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Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington DC 20429

Re: Proposed Rule on Resolution Plans and Credit Exposure Reports Required of the Dodd-Frank Act – RIN 3064-AD77

Dear Mr. Feldman:

These comments are submitted on behalf of the American Council of Life Insurers (ACLI). The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the U.S. On behalf of all of our members, we appreciate the opportunity to again comment on the FDIC proposed rulemaking implementing provisions of the Orderly Liquidation Authority pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). At the outset we reiterate our view that analysis will show that the traditional core activities of a life insurance entity do not present systemic risk. This comment letter pertains to the required resolution plans and credit exposure reports. As ACLI has stressed in past comment letters, our primary concern with all items related to Orderly Liquidation Authority is the recognition of the primacy of state law in the future resolution of any insurer, even those that might be designated by the Financial Stability Oversight Council for supervision by the Board of Governors of the Federal Reserve System (the “Federal Reserve Board.”)

Insurers Are Subject to Mandatory Liquidation Procedures Under State Law

As noted in the preface to the proposed rule, Section 165 (d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) requires nonbank financial companies supervised by the Federal Reserve Board and bank holding companies with assets of $50 billion or more (each a “Covered Company”) to prepare and submit to the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Financial Stability Oversight Council (FSOC) periodic plans “for rapid and orderly resolution in the event of material financial distress or failure.” In addition, such Covered Companies must provide reports on the nature and extent of credit exposures. The proposed rule states that these “resolution plans” and “credit exposure reports” must address how a Covered Company (and its U.S. subsidiaries in the event the Covered Company is organized or incorporated in a jurisdiction other than the United States) may be resolved under the United States Bankruptcy Code.

Insurance companies, however, are ineligible for Bankruptcy Code protection. Rather, they are subject to a mandatory and comprehensive resolution mechanism that is administered by the company’s primary regulator and is subject to judicial oversight. A footnote in the analysis of the proposed definitions at page 22649 of the Federal Register provides that "if an entity is subject to an insolvency regime other than the Bankruptcy Code, the analysis should be in reference to that applicable regime." Thus, the FDIC recognized the need to avoid inconsistent and potentially contradictory directives resulting from the simultaneous application of competing resolution mechanisms.

When a state court orders that an insurance company shall be subject to receivership for the purpose of liquidation by its domiciliary regulator, that insurer's domestic state insurance regulator as liquidator then oversees an accounting of the company's assets and liabilities and administers the estate of the company under state judicial oversight. Under state insurance insolvency law, the liquidator is required to maximize the company's assets and then make distributions to creditors having valid claims against the insurer according to statutorily prescribed priorities. As we indicated in our May 20, 2011 letter relating to the Orderly Liquidation Authority, we believe the present system has proven its ability to handle the simultaneous insolvencies of several major life insurers plus a number of failures involving middle-tier and smaller companies.

Accordingly, it is our position that regulated entities (such as insurance companies) that are ineligible for Bankruptcy Code protection but are subject to an established compulsory insolvency regime should be deemed to meet the resolution planning requirement of Section 165(d) by certifying the applicability of such a regime. In the case of insurers, then, the FDIC should accept as a credible resolution plan a Covered Company's statement of its intent to submit itself - if it is an insurance company - or its distressed insurance company subsidiaries – if it is an insurance holding company - to rehabilitation or liquidation under applicable state insurance insolvency law. This can be accomplished in either instance through appropriate coordination with state insurance regulators.

As you are aware, the National Association of Insurance Commissioners has established a DFA Resolution Working Group charged with studying and recommending any changes in state laws necessary to ensure implementation of Orderly Resolution Authority. We again urge FDIC to coordinate with state regulators regarding implication of Orderly Resolution Authority for insurers. Title II leaves open issues created by the interaction of different insolvency regimes for regulated entities within a holding company structure. In particular for insurance companies, in some instances, an insurer's subsidiaries and affiliates' operations are essential to or interwoven with the operation of the insurer. Consultation and coordination with the state insurance receiver of a covered financial company regarding the treatment of non-insurer subsidiaries or affiliates by the FDIC in such circumstances is critical in ensuring that such treatment does not conflict with or unduly impede a proceeding under the well-established state insurance rehabilitation and insolvency regime.

Finally, we wish to emphasize the importance of international coordination called for by section 165(b)(2) of the Dodd-Frank Act. On page 22649 of the Federal Register under II. Overview of Proposed Rule, it is stated that:

> *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 to 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.*

Such recognition of home country standards as imposed by foreign financial authorities is key in the coordination with existing contingency planning process of the foreign-based covered company and any resolution plan required under the proposed rules.

Thank you for the consideration of our comments and please let us know if there is any additional information that we can provide.

Sincerely,

David M. Leifer

David Leifer