

Supporting Statement
Resolution Plans Required for Insured Depository
Institutions With Over \$50 Billion in Total Assets
OMB Control No. 3064-NEW

A. Justification.

1. Circumstances that make the collection necessary:

The FDIC's roles as insurer and receiver require a distinct focus on potential loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the Deposit Insurance Fund and the ability of the FDIC to conduct an orderly resolution. The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the Rule. The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the Rule. The authority to issue the Rule is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a) Tenth, which authorizes the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or enforcing.

Since the recent financial crisis began in late 2008, financial authorities throughout the world have recognized and agreed that advance planning for the resolution of large, complex financial institutions is critical to minimizing the disruption that a failure of such an institution may have as well as the costs of its resolution.

2. Use of the information:

This Rule requires an insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution of such institution in the event of its failure ("Resolution Plan"). The Rule establishes the requirements for submission and content of a Resolution Plan, as well as procedures for review by the FDIC. The Rule requires a covered insured depository institution ("CIDI") to submit a Resolution Plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution's creditors. The Rule is intended to address the continuing exposure of the banking industry to the risks of insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning.

In addition, this Rule requires that each CIDI submit a new Resolution Plan on or before the anniversary date of its initial plan. And the rule requires that a CIDI file a notice within 45

days after any event, occurrence, change in conditions or circumstances, or change which results in, or could reasonably be foreseen to have a material effect on its resolution plan, such that the resolution plan would be ineffective or require material amendment to be effective.

3. Consideration of the use of improved information technology:

Respondents may use any information technology that permits review by FDIC examiners.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated elsewhere.

5. Methods used to minimize burden if the collection has an impact on a substantial number of small entities:

Not applicable.

6. Consequences to the Federal program if the collection were conducted less frequently:

Conducting the collection less frequently would present safety and soundness risks.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

None. The information collection is conducted in accordance with OMB guidelines in 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

FDIC caused to be published in the *Federal Register* for comment the following notices: a Proposed Rulemaking on May 17, 2010 (75 FR 27464), and an Interim Final Rule on September 21, 2011 (76 FR 58379).

In response to comments, the Rule was revised to coincide with the Section 165(d) rule's filing requirement for such an institution's parent. The Rule provides that an insured depository institution that becomes a CIDI after the effective date of the Rule shall submit its initial Resolution Plan no later than the next July 1 following the date the insured depository institution becomes a CIDI, provided such date occurs no earlier than 270 days after the date on which the insured depository institution became a CIDI.

One commenter noted that the IFR provision regarding notice of material event varied from the similar provision in the Section 165(d) rule and requested that the Rule be

modified to be consistent with the Section 165(d) rule. The Rule has been modified to be consistent with the Section 165(d) rule with respect to both the content of the notice and the exception, i.e., under the Rule, a CIDI is not required to file a notice of material event within 90 days prior to the date on which it is required to file its annual resolution plan.

While one commenter suggested that a CIDI's first iteration of a Resolution Plan should assume a baseline, adverse and severely adverse economic conditions, the FDIC recognizes the burden that the Rule imposes on CIDs and the challenge that CIDs face in preparing their initial Resolution Plans. To reduce this burden, the FDIC is requiring that feasibility for initial Resolution Plans be assessed under only baseline economic condition scenarios. Subsequent Resolution Plans must assess feasibility under adverse and severely adverse economic condition scenarios as well.

One commenter suggested that the Rule require the CIDI to identify potential barriers or other obstacles to an orderly resolution of the CIDI. The Rule now provides that the CIDI identify potential barriers or other material obstacles to an orderly resolution of the CIDI, interconnections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles. The Resolution Plan should provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The Resolution Plan should also describe remediation or mitigating steps that can be taken to eliminate or mitigate obstacles to such separation.

One commenter suggested that the Rule should not require the CIDI to demonstrate a strategy is least costly ex ante. The Rules requires the CIDI to propose reasonable resolution options and demonstrate how one is least costly relative to liquidation or other resolution methods. A CIDI can demonstrate a selected strategy is least costly by offering a range of transactions and be ensuring that the transactions are offered broadly to the market, competitive bids are taken and bids are evaluated carefully. The CIDI can apply those strategies, or others it may develop, for demonstrating that the option ultimately selected will be least costly.

As suggested by one commenter, a CIDI may consider a post-appointment recapitalization in its Resolution Plan and a CIDI should address this option if it believes a recapitalization would be among the resolution options that are least costly to the deposit insurance fund. Another commenter suggested a breakup of an institution should also be considered. A breakup is a legitimate resolution method and a CIDI may consider that as a resolution option. The resolution strategy should be tailored to the size, complexity and risk profile of the institution.

One commenter suggested that the Rule be modified to make clear that it would be appropriate if a CIDI were to divide responsibilities among multiple senior management officials

or assign them to a committee. While it may be appropriate to divide up the responsibilities, to assure appropriate oversight, the primary responsibility and accountability for the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with this section should be assigned to one senior management official.

The CIDI's ability to produce the information and data underlying its resolution rapidly and on demand is a vital element in a credible Resolution Plan. While one commenter believes that this requirement would be better addressed through the FDIC's ongoing review of Resolution Plans than through a rule-based requirement, without up-to-date information on the CIDI, the FDIC, as receiver, would be hampered in implementing the Resolution Plan. Therefore, within a reasonable period of time, as determined by the FDIC, after the filing of its initial Resolution Plan, the CIDI must demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, accurate and verifiable data underlying the key aspects of Resolution Plan. The FDIC understands that the capability to produce the data underlying the key aspects of the Resolution Plan will vary by CIDI and, therefore, intends to review and discuss the CIDI's plans to remedy deficiencies as part of their review of a CIDI's initial Resolution Plan. In addition, the Rule has been modified to require the FDIC shall consult with the appropriate Federal banking agency for the CIDI before any finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.

Several commenters requested that the Resolution Plans be treated as exempt from disclosure under the Freedom of Information Act ("FOIA"). The FDIC is aware of and sensitive to the significant concerns regarding confidentiality of Resolution Plans. The Rule contemplates and requires the submission of highly detailed, internal proprietary information of CIDs. This is the type of information that CIDs would not customarily make available to the public and that an agency typically would have access to and could review as part of the supervisory process in assessing, for example, the safety and soundness of a regulated institution. In the FDIC's view, release of this information would impede the quality and extent of information provided by CIDs and could significantly impact the FDIC's efforts to encourage effective and orderly resolution of the CIDs in a crisis.

Under the Rule, the confidentiality of Resolution Plans is to be assessed in accordance with the applicable exemptions under the FOIA, 5 U.S.C. 552(b), and the FDIC's Disclosure of Information Rule, 12 CFR part 309. The FDIC certainly expects that large portions of the submissions will contain or consist of "trade secrets and commercial or financial information obtained from a person and privileged or confidential" and information that is "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." This information is subject to withholding under exemptions 4 and 8 of the FOIA, 5 U.S.C. 552(b)(4) and (8).

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

FDIC will ensure that information will be kept private to the extent allowed by law. Information will only be released to authorized recipients in accordance to the criteria for disclosure laid out in the Privacy Act and the Freedom of Information Act.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimates:

A. Estimated Number of Respondents for Contingent Resolution Plan: 37.
Frequency of Response: Once.
Estimated Time per Response: 7,200 hours per respondent.
Estimated Total Initial Burden: 266,400 hours.

B. Estimated Number of Respondents for Annual Update of Resolution Plan: 37.
Frequency of Response: Annual.
Estimated Time per Response: 452 hours per respondent.
Estimated Total Initial Burden: 16,724 hours.

C. Estimated Number of Respondents for Notice of Material Change Affecting Resolution Plan: 37.
Frequency of Response: Zero to two times annually.
Estimated Time per Response: 226 hours per respondent.
Estimated Total Initial Burden: 8,362 hours.

13. Estimate of annualized costs to respondents (excluding cost of hour burden in Item #12):

None.

14. Estimate of annualized costs to the government:

None.

15. Changes in burden:

This is a new collection so all burdens are new.

16. Information regarding collections whose results are planned to be published for statistical use:

No publication for statistical use is contemplated.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.