



June 21, 2019

*Via Electronic Mail*

Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, D.C. 20551  
Attention: Ann E. Misback, Esq., Secretary  
Docket No. R-1660

Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington D.C. 20429  
Attention: Robert E. Feldman, Executive Secretary  
RIN 3064-AE93

Re: **Proposed 165(d) Rule Amendments**

Ladies and Gentlemen:

The Bank Policy Institute (**BPI**), the Securities Industry and Financial Markets Association (**SIFMA**) and the American Bankers Association (**ABA** and, together, the **Associations**)<sup>1</sup> appreciate the opportunity to comment on the Board of Governors of the Federal Reserve System's (the **Federal Reserve**) and the Federal Deposit Insurance Corporation's (the **FDIC** and, together, the **Agencies**) proposal (the **165(d) Proposal**) to amend and restate the jointly issued regulation (the **165(d) Rule**) implementing the resolution planning requirements of section 165(d) (**Section 165(d)**) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**).<sup>2</sup> This letter begins with our support for the 165(d) Proposal, which we believe preserves the key elements of an effective resolution planning process and does not undermine the work that has and will continue to be done to eliminate obstacles to orderly resolution. The **filers**<sup>3</sup> appreciate the imperative of having a credible resolution plan, and the 165(d) Proposal would continue to require them to maintain and enhance their resolvability over time. The core elements of the proposed revisions to the 165(d) Rule are important and welcomed, and this letter provides limited technical comments on areas for suggested refinement and responds to certain issues raised for comment in the NPR.

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<sup>1</sup> A description of each Association is provided in Appendix C of this letter.

<sup>2</sup> *Resolution Plans Required*, 84. Fed. Reg. 21600 (May 14, 2019) [*hereinafter* the **NPR**].

<sup>3</sup> The filers referred to in this letter are defined as Covered Companies in the 165(d) Proposal, except that when describing the history of the resolution planning process, the filers are defined as Covered Companies in the 165(d) Rule.

**I. The Associations support the Agencies' continued efforts to calibrate and better focus the resolution planning process.**

The Associations approve of the Agencies' decision to revisit the 165(d) Rule. The annual iterative process put in place by the Agencies eight years ago when the 165(d) Rule was first promulgated was a wise path forward when resolution planning was new and unknown.<sup>4</sup> The Associations appreciate the Agencies' engagement with the filers over the years and their commitment to developing sophisticated approaches to resolution planning. The Agencies and the filers have, as a result, learned an immense amount about the essential components of an effective resolution planning process, and tremendous progress has been made towards eliminating obstacles to an orderly resolution and ensuring that filers can be resolved in a manner that does not pose risks to U.S. financial stability.

The Agencies have already taken major steps to enhance and focus the resolution planning process, including by making the proposed guidance for the 2019 and subsequent resolution plan submissions by the eight largest, complex U.S. banking organizations available for notice and comment,<sup>5</sup> and by consolidating and making public all applicable guidance in the final version of that guidance.<sup>6</sup> The 165(d) Proposal continues these efforts, proposing changes to the 165(d) Rule that would enhance the effectiveness and transparency of the resolution planning process.

The Associations support the 165(d) Proposal and in particular would like to highlight the following proposed changes:

- *Formalizing an extended submission cycle.* The Agencies have through guidance extended recent submission deadlines to provide at least two years between filings and have acknowledged the difficulties that an annual filing cycle created in providing insufficient time for review by the Agencies and incorporation of feedback by filers.<sup>7</sup> Then FDIC Chairman Martin J. Gruenberg remarked that moving to an extended cycle “would give the agencies time to review the plans, provide meaningful feedback, and still enable firms to make structural and operational changes necessary to address their issues.”<sup>8</sup> As resolution planning has become a part of filers' business-as-usual processes, further refinements in response to Agency feedback can be implemented most effectively when filers have sufficient time to integrate them on an organization-wide basis.
- *Tailoring resolution planning requirements to size, complexity and risk profile of each of the filers.* The Associations support the Agencies' ongoing work to evaluate prudential requirements and ensure that they meet their objectives without imposing unintended costs. We similarly support their proposed formalization

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<sup>4</sup> See *Resolution Plans Required*, 76 Fed. Reg. 67323 (Nov. 11, 2011).

<sup>5</sup> *Resolution Planning Guidance for Eight Large, Complex U.S. Banking Organizations*, 83 Fed. Reg. 32856 (July 16, 2018).

<sup>6</sup> *Final Guidance for the 2019*, 84 Fed. Reg. 1438 (Feb. 4, 2018) [*hereinafter* the **2019 U.S. G-SIB Guidance**].

<sup>7</sup> NPR at 5–6. See the comment letter from BPI and SIFMA on the proposed 2019 U.S. G-SIB Guidance for an extended discussion of these challenges. Letter from BPI and SIFMA to the Agencies, re: Resolution Planning Guidance for Eight Large, Complex U.S. Banking Organizations at 5–7 (Sept. 14, 2018), [*hereinafter Proposed Guidance Comment Letter*] available at <https://www.sifma.org/wp-content/uploads/2018/09/Living-Wills-Guidance-Comment-Letter-For-Submission-9.14.2018.pdf>.

<sup>8</sup> Remarks by Martin J. Gruenberg, Chairman, FDIC, “Resolving a Systemically Important Financial Institution: A Progress Report,” The Wharton School University of Pennsylvania; Philadelphia, PA (Feb. 16, 2018), available at <https://www.fdic.gov/news/news/speeches/spfeb1618.html>.

of the recognition that the risk a filer poses to U.S. financial stability varies with its size, complexity and risk profile.

- *Providing options for streamlined submissions.* The Agencies recognize that referring to previously submitted information that remains accurate in all material respects would reduce unnecessary duplication and streamline resolution plan submissions.<sup>9</sup> The Associations appreciate this clarification and the related proposed revisions to the 165(d) Rule that enhance the ability of filers to rely on incorporation by reference, including by defining a “material change” and creating the concept of an “extraordinary event.” The Associations also appreciate the creation of a waiver process that may be used when provision of information would be of limited use, such as where the Agencies have recently conducted an intensive review of a particular business line.
- *Creation of a process to request reconsideration of critical operations identified by the Agencies.* The Agencies identified a taxonomy of critical operations in 2012 that was fit for purpose across filers in the early days of resolution planning before the filers more fully self-identified critical services and interconnections and reorganized their lines of business and legal entities as part of the resolution planning process. The Associations welcome the creation of a reconsideration process that would allow the filers and the Agencies to arrive together at a set of critical operations that more meaningfully correspond to risks that a filer’s failure could pose to U.S. financial stability.
- *Exclusion of Category IV banking organizations.* Generally, Category IV banking organizations are non-complex institutions, with simplified organizational structures that do not present a threat to U.S. financial stability. Category IV banking organizations tend to engage in fewer risky and complex activities, including a smaller number of nonfinancial activities, and they have significantly reduced foreign and international exposures. As a consequence, these institutions are less interconnected, significantly reducing any potential systemic risk associated with their activities. Under the current and proposed regulatory framework, the Category IV banking organizations maintain significant capital and liquidity resources that would support continued operations under a severe stress environment. Additionally, Category IV banking organizations maintain contingency funding plans and capital contingency plans that are designed to navigate a crisis situation to avoid a resolution situation. For these reasons, the Associations believe it is consistent with the statutory language of the Economic Growth, Regulatory Relief, and Consumer Protection Act (**EGRRCPA**) for the Agencies to exempt Category IV institutions from the 165(d) Rule’s requirements, as contemplated in the 165(d) Proposal.

**II. The 165(d) Proposal would maintain the strength of resolution plans while reducing the level of unnecessary burdens created by the resolution planning process.**

The Dodd-Frank Act requires firms to demonstrate that they have adequately assessed and mitigated the challenges that their structure and business activities pose to an orderly resolution, and the 165(d) Rule set in place a process aimed at strengthening the resolution planning capabilities of each filer. As a result of that process, none of the filers have currently outstanding, Agency-identified deficiencies that would make the resolution plans on which they have most recently received feedback not credible. FDIC Chairman Jelena McWilliams has observed that “[r]esolution plans have been a valuable tool for improving resolvability through bankruptcy. The planning process has helped ensure that firms can better project resource availability and needs in resolution, understand and simplify their legal structures, work through their internal governance processes, and address core obstacles to resolution in

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<sup>9</sup> 84 Fed. Reg., *supra* note 2, at 21614.

bankruptcy. Firms have made significant progress in this regard.<sup>10</sup> And while voting against the NPR, Martin J. Gruenberg, a member of the FDIC Board of Directors, also recognized that the resolution planning process has been effective, acknowledging that since “the adoption in November 2011 by the FDIC and the Federal Reserve of the final rule implementing the Dodd-Frank Act resolution plan requirement, the Agencies have worked diligently to carry it out. The firms subject to the rule have submitted several rounds of plans that have resulted in significant organizational and operational changes that have substantially enhanced their resolvability, particularly for the eight U.S. GSIBs.”<sup>11</sup>

For the filers of a size, level of complexity or risk profile that their disorderly failure might raise issues of financial stability, the Agencies have developed a regulatory framework to eliminate obstacles to an orderly resolution, and such filers have made many changes of their own to accomplish the same goal.<sup>12</sup> Many filers of lesser size, complexity or risk profile have also made resolvability enhancements, and the Agencies have agreed that other filers did not have or no longer have serious obstacles to orderly resolution. The 165(d) Proposal would preserve this tiering of requirements, and it would not scale back the intensity of resolution planning appropriate for the level of risk that the failure of a filer would pose to U.S. financial stability.<sup>13</sup> The 165(d) Proposal would also not lessen in any way the standards that the Agencies would apply in their review of a resolution plan. The 165(d) Proposal would instead merely codify the recognition by the Agencies that the frequency and magnitude of resolution planning requirements has been far in excess of what has been necessary to preserve U.S. financial stability. With eight years of experience behind them, the Agencies and filers now have a clearer idea of the core elements of an effective resolution planning process commensurate with the size, complexity and risk profile of a filer. The Agencies are now able to take stock of the burdens that the process has created, and evaluate where they might be reduced without undermining the statutory or regulatory goals of the process. This would allow the Agencies, without weakening existing requirements, to focus subsequent cycles on areas where further enhancements may be necessary. This is exactly what the Agencies did in the 2019 U.S. G-SIB Guidance, which made substantial revisions to prior guidance in two areas—payment, clearing and settlement, as well as derivatives and trading—and maintained or consolidated and streamlined other guidance. Doing so is consistent with the Agencies’ existing practices in other areas,<sup>14</sup> and is also consistent with the broader framework for evaluating financial regulation articulated by Federal Reserve Vice Chairman for Supervision Randal K. Quarles: “if we have a choice between two methods of equal effectiveness in achieving a goal, we should strive to choose the one that is less burdensome for both the system and regulators.”<sup>15</sup>

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<sup>10</sup> See statement by FDIC Chairman Jelena McWilliams on Notice of Proposed Rulemaking: Dodd-Frank Act Resolution Planning (April 16, 2019), available at <https://www.fdic.gov/news/news/speeches/spapr1619d.html>.

<sup>11</sup> See Statement by Martin J. Gruenberg Member, FDIC Board of Directors, Notice of Proposed Rulemaking: Title I Resolution Plans (April 16, 2019), available at <https://www.fdic.gov/news/news/speeches/spapr1619.html>.

<sup>12</sup> See Proposed Guidance Comment Letter at 3–5 for a discussion of these developments.

<sup>13</sup> See Opening Statement on Proposals to Modify Enhanced Prudential Standards for Foreign Banks and to Modify Resolution Plan Requirements for Domestic and Foreign Banks by Chair Jerome H. Powell (April 8, 2019) (“We are not changing our substantive review standards for the largest and most complex banks and we are generally formalizing the current practices that have developed over recent years.”), available at <https://www.federalreserve.gov/newsevents/pressreleases/powell-opening-statement-20190408.htm>.

<sup>14</sup> See, e.g., FDIC, Federal Reserve & Office of the Comptroller of the Currency, *Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements*, 83 Fed. Reg. 66024, 66027 (Dec. 21, 2018).

<sup>15</sup> Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, *Early Observations on Improving the Effectiveness of Post-Crisis Regulation* (Jan. 19, 2018), available at <https://www.federalreserve.gov/newsevents/speech/quarles20180119a.htm>.

**III. The Associations have identified areas of the 165(d) Proposal for which refinement or clarification would be beneficial.**

**A. Recommendations Related to Timing**

The Associations support the proposed revisions to the 165(d) Rule, but believe that a number of refinements can be made to the timing of requests, notifications and other deadlines to more effectively implement the spirit of the 165(d) Proposal. As a general matter, filers begin gathering and allocating their resources at least 12 months in advance of a submission deadline. Certainty about the informational content requirements of the next submission as far in advance of that time as possible optimizes the ability of filers to produce meaningful resolution plans that are responsive to Agency feedback. Please see Appendix A for a visual illustration of the Associations' recommendations related to timing.

**1. Critical Operations**

*Newly identified critical operations.* As proposed, the Agencies could inform filers of newly identified critical operations to be covered in the next submission as late as six months in advance of a filing deadline.<sup>16</sup> That deadline should be extended to at least 12 months. Incorporating a new critical operation into a resolution plan can have significant implications well beyond provision of additional information about that operation and could require significant revisions to a filer's internal resource allocations and mappings, as well as recalibration of funding and liquidity models, that would be difficult to achieve in only six months.

*Agency response to a filer request for de-designation of a critical operation.* As proposed, the Agencies would respond to a request for a de-designation of a critical operation at least 180 days before the next submission date as long as the request was made at least 270 days before the next submission date, although the Agencies would have the option to delay their request for an additional 90 days.<sup>17</sup> The Agencies state in the NPR that they would generally respond to a request for de-designation within 90 days.<sup>18</sup> This understanding articulated in the NPR should be reflected in the rule text, requiring a 90-day response to better align with the time the filers need to prepare for a submission. Under this recommendation, a filer that normally sets its resolution planning process in motion 12 months in advance of a filing deadline could request a de-designation 15 months in advance in order to have greater certainty about the next submission's requirements sufficiently in advance so that it could reallocate resources to other components of a submission.

**2. Waiver Process**

*Agency no-objection deadline for a waiver request.* As proposed, a waiver request must be submitted 15 months in advance of the filing date, and the waiver is automatically granted nine months in advance, assuming no joint objection.<sup>19</sup> This no-objection deadline should be moved to 12 months in advance to better align with firms' resolution planning timelines. This would provide the Agencies with three months to decide whether to object to a waiver request and would be aligned with the 90-day response period for a request of de-designation of a critical operation.

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<sup>16</sup> See § \_\_.3(b)(2).

<sup>17</sup> See § \_\_.3(d)(2)(ii).

<sup>18</sup> See 84 Fed. Reg., *supra* note 2, at 21611.

<sup>19</sup> See § \_\_.3(a)(2)(i)-(ii).

### 3. Submission and Review Cycle

*Notice for moving submission deadlines.* As proposed, the Agencies would have the flexibility to move filing dates, requiring notification only 180 days in advance of a new submission date.<sup>20</sup> This could lead to near-impossible situations if this discretion is used to require submission of a full plan earlier than it would otherwise be required. As explained above, filers begin gathering their resources and personnel at least 12 months in advance of filing, and by the six-month mark have typically made key decisions and resource allocations for the submission and will have completed significant work. The Associations recognize that future facts and circumstances may exist where the Agencies will find it helpful to maintain the flexibility to move the new submission deadlines, but believe that at least 12 months' notice should be required where a new deadline would be earlier than what is called for in the 165(d) Rule or otherwise set by the Agencies.

*Notice for interim updates or full submissions off-cycle.* As proposed, with only "reasonable" notice, the Agencies may require that a covered company (i) file an update to its resolution plan, and (ii) file a full resolution plan.<sup>21</sup> While the Associations understand the Agencies' need for the flexibility to require submissions or updates as needed, the requirement that filers provide the Agencies with notice of any extraordinary event and explain how that event would affect the resolvability of the filer mitigates some of the need for this flexibility. As a result, the Associations believe that the Agencies should adopt reasonable limits to these requirements and require at least six months' notice for an interim update and 12 months' notice for a full plan.

*Determination of informational completeness.* The 165(d) Proposal would eliminate a requirement that within 60 days the Agencies jointly inform filers if their plan is informationally complete or if additional information is required. We support that elimination because, in practice, it has not been useful and has been a misallocation of Agency resources.

*Feedback on prior submissions.* The Associations believe that the 165(d) Rule should provide a timeline for the Agencies to provide feedback on previously submitted plans in order to avoid situations in which filers have to significantly overhaul their resolution plans on an abbreviated timetable to meet new requirements. Although the Agencies are proposing to lengthen future submission cycles in recognition that "the annual filing cycle does not always permit sufficient time for the review of resolution submissions and the development of meaningful feedback and guidance,"<sup>22</sup> a lengthier cycle does not guarantee that feedback will be provided with sufficient lead time for it to be meaningfully incorporated into the next submission, particularly if the feedback relates to resource allocation and models. As a result, the 165(d) Rule should require that any feedback that must be reflected in a filer's next submission must be provided by the Agencies within 12 months of the filer's previous submission, assuming the extended submission cycle is adopted as proposed.<sup>23</sup>

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<sup>20</sup> See § \_\_.4(d)(2).

<sup>21</sup> See § \_\_.4(d)(3) (interim updates) and § \_\_.4(d)(5) (full plan).

<sup>22</sup> See 84 Fed. Reg., *supra* note 2, at 21601.

<sup>23</sup> As of the date of this letter, the Agencies have not provided feedback on plans submitted by December 31, 2018, and there is uncertainty with respect to whether these filers may have another plan due by December 31, 2019. BPI and SIFMA requested clarification on the Agencies' expectations for the submission deadlines for these filers as well as others with resolution plans currently due by December 31, 2019 or July 1, 2020 in letters submitted on May 1, 2019. Letter from BPI and SIFMA to the Agencies, *Re: 165(d) Proposal and Timing for December 2019 Filers* (May 1, 2019), available at <https://www.sifma.org/resources/submissions/resolution-plans-requirements-of-section-165d-proposal-and-timing-for-december-2019-filers/>; Letter from BPI and SIFMA to the Agencies, *Re: 165(d) Proposal and Timing for*

## **B. Recommendations Related to Resolution Plan Content Requirements**

### **1. Targeted Plans**

Information required in targeted plans should not exceed the informational content required in full plans. As proposed, the Agencies “may jointly identify resolution-related key areas of focus, questions and issues that must also be addressed in the covered company’s targeted resolution plan.”<sup>24</sup> The Agencies should clarify that information required for the areas of focus in a targeted plan will not be wider in scope or depth than the information that would normally be required in a full plan except as needed to implement necessary enhancements identified by the Agencies.

### **2. Filers Without Currently Identified Critical Operations**

Firms that do not have identified critical operations should not be required to submit waivers of the methodology requirement. As proposed, filers that do not have currently identified critical operations could apply for a waiver from the requirement to develop a critical operations identification methodology. These filers should be wholly exempt from this requirement, and instead should have to report material updates, which in turn would give the Agencies an opportunity to designate a critical operation as otherwise required in a submission.

### **3. Relationship with IDI Plans**

In light of the substantial overlap for some filers with regard to information in resolution plans submitted to the Agencies pursuant to the 165(d) Rule and resolution plans submitted by their insured depository institutions to the FDIC (**IDI Plans**), the 165(d) Rule should allow filers to incorporate by reference relevant information from a previously submitted IDI Plan. In addition, the cadence of IDI Plan submissions should be aligned with the cadence of resolution plans submitted pursuant to the 165(d) Rule for filers that would be triennial filers and which have adopted a multiple point of entry resolution strategy, as discussed in greater depth in Section II.D.1 of the Associations’ comment letter on the FDIC’s advance notice of proposed rulemaking on its rule requiring IDI plans, dated June 21, 2019.<sup>25</sup>

### **4. Tailored Plans**

As proposed, the tailored plan category would be eliminated. The Agencies suggest that they could grant a waiver to filers currently eligible to submit tailored plans that would limit the filers’ required plan content in a manner similar to what is currently required in a tailored plan.<sup>26</sup> The Agencies should grandfather these filers such that they do not need to submit a waiver request to maintain their current informational requirements. As an alternative, the 165(d) Rule should allow these filers to incorporate by reference information from a previously submitted IDI Plan and limit the content of any full or targeted plan to their nonbank operations.

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*Foreign Banking Organizations* (May 1, 2019), available at <https://www.sifma.org/resources/submissions/resolution-plans-requirements-of-section-165d-proposal-and-timing-for-foreign-banking-organizations/>.

<sup>24</sup> See § \_\_.6(c).

<sup>25</sup> Letter from the Associations to the FDIC, re: Advance Notice of Proposed Rulemaking for the IDI Rule (June 21, 2019), available at <https://bpi.com/wp-content/uploads/2019/06/ANPR-for-IDI-Rule.pdf>.

<sup>26</sup> 84 Fed. Reg., *supra* note 2, at 21609.

## 5. Tailoring of Required Informational Content

The final rule should adopt a framework that tailors resolution plan content between different categories of filers. The NPR describes the Agencies' past tailoring of feedback and guidance to take into account the size, business models and risk profiles and, for foreign banking organizations (**FBOs**), the scope of operations of in the United States,<sup>27</sup> and how further tailoring may occur between categories of filers, taking into account geographical footprints, operations and activities.<sup>28</sup> The 165(d) Proposal does not specify, however, how the requirements or expectations for full or targeted plans would be tailored among banking organizations in Categories I, II and III, despite the enormous differences in the size, assets, operations, scope, and potential risks to the financial stability of the United States.

One consequence of this lack of clarity on tailoring is that the 165(d) Proposal would leave some FBOs that would be Category II banking organizations subject to legacy guidance and feedback that impose expectations equivalent to those imposed on Category I banking organizations. Because this is inconsistent with the Agencies' stated intent, the Agencies should also clarify the expectations applicable to these Category II banking organizations well in advance of their next required project plan updates.

### C. Miscellaneous Recommendations

#### 1. Notice and Comment for Guidance

The 165(d) Rule should clarify that future living wills guidance will be issued subject to a public notice-and-comment process. The Agencies, to date, have used "guidance" to fundamentally reshape the requirements for resolution plans without adequate notice and opportunity for comment. Last year, the Agencies released the proposed 2019 U.S. G-SIB Guidance for notice and comment,<sup>29</sup> and have stated that a forthcoming rule or guidance on resolution capital and liquidity will be subject to notice and comment.<sup>30</sup> The Agencies should continue this trend and amend the 165(d) Rule to require that guidance issued pursuant to the rule be subject to notice and comment. Furthermore, the 165(d) Rule should require the Agencies to consolidate and make publicly available all applicable guidance for all filers, just as they did for U.S. G-SIBs in the 2019 U.S. G-SIB Guidance.

#### 2. Alternative Scoping Criteria

The Associations have addressed the alternative scoping criteria raised for comment in the NPR in several other comment letters submitted this year on other notices of proposed rulemakings by the Agencies that also request comment on the alternative scoping criteria, and refer the Agencies to those letters. The Bank Policy Institute submitted a comment letter on behalf of its members on January 22, 2019 on several proposals issued by the FDIC, the Federal Reserve and the Office of the Comptroller of the Currency that would implement EGRRCPA and tailor the application of various rules for domestic banking organizations based on the activities, business models

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<sup>27</sup> 84 Fed. Reg., *supra* note 2, at 21601.

<sup>28</sup> 84 Fed. Reg., *supra* note 2, at 21602.

<sup>29</sup> 83 Fed. Reg., *supra* note 5.

<sup>30</sup> 84 Fed. Reg., *supra* note 5, at 1439.



and risk profiles of these firms.<sup>31</sup> In addition, the American Bankers Association submitted a comment letter on behalf of its members on that date to the three agencies on those proposals.<sup>32</sup> Finally, the Bank Policy Institute and the American Bankers Association submitted a comment letter to the FDIC, the Federal Reserve and the Office of the Comptroller of the Currency on their proposed changes to the applicability thresholds for certain regulatory capital requirements and the application of liquidity requirements to FBOs on June 21, 2019.<sup>33</sup>

### 3. Additional Risk-Based Indicators for the Application of Category II Standards

Category II requirements are intended to apply to those firms that are “very large or have significant international activity” and, therefore, subject to the Basel standards applicable to very large or internationally active firms.<sup>34</sup> For the reasons set forth in greater detail in the FBO Tailoring Letter, the Associations do not believe that the new risk based indicators suggested by the Agencies (weighted short-term wholesale funding (**wSTWF**), nonbank assets and/or off-balance-sheet exposures) are necessary or appropriate for the Category II boundary as they would not facilitate the identification of firms that fit this description.

If, nevertheless, the Agencies determine that wSTWF, nonbank assets and/or off-balance sheet exposures should be included as additional indicators that would place firms in Category II, the threshold for these indicators with respect to Category II should be no less than \$210 billion to (i) maintain the proportional parity among the indicators for different categories of organizations; (ii) avoid negative implications for the availability of credit and participation by FBOs in U.S. markets; and (iii) maintain the overall integrity of the categories and framework proposed by the agencies.

Finally, subjecting firms to the restrictive Category II standards on the basis of crossing a single threshold is counter to the tailoring directives set forth in EGRRCPA.<sup>35</sup>

### 4. Description of Critical Operations

The critical operations methodology requirements refer to “economic functions” engaged in by the covered company.<sup>36</sup> This terminology is new and was not included in the original 165(d) rule or subsequent guidance from the

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<sup>31</sup> Letter from BPI to FDIC, Federal Reserve & Office of the Comptroller of the Currency, re: Regulatory Tailoring and DFAST Proposals (Jan. 22, 2019), *available at* <https://bpi.com/recent-activity/bank-policy-institute-files-comment-letter-on-proposed-tailoring-of-capital-stress-testing-and-liquidity-requirements/>.

<sup>32</sup> Letter from the ABA to the FDIC, Federal Reserve & Office of the Comptroller of the Currency, re: Notices of proposed rulemakings to tailor prudential standards (Jan. 22, 2019), *available at* <https://www.aba.com/Advocacy/commentletters/Documents/regulatory-tailoring-proposals-012219.pdf>.

<sup>33</sup> Letter from BPI and the ABA to the FDIC, Federal Reserve & Office of the Comptroller of the Currency, re: Proposed Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries (June 21, 2019), [*hereinafter* the **FBO Tailoring Letter**] *available at* <https://bpi.com/wp-content/uploads/2019/06/FBO-Tailoring-NPRs-Comment-Letter.pdf>.

<sup>34</sup> *Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies*, 83 Fed. Reg. 61408, 61410 (Nov. 29, 2018); *Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements*, 83 Fed. Reg. 66024, 66027 (Dec. 21, 2018).

<sup>35</sup> Please see the FBO Tailoring Letter for further discussion of these points.

<sup>36</sup> See § \_\_.3(a)(1)(ii).

Agencies. The Agencies should not depart from prior formulations, which refer simply to the “operations” of the covered company and over which the Agencies and the filers have shared a common understanding over the years. If the Agencies are attempting to align global terminology and continue to use “economic functions,” they should, however, explicitly clarify that critical economic functions are the same as critical operations.

#### **IV. Description of Appendices**

**Appendix A (Filer & Agency Deadlines)** contains a visual illustration of the Associations’ recommendations related to timing.

**Appendix B (Glossary)** contains a compilation of all defined terms in this comment letter.

**Appendix C (Associations)** contains a description of the Associations.

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The Associations appreciate the opportunity to comment on the 165(d) Proposal. If you have any questions, please contact John Court by phone at +1(202)589-2409 or by email at [john.court@bpi.com](mailto:john.court@bpi.com), Carter McDowell by phone at +1(202)962-7327 or by email at [cmcdowell@sifma.org](mailto:cmcdowell@sifma.org) or Hu A. Benton by phone at +1(202)663-5042 or by email at [hbenton@aba.com](mailto:hbenton@aba.com).

Respectfully submitted,



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Senior Vice President, Deputy General Counsel  
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Carter McDowell  
Managing Director and Associate General Counsel  
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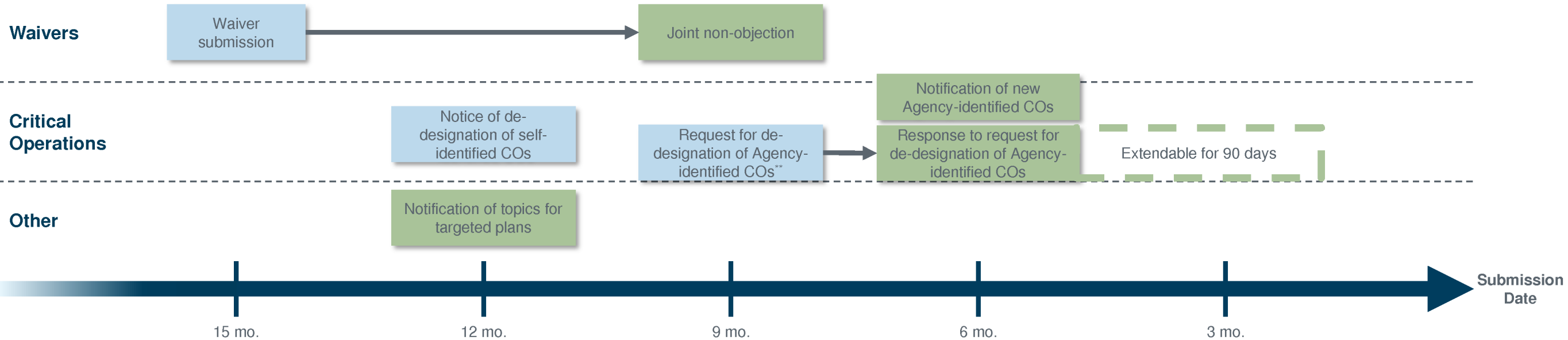
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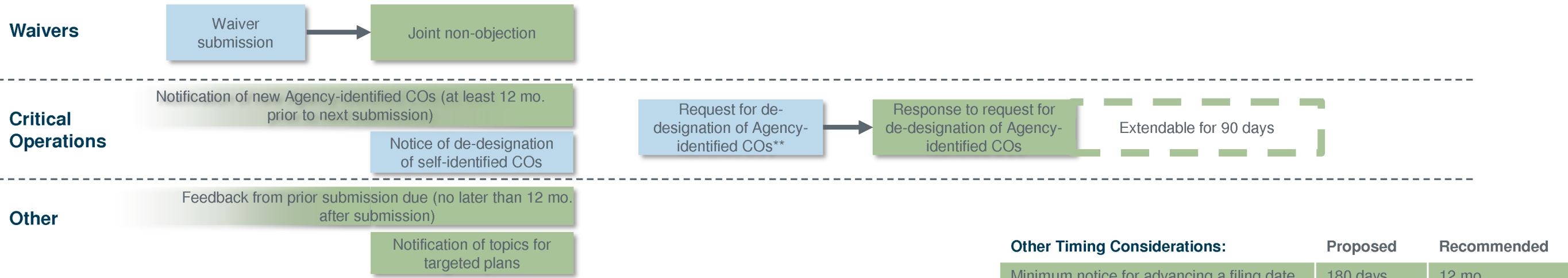
# Appendix A: 165(d) Proposal – Filer & Agency Deadlines\*

Filer deadline  
Agency deadline

As Proposed



As Recommended



Other Timing Considerations:	Proposed	Recommended
Minimum notice for advancing a filing date	180 days	12 mo.
Notice of extraordinary event	45 days	45 days
Response to deficiency(ies)	90 days	90 days

\* This timeline does not consider deadlines for newly covered companies or currently covered companies transitioning between filer categories.  
 \*\* Filers have the option to submit requests for de-designation of Agency-identified COs earlier than 270 prior to submission. BPI-Sifma is requesting that the Agencies be required to respond within 90 days of a request, rather than 180 days prior to submission.

**Appendix B to  
Proposed 165(d) Rule Amendments Comment Letter  
Glossary**

Term	Definition
§165(d) Proposal	The Federal Reserve’s and FDIC’s joint notice of proposed rulemaking to amend and restate the regulation implementing the resolution planning requirements of the 165(d) Rule; <i>Resolution Plans Required</i> (notice of proposed rulemaking, May 14, 2019) (to be codified at 12 C.F.R. pt. 381)
§165(d) Rule	Rule promulgated by the Federal Reserve and FDIC pursuant to §165(d) of the Dodd-Frank Act aimed at strengthening the resolution planning capabilities of each covered company as defined by the rule
2019 U.S. G-SIB Guidance	<i>Final Guidance</i> , 84 Fed. Reg. 1438 (Feb. 4, 2018)
ABA	The American Bankers Association
The Agencies	The Federal Reserve and the FDIC
The Associations	BPI, SIFMA and the ABA
BPI	The Bank Policy Institute
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
EGRRCPA	Economic Growth, Regulatory Relief, and Consumer Protection Act
FBO Tailoring Letter	Letter from BPI and the ABA, re: Proposed Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries (June 21, 2019)
FDIC	Federal Deposit Insurance Corporation
Federal Reserve	Board of Governors of the Federal Reserve System
filers	The filers referred to in this letter are defined as Covered Companies in the 165(d) Proposal, except that when describing the history of the resolution planning process, the filers are defined as Covered Companies in the 165(d) Rule
NPR	The Federal Reserve’s and FDIC’s joint notice of proposed rulemaking to amend and restate the regulation implementing the resolution planning requirements of the 165(d) Rule; <i>Resolution Plans Required</i> (notice of proposed rulemaking, May 14, 2019) (to be codified at 12 C.F.R. pt. 381)
Proposed Guidance Comment Letter	Letter from BPI and SIFMA to the Agencies, re: Resolution Planning Guidance for Eight Large, Complex U.S. Banking Organizations (Sept. 14, 2018)
SIFMA	The Securities Industry and Financial Markets Association
wSTWF	weighted short-term wholesale funding

**Appendix C to  
Proposed 165(d) Rule Amendments Comment Letter**

**Associations**

**The Bank Policy Institute.** The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

**The Securities Industry and Financial Markets Association.** SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

**The American Bankers Association.** The American Bankers Association is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional and large banks. Together, America's banks employ more than 2 million men and women, safeguard nearly \$14 trillion in deposits and extend more than \$10 trillion in loans.