form prescribed by the Board, that contains the following information as of the end of the calendar quarter:

(i) The aggregate credit exposure associated with all extensions of credit, including loans, leases, and funded lines of credit, by:

(A) The Covered Company and its subsidiaries to each significant company and its subsidiaries; and

(B) Each significant company and its subsidiaries to the Covered Company and its subsidiaries.

(ii) The aggregate credit exposure associated with all committed but undrawn lines of credit by:

(A) The Covered Company and its subsidiaries to each significant company and its subsidiaries; and

(B) Each significant company and its subsidiaries to the Covered Company and its subsidiaries.

(iii) The aggregate credit exposure associated with all deposits and money placements by:

(A) The Covered Company and its subsidiaries with each significant company and its subsidiaries; and

(B) Each significant company and its subsidiaries with the Covered Company and its subsidiaries.

(iv) The aggregate credit exposure associated with (on both a gross and net basis) of all repurchase agreements between the Covered Company and its subsidiaries and each significant company and its subsidiaries;

(v) The aggregate credit exposure associated with all reverse repurchase agreements (on both a gross and net basis) between the Covered Company and its subsidiaries and each significant company and its subsidiaries;

(vi) The aggregate credit exposure associated with all securities borrowing transactions (on both a gross and net basis) between the Covered Company and its subsidiaries and each significant company and its subsidiaries;

(vii) The aggregate credit exposure associated with all securities lending transactions (on both a gross and net basis) between the Covered Company and its subsidiaries and each significant company and its subsidiaries;

(viii) The aggregate credit exposure associated with all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued by:

(A) The Covered Company and its subsidiaries on behalf of each significant company and its subsidiaries;

(B) Issued by each significant company and its subsidiaries on behalf of the Covered Company and its subsidiaries;

(ix) The aggregate credit exposure associated with all purchases of or investments, as of the last day of the reporting quarter, in securities issued by each significant company or its subsidiaries by the Covered Company and its subsidiaries;

(x) The aggregate credit exposure associated with all counterparty credit exposure (on both a gross and net basis) in connection with a derivative transaction between the Covered Company and its subsidiaries and each significant company and its subsidiaries;

(xi) A description of the systems and processes that the Covered Company uses to:

(A) Collect and aggregate the data underlying the Credit Exposure Report; and

(B) Produce and file the Credit Exposure Report;

(xii) The credit exposure associated with intra-day credit extended, as specified by paragraph (i), by the Covered Company to each significant company and its subsidiaries during the prior quarter; and

(xiii) Any other transactions that result in credit exposure between a Covered Company and its subsidiaries and each significant company and its subsidiaries that the Board, by order or regulation, determines to be appropriate.

(2) Application to foreign-based organizations.—A Credit Exposure Report submitted by a Covered Company that is a company incorporated or organized in a country other than the United States (other than a bank holding company) or that is a foreign banking organization shall include the information described in paragraph (1) only with respect to the subsidiaries, offices, and operations that are domiciled in the United States.

(b) Credit Exposure Reports provided to the Council.— The Board shall make the Credit Exposure Reports submitted by the Covered Company pursuant to this section available to the Council upon request.

(c) No limiting effect.—Nothing in this section limits the authority of the Board to obtain reports from a Covered Company under other provisions of law, including pursuant to section 5(c) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)), or section 161 of the Dodd-Frank Act (12 U.S.C. 5361).

(d) Adjustment to timing.—The Board may:

(1) Require that a Covered Company submit a Credit Exposure Report more frequently than required pursuant to paragraph (a); and

(2) Extend the time period that a Covered Company has to submit a Credit Exposure Report.

[---].6 Review of Resolution Plans; resubmission of deficient Resolution Plans.

(a) Acceptance of submission and review.—

(1) Within 60 calendar days of receiving a Resolution Plan under [---].3(a), the Board and the Corporation shall jointly:

(i) Determine whether a Resolution Plan submitted pursuant to section [---].3(a) satisfies the minimum informational requirements of section [---].4; and

(ii) Either acknowledge acceptance of the plan for review or return the Resolution Plan if the Board and Corporation jointly determine that it is incomplete or that substantial additional information is required to facilitate review of the Resolution Plan.

(2) If the Board and Corporation jointly determine that a Resolution Plan is informationally incomplete or that substantial additional information is necessary to facilitate review of the Resolution Plan:

(i) The Board and Corporation shall jointly inform the Covered Company in writing of the area(s) in which the Resolution Plan is informationally incomplete or with respect to which additional information is required; and

(ii) The Covered Company shall resubmit an informationally complete Resolution Plan or such additional information as jointly requested to facilitate review of the Resolution Plan no later than 30 days after receiving the notice described in paragraph (a)(2)(i), or such other time period as the Board and Corporation may jointly determine.

(b) Joint determination regarding deficient Resolution Plans.—If the Board and Corporation jointly determine that the Resolution Plan of a Covered Company submitted under [-

--].3(a) 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 shall identify the aspects of the Resolution Plan that the Board and Corporation jointly determined to be deficient.

(c) Resubmission of a Resolution Plan.—Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (b), 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:

(i) The revisions made by the Covered Company to address the deficiencies jointly identified by the Board and the Corporation;

(ii) 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

(iii) 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) Extension of time to resubmit Resolution Plan.—Upon a written request by a Covered Company, the Board and Corporation may jointly extend the time to resubmit a Resolution Plan under paragraph (c). Each extension request shall be supported by a written statement of the company describing the basis and justification for the request.

[---].7 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:

(i) The Covered Company fails to submit a revised Resolution Plan under section [---].6(c) within the required time period; or

(ii) The Board and the Corporation jointly determine that a revised Resolution Plan submitted under section [---].6(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under section [---].6(b).

(b) Duration of requirements of restrictions.—Any requirements or restrictions imposed on a Covered Company or a subsidiary thereof pursuant to paragraph (a) 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 section [---].6(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:

(i) 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); and

(ii) 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) was

made, to submit a revised Resolution Plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under section [---].6(b); and

(iii) 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.

[---].8 Consultation.—Prior to issuing any notice of deficiencies under section [---].6(b), determining to impose requirements or restrictions under section [---].7(a), or issuing a divestiture order pursuant to section [---].7(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.

[---].9 No limiting effect or private right of action; confidentiality of Resolution Plans and Credit Exposure Reports.

(a) No limiting effect on bankruptcy or other resolution proceedings.—A Resolution Plan submitted pursuant to this subpart shall not have any binding effect on:

- (i) A court or trustee in a proceeding commenced under the Bankruptcy Code;
- (ii) A receiver appointed under Title II of the Dodd-Frank Act, 12 U.S.C. § 5381 *et seq.*;
- (iii) A bridge financial company chartered pursuant to 12 U.S.C. § 5390(h); or

(iv) 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 subpart creates or is intended to create a private right of action based on a Resolution Plan prepared or submitted under this subpart or based on any action taken by the Board or the Corporation with respect to any Resolution Plan submitted under this subpart.

(c) Request for confidential treatment of Resolution Plans and Credit Exposure Reports.—Any Covered Company submitting a Resolution Plan or Credit Exposure Report pursuant to this subpart that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and the Corporation’s Disclosure of Information Rules, 12 CFR part 309, the Board’s Rules Regarding Availability of Information, 12 CFR part 261 and the Council’s Rules of Organization and related policies shall file a request for confidential treatment in accordance with those rules.

[---].10 Enforcement. The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under [---].7(a) or [---].7(c) of this subpart. The Board, in consultation with the Corporation, may take action to address any violation of this subpart by a Covered Company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

[THIS SIGNATURE PAGE RELATES TO THE NOTICE OF PROPOSED RULEMAKING TITLED “RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS”]

By order of the Board of Governors of the Federal Reserve System, [DATE].

Jennifer J. Johnson

Secretary of the Board

[THIS SIGNATURE PAGE RELATES TO THE NOTICE OF PROPOSED RULEMAKING
TITLED “RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.”]

Dated at Washington, D.C., this [Date].

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.