

SUPPORTING STATEMENT
Reporting Requirements Associated with Resolution Planning
(OMB Control No. 3064-0210)

INTRODUCTION

This submission is being made by the Federal Deposit Insurance Corporation (FDIC) in connection with the issued Final Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies published in the *Federal Register*¹ (Final Guidance). The Final Guidance has been issued to assist certain foreign banking organizations (FBOs) for the 2021 and subsequent resolution plan submissions. The Final Guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

As a result, the FDIC is requesting approval from the OMB for the change in its PRA burden as a result of the Final Guidance.

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.

On November 1, 2019, the agencies amended the Rule in the *Federal Register* (84 FR 59194). The effective date for the amended Rule was December 31, 2019.

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

¹ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 83557 (Dec. 22, 2020). The Final Guidance was issued by the FDIC and the Board of Governors of the Federal Reserve System (the Board).

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 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 Rule. Compliance with the information collection is 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 are 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 Rule, and requires 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 establishes 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 allows 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 permitted under section 381.4, is 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 requires 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 is 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 able 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.

Guidance for the Industry

Final Guidance – The Final Guidance is intended for FBOs that are Category II

firms according to their combined U.S. operations under the Board's tailoring rule and are required to have a U.S. intermediate holding company (IHC) under the Board's Regulation YY (the Specified FBOs) as published in 84 FR 59032 (November 1, 2019). In addition to the three firms (Barclays PLC, Credit Suisse Group AG, and Deutsche Bank AG (the Proposed FBOs) that would have been within the scope of application under the methodology utilized in the proposed guidance, one additional firm, Mitsubishi UFJ Financial Group, Inc. (MUFG), is within the scope for application of the Final Guidance at the time of its issuance. Consequently, MUFG will have a transition period to consider the application of the Final Guidance to its resolution plan submission, as further described below. The Final Guidance describes the agencies' expectations regarding a number of key vulnerabilities in plans for an orderly resolution under the U.S. Bankruptcy Code (i.e., capital, liquidity, governance mechanisms, operational, branches, legal entity rationalization, and derivatives and trading activities). The Final Guidance modifies and clarifies certain aspects of the proposed guidance based on the agencies' consideration of comments to the proposed guidance, additional analysis, and further assessment of the business and risk profiles of the U.S. operations of large and complex FBOs.

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 Final Guidance will not have a significant impact on a substantial number of small entities. In particular, the Final Guidance is useful for 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 \$600 million asset threshold at which a banking organization is considered a "small entity" under the Small Business Administration's regulations.

In addition, the 12 CFR 381 applies 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 \$660 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 Final Guidance is not likely to apply to any company with assets of \$600 million or less.

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 March 18, 2020, the FDIC issued the proposed guidance in the Federal Register (85 FR 15449) seeking comment on any reporting, recordkeeping, or third-party disclosure requirements under the PRA. No comments were received with respect to the PRA.

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 203,332 hours.

	Number of Respondents	Annual Frequency	Estimated average hours per response	Estimated annual burden hours
FDIC's ½ of Burden Hours³				
Triennial Reduced	26	1	20	520
Triennial Full:				
Complex Foreign	1	1	9,916	9,916
Complex Foreign (new)	1	1	9,767	9,767
Foreign and Domestic	4	1	5,667	22,668
Biennial Filers				
Domestic	4	1	40,115	160,460
Waivers	1	1	1	1
<i>FDIC's Total</i>				203,332 hours

13. Estimate of Start-up Costs to Respondents:

None.

14. Estimate of annualized costs to the government:

None.

² Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. The FDIC has agreed to take the burden of the new triennial full complex filer and one Proposed FBO whereas the Board will take the burden for the remaining two Proposed FBOs. Specially, as a result of this split and these revisions, there will be a net decrease in the overall estimated burden of 6,438 hours for the Board and 6,587 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection (7100-0346) is 209,168 hours and the total FDIC estimated burden for its entire information collection (3064-0210) is 203,332 hours.

³ The Estimated average hours per response, estimated annual burden hours, and total are based on one-half of the total amounts for all resolution plan filers.

15. Analysis of change in burden:

The proposed guidance stated that the proposed changes to the 2018 FBO guidance would not revise the reporting provisions that have been previously cleared by the OMB under the Board's control number 7100-0346 and the FDIC's control number 3064-0210. The agencies did not receive any comments on the PRA determination in the proposed guidance. However, as indicated above, the Final Guidance includes certain modifications and clarifications to the proposed guidance. In particular, the scope, capital, liquidity, governance mechanisms, PCS, and derivatives and trading activities sections of the Final Guidance reflect changes from the proposal. Other sections or sub-sections, such as group resolution plan, management information systems, QFCs, separability, and mapping of branch activities, were determined not to be necessary as they are duplicative of existing regulatory requirements or not reflective of the Specified FBOs' current business models and accordingly have been eliminated from the guidance. The Final Guidance also eliminates expectations for information that, in the agencies' experience, may be obtained through other existing and effective mechanisms.

As a result of these changes, the Final Guidance reduces the existing estimated burden for a triennial full complex filer from 13,135 hours to 9,916 hours per year. This reduction is driven mainly by significant reductions in the burdens related to capital, liquidity, separability, and governance mechanisms. These burden savings are borne by the Proposed FBOs.

One FBO is no longer classified as a triennial full complex filer and thus saves the total burden associated with filing a triennial full complex resolution plan. However, another FBO is newly classified as a triennial full complex filer and must bear the burden. The agencies estimate the annual burden for this new triennial full complex filer as 9,767 hours per year. This estimate differs from the burden for the Proposed FBOs for primarily two reasons: (1) the agencies estimate that the new triennial full complex filer will incur some start-up costs in preparing its first full resolution plan that is subject to the Final Guidance; and (2) the agencies estimate that the burden for the new triennial full complex filer's 2021 targeted resolution plan will be less than the burdens for the three Proposed FBOs because the new triennial complex filer will not be expected to consider the Final Guidance for its 2021 targeted resolution plan (unlike the three other covered companies).

Specifically, as a result of this split and these revisions, there will be a net decrease in the overall estimated burden of 6,438 hours for the Board and 6,587 hours for 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.