FEDERAL RESERVE SYSTEM

12 CFR Part 243

[Regulation QQ; Docket No. R–1660]

RIN 7100–AF47

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 381

RIN 3064–AE93

Resolution Plans Required

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board and the Corporation (together, the agencies) are inviting comment on a proposal to amend and restate the jointly issued regulation (the Rule) implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The proposal is intended to reflect improvements identified since the Rule was finalized in November 2011 and to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The proposed amendments to the Rule include a proposal by the Board to establish risk-based categories for determining the application of the resolution planning requirement to certain U.S. and foreign banking organizations, consistent with section 401 of EGRRCPA, and a proposal by the agencies to extend the default resolution plan filing cycle, allow for more focused resolution plan submissions, and improve certain aspects of the Rule.

DATES: Comments should be received by June 21, 2019.

ADDRESSES:

Board: You may submit comments, identified by Docket No. R–1660 and RIN No. 7100–AF 47, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.
- All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

Corporation: You may submit comments, identified by RIN 3064–AE93, by any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal.* Follow the instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AE93 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AE93, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 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. All comments received must include the agency name (FDIC) and RIN 3064–AE93.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal.*

FOR FURTHER INFORMATION CONTACT:

Board: Michael Hsu, Associate Director, (202) 452–4330, Catherine Tilford, Assistant Director, (202) 452–5240, and Kathryn Ballintine, Lead Financial Institution Policy Analyst, (202) 452–2555, Division of Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Jay Schwarz, Special Counsel, (202) 452–2970, or Steve Bowne, Counsel, (202) 452–3900, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD), (202) 263–4869.

Corporation: Lori J. Quigley, Deputy Director, Institutions Monitoring Group, *lquigley@fdic.gov;* Robert C. Connors, Associate Director, Large Bank Supervision Branch, *rconnors@fdic.gov,* Division of Risk Management Supervision; Alexandra Steinberg Barrage, Associate Director, Resolution Strategy and Policy, Office of Complex Financial Institutions, *abarrage@fdic.gov;* David N. Wall, Assistant General Counsel, *dwall@fdic.gov;* Pauline E. Calande, Senior Counsel, *pcalande@fdic.gov;* Celia Van Gorder, Supervisory Counsel, *cvangorder@fdic.gov,* or Dena S. Kessler, Counsel, *dkessler@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

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I. Introduction

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

Among other requirements, the Rule requires each covered company to submit an annual resolution plan that includes a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and descriptions of the covered company's organizational structure, material entities, and interconnections and interdependencies. The Rule also requires that resolution plans include a confidential section that contains confidential supervisory and proprietary information submitted to the agencies, and a separate section that the agencies make available to the public.

II. Overview of the Resolution Planning Process to Date

The implementation of the Rule has been an iterative process aimed at strengthening the resolvability and resolution planning capabilities of covered companies. Since the finalization of the Rule in 2011, the agencies have reviewed multiple resolution plan submissions and have provided feedback and guidance to assist the covered companies in their development of subsequent resolution plan submissions. As part of the iterative process, the agencies have increasingly tailored feedback and guidance to take into account characteristics of covered companies including their size, business models, and risk profiles, and, for a foreign-based organization, the scope of operations in the United States. Based on these factors, the agencies have allowed certain covered companies to file resolution plans containing a subset of a full resolution plan's informational content.

The resolution plans' informational content and strategic analysis and the covered companies' capabilities to execute their resolution strategies have developed over time. As both the covered companies' submissions and the agencies' feedback have matured over several resolution plan cycles, the Rule's annual filing requirement has been a challenging constraint for both the agencies and covered companies and has become less necessary. The agencies have noted that the annual filing cycle does not always permit sufficient time for the review of resolution plan submissions and the development of meaningful feedback and guidance. The agencies also recognize that covered companies require time to understand and address the feedback and to incorporate any changes into their next resolution plan filings. In recognition of the challenges associated with an annual resolution plan filing, the agencies have extended plan filing deadlines over the last few submission cycles to provide at least two years between resolution plan filings.

The resolution planning process and other resolution-related regulatory changes have focused the covered companies on developing both resolution plan informational content, including strategic analysis, and the capabilities to improve their resolvability. Given the complexity of their operations, the U.S. global systemically important banks (U.S. GSIBs), in particular, have taken significant and material actions to address their resolvability. Over the past several years, these covered companies have enhanced their resolution strategies and addressed key resolution vulnerabilities by modelling resolution liquidity and capital needs, rationalizing legal structures, developing governance mechanisms to increase the likelihood of timely entry into resolution, and more clearly identifying and mitigating organizational dependencies, among other changes. Consistent with the agencies' feedback, firms have continued to build upon their respective capabilities to support their resolvability amidst ongoing changes in their businesses and in markets. If the agencies jointly determine that a resolution plan is not credible or would not facilitate an orderly resolution, the covered company must remedy the deficiencies in the resolution plan jointly identified by the agencies. If the covered company fails to adequately remedy the deficiencies within the time period specified by the agencies, the agencies may jointly impose more stringent prudential requirements on the company until the deficiencies are remedied.[1]

EGRRCPA revised the resolution planning requirement as part of the changes the law made to application of the enhanced prudential standards in section 165 of the Dodd-Frank Act. Specifically, EGRRCPA raised the $50 billion minimum asset threshold for general application of the resolution planning requirement to $250 billion in total consolidated assets, and provides the Board with discretion to apply the resolution planning requirement to firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets.[2] The threshold increase occurs in two stages. Immediately on the date of enactment, firms with total consolidated assets of less than $100 billion (for foreign banking organizations, $100 billion in total global assets) were no longer subject to the resolution planning requirement.

Eighteen months after the date of EGRRCPA's enactment, the threshold is raised to $250 billion in total consolidated assets. However, EGRRCPA provides the Board with the authority to apply resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets. Specifically, under section 165(a)(2)(C) of the Dodd-Frank Act, as revised by EGRRCPA, the Board may, by order or rule, apply the resolution planning requirement to any firm or firms with total consolidated assets of $100 billion (for foreign banking organizations, $100 billion in total global assets) or more.[3]

Consistent with section 401 of EGRRCPA, the Board has issued two separate proposals to revise the framework for determining the prudential standards that should apply to large U.S. banking organizations (domestic tailoring proposal)[4] and to large foreign banking organizations (FBO tailoring proposal[5] and together with the domestic tailoring proposal, the tailoring proposals). Among other provisions, the tailoring proposals identify distinct standards applicable to firms for the purpose of calibrating requirements. The tailoring categories established in the tailoring proposals[6] are as follows:

- Category I standards would apply to:
  - U.S. GSIBs,
- Category II standards would apply to:

[1] 12 U.S.C. 5365(d)(4), (5); 12 CFR 243.5(b), .6(a); 12 CFR 381.5(b), .6(a).

[2] EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a U.S. GSIB under the Board's U.S. GSIB surcharge rule shall be considered a bank holding company with $250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement. EGRRCPA section 401(f).

[3] 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). *See also* EGRRCPA section 401(g).

[4] Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies (Proposed Rule), 83 FR 61408 (November 29, 2018).

[5] Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies (April 8, 2019), *https://www.federalreserve.gov/newsevents/pressreleases/files/foreign-bank-fr-notice-1-20190408.pdf.*

[6] In the case of capital standards for foreign banking organizations, categories would apply based on the characteristics of the firm's U.S. intermediate holding company. That methodology is not relevant to this proposal.

○ U.S. firms that are not subject to Category I standards with (a) $700 billion or more in total consolidated assets, or (b) $100 billion or more in total consolidated assets that have $75 billion or more in the following risk-based indicator: Cross-jurisdictional activity, and

○ Foreign banking organizations with (a) $700 billion or more in combined U.S. assets,[7] or (b) $100 billion or more in combined U.S. assets that have $75 billion or more in the following risk-based indicator measured based on the combined U.S. operations: [8] Cross-jurisdictional activity,[9]

• Category III standards would apply to:

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

○ Foreign banking organizations that are not subject to Category II standards with (a) $250 billion or more in combined U.S. assets, or (b) $100 billion or more in combined U.S. assets that have $75 billion or more in any of the following risk-based indicators measured based on the combined U.S. operations: Nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure, and

• Category IV standards would apply to:

○ U.S. firms with $100 billion or more in total consolidated assets that do not meet any of the thresholds specified for Categories I through III, and

○ Foreign banking organizations with $100 billion or more in combined U.S. assets that do not meet any of the thresholds specified for Categories II or III.

These categories form the basis for this proposal's framework for imposing resolution planning requirements, with adjustments where appropriate. The categories would also be used to tailor the content of the resolution planning requirements, taking into account covered companies' particular geographical footprints, operations, and activities.

III. Overview of the Resolution Plan Proposal

The agencies are proposing modifications to the Rule, which are intended to streamline, clarify, and improve the resolution plan submission and review processes and timelines. The agencies are seeking to achieve three key goals with the proposal: First, the proposal is intended to improve efficiency and balance burden by allowing more focused full resolution plan submissions, as well as periodic targeted resolution plan submissions for some filers, and reduced resolution plans for the remaining filers. Second, the proposal would establish by rule a biennial filing cycle for the U.S. GSIBs and balance burden by extending the filing cycle to every three years for all other filers. Third, the proposal would improve certain aspects of the Rule, such as the process for identifying critical operations, based on the agencies' experience in applying the Rule over time. These changes are expected to permit covered companies to build on previous work more effectively.

Specifically, the agencies' proposal:

• Divides the firms that have resolution planning requirements, including those identified by the Board pursuant to EGRRCPA, into groups of filers for plan content tailoring purposes,

• Enhances transparency and provides greater predictability by formalizing the current reduced resolution plan category,

• Establishes multi-year submission cycles for each group of filers,

• Introduces a new category of plans distinguished by informational content,

• Supersedes the existing tailored plan category, and

• Updates certain procedural elements of the Rule.

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

1. Firms Subject to the Resolution Planning Requirement

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

• U.S. and foreign banking organizations with $250 billion or more in total consolidated assets,

• U.S. banking organizations identified as U.S. GSIBs, and

• Any designated nonbank financial companies that the Financial Stability Oversight Council (Council) has determined under section 113 of the Dodd-Frank Act should be supervised by the Board.

In addition and as discussed above, following EGRRCPA, the Board has the authority to apply the resolution planning requirement to firms with $100 billion or more and less than $250 billion in total consolidated assets.[10] The risk-based indicators established in the tailoring proposals to define firms subject to Category II and III standards are important indicia of a firm's complexity and serve to gauge the likely impact of a firm's failure on U.S. financial stability. Therefore, the Board proposes to use these risk-based indicators to identify those U.S. firms with total consolidated assets equal to $100 billion or more and less than $250 billion to be subject to a resolution planning requirement. Consistent with the domestic tailoring proposal, the Board is proposing to apply resolution planning requirements to U.S. bank holding companies with (a) total consolidated assets equal to $100 billion or more and less than $250 billion and (b) $75 billion or more in any of the following risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. Consistent with the FBO tailoring proposal, the Board is proposing to apply resolution planning requirements to foreign banking organizations [11] with (a) total global assets equal to $100 billion or more and less than $250 billion, (b) combined U.S. assets equal to $100 billion or more, and (c) $75

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

[8] The combined U.S. operations of a foreign banking organization include any U.S. subsidiaries (including any U.S. intermediate holding company, which would reflect on a consolidated basis any U.S. depository institution subsidiaries thereof), U.S. branches, and U.S. agencies. In addition, for a foreign banking organization that is not required to form a U.S. intermediate holding company, combined U.S. operations refer to its U.S. branch and agency network and the U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2), if applicable) and any subsidiaries of such U.S. subsidiaries.

[9] Cross-jurisdictional activity would be measured excluding transactions with non-U.S. affiliates.

[10] 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). *See also* EGRRCPA section 401(g).

[11] For purposes of the Rule and the proposal, a foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary. *See* 12 CFR 243.2(i); 12 CFR 381.2(i); § ____.2(n) of the proposal.

billion or more in any of the risk-based indicators measured based on combined U.S. operations.

In addition, the agencies propose to use the risk-based indicators to divide U.S. and foreign firms into groups for the purposes of determining the frequency and informational content of resolution plan filings. For a summary of the proposal's resolution plan filing categories, please see the Resolution Plan Filing Groups visual below.

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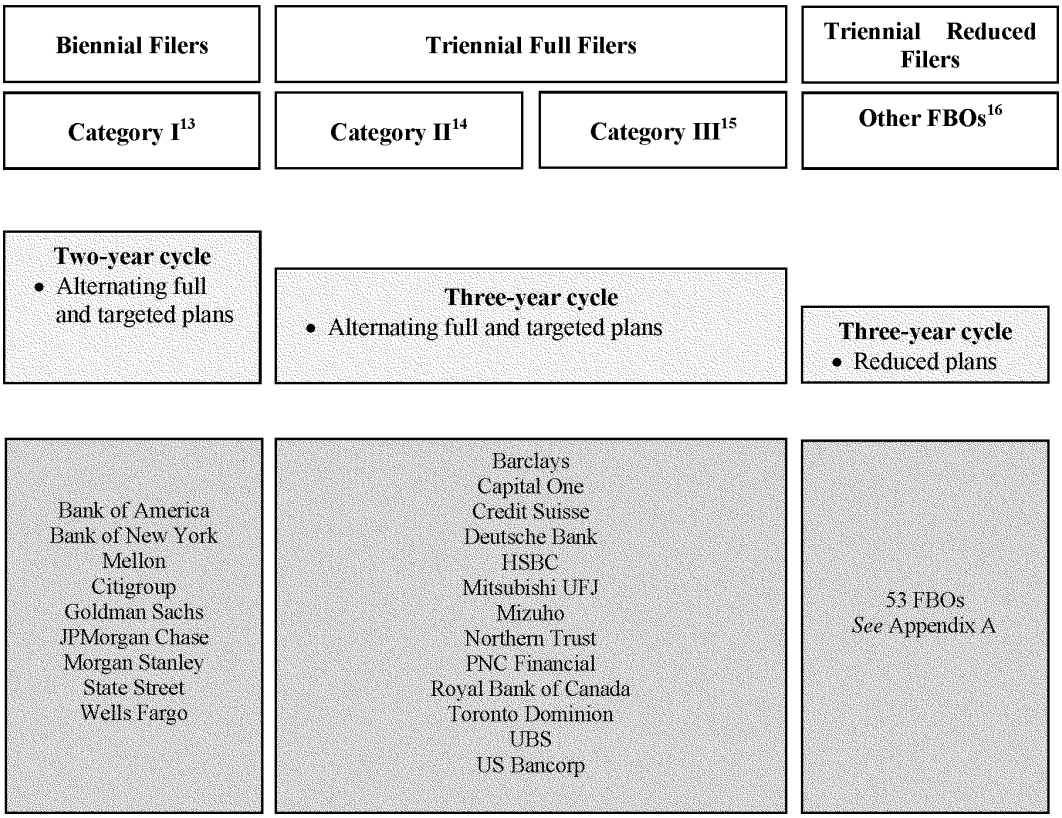
Resolution Plan Filing Groups[12]



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

While the failure of some U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets may not pose a significant threat to U.S. financial stability, the nature of an individual firm's particular activities and organizational footprint may present significant challenges to an orderly resolution. The thresholds and risk-based indicators identified in the categories above are designed to take these challenges and complexities into account. The Board is proposing to apply a uniform threshold of $75 billion for each of these risk-based indicators, based on the degree of concentration this amount would represent for each firm and the proportion of the risk factor among all U.S. firms with $100 billion or more in total consolidated assets that would be included by the threshold. In each case, a threshold of $75 billion would represent at least 30 percent and as much as 75 percent of total consolidated assets for U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets. Setting the indicators at $75 billion would also ensure that firms that account for the vast majority—over 85 percent—of the total amount of each risk factor among all U.S. depository institution holding companies with $100 billion or more in total consolidated assets would be subject to resolution planning requirements that address the associated challenges these factors may pose to orderly resolution. This would facilitate consistent treatment of these challenges across firms.

[12] Please see the accompanying visual ''Proposed Resolution Plan Submission Dates'' for a visualization of proposed future submissions.

[13] Firms subject to Category I standards would be the U.S. GSIBs. Any future Council-designated nonbank would file full and targeted plans on a two-year cycle, unless the agencies jointly determine the firm should file full and targeted plans on a three-year cycle.

[14] Firms subject to Category II standards would be: (1) U.S. firms with (a) ≥$700b total consolidated assets; or (b) ≥$100b total consolidated assets with ≥$75b in cross-jurisdictional activity and (2) foreign banking organizations (FBOs) with (a) ≥$700b combined U.S. assets; or (b) ≥$100b combined U.S. assets with ≥$75b in cross-jurisdictional activity.

[15] Firms subject to Category III standards would be: (1) U.S. firms with (a) ≥$250b and <$700b total consolidated assets; or (b) ≥$100b total consolidated assets with ≥$75b in nonbank assets, weighted short-term wholesale funding (wSTWF), or off-balance sheet exposure and (2) FBOs with (a) ≥$250b and <$700b combined U.S. assets; or (b) ≥$100b combined U.S. assets with ≥$75b in nonbank assets, wSTWF, or off-balance sheet exposure.

[16] Other FBOs subject to resolution planning pursuant to statute are FBOs with ≥$250b global consolidated assets that are not subject to Category II or Category III standards.

For example, where a firm is heavily engaged in cross-jurisdictional activity, that activity increases operational complexity. It may be more difficult to resolve or unwind the firm's positions due to the multiple jurisdictions and regulatory authorities involved and potential legal or regulatory barriers to transferring financial resources across borders. The proposal would thus continue to apply resolution planning requirements to U.S. firms with $75 billion or more in cross-jurisdictional activity.

Similarly, bank holding companies with significant nonbank assets are more likely to be engaged in activities such as prime brokerage, or complex derivatives and capital markets activities. These activities can pose risks to the financial system and, if a firm has not engaged in planning to address these particular challenges, it is less likely the firm's resolution would proceed in an orderly manner without unduly impacting other firms. Moreover, certain of these activities may not be permitted in insured depository institutions because of their risk and tend to be conducted in legal entities that are resolved through bankruptcy, making the resolution planning requirement more relevant. The Board proposes to continue to apply resolution planning requirements to U.S. firms with this risk-based indicator. Continued resolution planning may increase the likelihood that any complex capital markets, securities, or derivatives activities could be resolved in an orderly manner.

In the 2008 financial crisis, it was apparent that liquidity stresses can lead to solvency challenges in short order if not addressed. Where a firm is particularly reliant on short-term funding sources, it may be more vulnerable to large-scale funding runs or ''fire sale'' effects on asset prices. The proposal would continue to apply resolution planning requirements to U.S. firms with higher levels of potential liquidity vulnerability, as measured by the firm's weighted short-term wholesale funding. Weighted short-term wholesale funding is a measure of liquidity vulnerability, as reliance on short-term, generally uninsured funding from highly sophisticated counterparties can create vulnerability to large-scale funding runs. Specifically, banking organizations that fund long-term assets with short-term liabilities from financial intermediaries like pension funds and money market mutual funds may need to rapidly sell less liquid assets to maintain their operations in a time of stress. This can lead to a sudden drop in asset prices that may, in turn, lead to rapid deterioration in the firm's financial condition and negatively impact broader financial stability. Through the resolution plan development process, the agencies expect that firms will develop and maintain robust liquidity measurement and risk management processes (including robust capabilities to measure and manage liquidity needs for those firms whose failure is more likely to pose a risk to U.S. financial stability), with the goal of leaving firms better positioned to manage liquidity stresses in the event of resolution, reducing negative effects on U.S. financial stability.

Where a firm's activities result in large off-balance sheet exposure, the firm may be more vulnerable to significant draws on capital and liquidity in times of stress. In the 2008 financial crisis, for example, vulnerabilities at individual firms were exacerbated by margin calls on derivative exposures, calls on commitments, and support provided to sponsored funds. Successful execution of a resolution strategy depends in part on there being sufficient capital and liquidity resources to execute the firm's strategy. The proposal would continue to apply resolution planning requirements to U.S. firms with this risk-based indicator. Through the resolution planning submission process, firms whose failure is more likely to pose risk to U.S. financial stability are expected to develop a more robust capacity to measure capital and liquidity needs for resolution and a strategy to deploy financial resources as needed, and to maintain the capabilities to measure capital and liquidity needs.

Question 1: What would be the advantages and disadvantages of having similar applicable resolution planning requirements for bank holding companies with total consolidated assets of $100 billion or more based on the proposed categories? What would be the advantages and disadvantages of having different standards?

Question 2: For purposes of the Board's discretion to apply the resolution planning requirement to U.S. firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets, what are the advantages and disadvantages of the proposed risk-based indicators? What different indicators should the Board use, and why?

Question 3: For purposes of the Board's discretion to apply the resolution planning requirement to U.S. firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets, at what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

Question 4: For purposes of the Board's discretion to apply the resolution planning requirements to U.S. firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets, the Board is considering whether Category II standards should apply based on a firm's weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure, using a higher threshold than the $75 billion that would apply for Category III standards, in addition to the thresholds discussed above based on asset size and cross-jurisdictional activity. For example, a firm could be subject to Category II standards if one or more of these indicators equaled or exceeded a level such as $100 billion or $200 billion. A threshold of $200 billion would represent at least 30 percent and as much as 80 percent of total consolidated assets for firms with between $250 billion and $700 billion in assets. If the Board were to adopt additional indicators for purposes of identifying firms that should be subject to Category II standards, at what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

When a firm does not have one of the risk-based indicators listed above and its total asset size is less than $250 billion, it is less likely that the firm's failure would present a risk of serious adverse effects on U.S. financial stability. In these instances, requiring a plan for rapid and orderly resolution in bankruptcy would impose burden without sufficient corresponding benefit. Accordingly, under the proposal, resolution planning requirements would no longer apply to U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion that do not have any of the risk-based factors noted above. Based on their experience of reviewing resolution plans for firms in this category, the agencies have not identified deficiencies or shortcomings that required remediation.

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

Under the proposal, the Board is proposing to apply resolution planning requirements to foreign banking organizations with (a) total global assets equal to $100 billion or more and less

than $250 billion, (b) combined U.S. assets equal to $100 billion or more, and (c) $75 billion or more in any of the following risk-based indicators measured based on combined U.S. operations: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. For the reasons described above with respect to domestic firms and as further discussed below in the triennial full filers section, the Board is proposing to use the risk-based indicators to determine whether a foreign banking organization with a significant U.S. footprint should be subject to resolution planning.

Under the proposal, the Board, however, would no longer require resolution plan submissions from foreign banking organizations with total global assets equal to $100 billion or more and less than $250 billion where (a) the firm has combined U.S. assets below $100 billion or (b) the firm does not have $75 billion or more in any of the risk-based indicators measured based on combined U.S. operations. The majority of foreign banking organizations with total global assets less than $250 billion have limited U.S. activities and more limited interconnections with other U.S. market participants. Generally, such filers are likely to be foreign banking organizations with limited U.S. banking operations primarily conducted in a branch, which would not be resolved through bankruptcy. In the view of the Board, continuing to require even limited scope resolution plan submissions from this set of foreign banking organizations absent a significant amount of U.S. assets or any of the risk-based indicators does not seem warranted given the lower probability that the failure of these institutions would threaten U.S. financial stability.

Exiting Covered Company Status

The proposal would update the methodology for ascertaining when a firm ceases to be a covered company. With respect to a decrease in assets, under the proposal, a U.S. firm would cease to be a covered company when its total consolidated assets are less than $250 billion based on total consolidated assets for each of the four most recent calendar quarters (and it is not otherwise subject to Category II or Category III standards based on the risk-based indicators identified above). A foreign banking organization that files quarterly reports on Form FR Y–7Q similarly would be assessed on the basis of its total global assets for each of the four most recent calendar quarters. A foreign banking organization that files the Y–7Q report annually rather than quarterly would be assessed based on its total global assets over two consecutive years. The agencies would retain the discretion to jointly determine that a firm is no longer a covered company at an earlier time than it would be pursuant to its quarterly or annual reports. Firms that cease to be, or to be treated as, bank holding companies or that are de-designated by the Council for supervision by the Board are no longer covered companies and do not have any further resolution planning requirements as of the effective date of the applicable action unless there is a subsequent change to their status.

2. Filing Groups

The proposal divides covered companies required to file resolution plans into three groups of filers, commensurate with the potential impact of such companies' failure on U.S. financial stability. The proposal differentiates, for each group of filers, the resolution plan filing cycle length and information content requirements. The three groups of resolution plan filers are defined as: (a) Biennial filers; (b) triennial full filers; and (c) triennial reduced filers. Under the proposal, all covered companies would have a July 1 submission date, in place of the current division between July 1 and December 31. This change is intended to streamline the overall resolution planning framework.

Biennial Filers

The biennial filers in the proposal comprise firms subject to Category I standards, or U.S. GSIBs, which are the largest, most systemically important U.S. bank holding companies, as well as any nonbank financial company supervised by the Board that has not been jointly designated as a triennial full filer by the agencies. Any such designation of a nonbank financial company would be made taking into account the relevant facts and circumstances, including the degree of systemic risk posed by the particular covered company's failure. The failure of a firm in this group would pose the most serious threat to U.S. financial stability, and accordingly the proposal provides that this group be subject to the most stringent resolution planning requirements in terms of both submission frequency and information content. Under the methodology in the U.S. GSIB surcharge rule,[17] eight U.S. bank holding companies are currently identified as U.S. GSIBs,[18] and would therefore become subject to the proposed resolution planning requirements for this group.

For a biennial filer, the proposal would require submission of a resolution plan every two years, alternating between a full resolution plan, subject to the waiver option detailed below, and a targeted resolution plan, described below. Given that the U.S. GSIBs' resolution plans have matured over time and that these firms have taken meaningful steps to develop the foundational capabilities necessary for the implementation of their resolution strategies, the agencies have determined that a two-year filing cycle is appropriate.

Triennial Full Filers

The proposal would create a second filing group, triennial full filers, comprising firms subject to Category II or III standards, as well as any nonbank financial company supervised by the Board that has been designated as a triennial full filer by the agencies. As indicated above, the agencies' designation of a nonbank financial company's plan type would take into account the relevant facts and circumstances. Triennial full filers would include any of the following firms that do not meet the criteria to be biennial filers:

- U.S. firms with $250 billion or more in total consolidated assets,
- U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion that have $75 billion or more in any of the following risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure,
- Foreign banking organizations with $250 billion or more in combined U.S. assets, and
- Foreign banking organizations with $100 billion or more and less than $250 billion in combined U.S. assets that have $75 billion or more in any of the following risk-based indicators measured based on combined U.S. operations: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure.

Consistent with the tailoring proposals, the agencies would also consider the level of cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, and off-balance

[17] 12 CFR part 217, subpart H.

[18] Bank of America Corporation; The Bank of New York Mellon Corporation; Citigroup, Inc.; The Goldman Sachs Group, Inc.; JPMorgan Chase & Co.; Morgan Stanley; State Street Corporation; and Wells Fargo & Company.

sheet exposure levels of a foreign banking organization's U.S. operations to determine the applicable filing group. The agencies propose to apply a uniform threshold of $75 billion for each of these risk-based indicators. A threshold of $75 billion would represent at least 30 percent and as much as 75 percent of the size of the U.S. operations of a foreign banking organization with combined U.S. assets equal to $100 billion or more and less than $250 billion. The Board proposed a $75 billion threshold for these indicators in the tailoring proposals. Setting the thresholds for these risk-based indicators at $75 billion would ensure that domestic banking organizations and the U.S. operations of foreign banking organizations that account for the vast majority—over 70 percent—of the total amount of each risk-based indicator would be subject to resolution planning requirements that account for the risks associated with these indicators.

For example, foreign banking organizations with U.S. operations that engage in significant cross-jurisdictional activity [19] may present increased operational complexities for resolution. Where multiple jurisdictions and regulatory authorities are involved, there could be further legal or regulatory barriers preventing transfer of financial resources across borders. The agencies propose that foreign banking organizations with $75 billion or more in cross-jurisdictional activity (*i.e.,* foreign banking organizations subject to Category II standards) be triennial full filers in order to understand how these firms would address these challenges in resolution.

Similarly, foreign banking organizations with significant nonbank assets may have increased operational complexity that could present challenges to resolution. Specifically, banking organizations with significant investments in nonbank subsidiaries are more likely to have complex corporate structures, inter-affiliate transactions, and funding relationships. In a resolution scenario, it may be more challenging to resolve these activities in an orderly manner without unduly impacting other firms.

Additionally, nonbank activities may involve a broader range of risks than those associated with banking activities, and can increase interconnectedness with other financial market participants, presenting increased risks to the financial system. If a firm is not engaged in planning to address these challenges, the firm's resolution may be more difficult. The distress or failure of a nonbank subsidiary could also be destabilizing to the U.S. operations of a foreign banking organization and to the foreign banking organization itself, causing counterparties and creditors to lose confidence in its global operations. The agencies propose that firms with this risk-based indicator be triennial full filers as resolution planning may increase the likelihood that capital markets, securities, or derivatives activities could be resolved in an orderly manner.

In the 2008 financial crisis, liquidity stresses resulted in solvency challenges for firms. Where the U.S. operations of a foreign banking organization is particularly reliant on short-term, generally uninsured funding from sophisticated counterparties such as investment funds, these operations may be more vulnerable to large-scale funding runs. In particular, foreign banking organizations with U.S. operations that fund long-term assets with short-term liabilities from financial intermediaries such as investment funds may need to rapidly sell less liquid assets to meet withdrawals and maintain their operations in a time of stress, which they may be able to do only at ''fire sale'' prices. Such asset fire sales can cause rapid deterioration in a foreign banking organization's financial condition and may adversely affect U.S. financial stability by driving down asset prices across the market. The agencies propose that firms with this risk-based indicator be triennial full filers since the development and maintenance of liquidity measurement and risk management may result in the firms being better positioned to manage liquidity stresses in the event of resolution.

Where a firm's activities result in large off-balance sheet exposure, the firm's customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services. The firm may also be more vulnerable to significant future draws on liquidity, particularly in times of stress. In the 2008 financial crisis, for example, vulnerabilities among the U.S. operations of foreign banking organizations were exacerbated by margin calls on derivative exposures and draws on commitments. Successful execution of a resolution strategy depends in part on there being sufficient capital and liquidity resources to execute the firm's strategy. The proposal would make firms with this risk-based indicator triennial full filers. Through the resolution planning submission process, firms may develop a more robust capacity to measure capital and liquidity needs for resolution and a strategy to deploy financial resources as needed.

Question 5: For purposes of defining resolution plan filing groups, what are the advantages and disadvantages of the proposed risk-based indicators? Should the agencies use different indicators, and if so, why?

Question 6: For purposes of defining resolution plan filing groups, at what level should the threshold for each indicator be set for foreign banking organization's U.S. operations, and why? Commenters are encouraged to provide data supporting their recommendations.

The failure of a triennial full filer could pose a threat to U.S. financial stability, though it is generally less likely than a firm in the biennial filers group. The proposal would therefore require these firms to submit resolution plans as triennial full filers; however, under the proposal, the filing cycle for triennial full filers would be one year longer than that of the biennial filers.

Specifically, the proposal would require triennial full filers to submit a resolution plan every three years, alternating between a full resolution plan, subject to the waiver option detailed below, and a targeted resolution plan, described below. The agencies have determined that this longer filing cycle is appropriate in light of the lesser degree of systemic risk posed by the failure of a firm in this group.

Notably, this filing group includes the foreign banking organizations that have received detailed guidance from the agencies.[20] The agencies believe that it is appropriate that these firms be part of the triennial full filing group and submit plans on the three-year filing cycle because the preferred outcome for each of these foreign banking organizations is a successful home country resolution using a single point of entry resolution

[19] Consistent with the domestic tailoring proposal, cross-jurisdictional activity for U.S. firms would be defined as the sum of cross jurisdictional assets and liabilities, as each is reported on the Banking Organization Systemic Risk Report (FR Y–15). Consistent with the FBO tailoring proposal, a foreign banking organization would measure cross-jurisdictional activity as the sum of the cross-jurisdictional assets and liabilities of its combined U.S. operations excluding intercompany liabilities and collateralized intercompany claims. As discussed in more detail in the FBO tailoring proposal, cross-jurisdictional activity would be measured excluding cross-jurisdictional liabilities to non-U.S. affiliates and cross-jurisdictional claims on non-U.S. affiliates to the extent that these claims are secured by eligible financial collateral.

[20] *See, e.g.,* Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf.*

strategy, not the resolution strategy described in its U.S. resolution plan.

The filing group would also include non-bank financial companies designated by the Council for supervision by the Board that the agencies jointly designate to be triennial full filers. Given that the Council must determine that material financial distress at a nonbank financial company supervised by the Board could pose a threat to U.S. financial stability,[21] under the proposal, nonbank financial companies would automatically be deemed biennial filers. However, the agencies are retaining the discretion to obtain plans from these companies on a triennial basis based on the facts and circumstances of a particular company.

Triennial Reduced Filers

The proposal identifies a third group, triennial reduced filers, which consists of any covered company that is not subject to Category I, II, or III standards or is not a nonbank financial company supervised by the Board; that is, any covered company that is not a biennial or triennial full filer. The firms in this population do not pose the same risks to U.S. financial stability because they do not have the same size or complexity as the firms subject to Category I, II, or III standards. Accordingly, the proposal would apply less stringent resolution planning requirements to these firms. Triennial reduced filers would include foreign banking organizations with $250 billion or more in total global assets that are not subject to Category II or III standards.[22]

The proposal would require a firm that becomes a covered company and that is a triennial reduced filer to submit as its initial submission a full resolution plan, subject to the waiver option detailed below, and thereafter, every three years, a reduced resolution plan, described below. The agencies have determined that extending the filing cycle and reducing the informational requirements is appropriate given these firms' limited U.S. operations and smaller U.S. footprints.

Moving Filing Dates

As a covered company's resolution plan matures over time and as the risks presented by individual firms and the market change, a different filing cycle may be appropriate, commensurate with the risks posed by the failure of the firm to U.S. financial stability and the extent of current and relevant information available to support the agencies' advance planning efforts. Accordingly, the proposal would provide the agencies with flexibility to move filing dates when appropriate. The agencies would notify a covered company that has previously submitted a resolution plan at least 180 days prior to the new filing date. The agencies would notify a new covered company at least 12 months prior to the new filing date.

Question 7: Are the risk-based indicators and thresholds appropriate for identifying and distinguishing between groups of resolution plan filers (i.e., biennial, triennial full, and triennial reduced)?

Question 8: The agencies invite public comment on whether the proposed resolution plan submission cycle (i.e., U.S. GSIBs submitting resolution plans every two years, and other covered companies submitting resolution plans every three years) is appropriate. Would a longer or shorter interval between submissions be appropriate for any group of resolution plan filers?

B. Resolution Plan Content

1. Full Resolution Plan

The proposal would not generally modify the components or informational requirements of a full resolution plan.[23] Through numerous resolution plan submissions, the agencies and firms have gained familiarity with the format and content of the information currently required to be submitted pursuant to the Rule. The agencies also recognize the utility of the existing information requirements for full resolution plans. Focus on these items has facilitated resolution plan and resolvability improvements, particularly by the largest and most complex firms. Applicable guidance previously issued to specific full resolution plan filers concerning the content of their upcoming submissions would continue to apply to those individual firms.[24]

Question 9: The agencies invite comment on whether there are specific elements in § ____.4 (Informational content of a resolution plan) of the current Rule that should be omitted or modified.

2. Waiver

Through a covered company's repeated resolution plan submissions, certain aspects of its resolution plan may reach a steady state or become less material such that regular updates would not be useful to the agencies in their review of the plan. In acknowledgement of this, the proposal would continue to permit the agencies to waive certain informational content requirements for one or more firms on the agencies' joint initiative.[25] Waivers could be granted for one or more filing cycles.

The proposal also lays out a process for a covered company that has previously submitted a resolution plan to apply for a waiver of certain informational content requirements of a full resolution plan (waivers could not be applied for with respect to targeted or reduced resolution plans). Where the covered company would like to omit certain information from its next full resolution plan submission, the covered company would need to apply for the waiver at least 15 months in advance of the filing date.

In order to limit administrative burden and maximize transparency, covered companies would be limited to making one waiver request for each filing cycle, and the public section of the waiver request, containing the list of the requirements sought to be waived, would be made public. Waivers would be automatically granted on the date that is nine months prior to the plan it relates to is due if the agencies do not jointly deny the waiver prior to that date. The agencies may deny a waiver if, for example, they find that the information sought to be waived could be relevant to the agencies' review of the covered company's plan. The proposal provides that covered companies would not be able to request waivers for certain informational content requirements of the Rule. These include the core elements required in a targeted resolution plan, discussed below; information about changes the covered company has made to its resolution plan in response to a material change;

[21] 12 U.S.C. 5323.

[22] These foreign banking organizations would be required to submit resolution plans because they would have at least $250 billion in total global assets. *See* EGRRCPA section 401(a).

[23] The proposal would modify the requirements for a full resolution plan's executive summary by requiring a firm to include a description of material changes (as defined in the proposal) since the filing of the firm's previously submitted resolution plan and a description of the changes the firm has made to its resolution plan in response. The proposal would also require the executive summary to describe changes made to the firm's resolution plan, including its resolvability or resolution strategy or how the strategy is implemented, in response to feedback provided by the agencies, guidance issued by the agencies, or legal or regulatory changes. The requirements for targeted resolution plans would be consistent with these requirements.

[24] *E.g.,* Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438, 1449 (February 4, 2019).

[25] The current Rule permits the agencies to grant exemptions for one or more of the informational requirements of the Rule. 12 CFR 243.4(k); 12 CFR 381.4(k). The proposal would supersede this provision with the new waiver provisions found in § ____.4(d)(6) of the proposal, which would provide similar authority.

information required in the public section of a full resolution plan; information about a deficiency or shortcoming that has not been adequately remedied or satisfactorily addressed; and information that is specifically required to be included in a resolution plan pursuant to section 165(d) of the Dodd-Frank Act.[26] The agencies note, however, that covered companies may be able to incorporate by reference to a previous plan submission certain information that would not be eligible for a waiver if the information meets the proposed requirements for incorporation by reference.

The agencies expect that waivers would be granted in appropriate circumstances. For example, waivers could be appropriate to reduce burden for informational content that may be of limited utility to the agencies, such as where the agencies have recently completed an in-depth review of a particular business line and are satisfied that they are in possession of current information relevant to a firm's ability to resolve that business line. More specifically, if the agencies have recently undertaken a comprehensive review of a firm's Payments, Clearing, and Settlement (PCS) activities, it may be appropriate to waive the requirement for that firm to submit information relevant to these activities in its next resolution plan submission. As another example, for a covered company that would currently be eligible to file a tailored resolution plan, the agencies could grant a waiver that would limit the firm's required plan content in a manner that is similar to the current tailored resolution plan provisions of the Rule.[27]

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

A full resolution plan should specify content omitted due to a waiver request that was granted.

Question 10: The agencies invite comment on the process identified for covered companies to request waivers. Does the proposed timeline provide sufficient time for covered companies to request waivers and for the agencies to review those requests? Should waivers be presumed to be granted unless the agencies jointly deny them or presumed to be denied unless the agencies jointly grant them? The agencies invite comment on the list of requirements with respect to which a waiver is not available. For example, are there any additional requirements under the proposal with respect to which a waiver should not be available? Should the public section of waiver requests be required to contain any additional information?

Question 11: The agencies invite comment on areas where the agencies should consider granting a waiver on the agencies' joint initiative in the next plan submissions of the covered companies. The agencies note they do not anticipate soliciting such feedback regularly or periodically in advance of future resolution plan submissions, but rather are inviting general comments on this topic to help inform the initial application of this proposed waiver mechanism.

3. Targeted Resolution Plan

The proposal would also amend the Rule to include a new type of resolution plan submission: A targeted resolution plan. As resolution plans develop and solidify over time, it is appropriate that certain information be refreshed or updated rather than resubmitted in full. The agencies are proposing the creation of the targeted resolution plan submission to strike the appropriate balance between providing a means to continue receiving updated information on structural or other changes that may affect a firm's resolution strategy while not requiring submission of information that remains largely unchanged since the previous submission. A targeted resolution plan would be a subset of a full resolution plan.

The targeted resolution plan elements are proposed to be as follows:

Certain Resolution Plan Core Elements: Each targeted resolution plan would include an update of the information required to be included in a full resolution plan regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy. For firms that have received detailed guidance from the agencies applicable to their upcoming submissions regarding capital, liquidity, and governance mechanisms, the targeted resolution plans should address these elements consistent with the applicable guidance.[28] A firm that has not received detailed guidance would be required to describe the capital and liquidity needed to execute the firm's resolution strategy consistent with § ____.5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) of the proposal and, to the extent its resolution plan contemplates recapitalization, the covered company's plan for executing the recapitalization consistent with § ____.5(c)(5) of the proposal.

Material Changes: Each targeted resolution plan would include a description of material changes since

[26] 12 U.S.C. 5365(d)(1)(A)–(C).

[27] The current Rule's tailored resolution plan provisions allow covered companies with less than $100 billion in total nonbank assets that predominately operate through one or more insured depository institutions (*i.e.,* the company's insured depository institution subsidiaries comprise at least 85 percent of its total consolidated assets or, in the case of a foreign-based covered company, the assets of the U.S. insured depository institution operations, branches, and agencies comprise 85 percent or more of the company's U.S. total consolidated assets), to seek approval from the Board and the Corporation to submit a tailored resolution plan that focuses on the nonbank operations of the covered company.

[28] For example, a targeted resolution plan could discuss changes to a firm's methodology for modeling liquidity needs for its material entities during periods of financial stress, as well as changes to the firm's means for providing capital and liquidity to such entities as would be needed to successfully execute the firm's resolution strategy. These updates could, for example, involve changes to triggers upon which the firm relies to execute a recapitalization, including triggers based on capital or liquidity modeling. *See, e.g.,* Guidance for section 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438, 1449 (February 4, 2019); *Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf.* The firms that received this guidance would be expected to address Resolution Capital Adequacy and Positioning (RCAP), Resolution Liquidity Execution Need (RLEN), and governance mechanisms as part of their updates concerning capital, liquidity and any plans for executing a recapitalization, respectively.

the filing of the covered company's previously submitted resolution plan and a description of the changes the covered company has made to its resolution plan in response.[29] A material change is defined to be any event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have a material effect on the resolvability of the covered company, the covered company's resolution strategy, or how the covered company's resolution strategy is implemented. Such changes include the identification of a new critical operation or core business line; the identification of a new material entity or the de-identification of a material entity; significant increases or decreases in the business, operations, or funding of a material entity; or changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis.

Other such changes include material changes in operational and financial interconnectivity, both those that are intra-firm and external. Examples of such operational interconnectivity include reliance on affiliates for access to key financial market utilities or critical services, or significant reliance on the covered company by other firms for certain PCS services, including agent bank clearing or nostro account clearing, or government securities settlement services. Examples of such financial interconnectivity include a material entity becoming reliant on an affiliate as a source for funding or collateral, or the covered company becoming a major over-the-counter derivatives dealer.

Changes in Response to Regulatory Requirements, Guidance, or Feedback: Each targeted resolution plan would discuss changes made to the covered company's resolution plan, including its resolvability or resolution strategy or how the strategy is implemented, in response to feedback provided by the agencies, guidance issued by the agencies, or legal or regulatory changes.

Public Section: Each targeted resolution plan would contain a public section with the same content required of a full resolution plan's public section.

Targeted Areas of Interest: Each targeted resolution plan would discuss targeted areas of interest identified by the agencies that either an individual covered company or a group of similarly situated covered companies in a particular filing group [30] should address to enhance their resolution plan submissions. The agencies would notify covered companies of such targeted areas of interest at least 12 months prior to the applicable resolution plan submission date. Examples of a targeted area of interest could include the potential effects of Brexit on a covered company's resolvability because of material changes to booking practices or to the firm's organizational structure as a result of regulatory and market developments.

Question 12: The agencies invite comment on the proposed content of targeted resolution plans. Is it sufficiently clear what information is required to be included in a targeted resolution plan, including with respect to the proposed definition of the core elements? If not, how should the agencies clarify these requirements? Are there any information requirements that should be added to or removed from the proposed content of targeted resolution plans? Do the paragraphs of § ____.5 identified in the proposal's core elements definition identify the appropriate sections of the full resolution plan where core elements can be found?

4. Reduced Resolution Plan

The proposal would also codify the reduced resolution plan type. For foreign banking organizations with limited U.S. operations, the agencies have generally agreed, on a case-by-case basis, to limit the informational requirements of these firms' recent submissions to material changes and improvements to the firms' resolution strategies. The proposal would formalize the information requirements for this type of resolution plan and lay out the criteria (as discussed above) for firms to be permitted to file reduced resolution plans.

The proposal lays out the reduced resolution plan components as follows: A description of material changes experienced by the covered company since the filing of the covered company's previously submitted resolution plan and changes made to the strategic analysis that was presented in the firm's previously submitted resolution plan in response to these changes and changes made in response to feedback provided by the agencies, guidance issued by the agencies, or legal or regulatory changes.[31] Receiving updates of this information would permit the agencies to continue to monitor significant changes in structure or activities while appropriately focusing on the informational components of these firms' resolution plans.

For the public section of a reduced resolution plan, the proposal would modify the content currently required in the public section of all plans. The reduced resolution plan public section would be limited to the following elements: Names of material entities, a description of core business lines, the identities of principal officers, and a high-level description of the firm's resolution strategy, referencing the applicable resolution regimes for its material entities.

Question 13: The agencies invite comment on the proposed content of reduced resolution plans. Are there any information requirements that should be added to or removed from the proposed content of reduced resolution plans?

5. Tailored Plans

The Rule currently provides for a tailored plan, a means for certain bank-centric firms to request that their resolution plan submissions focus on nonbank activities that may pose challenges to executing the firm's resolution strategy. Pursuant to the Rule, firms must apply to the agencies to file a tailored plan rather than a full resolution plan every year that a submission is required.

The agencies propose to eliminate the tailored plan category. The introduction of the waiver process and the targeted resolution plan would provide effective substitutes for this type of focused submission in appropriate circumstances. Additionally, many of the covered companies currently eligible for a tailored plan either have ceased, post-EGRRCPA, to be subject to the resolution plan submission requirement or would become triennial reduced filers, which would focus their future plan submissions on material changes.

Question 14: The agencies invite comment on whether the tailored plan category should be retained.

[29] Section 165(d)(1) of the Dodd-Frank Act requires that certain information be periodically reported to the agencies in covered companies' resolution plans (required information). 12 U.S.C. 5365(d)(1). If a covered company does not include in its targeted resolution plan a description of changes to the required information from its previously submitted plan, the required information that it included in its previously submitted plan would be incorporated by reference into its targeted resolution plan.

[30] *E.g.,* U.S. GSIBs, or foreign banking organizations that are triennial full filers.

[31] As described above, section 165(d)(1) of the Dodd-Frank Act mandates that required information be included in covered companies' resolution plans. 12 U.S.C. 5365(d)(1). If a triennial reduced filer does not include in its reduced resolution plan a description of changes to the required information from its previously submitted plan, the required information that it included in its previously submitted plan would be incorporated by reference into its reduced resolution plan.

C. Critical Operations Methodology and Reconsideration Process

The current Rule provides for critical operations to be identified by the firms or at the agencies' joint direction. In 2012, the agencies established a process and methodology for jointly identifying critical operations for both U.S. and foreign-based covered companies. The agencies assessed the significance of activities and markets with respect to U.S. financial stability in the following four areas: Capital markets; funding and liquidity; retail and commercial banking; and payments, clearing, and settlement. The agencies then considered the significance of individual covered companies as a provider or participant in those activities and markets using criteria such as market share data, level of market concentration, size of market activity, and ease of substitutability.[32]

The agencies' original critical operations identifications from 2012 have remained largely unchanged. As covered companies have made changes to their operating structures, realigned business entities, and adapted to changing market conditions, some have submitted ad hoc requests to the agencies seeking reconsideration of certain critical operations identifications. The agencies have reviewed these requests and communicated their decisions to firms on a rolling basis.

Given that both firms and markets continually evolve and change, the agencies have determined that a periodic, comprehensive review of critical operations identifications would help to ensure that resolution planning remains appropriately focused on key areas.

The proposal would establish processes for firms and the agencies to identify particular operations of covered companies as critical operations and to rescind prior critical operations identifications made by the agencies. In addition, the proposal would specify a process for a covered company to request reconsideration of operations previously identified by the agencies as critical, and require that covered companies notify the agencies if the covered company ceases to identify an operation as a critical operation. The intended result would be a process that yields a relatively stable population of identified critical operations while allowing for recognition of new, or changes to existing, markets or activities as well as changes to individual firms' participation in those markets or activities, among other factors. The agencies expect that the proposed processes would cause covered companies' resolution plans to be more clearly focused on the actions a covered company would need to take to facilitate a rapid and orderly resolution.[33]

1. Changes to Definitions

The agencies are proposing to modify the definition of ''critical operations'' to reflect the proposed requirements and processes in new § ____.3. Under the proposal, ''critical operations'' means those operations, including associated services, functions, and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States. In addition, the proposal would include a new definition, ''identified critical operations,'' to clarify that critical operations can be identified by either the covered company or jointly identified by the agencies and that until such an operation has been identified by either method, the operation does not need to be addressed as a critical operation in a resolution plan.

2. Identification of Critical Operations by Covered Companies

In general, covered companies have developed processes within their broader resolution planning framework to identify critical operations. The proposal would require a subset of covered companies, specifically biennial filers and triennial full filers (*i.e.,* generally those with currently identified critical operations) to maintain a process for the identification of critical operations on a scale that reflects the nature, size, complexity, and scope of their operations.

The proposal would require that the firm's process include a methodology for identifying critical operations. Specifically, the methodology must first identify and assess economic functions engaged in by the firm. These economic functions may include the core banking functions of deposit taking; lending; payments, clearing and settlement; custody; wholesale funding; and capital markets and investment activities. In general, an economic function is most likely to present a critical operation of the firm where both (a) a market or activity engaged in by the firm is significant to U.S. financial stability and (b) the firm is a significant provider or participant in such a market or activity. Factors relevant for determining whether a market or activity is significant to U.S. financial stability, or whether a firm is a significant provider or participant in such a market or activity, may include substitutability, market concentration, interconnectedness, and the impact of cessation. The firm's analysis should focus on the significance of the activity to U.S. financial stability, not whether a particular activity is significant for a foreign parent or other foreign affiliates of the firm.[34] The process undertaken by a firm in completing such an analysis should be commensurate with the nature, size, complexity, and scope of its operations.[35]

The agencies propose that the covered company's critical operations review process occur at least as frequently as its resolution plan submission cycle and that the review process be documented in the covered company's corporate governance policies and procedures.[36]

The proposal lays out a process for a covered company that has previously submitted a resolution plan but does not currently have an identified critical operation under the Rule to apply for a waiver of the requirement to have a process and methodology to identify critical operations. Where the covered company would like a waiver of the requirement with respect to its next plan submission, the covered company would need to apply for the waiver at least 15 months in advance of the filing date for that resolution plan.

In its waiver request, the covered company must explain why a waiver of the requirement would be appropriate, including an explanation of why the process and methodology are not likely to identify any critical operation given its business model, operations, and organizational structure. For example, for a covered company that has not experienced any significant changes in its business, operations, or organizational structure since its most recent resolution plan, a waiver request that so states, with reasonable supporting detail, could provide sufficient information for the agencies to evaluate the request. Alternatively, if

[32] For example, a critical operation of a covered company would include an operation, such as a clearing, payment, or settlement system, that plays a role in the financial markets for which other firms lack the expertise or capacity to provide a ready substitute.

[33] *See* 12 CFR 243.4(c)(1)(ii); 12 CFR 381.4(c)(1)(ii); § ____.5(c)(1)(ii) of the proposal.

[34] Where a firm's operation, such as U.S. dollar deposit taking, is significant to the firm, but the failure or discontinuance of that activity would not pose a threat to the financial stability of the United States, that operation would not be an identified critical operation under the proposal.

[35] For a foreign firm, the critical operations identification process and methodology should be commensurate with the nature, size, complexity, and scope of its U. S. operations.

[36] *See* 12 CFR 243.4(d)(1)(i); 12 CFR 381.4(d)(1)(i); § ____.5(d)(1)(i) of the proposal.

one of a covered company's operations gained significant market share since it submitted its most recent resolution plan submission, the waiver request should include this information, a description of the operation, and a discussion of why this change would not warrant the development of a methodology for identifying critical operations.

Failure to provide appropriate information jointly requested by the agencies in a timely manner could lead the agencies to deny a waiver request on the basis that a lack of information makes it impossible to determine that the information sought to be waived would not be relevant to their review of the resolution plan.

The public section of the waiver request, describing that a waiver of the requirement is being sought, would be made public. Waivers would be automatically granted on the date that is nine months prior to the date that the resolution plan it relates to is due if the agencies do not jointly deny the waiver prior to that date.

Question 15: If granted, how long should the waiver from the critical operations methodology be valid? For example, should the waiver be valid for each submission cycle (e.g., three years) or for a full resolution plan submission and the following targeted plan submission (e.g., six years)? In addition, should the waiver become invalid upon the occurrence of certain events (e.g., the occurrence of a material change (as defined in the proposal))?

Question 16: The agencies propose that any critical operations identification process undertaken by a firm be commensurate with the nature, size, complexity, and scope of its operations, and that a firm that does not currently have an identified critical operation be permitted to seek a waiver from the requirement to have such a process. Are there benefits from having firms that do not have currently identified critical operations develop and maintain a process for identifying critical operations, or should these firms be able to request a waiver from the proposed critical operations identification process requirement? Should a firm that moves to a more stringent category (e.g., from being a triennial reduced filer to being a firm that is subject to Category II standards and, accordingly, a triennial full filer) and does not have a currently identified critical operation be permitted to seek a waiver from the critical operations identification process requirement?

3. Identification and Rescission of Critical Operations by the Agencies; Periodic Agency Review

Under the proposal, the agencies would be able to identify a critical operation or rescind a prior identification at any time. In addition, the proposal would provide for the agencies to review all identified critical operations and the operations of covered companies for consideration as critical operations at least every six years. In connection with these reviews, the agencies would jointly identify any additional critical operation or rescind any prior identification if they jointly find that the operation is not a critical operation.

4. Requests for Reconsideration

Under the proposal, a covered company would be able to request that the agencies reconsider a critical operation identification made jointly by the agencies by submitting a written request that presents the company's arguments, all relevant information that the company expects the agencies to consider, and, if applicable, a description of the material differences between the current request and the most recent prior reconsideration request for the same critical operation. A covered company would be required to submit a request for reconsideration sufficiently before its next resolution plan to provide the agencies with a reasonable period to reconsider the identification. The agencies would generally complete their reconsideration no later than 90 days after receipt of all requested information from the covered company.

5. De-Identification by Covered Companies of Self-Identified Critical Operations

Under the proposal, a covered company would be required to notify the agencies if the covered company ceases to identify an operation as a critical operation. The notice would be required to explain why the firm previously identified the operation as a critical operation and why the firm no longer identifies the operation as a critical operation. The notice is meant to provide the agencies with sufficient time to consider whether to jointly identify the operation as a critical operation, if they have not already done so. Accordingly, a covered company would generally be required to continue to treat an operation as a self-identified critical operation in any resolution plan the covered company is required to submit within 12 months of the notification.

Question 17: How often should the agencies conduct a new identification process and review existing critical operations identifications for each covered company? Should, for example, the frequency of the agencies' critical operations identification review processes occur on the same cycle with the agencies' review of covered companies' full resolution plan submission?

Question 18: What particular information should the agencies consider in addressing a covered company's rescission request under the Rule?

Question 19: The agencies invite comment on all aspects of the proposal for firms to establish and implement a process designed to identify their critical operations. Are the elements of the critical operations identification methodology sufficiently clear? For example, is it sufficiently clear how a covered company should analyze the significance to U.S. financial stability of the markets and activities through which it engages in economic functions? Should this requirement apply to a broader or narrower set of firms? For example, should the requirement apply only to global systemically important bank holding companies? Should firms' reviews of their critical operations designations be required to occur on a more or less frequent basis? In what ways, if any, do the proposed requirements differ from covered companies' current processes for identifying their critical operations?

D. Clarifications to the Rule

1. Resolution Strategy for Foreign-Based Covered Companies

The Rule does not specify the assumptions a foreign banking organization should make with respect to how resolution actions it takes outside of the United States should be addressed in its resolution plan. This issue is particularly acute for a foreign banking organization that expects to undertake a single point of entry resolution strategy in its home country. If such a strategy were to be successfully undertaken, a firm's U.S. operations would not need to enter resolution, which conflicts with the statutory requirement that a covered company present a plan for its orderly resolution under the U.S. Bankruptcy Code. Therefore, the proposal would clarify that covered companies that are foreign banking organizations should not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into

resolution proceedings. This is consistent with guidance that the agencies have previously provided.[37]

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

The definition of covered company in the Rule includes the top tier entity in a multi-tier holding company structure of any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978.[38] The top tier holding company of certain foreign banks is a government, sovereign entity, or family trust. There is no benefit to the agencies in obtaining resolution plan information concerning such types of entities. To date, the agencies have addressed these issues on a case-by-case basis and have identified alternate filers in the corporate structure, such as the entity in the structure that is directly supervised by the Board. In the interest of clarity, the proposal includes a formal process by which the agencies would identify a subsidiary in a multi-tiered FBO holding company structure to serve as the covered company that would be required to file the resolution plan.

3. Removal of the Incompleteness Concept and Related Review

The Rule includes a requirement that the agencies review a resolution plan within 60 days of submission and jointly inform the covered company if the plan is informationally incomplete or additional information is required to facilitate review of the plan.[39] This process led to a limited number of resubmissions in 2012 when the first resolution plans were submitted, but has not been used since. As resolution plans have developed over time, the agencies have not found that this requirement facilitates their review of the resolution plans and are therefore proposing to remove it.

Question 20: The agencies invite comment on whether the incompleteness concept and related review should be retained.

4. Assessment of New Covered Companies

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

In addition, the proposal would also address the process for assessing a firm whose assets have grown due to a merger, acquisition, combination, or similar transaction for covered company status. Under these circumstances, the agencies would have the discretion to alternatively consider, to the extent and in the manner the agencies jointly consider appropriate, the relevant assets reflected on the one or more of the four most recent reports of the pre-combination entities (the FR Y–9C in the case of a U.S. firm and the FR Y–7Q in the case of a foreign banking organization). For example, if Firm A, which previously reported total consolidated assets of $175 billion over the preceding four calendar quarters, acquired Firm B, which previously reported total consolidated assets of $80 billion over the same preceding four calendar quarters, the agencies could determine that immediately following the closing of the transaction, Firm A is a covered company. Similarly, if Firm A acquired assets from Firm B, which assets had been reported over the preceding four calendar quarters to have a value of $80 billion, the agencies could determine that Firm A became a covered company as of the closing of the acquisition.

5. Timing of New Filings, Firms That Change Filing Categories, and Notices of Extraordinary Events

To address the new filing cycles for biennial, triennial full, and triennial reduced filers, the proposal includes related modifications to the timing of the initial submission for new filers. When a firm becomes a covered company, the proposal provides that its first submission would be a full resolution plan and that the initial plan would be due the next time its filing group (biennial, triennial full, or triennial reduced) submits resolution plans as long as the submission deadline is at least 12 months after the time the firm becomes a covered company. For example, if a firm becomes a triennial full filer, its first resolution plan would be due when the triennial full filing group next submits resolution plans, so long as such date is at least 12 months after the firm becomes a triennial full filer. If the triennial full filers' next plan submission is a targeted resolution plan, the new filer would still need to submit a full resolution plan as its initial plan. After its initial plan, subsequent plans would be of the same type (full or targeted) as other triennial full filers. The proposal would also include a reservation of authority, however, permitting the agencies to require the initial plan earlier than the date of the filing group's next filing, so long as the submission deadline would be at least 12 months from the date on which the agencies jointly determined to require the covered company to submit its resolution plan.

Similarly, if a covered company changes groups (*e.g.,* a triennial reduced filer becomes a triennial full filer or a triennial full filer becomes a triennial reduced filer), the proposal specifies the timing and type of resolution plan it would be required to next submit:

- If the resolution plan submission deadline for the covered company's new group were the same as the prior group, the covered company would be required to submit a resolution plan by the deadline. If the deadline were within 12 months, the covered company would be required to submit the type of resolution plan based on its prior group status or its new group status (*e.g.,* if a triennial full filer became a triennial reduced filer, it could submit either the full or targeted resolution plan it would have submitted as a triennial full filer, or it could submit a reduced resolution plan as permitted by its status as a triennial reduced filer). If the deadline were 12 months or later, the covered company would be required to submit the type of resolution plan based on its new group status.
- If the resolution plan submission deadline for the new group were different than the prior group and:
  - The new deadline were at least 12 months in the future, the covered company would be required to submit a resolution plan of the type required by its new group status by the new deadline.
  - the new deadline were within 12 months, the covered company would not be required to submit a resolution plan on the new deadline. Instead, the

[37] *See https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf,* p. 4, *https://www.fdic.gov/resauthority/2018subguidance.pdf,* p. 4 and *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180129a.htm, https://www.fdic.gov/news/news/press/2018/pr18006.html.*

[38] 12 CFR 243.2(f)(1)(iii); 12 CFR 381.2(f)(1)(iii).

[39] 12 CFR 243.5(a); 12 CFR 381.5(a).

covered company would be required to submit a resolution plan of the type required by its new group status by the following submission deadline for the new group.

- A former triennial reduced filer that has become a triennial full filer would in all cases be required to submit a full resolution plan no later than its next deadline that occurs at least 12 months in the future. A triennial reduced filer would become a triennial full filer where its combined U.S. assets grow over $250 billion or it has $75 billion or more of one or more of the risk-based indicators (cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure) within its U.S. operations. Because these events would represent significant changes to the firm's U.S. operations, submission of a full resolution plan would be useful to allow the agencies to evaluate whether there could be any related challenges to the firm's resolvability. After the covered company submits a full resolution plan, it would submit on future submission dates the same type of resolution plan as the other members of the new group.

The proposal retains the agencies' authority to require a covered company to submit a resolution plan earlier than the deadline for the new group's submission, so long as the agencies notify the covered company of the revised submission deadline at least 180 days in advance.

The proposal would also permit the agencies to require a full resolution plan to be submitted within such time period as specified by the agencies.[40] In this instance, a firm may be required to submit a resolution plan at a different time or of a different plan type relative to its filing group. For example, a triennial reduced filer may become a triennial full filer due to a merger or acquisition of assets, but may not be required to submit a full resolution plan for a number of years due to the timing of the transaction. If the new, larger covered company has assets or operations that are of particular importance to U.S. financial stability, the agencies may jointly require it to submit a full resolution plan earlier than the rest of its new filing group.

The notice of material events requirement has been revised and clarified to reflect the creation of a material changes definition. The agencies determined that the material changes definition was too broad to merit a notice requirement and instead propose the concept of extraordinary events that would require a notice. An extraordinary event is a material merger, acquisition of assets or other similar transaction, or a fundamental change to a covered company's resolution strategy (such as a change from single point of entry to multiple point of entry).

Question 21: The agencies invite comment on whether the listed events that are proposed to constitute extraordinary events are appropriate, or if there are additional events should be identified.

6. Clarification of the Mapping Expectations for Foreign Banking Organizations

The proposal would amend the language governing the expectations regarding the mapping of intragroup interconnections and interdependencies by foreign banking organizations.[41] The proposal would clarify that foreign banking organizations would be expected to map (a) the interconnections and interdependencies among their U.S. subsidiaries, branches, and agencies, (b) the interconnections and interdependencies between these U.S. entities and any critical operations and core business lines, and (c) the interconnections and interdependencies between these U.S. entities and any foreign-based affiliates.

7. Standard of Review

In reviewing resolution plans, the agencies have identified ''deficiencies'' and ''shortcomings'' in plans and have issued letters to covered companies describing the rationale for the findings and suggesting potential alternatives for how the identified deficiencies and shortcomings could be addressed. While the agencies have defined these terms in a public statement, they are not defined in the Rule.[42] To provide an opportunity for public comment on these terms and a clearer articulation of the standards the agencies apply in identifying deficiencies and shortcomings, the proposal would define a deficiency and a shortcoming.

The proposed definition of deficiency is as follows: An aspect of a firm's resolution plan that the agencies jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the firm's plan. Where a deficiency has been identified, the covered company must correct the identified weakness and resubmit a revised resolution plan to avoid being subject to more stringent regulatory requirements or restrictions, as described in section 165(d)(5) of the Dodd-Frank Act and §§ ____.5 and ____.6 of the Rule.

The proposal also includes a definition of a shortcoming. A shortcoming would be defined as a weakness or gap that raises questions about the feasibility of a firm's plan, but does not rise to the level of a deficiency for both agencies. In some instances, a weakness that only one agency considers a deficiency may constitute a shortcoming for purposes of resolution plan feedback or guidance. A shortcoming may require additional analysis from the covered company or additional work by the covered company, or both. Although a shortcoming would not require a firm to resubmit a revised resolution plan prior to its next plan submission date, the agencies may require a firm to provide an interim update regarding progress made to address the shortcoming prior to the firm's next resolution plan submission date pursuant to § ____.4(d)(3) of the proposal. If the issue is not satisfactorily explained or addressed in the covered company's next resolution plan, it may be found to be a deficiency in the covered company's next resolution plan. It is not necessary for the agencies to identify an issue as a shortcoming before identifying it as a deficiency.[43] In addition, the agencies may identify issues and weaknesses in a covered company's resolution plan in feedback provided to the firm without jointly classifying them as deficiencies or shortcomings.

Both deficiencies and shortcomings reflect weaknesses that the agencies consider important and should be addressed in the firm's next resolution plan submission. The agencies' correspondence to a firm identifying one or more deficiencies or shortcomings will normally suggest a manner in which the covered company may address the deficiencies or shortcomings. These suggestions do not preclude the covered company from pursuing a different means of addressing the deficiency or shortcoming.

Question 22: The agencies invite comment on all aspects of the proposed

[40] When requiring a covered company to file a full resolution plan within a time period different from that of other covered companies in the same filing group, the agencies believe that 12 months is presumptively a reasonable period of time. However, a shorter time period may be reasonable in light of the relevant facts and circumstances.

[41] 12 CFR 243.4(a)(2)(i); 12 CFR 381.4(a)(2)(i); § ____.5(a)(2)(i) of the proposal.

[42] *Resolution Plan Assessment Framework and Firm Determinations (2016),* April 13, 2016, *https://www.fdic.gov/news/news/press/2016/pr16031a.pdf.*

[43] As noted above, as part of codifying definitions for the terms ''deficiency'' and ''shortcoming,'' the proposal would clarify that the agencies may jointly identify an issue as a deficiency without first identifying it as a shortcoming.

definitions of ''*deficiency*'' *and* ''*shortcoming.*''

8. Deletion of ''deficiencies'' Relating to Management Information Systems

The Rule requires a resolution plan to include information about a covered company's management information systems, including a description and analysis of the system's ''deficiencies, gaps or weaknesses'' in the system's capabilities. The proposal deletes the term ''deficiencies'' from this informational content requirement solely to avoid confusion with the proposal's new definition of ''deficiencies'' in § ____.8(b) of the proposal, and not to change the informational requirement relating to a covered company's management information systems.

9. Incorporation by Reference

Similar to the current Rule, the proposal would continue to allow a covered company to incorporate by reference information from its previously submitted resolution plans, subject to restrictions that the covered company clearly identifies the information it is incorporating and the specific location of the information in the previously submitted plan by, for example, indicating the relevant page range or subsection of the resolution plan. The proposal would require the referenced information to remain accurate in all respects that are material to the covered company's resolution plan. The agencies intend that this clarification regarding the material accuracy of referenced information provide covered companies greater flexibility in their ability to incorporate by reference information, thereby reducing duplication and further streamlining the resolution planning process. The proposal's incorporation of the waiver concept should not be interpreted to conflict with the ability to incorporate items by reference. In particular, if the agencies were to deny a waiver request, the covered company would not be precluded from incorporating by reference elements that it sought to have waived, so long as the information remains accurate in all respects that are material to the covered company's resolution plan. The agencies note that any information incorporated by reference would remain subject to the contemporaneous certification requirement specified in the Rule.

E. Alternative Scoping and Tailoring Criteria

In its tailoring proposals, the Board presented an alternative approach for assessing the risk profile and systemic footprint of a U.S. banking organization and of a foreign banking organization's combined U.S. operations or U.S. intermediate holding company using a single, comprehensive score. The Board uses an identification methodology (scoring methodology) to identify a U.S. bank holding company as a U.S. GSIB and apply risk-based capital surcharges to these firms. The Board could use this same scoring methodology to determine whether to apply the resolution planning requirements to firms with $100 billion or more but less than $250 billion in total consolidated assets. The agencies could likewise use this same scoring methodology to divide U.S. and foreign firms into groups for the purposes of determining the frequency and informational content of resolution plan filings.

1. Alternative Scoping Criteria for U.S. Firms

The scoring methodology in the Board's regulations is used to calculate a U.S. GSIB's capital surcharge under two methods.[44] The first method is based on the sum of a firm's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity (method 1). The second method is based on the sum of these same measures of risk, except that the substitutability measures are replaced with a measure of the firm's reliance on short-term wholesale funding (method 2).

The Board designed the scoring methodology to provide a single, comprehensive, integrated assessment of a large bank holding company's systemic footprint. Accordingly, the indicators in the scoring methodology measure the extent to which the failure or distress of a bank holding company could pose a threat to U.S. financial stability or inflict material damage on the broader economy. The Board could also use the indicators in the scoring methodology to help identify banking organizations that have heightened risk profiles and would closely align with the risk-based factors specified in section 165 of the Dodd-Frank Act for applying enhanced prudential standards, including the resolution planning requirement. Importantly, large bank holding companies already submit to the Board periodic public reports on their indicator scores in the scoring methodology. Accordingly, use of the scoring methodology more broadly for tailoring of resolution planning requirements may promote transparency and could economize on compliance costs for large bank holding companies.

Under the alternative scoring methodology, a banking organization's size and either its method 1 or method 2 score from the scoring methodology would be used to determine which category of standards would apply to the firm. In light of the changes made by EGRRCPA, the Board in its domestic tailoring proposal conducted an analysis of the distribution of method 1 and method 2 scores of bank holding companies and covered savings and loan holding companies with at least $100 billion in total consolidated assets.

Category I. As under the domestic tailoring proposal and under the Board's existing enhanced prudential standards framework, Category I standards would continue to apply to U.S. GSIBs, which would continue to be defined as U.S. banking organizations with a method 1 score of 130 or more.

Category II. Category II banking organizations were defined in the domestic tailoring proposal as those whose failure or distress could impose costs on the U.S. financial system and economy that are higher than the costs imposed by the failure or distress of an average banking organization with total consolidated assets of $250 billion or more.

In selecting the ranges of method 1 or method 2 scores that could define the application of Category II standards in the domestic tailoring proposal, the Board considered the potential of a firm's material distress or failure to disrupt the U.S. financial system or economy. As noted in section III.A and III.C of the domestic tailoring proposal, during the 2008 financial crisis, significant losses at Wachovia Corporation, which had $780 billion in total consolidated assets at the time of being acquired in distress, had a destabilizing effect on the financial system. In the domestic tailoring proposal, the Board estimated method 1 and method 2 scores for Wachovia Corporation, based on available data, and also calculated the scores of banking organizations with more than $250 billion in total consolidated assets that are not U.S. GSIBs assuming that each had $700 billion in total consolidated assets (the asset size threshold used to define Category II in the Board's domestic tailoring proposal). In the domestic tailoring proposal, the Board also considered the outlier method 1 and method 2 scores for banking organizations with more than $250 billion in total consolidated assets that are not U.S. GSIBs.

Based on this analysis, under the alternative methodology, the Board

[44] 12 CFR part 217, subpart H.

would apply Category II standards to any non-U.S. GSIB banking organization with $100 billion or more in total consolidated assets and with a method 1 score between 60 and 80 or a method 2 score between 100 and 150. If the Board were to establish a scoring methodology for these purposes in the final rule, the Board would set a single score within the listed ranges for application of Category II standards. The Board invites comment on what score within these ranges would be appropriate.

Category III. As noted, section 165 of the Dodd-Frank Act, as amended by EGRRCPA, requires the Board to apply enhanced prudential standards (including the resolution planning requirement) to any bank holding company with total consolidated assets of $250 billion or more and authorizes the Board to apply these standards to bank holding companies with $100 billion or more and less than $250 billion in total consolidated assets. In order to determine a scoring methodology threshold for application of Category III standards to banking organizations with $100 billion or more and less than $250 billion in total consolidated assets, the Board in the domestic tailoring proposal considered the scores of these banking organizations as compared to the scores of banking organizations with $250 billion or more in total consolidated assets that are not U.S. GSIBs. Based on the analysis in the domestic tailoring proposal, the Board, under a scoring methodology approach, would apply Category III standards to banking organizations with total consolidated assets of $100 billion or more and less than $250 billion that have a method 1 score between 25 and 45. Banking organizations with a score in this range would have a score similar to that of the average firm with $250 billion or more in total consolidated assets. Using method 2 scores, the Board would apply Category III standards to any banking organization with total consolidated assets $100 billion or more and less than $250 billion that have a method 2 score between 50 and 85. Again, if the Board were to establish a scoring methodology for these purposes in the final rule, the Board would pick a single score within the listed ranges. The Board invites comment on what score within these ranges would be appropriate.

Category IV. Under a score-based approach and similar to the domestic tailoring proposal, the Board would apply Category IV standards to banking organizations with $100 billion or more in total consolidated assets that do not meet any of the thresholds specified for Categories I through III (that is, a method 1 score of less than 25 to 45 or a method 2 score of less than 50 to 85). If the score-based approach is adopted, the Board may or may not exercise its discretion to apply resolution planning requirements to these firms.

Question 23: What are the advantages and disadvantages to using the alternative scoring methodology and category thresholds described above relative to the proposed thresholds for U.S. firms?

Question 24: If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets, should the Board use method 1 scores, method 2 scores, or both?

Question 25: If the Board adopts the alternative scoring methodology, what would be the advantages or disadvantages of the Board requiring banking organizations to calculate their scores at a frequency greater than annually, including, for example, requiring a banking organization to calculate its score on a quarterly basis?

Question 26: With respect to each category of standards described above, at what level should the method 1 or method 2 score thresholds be set for U.S. firms and why, and discuss how those levels could be impacted by considering additional data, or by considering possible changes in the banking system. Commenters are encouraged to provide data supporting their recommendations.

Question 27: What other approaches should the Board consider in setting thresholds for determining whether to apply the resolution planning requirements to U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets?

2. Alternative Scoping Criteria for Foreign Banking Organizations

Similar to the alternative approach for U.S. firms outlined above, an alternative approach for tailoring the application of resolution planning requirements to a foreign banking organization would be to use a single, comprehensive score to assess the risk profile and systemic footprint of a foreign banking organization's combined U.S. operations. As mentioned above, the Board uses a scoring methodology to identify U.S. GSIBs and apply risk-based capital surcharges to these firms. As an alternative in both tailoring proposals, the Board proposed a scoring methodology that also could be used to tailor resolution planning requirements for foreign banking organizations.

As mentioned above, the scoring methodology in the Board's regulations is used to calculate a U.S. GSIB's capital surcharge under two methods.[45] Consistent with the tailoring proposals and as an alternative to the threshold approach under this proposal, the Board is seeking comment on use of the scoring methodology to apply the resolution planning requirement to foreign banking organizations with $100 billion or more and less than $250 billion in total consolidated assets.

As discussed in further detail in the tailoring proposals, the scoring methodology was designed to identify and assess the systemic risk of a large banking organization, and can be similarly used to measure the risks posed by the U.S. operations of foreign banking organizations. Like the thresholds-based approach in this proposal and the tailoring proposals, the indicators used in the scoring methodology closely align with the risk-based factors specified in section 165 of the Dodd-Frank Act. Because this information would be reported publicly, use of the scoring methodology may promote transparency in the application of such standards to foreign banking organizations.

Under the alternative scoring methodology, the size of a foreign banking organization's combined U.S. assets, together with the method 1 or method 2 score of its U.S. operations under the scoring methodology, would be used to determine which category of standards would apply. Consistent with the FBO tailoring proposal, tailoring of the resolution planning requirement would be based on the method 1 or method 2 score applicable to a foreign banking organization's combined U.S. operations. U.S. intermediate holding companies already report information required to calculate method 1 and method 2 scores, and in connection with the FBO tailoring proposal, the reporting requirements would be extended to include a foreign banking organization's combined U.S. operations.[46]

To determine which category of standards would apply under the alternative scoring methodology, the Board in its FBO tailoring proposal considered the distribution of method 1 and method 2 scores of the U.S. operations of foreign banking

[45] *See* 12 CFR part 217, subpart H.

[46] As discussed in detail in the FBO tailoring proposal, the FR Y–15 would be amended to collect risk-indicator data for the combined U.S. operations of foreign banking organizations.

organizations, U.S. intermediate holding companies, U.S. bank holding companies, and certain savings and loan holding companies with $100 billion or more in total consolidated assets.[47]

Category II. In the FBO tailoring proposal, the Board considered the potential of a firm's material distress or failure to disrupt the U.S. financial system or economy in selecting the ranges of method 1 or method 2 scores that could define the application of Category II standards.

Based on the Board's analysis in the FBO tailoring proposal and to maintain comparability to the domestic tailoring proposal, under the alternative scoring methodology the Board would apply Category II standards to any foreign banking organization with at least $100 billion in combined U.S. assets whose combined U.S. operations have (a) a method 1 score that meets or exceeds a minimum score between 60 and 80 or (b) a method 2 score that meets or exceeds a minimum score between 100 to 150.

If the Board were to establish a scoring methodology for these purposes in the final rule, the Board would set a single score within the listed ranges for the application of Category II standards. The Board invites comment on what score within these ranges would be appropriate.

Category III. Under the FBO tailoring proposal, the Board would apply category III standards to a foreign banking organization with combined U.S. assets of $250 billion or more, reflecting, among other things, the crisis experience of U.S. banking organizations with total consolidated assets of $250 billion or more, which presented materially different risks to U.S. financial stability relative to firms with less than $250 billion in assets. Similarly, under the domestic tailoring proposal, the Board would at a minimum apply Category III standards to a firm with assets of $250 billion or more, reflecting the threshold above which the Board must apply enhanced prudential standards under section 165 of the Dodd-Frank Act.

In the domestic tailoring proposal, the Board sought comment on an alternative scoring methodology under which a firm with total consolidated assets of $100 billion or more and less than $250 billion that had a method 1 or method 2 score within a specified range would be subject to Category III standards. Specifically, the Board proposed selecting a minimum score for application of Category III standards between 25 and 45 under method 1, or between 50 and 85 under method 2. The maximum score for application of the Category III standards would be one point lower than the minimum score selected for application of Category II standards. In selecting these ranges, the Board compared the scores of U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion with those of firms with total consolidated assets of $250 billion or more. In the FBO tailoring proposal, the Board is proposing the same thresholds for application of Category III standards to foreign banking organizations under the alternative scoring methodology.

In this proposal, the Board proposes to use the same range for foreign banking organizations, such that Category III standards would apply to a foreign banking organization with combined U.S. assets of $100 billion or more and less than $250 billion with a method 1 score that meets or exceeds a minimum score between 25 and 45 or a method 2 score that meets or exceeds a minimum score between 50 and 85, and in either case is below the score threshold for Category II standards. The Board invites comment on what score within these ranges would be appropriate.

Category IV. The Board proposes that under the alternative scoring methodology, Category IV standards would apply to a foreign banking organization with $100 billion or more in combined U.S. assets whose method 1 or method 2 score for its combined U.S. operations is below the minimum score threshold for Category III. If the score-based approach is adopted, the Board may or may not exercise its discretion to apply resolution planning requirements to these firms.

Question 28: What are the advantages and disadvantages to the use of the alternative scoring methodology and category thresholds described above instead of the proposed thresholds for foreign banking organizations?

Question 29: If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to foreign banking organizations with $100 billion or more and less than $250 billion in total consolidated assets, should the Board use method 1 scores, method 2 scores, or both? What are the challenges of applying the scoring methodologies to the combined U.S. operations of a foreign banking organization? What modifications to the scoring methodology, if any, should the Board consider (e.g., should intercompany transactions be reflected in the calculation of indicators)?

Question 30: If the Board adopts the alternative scoring methodology, what would be the advantages or disadvantages of the Board requiring scores to be calculated for the U.S. operations of a foreign banking organization at a frequency greater than annually, including, for example, requiring scores to be calculated on a quarterly basis?

Question 31: With respect to each category of standards described above, at what level should the method 1 or method 2 score thresholds be set and why? Commenters are encouraged to provide data supporting their recommendations.

Question 32: What other approaches should the Board consider in setting thresholds for determining whether to apply the resolution planning requirements to foreign banking organizations with $100 billion or more and less than $250 billion in total consolidated assets and why? How would any such approach affect the comparability of requirements across U.S. banking organizations and foreign banking organizations?

3. Alternative Tailoring Criteria

If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets, the agencies may also use the scoring methodology to differentiate among U.S. and foreign firms to which the resolution planning requirements would apply. For example, the agencies could divide covered companies required to file resolution plans into the three groups of filers as follows:

- The biennial filers group could comprise firms subject to Category I standards under the alternative scoring methodology, which would continue to be U.S. GSIBs, as well as any nonbank financial company supervised by the Board that has not been jointly designated as a triennial full filer by the agencies.
- The triennial full filers group could comprise firms subject to Category II and III standards under the alternative scoring methodology, as well as any nonbank financial company supervised by the Board that has been designated as a triennial full filer by the agencies.
- The triennial reduced filers group could comprise covered companies that are neither subject to Category I, II, or III standards under the alternative scoring methodology, nor nonbank

[47] In conducting its analysis, the Board considered method 1 and method 2 scores as of September 30, 2018.

financial companies supervised by the Board. This would include foreign banking organizations with $250 billion or more in total global assets that are not subject to Category II or Category III standards under the alternative scoring methodology.

The agencies are seeking comment on use of the alternative scoring methodology to tailor the application of the resolution planning requirement to covered companies.

Question 33: If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets, should the agencies use the same scoring methodology for purposes of tailoring resolution planning requirements? What are the advantages and disadvantages in using the alternative scoring methodology to categorize U.S. firms with systemic footprints smaller than the U.S. GSIBs for purposes of tailoring the resolution planning requirements?

Question 34: What other approaches should the agencies consider in setting thresholds for tailoring resolution planning requirements?

IV. Transition Period

Under the proposal, the rule would take effect no earlier than (a) the first day of the first calendar quarter after the issuance of the final rule and (b) November 24, 2019. Financial institutions that are covered companies when the final rule is issued would be required to comply with the proposed requirements beginning on the effective date.

The following summary describes the proposed submission dates for each new group of filers in the coming years. There currently are no nonbank financial companies designated for Board supervision by the Council so the summary does not address this type of firm.

Biennial filers (all firms subject to Category I standards): All U.S. firms identified as U.S. GSIBs and subject to Category I standards would be biennial filers. Firms in this group of filers would submit resolution plans on a biennial basis. The biennial filers are currently required to submit resolution plans under the Rule by July 1, 2019. If the proposal is adopted, their subsequent submission would be due by July 1, 2021. This submission would be a targeted resolution plan. Thereafter, the biennial filers would alternate between filing full and targeted resolution plans on a biennial basis going forward.

Triennial full filers (all firms subject to Category II or Category III standards): Firms in this filing group would submit resolution plans on a triennial basis and alternate between filing full resolution plans and targeted resolution plans. If the proposal is adopted, each triennial full filer would submit its first full resolution plan by July 1, 2021 and alternate between filing full and targeted resolution plans on a triennial basis going forward. For firms in this filing group with outstanding shortcomings or deficiencies, it is expected that remediation and related timelines established by the agencies would continue to apply. For example, the four foreign banking organizations that received feedback letters on December 20, 2018 (Barclays plc, Credit Suisse Group AG, Deutsche Bank AG, and UBS Group AG) would be expected to address their shortcomings and complete their respective project plans by July 1, 2020, as provided in the feedback letters. Consistent with previous communications to the firm, Northern Trust Corporation would be expected to provide an update in response to the agencies' joint feedback letter regarding its December 2017 resolution plan.

Triennial reduced filers (all other filers): Firms in this filing group would submit reduced resolution plans on a triennial basis. If the proposal is adopted, each triennial reduced filer would be required to submit its first reduced resolution plan by July 1, 2022, and then every three years going forward.

Question 35: The agencies invite comment on the proposed transition period. Are there other alternatives to consider as the agencies finalize the rule?

V. Impact Analysis

The proposal would modify the expected costs imposed by the Rule while seeking to preserve the benefits to U.S. financial stability provided by the Rule.

Consistent with EGRRCPA, the proposal would change the asset thresholds at which all firms are required to file resolution plans from $50 billion to $250 billion in total consolidated assets. The proposal also would require the submission of resolution plans by certain firms with $100 billion or more and less than $250 billion in total consolidated assets, including those that have certain risk-based indicators. As of June 30, 2018, firms with total consolidated assets between $50 and $100 billion accounted for less than 2.5 percent of total U.S. industry assets, and firms with $100 billion or more and less than $250 billion in total consolidated assets accounted for 17 percent of total U.S. industry assets.[48] The net impact of these threshold changes would reduce the number of U.S. filers from 27 to 12 and the number of foreign banking organization filers from 108 to 62. This reduction in resolution plan filers would decrease costs as fewer firms would be required to prepare plans.

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

The proposal would also reduce the frequency of required resolution plan submissions for the remaining resolution plan filers, including the largest and most complex resolution plan filers, by extending the default filing cycle between resolution plan submissions. The proposal would modify the filing cycle in the Rule to every two years for U.S. GSIBs and certain systemically important nonbank financial companies and to every three years for all other resolution plan filers. This change formalizes a practice that has developed over time to extend firms' resolution plan submission dates to allow at least two years between plan submissions and should reduce costs.

In the August 2018 proposal to extend mandatory Reporting Requirements Associated with Regulation QQ, the estimate of total annual burden for resolution plan filings was estimated to be 1,137,797 hours.[49] The revised annual burden, incorporating proposed modifications to the resolution plan rule is 425,523 hours. At an estimated mean wage of $56.05 per hour,[50] this reduction in the number of resolution plan filers has an estimated wage savings of approximately $39,922,958 per year. Impacts on resolution preparedness that could arise from the reduced frequency of filing would be mitigated by the proposal authorizing the agencies to require a firm to file a resolution plan with appropriate notice. This authority would address circumstances where the agencies

[48] Assets as reported on form FR Y–9C for the quarter ending June 30, 2018.

[49] Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 83 FR 42296 (August 21, 2018).

[50] Mean hourly wages retrieved from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages May 2017, published March 30, 2018, *www.bls.gov/news.release/ocwage.t01.htm*.

determine that waiting for a firm to submit on its regular submission cycle could present excess risk.

Finally, the proposal is also expected to improve efficiency by streamlining the information requirements for the resolution plan submissions: The proposal includes a mechanism for firms to request a waiver from certain informational requirements in full resolution plan submissions; a new, more focused plan submission (*i.e.,* targeted resolution plan); and formalizes the conditions and content for reduced resolution plans. These resolution plan modifications are appropriate because the firms' resolution plans have matured and become more stable through multiple submissions. Further, the resolution plan modifications should reduce the costs of preparing and reviewing the plans without having a material impact on the benefits provided by the plans.

In short, as detailed in this section, the proposal would provide estimated wage savings, to the institutions affected by it, totaling $39,922,958 due to the reduction of 712,274 burden hours needed to comply with the Rule. Moreover, firms could reallocate the 712,274 hours used to comply with the Rule to other activities considered to be more beneficial. Thus, the total economic benefits of the proposal could be greater than the dollar amount estimated.

Question 36: The agencies invite comment on all aspects of this evaluation of costs and benefits.

VI. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposal and determined that the proposal would revise the reporting requirements that have been previously cleared by the OMB under the Board's control number (7100–0346). When the Rule was adopted in 2011, the Board took the entire burden associated with the Rule even though the Board and the Corporation are both legally authorized to receive and review resolution plans. The agencies have decided to now share equally in the burden associated with the proposal. As a result, the Corporation will request approval from the OMB for one half of the Board's PRA burden, as revised by the proposal, and the OMB will assign an OMB control number. The Board has reviewed the proposal under the authority delegated to the Board by the OMB and at the final rule stage, will revise and extend its information collection for three years.

Comments are invited on:

- Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- The accuracy of the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology;
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information; and
- Burden estimates for preparation of waiver requests and the calculation of any associated reduction in burden.

All comments will become a matter of public record. Comments on the collection of information should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer: 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; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

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

Agency Form Number: FR QQ.

OMB Control Number: 7100–0346.

Frequency of Response: Biennially, Triennially.

Respondents: Bank holding companies [51] with total consolidated assets of $250 billion or more, bank holding companies with $100 billion or more in total consolidated assets with certain characteristics specified in the proposal, and nonbank financial firms designated by the Council for supervision by the Board.

FR QQ	Number of respondents [52]	Annual frequency	Estimated average hours per response	Estimated annual burden hours
Current				
Reduced Reporters	72	1	60	4,320
December Filers:				
Tailored Reporters:				
Domestic	11	1	9,000	99,000
Foreign	6	1	1,130	6,780
Full Reporters:				
Domestic	3	1	26,000	78,000
Foreign	6	1	2,000	12,000
Complex Filers:				
Domestic	9	1	[53] 79,522	715,697
Foreign	4	1	55,500	222,000
Current Total	.....	.....	.....	1,137,797

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

FR QQ	Number of respondents [52]	Annual frequency	Estimated average hours per response	Estimated annual burden hours
Proposed				
Triennial Reduced	53	1	20	1,060
Triennial Full:				
Complex Foreign	4	1	13,135	52,540
Foreign and Domestic	9	1	5,667	51,003
Biennial Filers:				
Domestic	8	1	40,115	320,920
Waivers [54]	1	1	1	1
Current Total	.....	.....	.....	425,523
Change	.....	.....	.....	712,274

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requiresan agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[55] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[56]

The agencies have considered the potential impact of the proposal on small entities in accordance with the RFA. As discussed below, the Board believes and the Corporation certifies that the proposal is not expected to have a significant impact on a substantial number of small entities, including small banking organizations.

As discussed in detail above, section 165(d) of the Dodd-Frank Act requires certain financial companies to report periodically to the agencies their plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure. This provision of the Dodd-Frank Act has recently been amended by EGRRCPA.

In accordance with section 165(d) of the Dodd-Frank Act as amended by EGRRCPA, the Board is proposing to amend Regulation QQ (12 CFR part 243) and the Corporation is proposing to amend part 381 (12 CFR part 381) to amend the requirements that a covered company periodically submit a resolution plan to the agencies.[57] The proposal would also modify the procedures for joint review of a resolution plan by the agencies. The reasons and justification for the proposal are described in the Supplementary Information.

Under regulations issued by the SBA, a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with total consolidated assets totaling less than $550 million.[58] The agencies believe that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, banks, bank holding companies or nonbank financial companies with total consolidated assets of $550 million or less are small entities for purposes of the RFA. As of June 30, 2018, there were 4,106 insured depository institutions and six bank holding companies considered ''small'' by the SBA under the RFA.[59]

As discussed in the **SUPPLEMENTARY INFORMATION**, the proposal would apply to covered companies, which includes only bank holding companies and foreign banks that are or are treated as a bank holding company (foreign banking organization) with at least $100 billion in total consolidated assets, and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. The assets of a covered company substantially exceed the $550 million asset threshold at which a banking organization is considered a ''small entity'' under SBA regulations.[60] The proposal would apply to a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[61] It is therefore unlikely that a financial firm that is at or below the $550 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of it activities, are not likely to pose a threat to the financial stability of the United States.

[52] Of these respondents, none are small entities as defined by the Small Business Administration (*i.e.,* entities with less than $550 million in total assets) *https://www.sba.gov/document/support-table-size-standards.*

[53] This estimate captures the annual time that complex domestic filers will spend complying with this collection, given that eight of these filers will only submit two resolution plans over the three-year period covered by this document. The estimate therefore represents two-thirds of the time these firms are estimated to spend on each resolution plan submission.

[54] The agencies cannot reasonably estimate how many of the 21 firms expected to file full resolution plans may submit waiver requests, nor how long it would take to prepare a waiver request. Accordingly, the agencies are including this line as a placeholder.

[55] 5 U.S.C. 601 *et seq.*

[56] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the agencies use a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[57] *See* 12 U.S.C. 5365(d).

[58] 13 CFR 121.201.

[59] FFIEC Call reports, June 30, 2018.

[60] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the asset threshold for the application of the resolution planning requirements. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

[61] *See* 12 CFR 1310.11.

Because the proposal is not likely to apply to any company with assets of $550 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. Moreover, as discussed in the Supplementary Information, the Dodd-Frank Act requires the agencies jointly to adopt rules implementing the provisions of section 165(d) of the Dodd-Frank Act. The agencies do not believe that the proposal duplicates, overlaps, or conflicts with any other Federal rules.

In light of the foregoing, the Board believes and the Corporation certifies that the proposal, if adopted in final form, will not have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the agencies invite comment on whether the proposal would have significant effects on small organizations, and whether the potential burdens or consequences of such effects could be minimized in a manner consistent with section 165(d) of the Dodd-Frank Act.

Question 37: The agencies invite written comments regarding this analysis, and request that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact. A final regulatory flexibility analysis will be conducted after consideration of comment received during the public comment period.

C. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

Because the proposal would not impose additional reporting, disclosure, or other requirements on insured depository institutions, section 302 of the RCDRIA therefore does not apply. Nevertheless, the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies invite any other comments that further will inform the agencies' consideration of RCDRIA.

Question 38: The agencies invites comment on this section, including any additional comments that will inform the agencies' consideration of the requirements of RCDRIA.

D. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[62] The agencies have sought to present the proposal in a simple and straightforward manner, and invite comment on the use of plain language. For example:

Question 39: Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?

Question 40: Are the requirements of the proposal clearly stated? If not, how could they be stated more clearly?

Question 41: Does the proposal contain unclear technical language or jargon? If so, which language requires clarification?

Question 42: Would a different format (such as a different grouping and ordering of sections, a different use of section headings, or a different organization of paragraphs) make the regulation easier to understand? If so, what changes would make the proposal clearer?

Question 43: What else could the agencies do to make the proposal clearer and easier to understand?

Appendix A: Foreign Banking Organizations That Would Be Triennial Reduced Filers

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

Text of the Common Rules

(All Agencies)

The text of the common rules appears below:

PART [ ]—RESOLUTION PLANS

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

[62] 12 U.S.C. 4809(a).

§ ____.1 Authority and scope.

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

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

§ ____.2 Definitions.

For purposes of this part:

Bankruptcy Code means Title 11 of the United States Code.

Biennial filer is defined in § ____.4(a)(1).

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

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

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

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

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

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

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

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

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

(ii) Any global systemically important BHC;

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

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

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

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

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

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

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

(4) *Multi-tiered holding company.* In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company unless the Board and the Corporation

jointly identify a different holding company to satisfy the requirements that apply to the covered company. In making this determination, the Board and the Corporation shall consider:

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

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

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

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

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

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

Deficiency is defined in § ____.8(b).

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

Foreign banking organization means—

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

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

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

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

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

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

Full resolution plan means a full resolution plan described in § ____.5.

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

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

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

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

(1) The resolvability of the covered company;

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

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

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

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

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

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

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

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

(1) The covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

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

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

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

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

Reduced resolution plan means a reduced resolution plan described in § ____.7.

Shortcoming is defined in § ____.8(e).

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

Targeted resolution plan means a targeted resolution plan described in § ____.6.

Triennial full filer is defined in § ____.4(b)(1).

Triennial reduced filer is defined in § ____.4(c)(1).

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

§ ____.3 Critical operations.

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

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

the covered company's operations, to identify and assess:

(A) The economic functions engaged in by the covered company;

(B) The markets and activities through which the covered company engages in those economic functions;

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

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

(2) *Waiver requests.* In connection with the submission of a resolution plan, a covered company that has previously submitted a resolution plan under this part and does not currently have an identified critical operation under this part may request a waiver of the requirement to have a process and methodology under paragraph (a)(1) of this section in accordance with this paragraph (a)(2).

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

(ii) Any waiver request must be made in writing at least 15 months before the date on which the covered company is required to submit the resolution plan.

(iii) The Board and Corporation may jointly deny a waiver request in their discretion. Unless the Board and the Corporation have jointly denied a waiver request, the waiver request will be deemed approved on the date that is 9 months prior to the date that the covered company is required to submit the resolution plan to which the waiver request relates.

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

(2) If the Board and the Corporation jointly identify a covered company's operation as a critical operation, the Board and the Corporation shall jointly notify the covered company in writing. A covered company is not required to include the information required under §§__.5 through __.7 for the identified critical operation in any resolution plan that the covered company is required to submit within 180 days after the joint notification unless the operation had been identified by the covered company as a critical operation prior to when the Board and the Corporation jointly notified the covered company.

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

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

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

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

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

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

(2) *Timing.* (i) A covered company shall submit a request for reconsideration sufficiently before its next resolution plan to provide the Board and the Corporation with a reasonable period of time to reconsider the joint identification.

(ii) If a covered company submits a request for reconsideration at least 270 days before the date on which it is required to submit its next resolution plan, the Board and the Corporation will complete their reconsideration at least 180 days before the date on which the covered company is required to submit its next resolution plan, except the Board and the Corporation may jointly extend the period for their reconsideration by no more than 90 days. If the Board and the Corporation jointly find that additional information from the covered company is required to complete their reconsideration, the Board and the Corporation will jointly request in writing the additional information from the covered company. The Board and the Corporation will then complete their reconsideration no later than 90 days after receipt of all additional information from the covered company.

(iii) If a covered company submits a request for reconsideration less than 270 days before the date on which it is required to submit its next resolution plan, the Board and the Corporation may, in their discretion, defer reconsideration of the joint identification until after the submission of that resolution plan, with the result that the covered company must include the identified critical operation in that resolution plan.

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

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

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

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

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

(2) *Timing.* Notwithstanding a covered company's de-identification, and unless otherwise notified in writing jointly by the Board and the Corporation, a covered company shall include the applicable information required under §§ ____.5 through ____.7 regarding an operation previously identified by the covered company as a critical operation in any resolution plan the covered company is required to submit during the period ending 12 months after the covered company notifies the Board and the Corporation in accordance with paragraph (d)(1) of this section.

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

§ ____.4 Resolution plan required.

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

(i) Any global systemically important BHC; and

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

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

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

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

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

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

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

(i) Any category II banking organization;

(ii) Any category III banking organization; and

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

(2) *Frequency of submission.* Triennial full filers shall each submit a resolution plan to the Board and the Corporation every three years.

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

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

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

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

(2) *Frequency of submission.* Triennial reduced filers shall each submit a resolution plan to the Board and the Corporation every three years.

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

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

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

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

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

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

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

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

(iii) Notwithstanding paragraph (d)(1)(i) or (ii) of this section, any triennial reduced filer that becomes a biennial filer or a triennial full filer

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

(2) *Altering submission dates.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly determine that a covered company shall file its resolution plan by a date other than as provided in paragraphs (a) through (d) of this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(2) no later than 180 days prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan, unless the covered company has not previously submitted a resolution plan, in which case the Board and Corporation shall provide the written notice no later than 12 months prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan.

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

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

(ii) *Exception.* A covered company shall not be required to file a notice under paragraph (d)(4)(i) of this section if the date on which the covered company would be required to submit the notice under paragraph (d)(3)(i) of this section would be within 90 days prior to the date on which the covered company is required to file a resolution plan under this section.

(5) *Authority to require a full resolution plan submission.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly require that a covered company submit a full resolution plan within a reasonable period of time.

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

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

(A) A requirement to include any of the following information is not eligible for a waiver at the request of a covered company:

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

(*2*) Any core element;

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

(*4*) Information about the remediation of any previously identified deficiency or shortcoming unless the Board and the Corporation have jointly determined that the covered company has satisfactorily remedied the deficiency or addressed the shortcoming prior to the covered company's submission of the waiver request; or

(*5*) Information about changes to the covered company's last submitted resolution plan resulting from any:

(*i*) Change in law;

(*ii*) Change in regulation;

(*iii*) Guidance from the Board and the Corporation; or

(*iv*) Feedback from the Board and the Corporation, or any material change experienced by the covered company since the covered company submitted that resolution plan.

(B) Each waiver request shall be divided into a public section and a confidential section. A covered company shall segregate and separately identify the public section from the confidential section. A covered company shall include in the confidential section of a waiver request a clear and complete explanation of why:

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

(*2*) The information sought to be waived would not be relevant to the Board's and Corporation's review of the covered company's next full resolution plan; and

(*3*) A waiver of each requirement would be appropriate. A covered company shall include in the public section of a waiver request a list of the requirements that the covered company is requesting be waived.

(C) A covered company may not make more than one waiver request for any full resolution plan submission and any waiver request must be made in writing at least 15 months before the date on which the covered company is required to submit the full resolution plan.

(D) The Board and Corporation may jointly deny a waiver request in their discretion. Unless the Board and the Corporation have jointly denied a waiver request, the waiver request will be deemed approved on the date that is 9 months prior to the date that the covered company is required to submit the full resolution plan to which the waiver request relates.

(e) *Access to information.* In order to allow evaluation of a resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. In order to facilitate review of any waiver request by a covered company under § ____.3(a)(2) or paragraph (d)(6)(ii) of this section, or any joint identification of a critical operation of a covered company under § ____.3(b), each covered company must provide such information and access to personnel of the covered company as the Board and the Corporation jointly determine is necessary to evaluate the waiver request or whether the operation is a critical operation. The Board and the

Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

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

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

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

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

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

(1) Take into account that the material financial distress or failure of the covered company may occur under the severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B);
provision of extraordinary support by the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company, including any resolution actions taken outside the United States that would eliminate the need for any of a covered company's U.S. subsidiaries to enter into resolution proceedings; and

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

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

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

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

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

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

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

§ ____.5 Informational content of a full resolution plan.

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

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

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

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

(B) Any foreign-based affiliate; and

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

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

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

(2) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan;

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

(i) Change in law or regulation;

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

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

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

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

(1) Include detailed descriptions of the:

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

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

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

financial distress at or failure of the covered company;

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

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

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

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

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

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

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

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

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

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

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

(1) Include a detailed description of:

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

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

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

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

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

(3) Identify and describe the relevant risk measures used by the covered company to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to the covered company's appropriate Federal regulator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Identify each trading, payment, clearing, or settlement system of which the covered company, directly or indirectly, is a member and on which

the covered company conducts a material number or value amount of trades or transactions. Map membership in each such system to the covered company's material entities, identified critical operations and core business lines.

(f) *Management information systems.* (1) Each full resolution plan shall include:

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

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

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

(iv) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified in paragraph (f) of this section; and

(v) A description and analysis of:

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

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

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

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

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

(2) Capital, funding, or liquidity arrangements;

(3) Existing or contingent credit exposures;

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

(5) Risk transfers; and

(6) Service level agreements.

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

(1) Identify any:

(i) Federal, state, or foreign agency or authority (other than a Federal banking agency) with supervisory authority or responsibility for ensuring the safety and soundness of the covered company, its material entities, identified critical operations and core business lines; and

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

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

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

§ ____.6 Informational content of a targeted resolution plan.

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

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

(1) The core elements;

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

(3) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan; and

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

(i) Change in law or regulation;

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

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

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

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

§ ____.7 Informational content of a reduced resolution plan.

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

(1) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan; and

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

(i) Change in law or regulation;

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

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

(b) *Deemed incorporation by reference.* If a covered company does

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

§ ____.8 Review of resolution plans; resubmission of deficient resolution plans

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

(b) *Joint determination regarding deficient resolution plans.* If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under § ____.4 is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation shall jointly notify the covered company in writing of such determination. Any joint notice provided under this paragraph (b) shall identify the deficiencies identified by the Board and Corporation in the resolution plan. A deficiency is an aspect of a covered company's resolution plan that the Board and Corporation jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the covered company's resolution plan.

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

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

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

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

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

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

§ ____.9 Failure to cure deficiencies on resubmission of a resolution plan

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

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

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

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

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

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

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

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

§ ____.10 Consultation.

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

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

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

§ ____.11 No limiting effect or private right of action; confidentiality of resolution plans

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

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

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

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

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

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

(c) *Form of resolution plans*—(1) *Generally.* Each full, targeted, and reduced resolution plan of a covered company shall be divided into a public section and a confidential section. Each covered company shall segregate and separately identify the public section from the confidential section.

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

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing and settlement systems;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) A description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities, and its core business lines.

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

(i) The names of material entities;

(ii) A description of core business lines;

(iii) The identities of the principal officers; and

(iv) A description, at a high level, of the covered company's resolution strategy, referencing the applicable resolution regimes for its material entities.

(d) *Confidential treatment of resolution plans.* (1) The confidentiality of resolution plans and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules).

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

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

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

§ ____.12 Enforcement

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

[END OF COMMON TEXT]

List of Subjects

12 CFR Part 243

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

12 CFR Part 381

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

Adoption of the Common Rule Text

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

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

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

PART 243—RESOLUTION PLANS (REGULATION QQ)

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

Authority: 12 U.S.C. 5365.

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

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

§ 243.1 Authority and scope.

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

* * * * *

■ 4. Add § 243.13 to read as follows:

§ 243.13 Additional covered companies.

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

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

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation proposes to revise part 381

to 12 CFR chapter III as set forth in the text of the common rule at the end of the preamble and further amend 12 part 381 as follows:

PART 381—RESOLUTION PLANS

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

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

§ 381.2 [Amended]

■ 6. In § 381.2(j)(1)(v), add the words ''of this title'' after the phrase ''pursuant to § 243.13''.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on April 16, 2019.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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