[6714-01-P]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064-

Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is seeking comment on a proposed rule that would require certain identified insured depository institutions ("IDIs") that are subsidiaries of large and complex financial parent companies to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the IDI's ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion. The IDI's plan would include a gap analysis that would identify impediments to the orderly stand-alone resolution of the IDI, and identify reasonable steps that are or will be taken to eliminate or mitigate such impediments. The contingent resolution plan, gap analysis, and mitigation efforts are intended to enable the FDIC to develop a reasonable strategy, plan or options for the orderly resolution of the institution. The proposal would apply

only to IDIs with greater than $10 billion in total assets that are owned or controlled by parent companies with more than $100 billion in total assets.

DATE: Comments must be submitted on or before **[insert date 60 days after the FR publication date]**.

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

- Agency Web Site: http://www.fdic.gov/regulations/laws/federal. Follow instructions for submitting comments on the Agency Web Site.
- E-mail: Comments@FDIC.gov. Include "Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions" in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to http://www.fdic.gov/regulations/laws/federal including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9 a.m.

and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: Keith Ligon, Chief, Exam Support Section, Division of Supervision and Consumer Protection, (202) 898-3686, or James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898-7151, or Shane Kiernan, Senior Attorney, Legal Division, (703) 562-2632, or Mark Flanigan, Counsel, Legal Division, (202) 898-7426, or John Dorsey, Counsel, Legal Division, (202) 898-3807, or Richard A. Bogue, Counsel, Legal Division, (202) 898-3726, or Carl J. Gold, Counsel, Legal Division, (202) 898-8702.

SUPPLEMENTARY INFORMATION:

I. Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions

(A) Authority for Proposed Regulation

The FDIC is charged by Congress with the critical responsibility of insuring the deposits of banks and thrifts in the United States, and with serving as receiver of all such institutions if they should fail. As of December 31, 2009, the FDIC insured approximately $4.75 trillion in deposits in more than 8,000 depository institutions. In implementing the deposit insurance program, and in efficiently and effectively resolving failed depository institutions, the FDIC strengthens the stability of the banking system and

helps maintain public confidence in the banking industry in the United States. In its efforts to achieve this objective and to implement its insurance and resolution functions, the FDIC requires a comprehensive understanding of the organization, operation and business practices of banks and thrifts in the United States, with particular attention to the nation's largest and most complex insured depository institutions that account for nearly half of the FDIC's insurance risk.

To carry out these core responsibilities, the proposed regulation requires a limited number of the largest insured depository institutions to provide the FDIC with essential information concerning their structure, operations, business practices and financial responsibilities and exposures. The proposed regulation requires these institutions to develop and submit detailed plans demonstrating how such depository institutions could be separated from their affiliate structure and wound down in an orderly and timely manner in the event of receivership. The proposed regulation would also make a critically important contribution to the FDIC's implementation of its statutory receivership responsibilities by providing the FDIC as receiver with the information it needs to make orderly and cost effective resolutions much more feasible.

The Federal Deposit Insurance Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the proposed regulation. The authority to issue the proposed regulation is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. section 1819(a)Tenth, authorizing the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or enforcing. The FDIC also has authority to adopt regulations governing the opera-

tions of its receiverships pursuant to Section 11(d)(1) of the FDI Act. 12 U.S.C. section 1821(d)(1). Collection of the information required by the regulation is also supported by the FDIC's broad authority to conduct examinations of depository institutions to determine the condition of the IDI, including special examinations, 12 U.S.C. section 1820(b)(3).

Finally, a failure of an IDI to provide the information required by this regulation would constitute a regulatory violation that would allow the FDIC to initiate the process of deposit insurance termination (12 U.S.C. section 1818(a)(2)), or to use backup enforcement authority of the FDIC under 12 U.S.C. section 1818(t). This backup enforcement authority allows the FDIC, after notice to the primary federal regulator, to pursue FDI Act section 8 enforcement actions, including cease-and-desist orders, civil money penalties, and removal and prohibition actions.

(B) Background

Over the past decades, the size and complexity of insured depository institutions ("IDIs") have evolved dramatically. More recently, and as a result of the financial crisis, the industry has seen further consolidation and continued expansion in the scope of insured depository institutions' activities, operations, and risks. As a result of continued consolidation of the U.S. banking industry, the FDIC's insurance risk is now concentrated in the largest and most complex insured depository institutions. Today, almost half of the FDIC's deposit insurance exposure is accounted for by fewer than 40 large institutions that exist within even larger conglomerate and multinational structures.

These large and complex IDIs present profound challenges to the FDIC both as insurer and when it must act in its receivership capacity. The complexity of these IDIs,

the extensive financial interrelationships within the conglomerates, and the likely presence of competing statutory regimes that may apply to the IDI, its parent corporation and key affiliates, result in opaque structures that prevent the FDIC from gaining access to information that is essential to the FDIC's assessment of its risks as insurer and to its ability to resolve the IDI in a cost-effective and timely fashion as receiver, in the event of failure. Also, given the extensive interconnectedness of the IDI with its parent and affiliates, the FDIC can be significantly hindered in its mission to effect an orderly and timely resolution, minimize cost to the insurance fund, and to maximize recoveries to depositors and other claimants. This mission is separate and distinct from the mission of the primary federal supervisor. Complementing the supervisory oversight of the primary federal regulator, the FDIC's role as insurer and resolver requires a distinct focus on loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the fund and the ability of the FDIC to effect an orderly resolution.

The proposed rule is intended to ensure that the FDIC has access to all the information it needs to assess its insurance risk in connection with large IDIs existing within such structures, and to efficiently resolve such IDIs in the event of failure. The rule requires identified IDIs to compile information, conduct analyses and develop plans that will enable the FDIC to understand and anticipate the operational, managerial, financial and other aspects of the IDI that would complicate efforts by the FDIC, as receiver, to extract the IDI from the larger enterprise, determine and maximize franchise value, and conduct a least-cost transaction.

Organizational and operational complexity of the largest IDIs results in opaque structures. The very largest IDIs reside within bank, thrift and financial holding com-

pany structures that include an extensive network of affiliated companies offering both banking and non-banking products and services. Management and operation of these complex entities is typically organized along business lines rather than by legal entity. Key decisions affecting the IDI, and key services or functions relating to the IDI, are often made outside the IDI, by parent holding companies or affiliates of the IDI. Complex financial and other interrelationships within such groups (for example, guaranties, derivatives trades, contractual commitments, service agreements, information technology agreements, staffing allocations, human resource and related administrative support ties) create further interdependencies that can significantly impact resolution strategy and the conduct of an orderly and timely resolution. IDIs often rely upon affiliates for the provision of critical operations and services without which the IDI cannot continue to smoothly function, which in a resolution context threatens its franchise value and the FDIC's ability to conduct an effective resolution.

Further complications result from the presence of distinct statutory insolvency regimes specific to the various legal entities within the conglomerate, which often have different, and sometimes competing, goals. Insured banks and thrifts are subject to the FDI Act and are resolved by the FDIC. The insolvency of bank, thrift and financial holding companies and most of their non-insured financial subsidiaries are subject to the Bankruptcy Code.[1] These competing regimes result in disputes over assets, intra-affiliate claims and litigation, and can increase the cost of the resolution and impair its efficiency.

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[1] The recent financial crisis, for example, saw the collapse of several major financial services holding companies whose primary business activities were not housed in an insured depository institution. These institutions included Bear Stearns, Lehman Brothers and American International Group (AIG). Each of these financial holding companies was subject to the jurisdiction of the bankruptcy courts. Broker-dealer subsidiaries of parent

The FDIC has determined that there is a compelling need for better information and planning to separately resolve the insured depository institution as a distinct entity. For example, in certain receiverships, staff and human resources have been provided by the parent organization, impeding the receiver's ability to effect a smooth and orderly transition of services to the community. Critical information technology support services are frequently conducted outside the insured entity, forcing the receiver to seek continuity of such key services. The FDIC has witnessed the inability of large and complex insured depository institutions to identify the location and legal owner of assets, to separate liquidity needs and funding sources of the insured entity, and even to identify a separate line management team to conduct operations during a resolution. The FDIC, moreover, has been routinely engaged in disputes over assets, lien claims, and related litigation with parents and affiliates, draining receivership resources, extending the duration of the receivership and delaying the prompt resolution of claims.

The proposed rule is consistent with and will assist in the implementation of "Resolution Plan" legislation pending in both houses of Congress. Pending reform legislation now in both houses of Congress requires wind-down and resolution plans to be submitted by identified large bank holding companies or non-bank financial companies, pursuant to regulations to be adopted jointly by the FDIC and the Board of Governors of the Federal Reserve System ("FRB"). This important Congressional initiative is fully consistent with the conclusion by the FDIC, based on its experience in the current finan-

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holding companies that are members of the Securities Investor Protection Corporation (SIPC) are subject to a combination of the Securities Investor Protection Act (SIPA) and the Bankruptcy Code. Further, the rehabilitation, restructuring or liquidation of insurance company subsidiaries is governed by unique state insurance insolvency codes, which differ from state to state, and often also may lead to state judicial proceedings.

cial crisis as receiver charged with responsibility for resolving failed banks (especially large and complex IDIs), that comprehensive wind-down plans for large and complex IDIs are essential for their orderly and least-cost resolution. It is for that reason that the FDIC is proposing that the process of developing plans for such IDIs should begin promptly. This initiation of that process by FDIC under the authority of the FDI Act will in no way conflict with the mandate of the FDIC and the FRB under the pending legislation to establish rules and administer a system of resolution planning for large bank holding companies and non-bank financial companies. Indeed, the joint planning process to be conducted by the FDIC and the FRB involving companies that include large or complex IDIs will be able to integrate earlier resolution planning that will take place under the FDIC proposed contingent resolution program, and such planning should be able to continue as a part of any proposal adopted by Congress. The FDIC, in implementing this proposal, will make every effort to coordinate its work with the separate joint planning process of the FDIC and the Federal Reserve to avoid duplication of effort.

The proposed rule similarly supports and complements related international initiatives. At the 2009 Pittsburgh Summit, and in response to the recent financial crisis, the G20 Leaders called on the Financial Stability Board (FSB) to propose by the end of October 2010, possible measures to address the "too big to fail" and moral hazard concerns associated with systemically important financial institutions. Specifically, the G20 Leaders called for the development of "internationally-consistent firm-specific contingency and resolution plans" by the end of 2010. The FSB is pursuing further work to develop the international standards for contingency and resolution plans and to evaluate how to

improve the capacity of national authorities to implement orderly resolutions of large and interconnected financial firms.

The FSB's program has built on work undertaken by the Basel Committee on Banking Supervision's Cross-border Bank Resolution Group, co-chaired by the FDIC, since 2007. In its final *Report and Recommendations of the Cross-border Bank Resolution Group,* issued on March 18, 2010, the Basel Committee emphasized the importance of pre-planning and the development of practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. In its review of the financial crisis, the Report found that one of the main lessons was that the complexity and interconnectedness of large financial conglomerates of corporate structure made crisis management and resolutions more difficult and unpredictable.

Similarly, the FSB's Principles for Cross-Border Cooperation on Crisis Management commit national authorities to ensure that firms develop adequate contingency plans and highlight that information needs are paramount, including information regarding group structure, and legal, financial and operational intra-group dependencies; the interlinkages between the firm and financial system (*e.g.*, in markets and infrastructures) in each jurisdiction in which it operates; and potential impediments to a coordinated solution stemming from the legal frameworks and bank resolution procedures of the countries in which the firm operates. The FSB Crisis Management Working Group has recommended that supervisors ensure that firms are capable of supplying in a timely fashion the information that may be required by the authorities in managing a financial crisis. The FSB recommendations strongly encourage firms to maintain contingency plans and pro-

cedures for use in a wind-down situation (*e.g.*, factsheets that could easily be used by insolvency practitioners), and to regularly review them to ensure that they remain accurate and adequate. This proposed rule enhances and complements these international efforts.

Conclusion. The FDIC believes that assessing its insurance risk and planning for resolution of covered IDIs require access to timely, complete and accurate information regarding the nature and structure of the IDI within the organization as well as its ability to extract and separate itself from its parent structure in contemplation of failure. These information and contingency planning requirements are the foundation for any meaningful analysis of IDI franchise value, least-cost resolution strategies, strategies to mitigate systemic risks and overall planning for an orderly resolution in the possible event of failure. The recent financial crisis has demonstrated that the risk of insolvency to an IDI can arise quickly, and that preparedness and planning must be conducted on a continuing basis, *before* problems become evident, and not merely in response to after-the-fact supervisory indicators.

The Notice of Proposed Rulemaking

The Notice of Proposed Rulemaking ("NPR") sets forth information reporting requirements intended provide the FDIC with key information concerning the operations, management, financial, affiliate relationships and other aspects of IDIs operating within a complex conglomerate to permit the FDIC to more effectively carry out its duties as insurer and receiver. The NPR requires IDIs within the scope of the rule to prepare, and submit to the FDIC, a contingent resolution plan describing the means by which the IDI

could be effectively separated from the rest of the conglomerate enterprise in the event of failure of the IDI or the bankruptcy of the parent company or any key affiliate of the IDI. It is intended that such a plan also will assist the FDIC, in the event of the failure of the IDI, in carrying out its responsibilities to resolve the failed institution in timely and cost-effective fashion. The rule proposes that the contingent resolution plan be submitted within 6 months of the effective date of the rule. The FDIC will review the plan in consultation with appropriate primary Federal regulator(s) and the institution to ensure the plan is effective, workable and satisfactory. The plan should be updated annually, and material information elements should be updated more frequently as reasonable and necessary, given the risk profile and structure of the institution relative to its affiliates and to demonstrate the capacity to provide specific information when needed (*e.g.*, deposit flows, intra-group funding flows, short-term funding, derivatives transactions, or material changes to capital structure or sources). While much more information will be required to prepare for and implement an actual resolution, the information required under the proposed regulation focuses on key structures, exposures, and interlinkages necessary to evaluate and further develop the contingent resolution plan.

The NPR is intended to reach large, complex insured depository institutions. Accordingly under the NPR, a "covered insured depository institution" ("covered IDI") is defined as insured depository institutions with greater than $10 billion in total assets that are owned or controlled by parent companies with more than $100 billion in total assets. As of the fourth quarter of 2009, there were 40 such institutions, representing total assets of $8.3 trillion. These 40 institutions hold approximately 47.9% of all deposits insured by the FDIC.

Nature and scope of contingent resolution plan to be provided to the FDIC

The FDIC is proposing that each covered IDI develop and provide to the FDIC a credible contingent resolution plan which sets forth detailed information needed to allow the FDIC to understand the scope and extent of the IDI's business lines, operations, risks and activities, and especially to determine the nature and extent of interrelationships between the IDI and its affiliates; to identify and quantify non-obvious risks embedded within distinct business entities or units; to identify concentrations of risk and correlations among risks; and to develop an enterprise-wide and entity-specific vision of the covered IDI.

Some of the required information is likely already to have been developed and/or reported elsewhere, and to the greatest extent possible, the FDIC expects to use such existing information and reports to minimize the regulatory burden on the covered IDIs. The FDIC recognizes that the information and analysis provided will be proprietary and highly confidential, and is not intended for disclosure.

In addition to providing information, the contingent resolution plan should provide an analysis of the covered IDI's ability to be resolved in an orderly fashion in the event of its receivership, or the insolvency of the parent or key affiliates. The analysis should reveal the covered IDI's planning and gap analysis of its ability to separate the covered IDI from the conglomerate structure in the most cost-effective and timely fashion. The analysis and plan should reveal all material obstacles to an orderly resolution of the covered IDI and interconnections and interdependencies that would hinder the timely and effective resolution of the insured entity, and set forth specific, credible remediation

steps or mitigating responses that would be required to eliminate or minimize such obstacles.

In developing an analysis and plan, a covered IDI should consider the institution's size relative to its parent company structure; its interdependence with the national and international marketplaces; as well as how easily its financial company products or services can be substituted.

Standards for Content of Contingent Resolution Plan

The following set forth the minimum standards for the contingent resolution plan to be provided by covered IDIs:

- Provide sufficient information, covering material risks, business lines, operations, activities and exposures of the covered IDI and its subsidiaries necessary to permit development of an effective contingent resolution plan.
- Set forth the institution's analysis that identifies material impediments to an orderly resolution of the covered IDI in the event of its insolvency, the insolvency of its parent or critical affiliates, and describing the steps that are or will be taken to eliminate or mitigate such impediments.
- Provide sufficient information to the FDIC to allow the FDIC to isolate the IDI and to allow for effective resolution strategy development and contingency planning for a period of severe financial distress, describing means of preserving franchise value, maximizing recovery to creditors, and minimizing systemic impacts on the financial system.

- Provide a gap analysis tailored to the size, complexity and risk profile of the institution, provide remediation steps that are feasible and capable of execution within a reasonable time frame and set forth a time period within which remediation actions are to be concluded.
- The contingent resolution plan must be approved by the institution's Board of Directors or designated executive committee.
- The contingent resolution plan must be updated on a regular, at least annual, basis, and demonstrate an ability to provide current and updated information on material elements as described in the regulation.

Minimum Components of the Required Contingent Resolution Plan

The proposed rule prescribes the elements of a contingent resolution plan intended to provide a complete review of the covered IDI and its relationships with its parent and affiliates, and key counterparties, to enhance preparedness for resolution. At a minimum the contingent resolution plan should include the following elements:

Summary of Analysis and Contingent Resolution Plan. Summarize material impediments to an orderly resolution of the covered IDI separate from its parent company and affiliates and a description of specific, credible remedial or mitigating steps that are or would be taken to eliminate or minimize such impediments. For example, reliance upon affiliates to provide critical services can establish an impediment to transferring its assets, liabilities and operations to an acquiring institution or bridge bank. This gap may be remediated by the development of continuity provisions in relevant contracts or by establishing pre-arranged substitution for such services.

Describe key assumptions underlying the analysis. Define short and long-term goals to remediate or mitigate identified impediments to separation and resolution.

Organizational Structure. Includes the IDI's, parent company's, and affiliates' legal and functional structures and identity of key personnel tasked with managing major components within the organization materially affecting the covered IDI.

Business Activities, Relationships and Counterparty Exposures. Identify and describe the business activities of the covered IDI and its subsidiaries, including an explanation of material interrelationships among the entities in the organizational structure, *e.g.* major counterparties (especially for financial contracts) and affiliates that provide key services and support. Critical services that are provided by affiliates, such as servicing, information technology support and operations, human resources or personnel should be identified. This description should also provide an assessment of each key entity's ability to function on a stand-alone basis.

Capital Structure. Detail the covered IDI's capital structure, as well as that of its parent, each subsidiary and key affiliates. Provide complete financial information in the form of audited financial statements presented along with line-item descriptions of the assets, liabilities, and equity comprising the balance sheets of the parent company as a consolidated entity as well as of each subsidiary or affiliated entity. Describe corporate financing arrangements for the institution, its subsidiaries, parent and key affiliates. Identify funding, liquidity, and refinancing risks associated with the various capital pools being utilized.

Intra-Group Funding, Transactions, Accounts, Exposures and Concentrations. Relative to the IDI, describe intra-group funding relationships, accounts, and exposures,

including terms, purpose, and duration. These would include, for example, a description of intra-group financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits or derivatives transactions. Clearly identify the nature and extent to which the IDI's parent or affiliates are to serve as a source of funding to the IDI, the terms of any contractual arrangements, the location of related assets, funds or deposits and the mechanisms by which funds can be down-streamed from the parent to the IDI.

Systemically Important Functions. Describe systemically important functions that the covered IDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs and capital markets operations in which it plays a dominant role. Identify critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

Material Events. Describe events, *e.g.*, acquisitions, sales, litigation, operational and fiscal challenges, that have had a material effect on the IDI and its relationship with its parent or affiliates.

Cross-Border Elements. Discuss the nature and extent of the IDI's cross-border interrelationships and exposures; describe individual components of the group structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. This information is necessary to facilitate the FDIC's determination of the legal and policy framework under which such assets might be resolved in the event of insolvency, in-

cluding the framework for providing liquidity, the terms and restrictions of government support, and the operational and technical challenges of international payment systems.[2]

Any other material factor that may impede the orderly resolution of the covered IDI separately from its parent and affiliates.

Time frame for remediation. The plan should identify a time frame within which identified remediation efforts shall be achieved.

Approval. The covered IDI's board of directors or designated executive committee must approve the analysis and plan and attest that the plan is accurate and the information is current.

No contingency resolution plan provided pursuant to this rule shall be binding on the FDIC as receiver for a covered IDI.

II. Request for Comments

The FDIC realizes that the proposed requirements for covered IDIs could not be implemented without some regulatory and financial burden on the industry. The FDIC is seeking to minimize the burden while carrying out its mandates as insurer and as receiver. The FDIC seeks comments on all aspects of the proposed rule. The FDIC seeks comment on the potential industry costs and feasibility of implementing the requirements of the proposed rule. The FDIC also is interested in comments on whether there are other

[2] The challenges related to cross-border resolutions, the nature and extent of planning, and relevant information needs are detailed in the Report and Recommendations of the Cross-border Bank Resolution Group, Basel Committee on Banking Supervision (March 2010); see especially Recommendation 6: "Planning in advance for orderly resolution".

ways to accomplish its goals, or other information that will further the objectives of this rulemaking.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)("PRA"), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

Title: Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions

OMB Number: 3064-New Collection.

Affected Public: Insured depository institutions with greater than $10 billion in total assets that are owned or controlled by a parent company with more than $100 billion in total assets ("covered IDIs").

A. Estimated Number of Respondents for Initial Analysis, Information and Contingent Resolution Plan 40.

Frequency of Response: once.

Estimated Time per Response: 500 hours per respondent.

Estimated Total Initial Burden: 20,000 hours.

B. Estimated Number of Respondents for Annual Update on Analysis, Information and Contingent Resolution Plan: 40.

Frequency of Response: annual.

Estimated Time per Response: 250 hours per respondent.

Estimated Total Burden: 10,000 hours.

C. Estimated Number of Respondents for Update on Certain Material Information Elements of Resolution Plan: 40

Frequency of Response: zero to two times annually

Estimated Time per Response: 0 to 250 hours per respondent.

Estimated Total Burden: 0 to 20,000 hours.

Background/General Description of Collection: Section 360.10 contains collections of information pursuant to the PRA . In particular, the following requirements of this proposed rule constitute collections of information as defined by the PRA: all covered IDIs are required to submit to the FDIC a contingent resolution plan that contains certain required information and meets certain described standards within six months of the effective date of the proposed rule; updates to the analysis and plan are required to be submitted annually, with certain material information elements required to be updated more frequently as reasonable and necessary. The collections of information contained in this proposed rule are being submitted to OMB for review.

Comments: In addition to the questions raised elsewhere in this Preamble, comment is solicited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respon-

dents, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Addresses: Interested parties are invited to submit written comments to the FDIC concerning the PRA implications of this proposal. Such comments should refer to "Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions." Comments may be submitted by any of the following methods:

- *Agency Web Site:* http://www.FDIC.gov/regulations/laws/federal. Follow instructions for submitting comments on the Agency Web Site.
- *E-mail:* comments@FDIC.gov. Include "Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions" in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Attention: Comments, FDIC, 550 17th St., N.W., Room F-1072, Washington, D.C. 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).
- A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Public Inspection: All comments received will be posted without change to http://www.fdic.gov/regulations/laws/federal including any personal information provided.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires an agency publishing a notice of proposed rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a "small entity" includes a bank holding company, commercial bank, or savings association with assets of $165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA (5 U.S.C. 605(b)), the FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would require the largest insured depository institutions to submit and periodically update a contingent resolution plan. The proposed rule would apply only to *covered IDIs*—defined in the proposed rule as insured depository institutions with greater than $10 billion in total assets that are owned or controlled by parent companies with more than $100 billion in total assets. There are no small banking organizations that would come within the definition of *covered IDIs*.

List of subjects in 12 CFR Part 360:

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and record keeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend Part 360 of title 12 of the Code of Federal Regulations as follows:

Part 360 -- RESOLUTION AND RECEIVERSHIP

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

Authority: 12 U.S.C. **1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4),** 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.

2. Add new section **360.10** as follows:

§ 360.10: Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions

(a) *Purpose and scope*. This section is intended to ensure that the FDIC has the information necessary to facilitate the orderly resolution by the FDIC of a large insured deposi-

tory institution (defined as a "Covered Insured Depository Institution" or "CIDI"), upon its failure, on a stand-alone basis, when the CIDI is part of a complex financial organization that includes a corporate parent and, in most cases, affiliates that are not depository institutions insured by the FDIC. It also is intended to permit the FDIC to fulfill its legal mandates as deposit insurer by facilitating assessment of insured depository institutions' risk, and regarding the resolution of failed insured depository institutions, to provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different insured depository institutions, and reduce the FDIC's costs by preserving the franchise value of a failed insured depository institution.

(b) *Definitions* -- (1) *Affiliate* has the same meaning given to such term in Section 3(w)(6) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(w)(6).

(2) *Covered Insured Depository Institution ("CIDI")* means an insured depository institution with greater than $10 billion in total assets that is owned or controlled by a parent company with more than $100 billion in total consolidated assets.

(3) *Non-Covered Insured Depository Institution* means an FDIC-insured depository institution that does not meet the definition of a *CIDI.*

(4) *Parent company* means any company that controls, directly or indirectly, an insured depository institution.

(5) *Company* has the same meaning given to such term in Part 362.2(d) of the FDIC's Regulations, 12 C.F.R. Part 362.2(d).

(6) *Subsidiary* has the same meaning given to such term in Section 3(w)(4) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(w)(4).

(7) *Total assets* are defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports, as applicable to the insured depository institution for determining whether it qualifies as a CIDI.

(c) *Contingent Resolution Plans to be Submitted by CIDIs to FDIC*

(1) *General.*

(a) Every CIDI, beginning on the effective date of this section as set forth in subsection (d), must submit to the FDIC, in a form and at a place to be prescribed, a contingent resolution plan containing at least the information described in this section, and meeting the standards described in this section. The contingent resolution plan is to address the CIDI's ability to be resolved in an orderly fashion in the event of its receivership, the insolvency of the parent or key affiliates. The CIDI's contingent resolution plan should discuss its ability to unwind or separate the CIDI from the conglomerate structure in a cost-effective and timely fashion. The plan should disclose material obstacles to an or-

derly resolution of the CIDI, inter-connections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such obstacles. The FDIC will review the plan in consultation with the primary federal regulator of the CIDI and the parent company to determine whether the plan is workable and effective. FDIC may reject the plan and require its resubmission if it fails to contain the required information or otherwise fails meet the standards prescribed in this section.

(b) In developing the contingent resolution plan, CIDIs should consider the institution's size relative to its parent company structure, its interdependence with the national and international marketplaces, as well as how easily its financial company products or services can be substituted with the services of other organizations.

(2) *Use of existing documents; updating of analysis.* The CIDI may incorporate or include specific references to current reports or publicly-filed information.

(3) *Standards for Plan Content*

The following set forth the minimum standards for the contingent resolution plan to be provided by CIDIs:

(i) Provide detailed information, covering material risks, business lines, operations, activities and exposures of the CIDI and its subsidiaries necessary to develop an effective contingent resolution plan.

(ii) Set forth the institution's analysis that identifies material impediments to an orderly resolution of the CIDI in the event of its insolvency, the insolvency of its parent or critical affiliates, and describing the remediation or mitigating steps that are or will be taken to eliminate or mitigate such impediments.

(iii) Provide information to the FDIC to allow the isolation of the CIDI and allow for effective resolution strategy development and contingency planning for a period of severe financial distress, describing means of preserving franchise value, maximizing recovery to creditors, and minimizing systemic impacts on the financial system.

(iv) The contingent resolution plan should be tailored to the size, complexity and risk profile of the institution, provide remediation steps that are feasible and capable of execution within a reasonable time frame, and set forth a time period within which remediation actions are to be concluded.

(v) The analysis and plan must be approved by the institution's Board of Directors or designated executive committee.

(vi) The analysis and contingent resolution plan must be updated on a regular, at least, annual, basis, and demonstrate an ability to provide current and updated information on material elements described in subsection (d)(1) of this section.

(4) *Minimum Components of the Required Contingent Resolution Plan*

At a minimum the contingent resolution plan should include the following elements:

(i) *Summary of Analysis and Contingent Resolution Plan.* Summarize the material impediments to an orderly resolution of the CIDI separate from its parent and affiliates and a description of specific, credible remedial or mitigating steps that are or would be taken to eliminate or minimize such impediments. For example, reliance upon affiliates to provide critical servicers can establish an impediment to transferring the its assets, liabilities and operations to an acquiring institution or bridge bank. This gap may be remediated by the development of continuity provisions in relevant contracts or by establishing pre-arranged substitution for such services.

(ii) *Organizational Structure.* Provide the IDI's, parent company's, and affiliates' legal and functional structures, and identity of key personnel tasked with managing major components within the organization materially affecting the CIDI.

(iii) *Business Activities, Relationships and Counterparty Exposures.* Identify and describe the business activities of the CIDI and its subsidiaries, along with an explanation of material inter-relationships among the entities in the organizational structure (for example, identification of major counterparties (especially for financial contracts) and affiliates) that provide key services and support. Critical services that are provided by affiliates, such as servicing, human resources, information technology support and operations, human resources or personnel should be identified. This section should also provide an assessment of each material affiliate's ability to function on a stand-alone basis.

(iv) *Capital Structure*. Detail the CIDI's capital structure, as well as that of its parent, each subsidiary, and key affiliates. Provide complete financial information in the form of audited financial statements presented along with line-item descriptions of the assets, liabilities, and equity comprising the balance sheets of the parent company as a consolidated entity as well as each CIDI. Describe corporate financing arrangements for the institution, its subsidiaries, parent and key affiliates. Identify funding, liquidity, refinancing and concentration risks associated with the various capital pools being utilized. Identify the key exposures to systemic risk and the availability of a substitute that would mitigate the effect of a systemic event.

(v) *Intra-Group Funding, Transactions, Accounts, Exposures and Concentrations.* Relative to the CIDI, describe intra-group funding relationships, accounts, and exposures, including terms, purpose, and duration. These would include, for example, a description of intra-group financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions. Clearly identify the nature and extent to which the CIDI's parent or affiliates are to serve as a source of funding to the CIDI, the terms of any contractual arrangements, the location of related assets, funds or deposits and the mechanisms by which funds can be down-streamed from the parent to the CIDI.

(vi) *Systemically Important Functions.* Describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep

programs, and capital markets operations in which it plays a dominant role. Discuss critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

(vii) *Material Events.* Describe events, *e.g.*, acquisitions, sales, litigation, operational and fiscal challenges, that have had a material affect on the IDI and its relationship with its parent company or affiliates, since the last iteration of the analysis and plan.

(viii) *Cross-Border Elements.* Discuss the nature and extent of the CIDI's cross-border interrelationships and exposures; describe individual components of the group structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. This information is necessary to facilitate the FDIC's determination of the legal and policy framework under which such assets might be resolved in the event of insolvency, including the framework for providing liquidity, the terms and restrictions of government support, and the operational and technical challenges of international payment systems.

(ix) *Any other material factor* that may impede the orderly resolution of the CIDI separately from its parent and affiliates.

(x) *Time frame.* The plan should identify a time frame within which identified remediation efforts shall be achieved.

(xi) *Approval.* The CIDI's board of directors or designated executive committee must approve the analysis and plan and attest that the plan is accurate and that the information is current.

(5) *No limiting effect on FDIC as receiver.* No contingency resolution plan provided pursuant to this rule shall be binding on the FDIC as receiver for a covered IDI.

(d) *Implementation requirements.* (1) The gap analysis and plan must be submitted within 6 months of the effective date of the rule and must be updated annually. FDIC may extend these deadlines in individual cases for good cause shown. Material information elements must be updated as necessary given the risk profile and structure of the institution relative to its affiliates (*e.g.*, deposit flows, intra-group funding flows, short-term funding, derivatives transactions, assets subject to market volatility; or material changes to capital structure or sources).

(2) An insured depository institution not within the definition of a *CIDI* on the effective date of this section must comply with the requirements of this section no later than 6 months following the end of the second calendar quarter for which it meets the criteria for a *CIDI.*

(3) Upon the merger of two or more *Non-CIDIs*, if the resulting institution meets the criteria for a *CIDI*, that *CIDI* must comply with the requirements of this section no later than 6 months after the effective date of the merger.

(4) Upon the merger of two or more *CIDIs*, the merged institution must comply with the requirements of this section within 6 months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement, in place prior to the date of the merger, for the individual *CIDI(s)* involved in the merger.

(5) Upon the merger of one or more *CIDIs* with one or more *Non-CIDIs*, the merged institution must comply with the requirements of this section within 6 months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement for the individual *CIDI(s)* involved in the merger.

(6) Notwithstanding the general requirements of this paragraph (d), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation and updating time frames for all or part of the requirements of this section.

(7) FDIC may, upon application of a CIDI and for good cause shown, modify or waive the minimum requirements set forth in this section for that institution. "Good cause" shall mean that, because of the CIDI's asset size, level of complexity, risk profile, scope of operations or other relevant characteristics, the FDIC is able to determine that the par-

ticular IDI does not, at the time of the application, appear to present material resolution challenges or other unusual risk to the Deposit Insurance Fund. Any such waiver or modification shall be effective for one year.

(e) *Confidentiality of Information Submitted Pursuant to this Section.* Proprietary information and information which, if disclosed, could endanger the institution's safety and soundness, should be identified and segregated to the extent possible, and be accompanied by a request for confidential treatment. Confidential information will not be disclosed except as required by law.