

SUPPORTING STATEMENT
Reporting Requirements Associated with Resolution Planning
(OMB Control No. 3064-NEW)

INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC) is requesting approval from the OMB to establish a new information collection comprised of reporting requirements contained in a notice of proposed rulemaking on “Resolution Plans Required” (the proposal). The proposal seeks to amend and restate the jointly-issued rule (12 C.F.R. Part 381 (FDIC), 12 C.F.R Part 243 (Board of Governors of the Federal Reserve System)) (the Rule) that was adopted in 2011 implementing section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The Rule, as currently written and as proposed to be amended, would require certain financial companies¹ (covered companies) to report periodically to the FDIC and the Board of Governors of the Federal Reserve System (Board) (together, the agencies) their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (Bankruptcy Code) in the event of material financial distress or failure. When the Rule was adopted in 2011, the Board took the entire Paperwork Reduction Act (PRA) burden associated with the Rule even though the Board and the FDIC 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 FDIC is requesting approval from the OMB for one half of the Board’s PRA burden, as it would be revised by the proposal, and asks that the OMB assign an OMB control number.

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

To promote financial stability, section 165(d) of the Dodd-Frank Act requires certain companies to periodically submit a plan for such company’s rapid and orderly resolution under the Bankruptcy Code in the event of the company’s material financial distress or failure.

On November 1, 2011, the agencies published the Rule in the *Federal Register* (76 FR 67323), to implement the resolution plan requirement set forth in section 165(d)(1) of the Dodd-Frank Act. The effective date for the Rule was November 30, 2011, and the first set of resolution plans were submitted in July 2012, as required by the regulation.

Resolution plans filed under section 165(d) and the Rule assist covered companies and regulators in conducting advance resolution planning for a covered company. Through the FDIC’s experience in failed bank resolutions, as well as the Board’s and the FDIC’s experience in the most recent financial crisis, it became apparent that advance planning has the potential to improve the

¹ As the Rule is proposed to be amended, the term “covered companies” would include bank holding companies (including 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) with total consolidated assets of \$250 billion or more, bank holding companies with \$100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council (FSOC) for supervision by the Board.

efficient resolution of a covered company. Advance planning has long been a component of resiliency and recovery planning by financial companies. The resolution plan required of covered companies under the Rule supports the FDIC's planning for the exercise of its resolution authority under the Dodd-Frank Act by providing the FDIC with an understanding of the covered companies' structures and complexity, as well as their resolution strategies and processes. The resolution plans also keep the agencies apprised of relevant changes to the covered companies' structure, complexity, and other factors that may affect resolvability. In addition, these plans enhance the agencies' understanding of the U.S. operations of foreign banking organizations and improve efforts to develop a comprehensive and coordinated resolution strategy for a foreign banking organization.

The Rule currently requires each resolution plan to contain certain information, including information regarding the manner and extent to which any insured depository institution affiliated with the covered company is adequately protected from risks arising from the activities of nonbank subsidiaries of the company; descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company; identification of the cross-guarantees tied to different securities; identification of major counterparties; a process for determining to whom the collateral of the company is pledged; and other information that the Board and the FDIC jointly require by rule or order. The Rule also requires a strategic analysis by the covered company of how it can be resolved under the Bankruptcy Code 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. Since the implementation of the Rule in 2011, the agencies have provided additional guidance to covered companies regarding the information that should be included in, or that can be omitted from, a company's resolution plan.

The information collected under the Rule has been helpful for identifying obstacles to a rapid and orderly resolution under the Bankruptcy Code. The agencies have used this information to provide feedback to covered companies concerning improvements to their resolution plans and planning processes. The resolution plan submissions have also provided information about covered companies' structure and operations that have been useful to the FDIC in planning for any actions it would take with respect to its authority under the Dodd-Frank Act.

2. Use of the information:

As stated above, the resolution plans required of covered companies under the Rule support the FDIC's planning for the exercise of its resolution authority under the Dodd-Frank Act and the Federal Deposit Insurance Act (FDI Act) by providing the FDIC with an understanding of the covered companies' structures and complexity, as well as their resolution strategies and processes. The resolution plans also keep the agencies apprised of relevant changes to the covered companies' structure, complexity, and other factors that may affect resolvability.

The reporting requirements are found in sections 381.3, 381.4, 381.5, 381.6, 381.7, 381.8, 381.11 of the proposal. Compliance with the information collection would be mandatory. No other federal law mandates these reporting requirements.

General Requirements

Section 381.3 - In connection with the submission of a resolution plan, certain covered companies would be required to establish and implement a process and methodology to identify each of its critical operations. Certain covered companies, including those that have previously submitted a resolution plan under this part and do not currently have an identified critical operation under this part would be able to request a waiver of the requirement to have a process and methodology under 381.3(a)(1).

Section 381.4 - Resolution plan required sets forth a staggered schedule for submission of initial resolution plans by firms that become covered companies and become subject to the proposal, and would require that covered companies submit an updated resolution plan on the July 1 of each year in which a plan is due. In addition, section 381.4 would establish a requirement that a covered company provide notice to the Board and FDIC of extraordinary events that have the potential to affect its resolvability. Section 381.4 would allow the FDIC and the Board to jointly modify a covered company's resolution plan submission deadline, and to jointly require a covered company to submit an interim update to its resolution plan. Additionally, a covered company that submits a request to waive certain informational content requirements from its full resolution plan, as would be permitted under section 381.4, would be required to submit certain information supporting its request for a waiver.

Section 381.5 – This section describes the informational content of a full resolution plan.

Section 381.6 – This section describes the informational content of a targeted resolution plan.

Section 381.7 – This section describes the informational content of a reduced resolution plan.

Section 381.8 – This section would require that, if the Board and FDIC jointly determine that a resolution plan of a covered company is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, a covered company would be required to resubmit a revised plan within 90 days of receiving notice of deficiencies the agencies jointly identified in the resolution plan (or such other period as the agencies jointly determine). A covered company would also be to submit a written request for an extension of time to resubmit a revised resolution plan.

Section 381.11 – This section describes the informational content of the public

section of a full resolution plan, a targeted resolution plan, and a reduced resolution plan.

3. Consideration of the use of improved information technology:

Covered companies may use technology to the extent feasible and/or desirable or appropriate to make the required reports. Generally, at the direction of the Board and the FDIC, covered companies have used a secure electronic portal to submit their resolution plans in digital format.

4. Effort to identify duplication:

The reporting requirements are found in sections 381.3, 381.4, 381.5, 381.6, 381.7, 381.8, 381.11 of the Rule. Compliance with the information collection is mandatory. No other federal law mandates these reporting requirements and therefore the reporting requirements are not otherwise duplicated.

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

This proposal will not have a significant impact on a substantial number of small entities. In particular, the proposal would apply to covered companies, which would include only bank holding companies and foreign banks that are or are treated as a bank holding company (foreign banking organization), in both cases with at least \$100 billion in total consolidated assets. The assets of a covered company substantially exceed the \$550 million asset threshold at which a banking organization is considered a “small entity” under the Small Business Administration’s regulations.

In addition, the proposal would apply to a nonbank financial company designated by the FSOC 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 FSOC for supervision by the Board, it is an important consideration. It is therefore unlikely that a financial firm that is at or below the \$550 million asset threshold would be designated by the FSOC 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 its activities, are not likely to pose a threat to the financial stability of the United States.

Therefore, the proposal is not likely to apply to any company with assets of \$550 million or less, if adopted in final form.

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

Resolution plans filed under section 165(d) and the Rule assist covered companies and regulators in conducting advance resolution planning for a covered company. Through the FDIC’s experience in failed bank resolutions, as well as the Board’s and

the FDIC's experience in the most recent financial crisis, it became apparent that advance planning has the potential to improve the efficient resolution of a covered company. Advance planning has long been a component of resiliency and recovery planning by financial companies. The resolution plan required of covered companies under the Rule supports the FDIC's planning for the exercise of its resolution authority under the Dodd-Frank Act by providing the FDIC with an understanding of the covered companies' structures and complexity as well as their resolution strategies and processes. The resolution plans also keep the agencies apprised of relevant changes to the covered companies' structure, complexity, and other factors that may affect resolvability. The resolvability of firms changes as markets change and as firms' activities, structures, and risk profiles change. Less frequent collection of information could impede the FDIC's advance resolution planning.

7. Special circumstances necessitating collection inconsistent with 5 CFR 1320.5(d)(2):

None. This information collection is conducted in accordance with the guidelines in 5 CFR 1320.5(d)(2).

8. Efforts to consult with persons outside the agency:

On May 14, 2019, the FDIC issued a Notice of Proposed Rulemaking in the Federal Register (84 FR 21600) seeking comment on the reporting requirements under the PRA. The FDIC will consider any comments received during the comment period when finalizing the Rule.

9. Payment or gift to respondents:

None.

10. Any assurance of confidentiality:

Information collected is kept private to the extent allowed by law. All required records are subject to the confidentiality requirements of the Privacy Act. In addition, any information deemed to be of a confidential nature is exempt from public disclosure in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552).

11. Justification for questions of a sensitive nature:

No questions of a sensitive nature are included in the collection.

12. Estimate of Hour Burden:

The FDIC’s estimated burden² for the respondents for complying with the collection of information is 212,762 hours.

	Number of Respondents [Annual Frequency	Estimated average hours per response	Estimated annual burden hours
FDIC’s ½ of Current Burden Hours				
Reduced Reporters	72	1	30	2,160
December Filers:				
Tailored Reporters				
Domestic	11	1	4,500	49,500
Foreign	6	1	565	3,390
Full Reporters				
Domestic	3	1	13,000	39,000
Foreign	6	1	1,000	6,000
Complex Filers				
Domestic	9	1	39,761	357,849
Foreign	4	1	27,750	111,000
<i>Board’s Current Total</i>				568,899 hours
FDIC’s ½ of Proposed Burden Hours³				
Triennial Reduced	53	1	10	530
Triennial Full:				
Complex Foreign	4	1	6,568	26,270
Foreign and Domestic	9	1	2,834	25,502
Biennial Filers				
Domestic	8	1	20,058	160,460
Waivers				
	1	1	0.5	1
<i>FDIC’s Proposed Total</i>				212,762 hours

2 When the Rule was adopted in 2011, the Board took the entire PRA burden associated with the Rule even though the Board and the FDIC 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 FDIC is requesting approval from the OMB for one half of the total PRA burden associated with the proposal.

3 The Estimated average hours per response, Estimated annual burden hours, and Total are based on one-half of the amounts provided in the preamble of the proposal, with fractions of an hour rounded up to the next integer.

13. Estimate of Start-up Costs to Respondents:

None.

14. Estimate of annualized costs to the government:

None.

15. Analysis of change in burden:

The change in burden from the Board's previous collection versus this proposal is a reduction of 712,274 burden hours. Since this is the first time the FDIC will be submitting an information collection in connection with the Rule, half of the burden reduction would be attributed to the FDIC.

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

The results of this collection will not be published for statistical use.

17. Display of Expiration Date

This information collection is contained in a regulation.

18. Exceptions to Certification Statement

None.

B. STATISTICAL METHODS

Statistical methods are not employed in these collections.