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Washington, DC 20548

July 21, 2020

Congressional Committees

**Financial Company Bankruptcies: Congress and Regulators Have Updated Resolution Planning Requirements**

The 2007–2009 financial crisis and the failures of large, complex financial companies led some financial and legal experts to question the adequacy of the U.S. Bankruptcy Code (Code) for effectively reorganizing or liquidating the companies. These experts, along with government officials and members of Congress, responded by proposing changes to the Code and the supervisory process leading to a bankruptcy filing. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established Orderly Liquidation Authority (OLA) as a regulatory alternative to bankruptcy for resolving failed, systemically important financial institutions. Under OLA, the Secretary of the Treasury may appoint the Federal Deposit Insurance Corporation (FDIC) as a receiver to resolve those companies. In addition to OLA, the Dodd-Frank Act requires certain financial companies to file periodic resolution plans with the Board of Governors of the Federal Reserve System (Federal Reserve), FDIC, and the Financial Stability Oversight Council describing how these financial companies could be resolved under the Code in an orderly manner in the event of material financial distress or failure.[1]

The Dodd-Frank Act also includes a provision for us to study, at specified intervals, the effectiveness of the Code in facilitating orderly liquidation or reorganization of financial companies and ways to make orderly liquidation under the Code more effective.[2] This report examines (1) proposed or enacted changes to the Code related to financial companies and OLA since 2015, and (2) regulatory actions related to resolution planning and OLA.

For the first objective, we reviewed proposed legislation from January 2015 through April 2020 (in the 114th, 115th, and 116th Congresses) to change the Code that was relevant to liquidation or reorganization of financial companies, prior GAO reports and agency reports, presentations, and speeches, and interviewed officials from the Administrative Office of the United States Courts. For the second objective, we reviewed comment letters to the 2019 proposed Resolution Plans Required rule, and proposed and finalized rules for actions FDIC and the Federal Reserve took related to resolution planning and OLA. Additionally, we reviewed prior

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[1]Pub. L. No. 111-203, Title I, § 165(d), 123 Stat. 1376, 1426-1427 (2010)(codified at 12 U.S.C. § 5365(d)).

[2]Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 202(e), 124 Stat. 1376, 1448-1449 (2010). Also see GAO, *Financial Company Bankruptcies: Information on Legislative Proposals and International Coordination,* GAO-15-299 (Washington, D.C.: Mar. 19, 2015); *Financial Company Bankruptcies: Need to Further Consider Proposals' Impact on Systemic Risk,* GAO-13-622 (Washington, D.C.: July 18, 2013); *Bankruptcy: Agencies Continue Rulemakings for Clarifying Specific Provisions of Orderly Liquidation Authority,* GAO-12-735 (Washington, D.C.: July 12, 2012); and *Bankruptcy: Complex Financial Institutions and International Coordination Pose Challenges,* GAO-11-707 (Washington, D.C.: July 19, 2011).

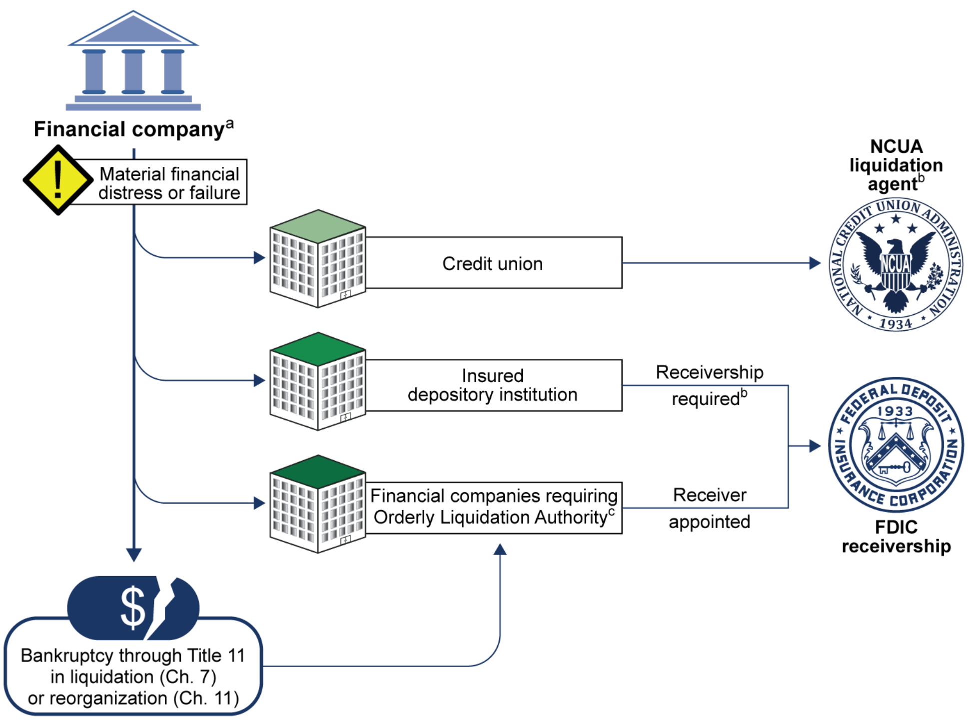
GAO reports, agency reports, guidance, statements, and law firm publications. We interviewed six industry stakeholders, including academics, representatives from a consumer group, industry associations, and former regulatory officials, about the 2019 Resolution Plans Required Rule.[3] We identified these stakeholders by reviewing the organizations that submitted public comments to the rule and consulting subject matter experts. We also interviewed FDIC and Federal Reserve officials on regulatory actions related to resolution planning and OLA.

We conducted this performance audit from February 2020 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Background**

Large financial institutions may be liquidated or reorganized under a judicial bankruptcy process or resolved under special legal and regulatory resolution regimes that have been created to address insolvent financial institutions (see fig. 1).

**Figure 1: Overview of Resolution Process for Failed Financial Companies**




Source: GAO. | GAO-20-608R

[a]This figure excludes broker-dealers and insurance companies.
[b]Bankruptcy prohibited by law.
[c]The Secretary of the Treasury, in consultation with the President, determines, upon the recommendation of at least two-thirds of the members of the Board of Governors of the Federal Reserve and (depending on the nature of the financial company or its largest U.S. subsidiary) two-thirds of the members of the Board of Directors of the Federal Deposit Insurance Corporation, two-thirds of the members of the Securities and Exchange Commission, or the Director of the Federal Insurance Office, that, among other things, the company is in default or danger of default and the company's failure and its resolution under applicable law, including bankruptcy, would have serious adverse

[3]84 Fed. Reg. 59194 (Nov. 1, 2019).

effects on U.S. financial stability and no viable private-sector alternative is available to prevent default. Orderly Liquidation Authority is only applicable to financial companies and certain subsidiaries, which include certain large bank holding companies and certain of their subsidiaries, and certain nonbank financial companies designated by the Financial Stability Oversight Council for supervision by the Federal Reserve and their subsidiaries. A determination may be made for a financial company that, among other requirements, is in default or in danger of default, which is defined in OLA to include when a case has been or likely will be promptly commenced for the financial company under the Code.

**Bankruptcy.** Bankruptcy is a federal court procedure, the goal of which is to help eliminate or restructure debts individuals and businesses cannot repay and to help creditors receive some payment in an equitable manner. Generally, the filing of a bankruptcy petition automatically stays (stops) most lawsuits, foreclosures, and other collection activities against the debtor. Equitable treatment of creditors means creditors with substantially similar claims are classified similarly and receive the same treatment.

Business debtors may seek liquidation, governed primarily by Chapter 7 of the Code, or reorganization, governed by Chapter 11. Chapters 7 and 11 petitions can be voluntary (initiated by the debtor) or involuntary (generally initiated by at least three creditors holding at least a certain minimum dollar amount in claims against the debtor).

**Orderly Liquidation Authority.** Title II of the Dodd-Frank Act established OLA, which gives FDIC the authority, subject to certain constraints, to resolve certain financial companies, including a bank holding company or a nonbank financial company designated for supervision by the Federal Reserve, outside of the bankruptcy process.[4] This authority allows for FDIC to be appointed receiver for a financial company if the Secretary of the Treasury determines, among other things, that the company is in default or danger of default. The Secretary must also determine that the company's failure and its resolution under applicable law, including bankruptcy, would have serious adverse effects on U.S. financial stability and no viable private-sector alternative is available to prevent the default.[5]

**Resolution plans.** Title I of the Dodd-Frank Act requires certain financial companies to provide the Federal Reserve, FDIC, and the Financial Stability Oversight Council with periodic reports on their plans for rapid and orderly resolution under the Code in the event of "material financial distress or failure."[6] The Federal Reserve and FDIC must review the resolution plans. If they jointly determine and notify a company in writing that its plan is not credible or would not

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[4]Pub. L. No. 111-203, § 204, 124 Stat. 1376, 1454-1456 (2010). Nonbank financial companies are domestic or foreign companies that predominantly engage in financial activities (such as insurance companies, consumer finance providers, commercial lenders, asset managers, and investment funds) but are not bank holding companies or certain other types of institutions (such as registered securities exchanges, clearing agencies, and swap execution facilities). Holding companies own or control one or more subsidiary companies.

[5]In determining whether to appoint FDIC as receiver, the Secretary of the Treasury is to consult with the President, upon the recommendation of two-thirds of the members of the Board of Governors of the Federal Reserve System and (depending on the nature of the financial company or its largest U.S. subsidiary) two-thirds of the members of the Board of Directors of the FDIC, two-thirds of the members of Securities and Exchange Commission, or the Director of the Federal Insurance Office. The factors the Secretary of the Treasury is to consider are set forth in Section 203(b) of the Dodd-Frank Act. Pub. L. No. 111-203, § 203(b), 124 Stat. 1376, 1451 (2010)(codified at 12 U.S.C. § 5383(b)).

[6]Rapid and orderly resolution means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished 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. 12 C.F.R. § 243.2; 12 C.F.R. § 381.2.

facilitate an orderly resolution under the Code, the financial company would have to submit a revised plan to address deficiencies identified by regulators. The revised plan also must address any changes in business operations or corporate structure the company proposes to facilitate implementation of the plan. If the company fails to submit a satisfactory revised plan, the Federal Reserve and FDIC could impose stricter requirements on the company (such as more stringent capital, leverage, or liquidity requirements) or restrictions on its growth, activities, or operations.[7] If the company fails to submit a satisfactory revised plan within 2 years of the imposition of stricter requirements, the Federal Reserve and FDIC, in consultation with the Financial Stability Oversight Council, may jointly direct the company to divest certain assets or operations jointly identified by the Federal Reserve and FDIC as necessary to facilitate an orderly resolution under the Code in the event of the company's failure.[8]

**Current safe-harbor treatment for financial contracts under the Code.** The Code's automatic stay is subject to exceptions, commonly referred to as "safe harbor" provisions that pertain to certain financial contracts, often referred to as qualified financial contracts (QFC).[9] Under these provisions, most counterparties to a QFC with the debtor may exercise certain contractual rights under an exception to the automatic stay.[10] When the debtor files for bankruptcy, the nondefaulting party in a QFC can liquidate, terminate, or accelerate the contract, or offset (net) any termination value, payment amount, or other transfer obligation under the contract. That is, the nondefaulting counterparty can subtract what it owes the debtor from what the debtor owes it (netting).

### Bankruptcy Code for Financial Companies and Orderly Liquidation Authority Have Not Been Amended Since 2015, but Changes Have Been Proposed

Since 2015, Congress has not enacted changes to the Code related to financial companies or to OLA, but legislators proposed several bills that would amend both. Proposed legislative amendments to the Code generally have aimed at enabling the orderly resolution of a financial company through the Code. For example, to mitigate legal challenges to the court's approval of first-day motions under an expedited timeline, legislators proposed amendments describing the conditions under which the court may order the transfer of assets, QFCs, and other contracts to a bridge company under the Code.[11] Legislative proposals have included provisions that would

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[7]Pub. L. No. 111-203, § 165(d)(5)(A), 124 Stat. 1376 1427 (2010)(codified at 12 U.S.C. § 5365(d)(5)(A)). Capital is contributed largely by an institution's equity stockholders and its own returns in the form of retained earnings. One important function of capital is to absorb losses. Prudential regulators require banks to meet certain capital, leverage, and liquidity requirements and generally expect banks to maintain capital, leverage and liquidity at those required levels, commensurate with their risk exposure.

[8]Pub. L. No. 111-203, § 165(d)(5)(B), 124 Stat. 1376, 1427 (2010)(codified at 12 U.S.C. § 5365(d)(5)(B)). The Dodd-Frank Act established the Financial Stability Oversight Council to monitor the stability of the U.S. financial system and take actions to mitigate risks that might destabilize the system.

[9]The term "qualified financial contract" is not used in the Code. However, the types of contracts eligible for the safe harbors are defined in the Code and include swap agreements, repurchase agreements, reverse repurchase agreements, commodity contracts, forward contracts, securities contracts, and master netting agreements. 11 U.S.C. §362(b)(6), (7), (17) and (27); 11 U.S.C. § 101(25), (38A), (47), (53B); 11 U.S.C. § 741(7); 11 U.S.C. § 761(4).

[10]A contractual right includes a right set forth in the rules or bylaws of institutions that include a derivatives clearing organization, multilateral clearing organization, national securities exchange or association, and securities clearing agency.

[11]Financial Institution Bankruptcy Act of 2017, H.R. 1667, 115th Cong. § 3 (2017). Common first-day motions relate to the continued operation of the debtor's business and can involve requests to use cash collateral—liquid assets on which secured creditors have a lien or claim—and to obtain financing. A bridge company is a temporary company

place a stay on the termination, acceleration, or modification of any QFC at the commencement of a bankruptcy to mitigate the risk of QFC counterparties exercising their default rights if the court approved first-day motions.[12] In addition to proposed amendments to the Code, some members of Congress have made several proposals to eliminate or amend OLA.[13] For example, a bill in Congress proposed amending OLA by requiring FDIC to notify and receive approval from state insurance authorities before placing a lien on an insurance company.[14]

In recent years, Treasury also proposed changes to the Code and OLA processes. In 2018, Treasury recommended adding a new chapter to the Code (Chapter 14) for resolving distressed financial companies, which had several provisions similar to those included in proposed legislation.[15] In this same report, Treasury also recommended changes to OLA, including eliminating FDIC's authority to treat similarly situated creditors differently on an ad hoc basis and eliminating the tax-exempt status of a bridge holding company. The report recommended retaining OLA as an emergency tool for use under extraordinary circumstances, but said the proposed Chapter 14 addition to the Code would reduce the likelihood of having to use OLA.[16]

In a report we issued in 2018, experts expressed mixed views on the potential effectiveness of proposed amendments to the Code relevant to financial companies.[17] For example, most of the experts we interviewed said that a Code amendment to clarify that a global systemically important bank (GSIB) may transfer its intermediate holding company and other subsidiaries within 48 hours of the bankruptcy filing to a bridge holding company would mitigate potential challenges to the transfer.[18] However, experts were split as to whether a Code amendment to shield a GSIB’s board of directors from liability for a good faith bankruptcy filing would further mitigate the risk of a GSIB’s board of directors not filing for bankruptcy in a timely manner. In our 2018 report, we also reported that some experts we interviewed said it was important to maintain OLA as a backstop to resolving a GSIB under the Code.

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created to transfer certain assets and financial contracts from the holding company, allowing certain subsidiaries to continue their operations.

[12]Financial CHOICE Act of 2017, H.R. 10, 115th Cong. §§ 121-23 (2017).

[13]For example, H.R. 171, 114th Cong. § 1 (2015), H.R. 10, 115th Cong. § 111 (2017).

[14]Policyholder Protection Act of 2015, S. 798, 114th Cong. § 3 (2015).

[15]See Department of the Treasury, *Orderly Liquidation Authority and Bankruptcy Reform,* a report to the President of the United States pursuant to the Presidential Memorandum issued April 21, 2017 (Washington, D.C.: Feb. 21, 2018).

[16]In its 2018 report, Treasury said that bankruptcy is the resolution method of first resort because market discipline is the surest check on excessive risk-taking, and the bankruptcy process reinforces market discipline through a rules-based, predictable, judicially administered allocation of losses from a firm’s failure.

[17]See GAO, *Financial Company Bankruptcies: Experts Had Mixed Views on Companies’ Controls for Mitigating Obstacles,* GAO-19-30 (Washington, D.C.: Nov. 8, 2018).

[18]GSIBs are banking organizations whose distress or disorderly failure would cause significant disruption to the wider financial system and economy (because of attributes such as their size, complexity, and interconnectedness). The Federal Reserve established criteria for identifying a GSIB in 2015. Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharge for Global Systemically Important Bank Holding Company, 80 Fed. Reg. 49082 (Aug. 14, 2015).

**Federal Reserve and FDIC Issued a Joint Resolution Planning Rule**

Resolution Plans Required Rule

In November 2019, FDIC and the Federal Reserve finalized amendments to the Resolution Plans Required rule, which in part addresses statutory changes made by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) and is intended to better match resolution planning requirements to the risks of the covered companies.[19]

The rule establishes the following key changes:

- Raises minimum asset size threshold and creates risk-based indicators and categories for covered companies based on asset size and risk profile.[20]
- Lengthens filing cycle for plan submissions from annual to biennial or triennial, depending on category.
- Establishes resolution plan content requirements for targeted and reduced plans.
- Establishes schedule alternating between full and targeted plans. Reduces plans required for foreign banking organizations that do not meet other category requirements.
- Establishes content waivers, subject to the agencies' joint approval, for elements that have not materially changed since the covered company's previous plan.
- Establishes a process for covered companies and agencies to identify operations of companies most important to U.S. financial stability.[21]
- Imposes time requirements for regulators to provide feedback to covered companies on their resolution plans or to request updates within a reasonable amount of time.

See enclosure I for more information.

The groups we interviewed had mixed views on the overall impact of the rule. FDIC and Federal Reserve officials said that revisions to the rule incorporate knowledge gained by regulators in reviewing resolution plan submissions under the original 2011 rule. They said the new rule balances the regulatory burden placed on covered companies with the risk those companies pose to U.S. financial stability. However, the consumer group opposed the 2019 rule because,

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[19]Resolution Plans Required, 84 Fed. Reg. 59194 (Nov. 1, 2019). The 2019 rule implements the resolution plan requirement found in the Dodd-Frank Act Sec. 165(d). Pub. L. No. 111-203, § 165(d), 124 Stat. 1376. 1423-1432 (2010)(codified at 12 U.S.C. § 5365(d)).

[20]This rule's categories were consistent with a broader reorganization of financial companies under the Federal Reserve's 2019 Tailoring Rule. Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59032 (November 1, 2019). The 2019 Tailoring Rule establishes risk-based categories for determining prudential standards for large U.S. banking organizations and foreign banking organizations, consistent with statutory requirements.

[21]The rule defines these critical operations as those operations of a covered company, including associated services, functions, and support, the failure or discontinuance of which would pose a threat to U.S. financial stability. 12 C.F.R. §§ 243.2 & 381.2.

according to this group, it exempts more companies from resolution planning requirements than EGRRCPA requires. This same consumer group along with an academic and a former regulatory official also stated that the increased time between resolution plan submissions increases the risk of a company's plan becoming obsolete, and therefore ineffective, if the company faces material distress or failure. These stakeholders said the cumulative effect of the rule's changes increases the likelihood of a company's disorderly failure and need for public assistance.

**Companies subject to resolution planning requirements.** The rule raises the minimum threshold for companies automatically subject to the planning requirement to $250 billion in total consolidated assets from $50 billion.[22] The rule also establishes criteria for applying resolution planning requirements for companies with $100 billion or more and less than $250 billion in total consolidated assets by establishing risk-based indicators.[23] The rule states these indicators were chosen to capture different elements of financial risk, such as exposure to the derivatives market or runs on short-term funding. According to regulators, the rule focuses regulatory efforts on those companies most likely to present systemic risk, while reducing regulatory burden for smaller and systemically less-risky companies.

An academic, consumer group, and a former regulatory official we interviewed raised concerns that companies exempted from filing plans—such as those with $100 billion or more and less than $250 billion in total consolidated assets but less than $75 billion in one of the four risk-based indicators—could pose a threat to U.S. financial stability if they were to suffer a disorderly failure. To illustrate this point, the consumer group noted that some of the companies that failed and stressed the rest of the financial system during the 2007–2009 financial crisis would not have been required to file a resolution plan under the new rule.

Generally, the regulators, the consumer group, former regulatory officials, and the industry associations, including those opposed to the rule, said they believed the four risk-based indicators themselves were appropriate in capturing their intended measure of risk. A former regulatory official and the industry association suggested the agencies continuously assess the indicators' relevance and ability to capture any new financial risks that emerge. However, one industry association told us they believed the indicators overstated the risk that foreign banking organizations pose to U.S. financial stability.

**Extended filing cycle.** Under the 2019 rule, covered companies must submit full, targeted or in some cases reduced resolution plans every 2 or 3 years to regulators, replacing the default

[22]For information regarding the calculation of a covered company's total consolidated assets, see pages GEN-3 to GEN-8 of the Federal Reserve's Instructions for Preparation of Consolidated Financial Statements for Holding Companies, Reporting Form FR Y-9C.

[23]The rule applies the highest level of standards to U.S. GSIBs, which must submit resolution plans every 2 years, alternating between full and targeted plans. U.S. companies other than GSIBs with U.S. average total consolidated assets of at least $250 billion and foreign banking organizations with average combined U.S. assets of at least $250 billion must submit resolution plans every 3 years, alternating between full and targeted plans. Furthermore, U.S. companies with at least $100 billion and less than $250 billion in average total consolidated assets and foreign banking organizations with at least $100 billion and less than $250 billion in average combined U.S. assets that, in either case, have $75 billion or more in one of the four risk-based indicators must submit resolution plans every 3 years, alternating between full and targeted plans. The risk-based categories the rule establishes are average cross-jurisdictional activity, average total nonbank assets, average weighted short-term wholesale funding, and average off-balance sheet exposure. Finally, foreign banking organizations that have U.S. operations, $250 billion or more in global consolidated assets, and are not covered by the requirements above must file reduced resolution plans every 3 years. See enclosure I for more information.

requirement under the 2011 rule to submit full plans annually. In a 2016 report, we evaluated FDIC's and the Federal Reserve's resolution plan review processes. We recommended that the agencies revise the annual filing requirement to provide sufficient time for regulators to complete their plan reviews and for companies to address and incorporate regulators' feedback in subsequent filings.[24] We suggested a 2-year filing cycle as a possible alternative. Since then, FDIC and the Federal Reserve had been extending the covered companies' resolution plan submission dates to allow at least 2 years between resolution plan submissions, a practice formalized in the 2019 rule.

Regulators and industry associations we interviewed said the rule's changes reduce regulatory burden and give covered companies the time they need to effectively consider and incorporate agencies' firm-specific feedback and general guidance into the next iteration of their resolution plans. Regulators and an industry group also said that waivers allow for further tailoring of resolution plans. However, the consumer group we interviewed is concerned that while the reduced frequency of plan submissions might lessen the burden on agencies, the new requirement for comprehensive waiver reviews might simply shift that burden elsewhere. An academic, consumer group, and a former regulatory official said that extended filing cycles risk the disorderly failure of covered companies, noting that financial companies' asset sizes and risk exposures can change so rapidly that resolution plans will be obsolete before the 2- or 3-year filing deadline. One stakeholder said this problem is exacerbated by the rule provision allowing covered companies to alternate between full and targeted plans, which excludes key information such as descriptions of collateral management practices and identification of major counterparties, and results in covered companies filing full plans only once every 4–6 years.[25]

Regulators and an industry association said the risk of plans becoming obsolete is mitigated by a provision in the rule that provides regulators the authority to request resolution plans or interim updates mid-cycle if they believe more information is required. Federal Reserve officials said they would determine if an updated resolution plan was needed based on information gathered through a combination of examinations and institution self-reporting. A scenario for requesting updated resolution plans could include an institution acquiring a new business line or relocating into the United States. FDIC officials said the rule gives them appropriate flexibility to request updated plans as they deem necessary, and does not overly constrain regulators with rigid procedures. One former regulatory official emphasized the need for mid-cycle updates because 6 years elapse between full resolution plan submissions for many covered companies. The former regulatory official also expressed concern that the extended length of time between plans would make it difficult for agencies and covered companies to retain institutional knowledge.

Other Regulatory Changes and Proposals Related to OLA and Resolution Planning

**Finalized rules.** Since 2015, regulators finalized a number of other rules related to OLA and resolution planning:

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[24]See GAO, *Resolution Plans: Regulators Have Refined Their Review Processes but Could Improve Transparency and Timeliness,* GAO-16-341 (Washington, D.C.: Apr. 12, 2016).

[25]The 2019 rule did not amend information previously required in a full resolution plan. However, a company may submit a waiver request, which FDIC and the Federal Reserve may jointly approve. Targeted plans, newly created under the 2019 rule, always include core elements of the full resolution plan, such as capital and liquidity, and any material changes to the company that occurred since the last plan submission and also may include material topics identified by FDIC and the Federal Reserve.

- In October 2016, the Secretary of the Treasury, as Chairperson of the Financial Stability Oversight Council, adopted final rules, in consultation with FDIC, to implement the QFC recordkeeping requirements of the Dodd-Frank Act.[26] The rules require recordkeeping for positions, counterparties, legal documentation, and collateral, to assist FDIC as receiver under OLA. FDIC officials said that when the agency becomes receiver of a financial company, it has to decide quickly whether to transfer QFCs or retain them in the receivership. Agency officials said that this rule, which mandates certain recordkeeping (not reporting) standards, simplifies the decision-making process for QFC transfers.

- In 2017, the Federal Reserve, FDIC, and the Office of the Comptroller of the Currency, issued final QFC stay rules regarding new restrictions on QFCs for U.S. GSIBs and their subsidiaries and the U.S. operations of foreign GSIBs.[27] Under these rules, GSIBs and their subsidiaries must include provisions in their QFCs that would prevent counterparties from exercising default rights based on entry into a bankruptcy or resolution proceedings.[28] These institutions also must ensure their QFCs include language recognizing FDIC's powers as receiver under U.S. special resolution regimes, including OLA.

- In January 2017, the Federal Reserve finalized a rulemaking that sets the minimum amount of total loss-absorbing capacity that U.S. GSIBs and the top-tier intermediate holding companies of certain foreign GSIBs must hold to recapitalize key subsidiaries.[29] Total loss-absorbing capacity comprises firm-issued capital and eligible external long-term debt, which in the event of an institution's failure will bear the losses and be available to recapitalize the institution. Some experts interviewed in a 2019 report said the amount of total loss-absorbing capacity GSIBs must hold should be sufficient to absorb significant losses. A service provider we interviewed in this report expressed concern that the requirements for total loss-absorbing capacity were calibrated based in part on losses suffered in the previous financial crisis and that the next crisis could be worse.[30] At the time of this report, the COVID-19 pandemic has resulted in significant disruption in the financial sector and its full impact is still uncertain.

**Notices of proposed rulemaking.** Since 2015, regulators also have proposed two rules related to resolution planning that have not been finalized:

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[26]Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority, 81 Fed. Reg. 75624 (Oct. 31, 2016).

[27]Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking, 82 Fed. Reg. 42882 (Sept. 12, 2017); Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreements and Related Definitions, 82 Fed. Reg. 50228 (Oct. 30, 2017); and Mandatory Contractual Stay Requirements for Qualified Financial Contracts, 82 Fed. Reg. 56630 (Nov. 29, 2017).

[28]See GAO-19-30.

[29]Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U,S, Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed, Reg. 8266 (Jan. 24, 2017).

[30]See GAO-19-30.

- In March 2016, FDIC and the Securities and Exchange Commission issued a joint notice of proposed rulemaking to implement provisions applicable to the orderly liquidation of covered brokers and dealers under Title II of the Dodd-Frank Act.[31] This proposed rulemaking is intended to clarify the distribution of responsibilities between the two agencies and the Securities Investor Protection Corporation in the event of a broker-dealer's failure.[32] It also would allow FDIC the option of establishing a bridge broker-dealer to maintain customers' access and prevent a distressed sale of the assets.[33] FDIC officials told us the 2016 notice is still relevant, despite there being no published updates, and they hope to move forward with the rule in the near future.

- In April 2019, FDIC issued an advanced notice of proposed rulemaking concerning the resolution plan requirements for larger insured depository institutions (also known as the IDI Rule).[34] In the notice, FDIC sought comment on its proposed approaches, which are specifically for covered insured depository institutions.[35] The notice presents the idea that rules could revise the frequency and content of plan submissions based on the insured depository institution's size and risk profile. It also proposes improvements to the process for periodic engagement between FDIC and insured depository institutions regarding resolution plans. FDIC officials told us they continue to work on the notice for proposed rulemaking for the IDI Rule and plan to release the proposal in 2020.

**Agency Comments**

We provided a draft of this report to the Director of the Administrative Office of the United States Courts, the Chairman of FDIC, and the Chairman of the Federal Reserve for review and comment. FDIC and the Federal Reserve provided technical comments on the draft that we incorporated as appropriate. The Administrative Office of the United States Courts had no comments.

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We are sending copies of this report to the appropriate congressional committees, the Director of the Administrative Office of the United States Courts, the Chairman of FDIC, the Chairman of the Federal Reserve, and other interested parties. In addition, the report is available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or ClementsM@gao.gov. Contact points for our Offices of Congressional Relations and Public

[31]Covered Broker-Dealer Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 81 Fed. Reg. 10798 (Mar. 2, 2016).

[32]The Securities Investor Protection Corporation is a nonprofit membership corporation that oversees the liquidation of member firms closed due to bankruptcy or financial trouble to protect investors' cash and securities.

[33]The proposed rule defines a bridge broker or dealer as a new financial company organized by FDIC in accordance with section 210(h) of the Dodd-Frank Act (codified at 12 U.S.C. § 5390(h)) for the purpose of resolving a covered broker or dealer.

[34]Resolution Plans Required for Insured Depository Institutions With $50 Billion or More in Total Assets, 84 Fed. Reg. 16620 (Apr. 22, 2019).

[35]Insured depository institutions operate under different legal frameworks than bank holding companies, and involve distinct entities and objectives.

Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are John Forrester (Assistant Director), Christopher Ross (Analyst in Charge), William R. Chatlos, Jason Marshall, Marc Molino, Barbara Roesmann, and Jessica Sandler.

Michael Clements

Michael Clements
Director, Financial Markets and Community Investment

Enclosure – 1

*List of Committees*

Honorable Mike Crapo
Chairman
Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

Honorable Lindsey Graham
Chairman
Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

Honorable Maxine Waters
Chairwoman
Honorable Patrick McHenry
Ranking Member
Financial Services Committee
House of Representatives

Honorable Jerrold Nadler
Chairman
Honorable Jim Jordan
Ranking Member
Judiciary Committee
House of Representatives

## Enclosure I: Categories and Filing Requirements for Firms under the 2019 Resolution Plans Required Rule

In November 2019, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System finalized amendments to the Resolution Plans Required Rule, which in part addresses statutory changes made by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act. The rule categorizes covered companies by asset size and risk profile and establishes new filing cycles and content requirements for resolution plans based on those new categories, which are summarized in table 1.

**Table 1: Summary of Categories and Filing Requirements for Firms under the Resolution Plans Required Rule**

| Category | U.S. firm thresholds | Foreign banking organization (FBO) thresholds | Filing cycle | Type of plan |
|---|---|---|---|---|
| **I** | U.S. global systemically important banks (GSIB) | Not applicable | Every 2 years | Alternating between full and targeted plans |
| **II** (firms not subject to Category I) | ≥ $700 billion (b) in average total consolidated assets<br>*Or*<br>≥ $100b in average total consolidated assets *and* ≥ $75b in average cross-jurisdictional activity | ≥ $700b in average combined U.S. assets<br>*Or*<br>≥ $100b in average combined U.S. assets *and* ≥ $75b in average cross-jurisdictional activity based on the FBO's combined U.S. operations | Every 3 years | Alternating between full and targeted plans |
| **III** (firms not subject to Category I or II) | ≥ $250b in average total consolidated assets<br>*Or*<br>≥ $100b in average total consolidated assets *and* ≥ $75b or more in the following categories:<br>• Average total nonbank assets<br>• Average weighted short-term wholesale funding<br>• Average off-balance sheet exposure | ≥ $250b in average combined U.S. assets<br>*Or*<br>≥ $100b in average combined U.S. assets *and* ≥ $75b or more in the following categories based on the FBO's combined U.S. operations:<br>• Average total nonbank assets<br>• Average weighted short-term wholesale funding<br>• Average off-balance sheet exposure | Every 3 years | Alternating between full and targeted plans |
| **IV** (FBOs not subject to category I, II, and III) | Not applicable | ≥ $250b in global consolidated assets that do not meet any of the thresholds specified for Categories II or III | Every 3 years | Reduced plans |

Source: GAO analysis of the Resolution Plans Required Rule. | GAO-20-608R

Notes: The 2019 rule did not amend the information types previously required in a full resolution plan. However, a non-U.S. GSIB may submit a waiver, which the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System (Federal Reserve) may then jointly approve.

Targeted plans, newly created under the 2019 rule, focus on the most material topics identified by FDIC and the Federal Reserve, including capital and liquidity, and any material changes to the firm that have occurred since the last plan submission.

Reduced resolution plan components include a description of (1) material changes experienced by the covered company since the filing of the covered company's previously submitted resolution plan, and (2) changes to the strategic analysis presented in the firm's previously submitted resolution plan that resulted from material changes, firm-specific feedback from FDIC and the Federal Reserve, general guidance issued by FDIC and the Federal Reserve, or legal or regulatory changes.

Nonbank financial companies supervised by the Federal Reserve are biennial filers unless they are designated triennial filers by FDIC and the Federal Reserve. Taking into consideration any facts and circumstances they each deem relevant, the Federal Reserve and FDIC may designate a nonbank financial company supervised by the Federal Reserve as a triennial filer or re-designate a triennial filer as a biennial filer.

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