Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
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RIN 3064-AF05

RE: Resolution Plans Required for Insured Depository Institutions with $50 Billion or More

Dear Executive Secretary:

Commenting on the above referenced Advance Notice of Proposed Rulemaking (ANPRM or Proposal) by the Federal Deposit Insurance Corporation (FDIC).

The process of resolution planning for Insured Depository Institutions (IDIs) addressed in this ANPRM raises fundamentally different issues than the resolution planning process for bank holding companies (BHCs) under Section 165(d) of the Dodd-Frank Act. Dodd-Frank resolution planning is intended to prepare large bank holding companies for an orderly resolution in conventional bankruptcy without risk to financial stability and without any reliance on extraordinary public support of the failed bank or its counterparties. IDI resolution planning is intended to prepare for managing the FDIC receivership of a failed insured depository institution and to minimize any taxpayer losses due to the government guarantee of insured bank deposits.

The legal basis for the resolution processes are also different. IDI resolution planning is authorized under the Federal Deposit Insurance (FDI) Act, while Dodd-Frank resolution planning is authorized under the Dodd-Frank Act. A year ago the 115th Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). This legislation restricted statutory authority to require Dodd-Frank resolution plans to BHCs with $100 billion or more in assets. However, EGRRCPA in no way restricted or even addressed the FDIC's authority to require IDI resolution planning for insured depository institutions of any size. Since institutions well below $100 billion in size can pose significant threats to the deposit insurance fund, we consider it critical for the FDIC to maintain strong IDI resolution planning for regional banks that are smaller than $100 billion.

For example, as the ANPRM points out, the failure of IndyMac bank in 2008, a $32 billion bank, created very significant losses for the deposit insurance fund. The current resolution planning threshold of $50 billion is in our view already appropriate and we would strongly oppose eliminating or seriously weakening resolution planning procedures for banks in the $50 to 100 billion range. I am very concerned that in this ANPRM the FDIC appears to be considering the elimination of IDI resolution planning requirements for a substantial number of IDIs over $50 billion in size, for example, for Group C IDIs. I urge the maintenance of strong resolution reporting and planning requirements for all IDIs who currently report.

While it may be appropriate to modify resolution reporting requirements according to the complexity of the bank, we would note that the business models of banks like IndyMac, Countrywide, and Washington Mutual would not necessarily have been considered "complex" prior to the 2008 crisis. These banks made nonprime loans based on uninsured liabilities and either sold the loans or held them on their books. The issue was in the underwriting of the loans, not the complexity of the business model.

Simply because IDI resolution addresses losses to the deposit insurance fund does not mean that it does not have major systemic risk implications. At its required reserve ratio of 1.35%, the deposit insurance fund holds just $100 billion to cover $7.7 trillion in insured deposits. Fully $2.8 trillion in these deposits are held by regional banks between $10 billion and $250 billion in size. The threat that the disorderly failure of one or more banks could wipe out the deposit insurance fund can have a profound impact on government policy and on market confidence during times of financial stress. If such a failure created the possibility that deposit insurance guarantees could not be safely honored, it would greatly increase pressures for a government bank bailout and reduce consumer and investor confidence in unpredictable and significant ways.

For many years, and notably in 2008, the FDIC reduced taxpayer losses through intensive use of "purchase and assumption" (P&A) transactions for failed banks. This refers to a transaction where a larger bank buys the failing smaller bank and takes over its deposits, negotiating the disposal of bad assets with the FDIC. While such transactions clearly have an important role to play, an excessive reliance on the P&A method of managing bank failures carries real risks to the financial system, as described below:

First, such transactions may not be reliably available in times of financial stress. The ANPR acknowledges that the FDIC would have had great difficulty in resolving Washington Mutual if J.P. Morgan Chase had not been willing to acquire all of Washington Mutual's branches and deposits. The availability of a similar acquirer for a large failing IDI cannot be assumed during a future crisis. Washington Mutual gave JPMC a highly desired entry into West Coast banking markets. That was a unique situation that is not likely to recur. Other examples of crisis-period bank failures that would have been extremely expensive to taxpayers without a willing acquirer include National City and Wachovia.

Second, even if buyers are available, emergency P&A transactions can serve as a mechanism of contagion during systemic crises. Unforeseen issues with acquired banks can impose costs on larger and more systemically critical institutions. A prime example of this effect during the 2008 financial crisis involved Bank of America's acquisition of Countrywide. This was a quasi-distressed transaction that inflicted serious losses on Bank of America, which required a government bailout. It would have been a very costly resolution for taxpayers had Bank of America decided to let Countrywide fail.

Third, even if there are buyers available and the transaction does not create destabilizing losses for the purchasing bank, the consistent use of P&A transactions for major bank failures increases the concentration of the banking sector and adds to the problem of "too big to fail". The P&A transactions conducted during the 2008 crisis clearly increased the size of the largest U.S. banks such as J.P. Morgan, Bank of America, and Wells Fargo.

The above concerns call for a serious effort to reduce future reliance on P&A transactions as a means of addressing bank failures and financial instability. This effort must involve a combination of resolution planning and safety and soundness supervision to address structural issues that could create unexpected losses in receivership.

In addition, I would encourage the FDIC to plan now for mechanisms that could safely absorb losses at a failed bank without imposing such losses on taxpayers or exclusively on uninsured depositors who are not prepared to take losses. For example, requiring the issuance of unsecured long-term debt at the IDI subsidiary level, accompanied by a clear warning to investors that such debt will be wiped out in the case of a bank failure, could be a useful mechanism to pre-place loss absorbing capacity at the IDI level. It would be analogous to TLAC debt at the holding company level of systemically important (G-SIB) banks. To be clear, I do not support the use of long-term debt as a replacement or substitute for capital requirements, but it can be a useful mechanism for loss absorbency in the case of a bank failure, when capital has been wiped out.

Unfortunately, this ANPRM does not appear to be moving in the direction of maintaining and strengthening IDI resolution requirements or diversifying the methods of handling IDI failures. Instead, there is a pervasive focus on reducing the frequency of resolution reporting and the level of planning and information provision concerning a potential resolution. While the ANPRM is not detailed enough to comment on the specific level of reduction in resolution planning requirements at this time, I will read with interest the recommendations of regulated banks in response to this solicitation for input and may comment further based on their input.

Yours sincerely,
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