June 21, 2019

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
ATT: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th ST NW
Washington, DC 20429

RE: RIN 7100-AF47 (Federal Reserve); RIN 3064-AE93 (FDIC), Resolution Plans Required

To Whom It May Concern:

Americans for Financial Reform Education Fund (AFR Education Fund) appreciates the opportunity to comment on the above referenced Notice of Proposed Rulemaking (NPRM or Proposal) by the Board of Governors of the Federal Reserve (the Board) and the Federal Deposit Insurance Corporation (the FDIC; collectively, the Agencies). AFR Education Fund is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

The Proposal would substantially reduce the number of required full submissions of resolution plans under Section 165(d) of the Dodd-Frank Act, and open up new avenues for waivers of resolution planning requirements. The net effect of these changes would be to make the resolution planning process much less stringent than it currently is, and to grant much more power over what is reported to regulated banks. We are deeply concerned that the reductions in resolution planning requirements proposed here would have an adverse effect on the financial stability of the United States and possibly also on the safety and soundness of individual banks.

In making this assessment, we are mindful of the fact that threats to the financial stability of the United States are inherently systemic and may not be limited to the resolution of a single "too big to fail" bank. The disorderly failure of multiple regional banks, such as occurred during the 2008 financial crisis, may also put significant stress on financial stability, particularly in periods when other forms of financial stress are high. By entirely exempting bank holding companies (BHCs) below $250 billion from the need to submit resolution plans under any circumstances, as well as substantially decreasing resolution planning requirements for larger banks and foreign

[1] A list of coalition members is available at: http://ourfinancialsecurity.org/about/our-coalition/

banking organizations, this Proposal increases the likelihood that multiple large BHCs will fail in a disorderly manner during a period of financial stress.

Given the evidence of severe economic harm created by multiple disorderly failures of large banks and financial institutions during the financial crisis, the wholesale reduction in resolution planning requirements proposed in this NPRM is a dangerous step. There also seems to be little justification for it beyond the Agencies desire to reduce administrative workloads for large banks, and the general assertion that, based on the Agencies' experience, current levels of resolution planning could be reduced. But administrative workloads for banks have already been reduced by the recent move from an annual to an every-other-year resolution planning cycle. There is also no evidence that the costs of resolution planning and reporting for large banks are excessive when compared to the resources of these banks, which are earning near-record profits.

Further, current resolution procedures have not yet been tested in a crisis or even in the failure of a single major bank. In the absence of any actual real-world experience, the sudden assertion that a drastic reduction in resolution planning requirements is called for is not convincing. This is especially so since central elements of this proposal, such as "targeted resolution plans", are completely untested even in an administrative sense.

We do not believe that these proposed reductions in current resolution planning requirements are justified. We would like to underscore the seriousness of the risks presented by inadequate resolution planning. To prevent this unjustified increase in risks of resolution requirements, we recommend that a final rule contain the following modifications from the NPRM:

- Rather than exempting all BHCs below $250 billion, BHCs above $100 billion in size should be required to submit targeted resolution plans related to any subsidiaries or operations that are not within their Insured Depository Institutions (IDIs). In addition, as discussed in our separate comment on the FDIC's IDI resolution planning proposal, FDIC resolution planning for the IDIs of these banks should be extensive.

- The waiver process proposed in the NPRM should be eliminated. The Agencies already have the ability to grant exemptions for resolution planning requirements on a case by case basis, and the waiver process described here is tilted toward large banks in an inappropriate manner.

- U.S. G-SIB banks should maintain their current schedule of biennial full resolution plans.

- Most of the other banks covered by this proposal should be placed on a biennial cycle that alternates full and targeted resolution plans, rather than the triennial and "triennial reduced" schedules proposed in the NPRM. This would be a more appropriate level of planning for the largest non-GSIB banks, and would permit full administrative testing of the "targeted resolution plan" concept.

Below, we provide additional discussion of these recommendations.

Resolution planning for banks $100 to $250 billion in size: Even after the passage of S. 2155, the Board retains authority to require resolution planning as needed for BHCs over $100 billion in size. The NPRM indicates that the Board does not intend to use this authority for BHCs below $250 billion in asset size. The disorderly failure of even a few banks in this size range could pose a threat to financial stability or act as a trigger for broader Federal government bailouts of the financial sector. As the FDIC comments in its IDI resolution proposal, unprecedented losses to the deposit insurance fund could occur from the failure of even one such bank, and it is unwise to rely on the availability of the kind of purchase and assumption transactions that occurred during the 2008 financial crisis to prevent such losses in the future.

It may be that the Agencies plan to rely on the Insured Depository Institution (IDI) resolution planning process conducted by the FDIC for this size category, as in most cases the IDI is by far the dominant subsidiary in regional BHCs. However, the FDIC lacks jurisdiction over non-bank subsidiaries of such bank holding companies. It is thus necessary for the Board to cooperate with the FDIC to ensure that threats to orderly resolution posed by non-bank subsidiaries of large regional BHCs are addressed.

This should be done by requiring such BHCs to submit targeted resolution plans that address non-bank subsidiaries, their interaction with the IDI, and possible resolution issues that may arise concerning such subsidiaries. The content and timing of such plans could be coordinated with FDIC plans for IDIs.

The waiver process proposed in the NPRM should be eliminated. As the Proposal notes, the Agencies already have the authority to exempt banks from informational requirements in resolution planning when they believe it is appropriate. The NPRM proposes to add a formal waiver process to resolution planning. This process would permit banks to submit a request to waive elements of the resolution plan, which would be automatically granted unless both of the Agencies jointly deny it by a date nine months prior to the time the resolution plan is due. Since waivers could be submitted up to fifteen months before the resolution plan due date, the Agencies would have as little as six months to analyze all waiver requests and jointly agree on which to deny.

This waiver process appears completely unnecessary given the Agencies existing authority to issue exemptions. The fact that waiver requests would be automatically granted unless both Agencies can agree to deny them within a limited time period significantly shifts power toward regulated banks and gives them a tool with which to manipulate the process. The proposed waiver process should be eliminated.

U.S. G-SIB banks should maintain their current schedule of biennial full resolution plans: The NPRM proposes that every other resolution plan submitted by a systemically significant bank would be a "targeted" resolution plan. This targeted resolution plan would include a subset of the information incorporated into a full resolution plan (identified "core elements"), and also any "material changes" that the bank has identified in key elements of their business relevant to resolution since the last full resolution plan was filed. Full resolution plans would be submitted only once every four years – a very long period of time in financial markets.

It is true that the targeted resolution plans would include important elements of the full resolution plans. If banks could be trusted to correctly and thoroughly reveal all material changes that had occurred over the past two years, this would also provide key additional elements to a targeted plan. But it is also true that targeted resolution plans would drop elements of the full resolution plan that are particularly critical for the largest G-SIB banks, such as for example booking and trading practices for derivatives, trading exposure limits, and relationships with counterparties. Further, reliance on banks to correctly and fully identify all material changes carries risks, particularly if regulators are not able to fully cross-check the banks' judgements as to which changes are "material". Regulators lack meaningful experience with "targeted" resolution plans in order to assess the willingness and ability of banks to properly identify all material changes.

G-SIB banks are the largest, most complex, and most sophisticated banking organizations in the economy. This makes the issue of orderly resolution particularly critical for them; the costs of failure of an orderly resolution are largest for these banks. It also means that they are the best equipped to perform the analysis involved in conducting a full resolution plan. Indeed, many elements of a full resolution plan are analyses that the largest banks should be conducting on an almost continuous basis as part of their own management controls (e.g. trading practices exposure limits, and counterparty exposures).

It is simply unjustified and excessively risky to switch the largest G-SIB banks to a regime in which full resolution plans are only submitted every four years, and an untested regime of "targeted" resolution plans are substituted for the full plan. These are some of the largest, most sophisticated, and most profitable banks in the world and should have the capacity to provide the information laid out in a full resolution plan.

Other banks covered by this proposal should be placed on a two year cycle that alternates full and targeted resolution plans. It would be more appropriate to carry out the experiment of "targeted" resolution plans for other banks addressed in this proposal, which are somewhat smaller and less complex than G-SIBs. However, the three to six year cycle proposed for non-GSIB banks (triennial submissions alternating full and targeted plans) is inappropriately lengthy. Just the acquisition cycle for large superregional banks can completely transform a bank within three years. For example, during the three years from 1999 to 2001, Washington Mutual acquired Long Beach Financial, Fleet Mortgage, and Dime Bancorp, completely altering its business lines and geographic footprint. This is just one of many historical examples of rapid and aggressive acquisitions and other changes in business models by super-regional banks.

In addition, the largest and most sophisticated foreign banking organizations (FBOs) in the U.S., which would become triennial filers under this proposal, raise many of the same issues as U.S. G-SIBs. The proposal appears to justify lenient filing schedules for these FBOs based on the argument that the likely resolution path for these foreign banks is a single point of entry resolution conducted in the home country. If the single point of entry strategy for the home country parent succeeds, the U.S. subsidiary is unlikely to fail, as it will be kept operational by down-streaming resources from the parent. This is a reassuring prospect, but the goal of resolution planning is specifically to plan for the failure of the U.S. entity. Thus, resolution planning for foreign banks in the U.S. addresses the situation where the U.S. subsidiary does fail. Such a situation would be particularly dangerous as it would likely be associated with a global financial crisis where markets were not stable enough to support a single point of entry recapitalization through the parent. This scenario for the failure of a FBO may be less likely than the failure of a U.S. bank but it would carry even higher risks. Moving banks of the size and importance of the largest FBOs to the triennial cycle is particularly inappropriate and risky.

Under the NPRM over fifty smaller FBOs would be moved to a "triennial reduced" cycle, where they would file only "reduced" plans. All the criticisms of the targeted plans above apply much more strongly to the idea of "reduced" plans. These plans would contain far less information than the targeted plans, as they are not required to include core elements of the full resolution plan but only "material changes" since the last filing. In addition, since banks would not be required to file full resolution plans once the "reduced" cycle was initiated, it would rapidly become unclear what the reference baseline for material changes would be. It is a mistake for regulators to try to specify an even lower-information category of plan than the already slimmed down "targeted" resolution plan.

A longer resolution planning cycle than the biennial cycle may be justified for some smaller FBOs. However, this would not include all the FBOs proposed for the "triennial reduced" cycle in this NPRM, which are a very diverse group. Some of these "smaller" FBOs are not actually small. For example, U.S. operations of Santander and BNP Paribas would be included in the "triennial reduced" category under the NPRM. These are subsidiaries of extremely large and sophisticated banks designated as global systemically important banks by the Financial Stability Board. Their U.S. operations are large, each holding over $100 billion in assets. A biennial cycle alternating full and targeted resolution plans clearly seems to be appropriate for such banks. However, it may also be appropriate to specify a less frequent reporting cycle for smaller U.S. FBOs that are subsidiaries of banks that are not systemically important at the global scale.

Thank you for the opportunity to comment on the Proposal. If you have questions, please contact Marcus Stanley, the AFR Education Fund's Policy Director, at 202-466-3672 or marcus@ourfinancialsecurity.org

Sincerely
Americans for Financial Reform Education Fund