CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
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Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
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Re: Proposed Amendments to Resolution Planning Requirements of Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act – Docket. No. R-1660 and RIN No. 7100-AF 47 (Federal Reserve); RIN 3064-AE93 (FDIC)

To Ms. Ann E. Misback and Mr. Robert E. Feldman

The U.S. Chamber of Commerce's ("the Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to respond to the proposal ("the Proposal") from the Federal Reserve Board of Governors ("Federal Reserve") and the Federal Deposit Insurance Commission ("FDIC") to amend and restate the jointly issued regulation 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 would implement changes to resolution planning requirements consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA").

The Dodd-Frank Act requires covered financial companies to periodically report to the Federal Reserve and the FDIC ("the Agencies") their plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure. In October 2011, the Agencies approved a final rule (the Rule) implementing 165(d) of the Dodd-Frank Act. In general, the final rule required bank holding companies with $50 billion or more and nonbank financial firms designated by the Financial Stability Oversight Council (FSOC) to annually submit resolution plans to the Agencies. The Proposal would tailor this requirement consistent with the new risk-based framework being developed by the Agencies.

When the EGRRCPA was under consideration by Congress, the Chamber stated, "Main Street businesses depend on community and regional banks for the capital necessary to get started, sustain operations, manage cash, make payroll, and create well-paying jobs. The post-financial crisis 'one-size-fits-all' regulatory regime has severely constrained these banks' ability to serve households and small businesses in their communities."

The Chamber believes the Proposal is an important step for tailoring regulatory requirements, will reduce administrative burden, and improve the ability of covered financial companies to meet the needs of their customers. Additionally, the Chamber supports the similar treatment of foreign banking organizations ("FBOs") and domestic bank holding companies ("BHCs") within the Proposal, and the decision to determine an FBO's level of regulation by their U.S. assets and activities alone.

The Chamber offers the following comments with the intention of improving the Proposal:

I. Consider Impact of Regulation on Nonfinancial Companies;

II. Tailoring of Resolution Planning Requirements;

III. Submission and Review Cycle Timing; and

IV. Reduced Emphasis on asset-thresholds as a risk-metric

I. Impact of Regulation on Nonfinancial Companies

As a threshold matter, policymakers should be concerned that small business lending by financial institutions has dropped by nearly 50 percent – loans less than $1 million dropped from 2.5 percent of gross domestic product in 2001 to 1.7 percent in 2017, and such loans make up a smaller portion of total bank assets, dropping from 4.0 percent in 2001 to 2.1 percent in 2016.[1] This concerning trend must be addressed as you consider changes to resolution planning and other requirements imposed on financial companies that indirectly impede the ability of their customers to access the credit they need to grow.

The Chamber regularly conducts a survey of corporate treasurers, chief financial officers, and other corporate financial professionals to inform our understanding of how financial regulations, and other policies, affect their financing needs. [2]

After a challenging decade that included a financial meltdown, recession, and a historically slow recovery, American businesses are reporting that their ability to access capital is steadily improving, and generally they are optimistic about their expected performance over the next 12 months. This improvement is a welcome development; given the difficulties Main Street businesses had raising capital in the years immediately following the financial crisis.

A key component of a strong financial system is a regulatory structure that promotes economic growth. Unfortunately, the post 2008 financial crisis regulatory response imposed enormous costs on the economy while doing little to fundamentally reform the U.S. financial regulatory system. As a result, Main Street businesses found it more difficult to access the capital they needed to innovate, grow, and hire new employees.

The Chamber's Survey, which includes insight from more than 300 corporate finance professionals, illuminates their attitudes regarding financial regulation.

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[1] Angel, J. (fall 2018). Impact of Bank Regulation on Business Lending. U.S. Chamber of Commerce Center for Capital Markets Competitiveness. Retrieved from https://www.centerforcapitalmarkets.com/wpcontent/uploads/2018/09/CCMC_RestoringSmallbizLendingReport_9.10.18-1.pdf

[2] Financing Main Street: The State of Business Financing in America. Spring 2019. Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/04/CCMC_CorpTreasurerSurvey_v4_DIGITAL.pdf

Lingering effects of the post-financial crisis regulatory response in the U.S. and abroad continue to present a challenge to American businesses. Bank capital charges in particular are cited as an impediment to capital access. The Chamber's Survey finds that among American businesses:

- 82% report taking some action as a result of changes to banking regulations, up from 61% in 2013 and 79% in 2016.
- 45% report absorbing the higher costs of banking services and loans, while 28% report increasing prices for customers as a result of financial regulation.
- 27% report substituting or reducing the number of financial institutions that provide services to them.
- 66% report that increased bank capital charges have led to increased costs or other challenges, up from 50% in 2016.
- Of companies, 63% support federal regulators recalibrating capital requirements for large banks when lending money to small businesses.

The effects of financial regulation on Main Street, including the customers of covered financial institutions, must be addressed in the rulemaking process.

II. Tailoring of Resolution Planning Requirements

The Proposal would create three groups with tiered resolution planning requirements. The groups, derived by asset-size and risk-based indictors (weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure), include "biennial filers," "triennial full filers," and "triennial reduced filers." The groups have tiered regulatory obligations including less frequent and/or reduced resolution planning filing requirements.

a. Biennial Filers

The Proposal would create a group of "biennial filers." This would include Category I financial institutions under the new risk-based framework. Therefore, biennial filers would include all of the globally systemic important banks that are domiciled in the United States ("U.S. GSIBs").

The two-year cycle would alternate between full resolution plans and targeted resolution plans. The full resolution plans would include existing requirements. It would also include a waiver option.

The Chamber appreciates the Proposal recognizing the significant steps taken by these financial institutions to improve their capital, liquidity, and operations to meet the heightened expectations that have been imposed under the Dodd-Frank Act and Basel III accords. The Proposal notes, "Given that the U.S. GSIBs resolution plans have matured over time and that these firms have taken meaningful steps to develop the foundational capability necessary for the implementation of their resolution strategies, the Agencies have determined that a two-year filing cycle is appropriate."

In general, the Chamber believes regulatory requirements imposed on U.S. GSIBs should be tailored to more appropriately account for the risk they pose to the financial system and also to recognize the important role they play in providing credit to businesses. Nearly two-thirds (63 percent) of businesses approve of federal regulators recalibrating capital requirements for large banks when lending money to small businesses, according to the Chamber's Survey.[3]

U.S. GSIBs are important for small business lending and capital formation, but their business model also helps them serve businesses from all corners of the U.S. economy. According to data from the Financial Services Forum, these institutions make one-quarter of all U.S. small business loans, including one-third of business loans under $100,000. This makes it possible for local businesses to hire employees, stock their inventories, invest in capital, and contribute to their communities. Additionally, these institutions account for 40 percent of all commercial and industrial lending – evidence that they are also positioned to meet the needs of the middle-market and larger job creators. They also provide businesses access to the capital markets.

b. Tailoring for Triennial Full Filers

The Proposal would create a group of "triennial full filers." This would include Category II and III financial institutions under the new risk-based framework.

[3] Financing Main Street: The State of Business Financing in America. Spring 2019. Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/04/CCMC_CorpTreasurerSurvey_v4_DIGITAL.pdf

Therefore, this would include U.S. firms (that do not meet Category I criteria) with $250 billion or more in total consolidated assets, U.S. firms with total consolidated assets of between $100 and $250 billion in assets that have $75 billion or more in the relevant risk-based indicators, foreign banking organizations with $250 billion or more in combined U.S. assets, and foreign banking organizations with total consolidated assets of between $100 and $250 billion in assets that have $75 billion or more in the relevant risk-based indicators.

The three-year cycle would require filing a full resolution plan in the first year and then a targeted plan three years later. The full resolution plans would include existing requirements. It would also include a waiver option.

The Chamber has noted the importance of tailoring regulations for both domestic and foreign banking organizations that would be deemed Category II or Category III. These "regional" financial institutions, including those with a foreign parent company, play a valuable role in providing financing to the American economy through the provision of credit and access to our capital markets. For example, they are a primary provider of banking services to middle-market companies in the U.S.

The Chamber's recent survey of corporate treasurers noted that middle market companies are particularly impacted by financial regulation. Of middle market companies that stated they have been impacted by financial regulation, 42% believe that financial regulation has negatively impacted their ability to access capital, versus 31% of large companies and 30% of small firms. Middle market businesses are also more likely to be pessimistic about their own performance expectations. And over half of midsize companies state that they have had to absorb significant costs as a result of new regulation.

The Chamber strongly supports the Agencies work to evaluate prudential requirements and recognition of the reduced risk the filers in Category II and Category III pose to U.S. financial stability based on size, complexity and risk profile. As the Chamber previously stated "while provisions such as raising the asset threshold for enhanced prudential standards are an important step, the Chamber continues to strongly support tailored regulations—sophisticated rules that are properly calibrated to the risk profile of an activity or institution." It is important that the resolution planning requirements (including required capabilities and resolution plan content components) are tailored to reflect the size, complexity and risk profile of the institutions in this category.

While the Proposal addresses the frequency of the submission, it does not provide any tailoring of resolution plan content to differentiate between Category I, II/III Full Plans and Targeted Plans. The Proposal leaves filers subject to existing guidance and feedback, which means that some firms in Category II/III remain subject to requirements and capabilities that are more onerous than their newly determined peers under the Proposal.[4] It is important that the Agencies provide tailoring of these requirements to recognize the significantly reduced risk that the institutions in this category pose in relation to assets, operations, scope and potential risks to U.S. financial stability.

Additionally, the Agencies should strongly consider permitting Category II and Category III financial institutions to be exempt from any requirements to file full resolution plans. Instead, these financial institutions should be permitted to file targeted resolution plans every three years unless there is an "extraordinary event" as defined by the Proposal. Firms have already filed multiple full resolution plans under the existing requirements providing the Agencies detailed insight into their operations and preparedness for resolution. The Chamber recognizes the reduction in administrative burden under the Proposal; however, this recommendation would substantially mitigate staffing bandwidth challenges without undermining the Agencies' ability to review resolution plans.

c. Tailoring for Triennial Reduced Filers

The Proposal would also create a group of "triennial reduced filers." This includes any covered financial institutions that is not a biennial or triennial full filer. Therefore, this would include foreign banking organizations with $250 billion or more in total global assets that are not subject to Category II or III standards.

The three-year cycle would require filing a reduced resolution plan every three years. It would also include a waiver option.

The Agencies should clarify when the three-year cycle begins. The Proposal indicates that covered financial institutions will be required to submit a full resolution plan in the first year; however, the accompanying material in Appendix C of the Federal Reserve's memo suggests firms will first submit a reduced plan in 2022 and

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[4] Quaadman, T. (February 25, 2019). Letter regarding Large Institution Supervision Coordinating Committee [Letter to Board of Governors of the Federal Reserve System]. Available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2019/02/Chamber-Letter-to-Chairman-Powell-LISCC-Review-2.25.19-FINAL.pdf?#

does not specify if the "first" full resolution plan in the cycle will be complete in the 2018 or 2019 submission.

d. Waiver for Resolution Plan Submission

The Proposal also includes an option for the Agencies to waive certain information content requirements upon receiving an application by a financial institution. The formalization of a waiver process recognizes "certain aspects of its [a covered company's] 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."

The Chamber supports the establishment of a waiver process and we believe it will reduce unnecessary administrative burdens for covered financial institutions and the Agencies.

Importantly, the Proposal creates a process that will not permit waiver applications to be disregarded or ignored. According to the Proposal, "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."

Financial institutions should have a reasonable expectation if their waiver will be denied given feedback on prior resolution plan submissions and other communications through their supervisory relationships. Therefore, it is unlikely that the Agencies will feel compelled to deny many, if any, waiver applications for resolution plan submissions.

III. Submission and Review Cycle Timing

The Chamber believes that the Proposal should provide a defined timeline for the Agencies to provide feedback on previously submitted plans. Firms require time to address feedback and make meaningful changes prior to the next plan submission. Adequate time is required to identify resources, develop capabilities and make infrastructure or technology changes to enhance a firm's resolvability to meet supervisory expectations. Firms should be provided with feedback from the Agencies within 12 months of submission, which is in excess of the nine months on average the FDIC and Federal Reserve have taken to review resolution plans.[5]

The Agencies have proposed including the flexibility to move filing dates or to require interim updates or full submission off-cycle. The Proposal requires that the Agencies notify the firms at least 180 days in advance of the new submission date when moving a filing date. This timeline is unreasonable for filers expected to develop Full or Targeted plans or to provide off-cycle submissions. Institutions typically begin to gather resources at least 12 months in advance of a filing. The Chamber recognizes that circumstances exist where the Agencies find it helpful to maintain flexibility to move submission dates or receive off-cycle submissions, but believes notice of at least 12 months should be required.

The Proposal also states that the Agencies retain authority to require a full resolution plan or interim updates "within a reasonable amount of time." The Agencies should define a "reasonable amount of time." Consistent with the above statements, the Chambers believes that notice of at least 12 months should be provided to firms.

IV. <u>Reduced Emphasis on asset-thresholds as a risk-metric</u>

When the Chamber supported the passage of EGRRCPA we wrote it "would better tailor regulations for community and regional banks . . . While provisions such as raising the asset threshold for enhanced prudential standards are an important step, the Chamber continues to strongly support tailored regulations—sophisticated rules that are properly calibrated to the risk profile of an activity or institution."[6]

In general, the Agencies should avoid relying on arbitrary asset thresholds where possible and should index such thresholds to avoid creating regulatory cliffs that stymie organic growth. The Agencies should index the dollar thresholds of the risk-based indicators to growth in U.S. banking assets. Alternatively, the Chamber has

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[5] U.S. Government Accountability Office. 2016. Resolution Plans: Regulators Have Refined Their Review Processes but Could Improve Transparency and Timeliness. GAO-16-341. Available at https://www.gao.gov/products/GAO-16-341

[6] Letter from the Chamber of Commerce to the U.S. House of Representatives regarding S. 2155, the "Economic Growth, Regulatory Relief, and Consumer Protection Act." May 21, 2018. Available at https://www.uschamber.com/sites/default/files/180521_kv_s2155_economicgrowthregulatoryreliefandconsumerprotection_house.pdf

proposed indexing asset thresholds to inflation, for example.[7] Indexing would more closely align the risk-based indicators to organic growth of individual firms and the overall economy.

The Proposal is a substantial improvement over the current system. However, it still significantly relies on asset thresholds as a metric for systemic risk, and thus poses the possibility of imposing inappropriately calibrated regulation on financial institutions, especially if these thresholds are not indexed.

<u>Conclusion</u>

The Chamber supports the Agencies' Proposal to tailor resolution planning requirements. The Proposal could be further improved, and meet the objective of reducing unnecessary administrative burden, by considering our recommendations. These reforms will help reduce compliance costs so financial institutions can focus on restoring small business lending and meeting the needs of their customers.

Sincerely,

Tom Quaadman

[7] Letter available from the Chamber of Commerce to the Federal Reserve, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation. November 9, 2018. Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/11/181108_Comments_BankCapitalRules_OCCFedFDIC-002-Final.pdf?#