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

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
Attention: Comments-RIN 3064–ZA37
550 17th Street NW
Washington, DC 20429

November 30, 2023

Re: Proposed Rule for Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers (Fed Docket ID OP–1816 and FDIC RIN 3064–ZA37) and Proposed Rule for Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers (Docket IDs Fed No. OP–1817 and FDIC-RIN 3064–ZA38)

Dear Ms. Misback and Mr. Sheesley:

Americans for Financial Reform Education Fund (AFREF) appreciates this opportunity to comment on the Federal Reserve Board of Governors (FRB) and the Federal Deposit Insurance Corporation's (FDIC) two proposed regulatory guidances (Resolution Plan Guidance for Domestic Triennial Full Filers[1] and Resolution Plan Guidance for Foreign Triennial Full Filers[2]) that clarify and strengthen supervisory expectations for banking organizations to fulfill their resolution plan requirements. AFREF is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups dedicated to advocating for policies that shape a financial sector that serves workers, communities and the real economy, and provides a foundation for advancing economic and racial justice.

Banking organizations' resolution plans represent a playbook to facilitate the orderly resolution of a systemically important bank if they fall into insolvency. Resolution plans, also sometimes referred to as

[1] Federal Reserve System, Federal Deposit Insurance Corporation. Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers. 88 Fed. Reg. 180. September 19, 2023 at 64626 et seq.
[2] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation. Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers. 88 Fed. Reg. 180. September 19, 2023 at 64641 et seq.

"living wills," became a regulatory imperative, along with capital planning, liquidity, stress testing, and other enhanced prudential standards for systemically important banks after the 2008 financial crisis. The 2023 financial crisis revealed not only weaknesses in large banks' capital, liquidity, and interest rate risk and related controls, but also weaknesses in planning for an orderly resolution if the firm were to fail.[3]

The proposed guidance makes important improvements to how banking firms perform and present these plans that protect the financial system, the economy, and ordinary Americans and their businesses in the event of a large bank failure. Resolution plans are intended to give depositors prompt access to their cash, maximize the return from the sale and disposition of assets, and reduce creditors' losses. These protections, in turn, reduce the potential risks to the economic and financial system and minimize costs to the Deposit Insurance Fund in the event of a systemically important bank failure. The proposed guidance undergirds the resolution plan requirements by providing clarity of intent to banks and regulators and represents one tool in the urgently needed safety and soundness and systemic risk financial reforms currently pending, particularly the bank regulatory capital proposal, to avoid threats to the financial system from bank failures. For example, in May 2023, the FDIC, with approval of the Office of the Comptroller of the Currency, exercised its systemic risk authority to arrange the sale of the failed First Republic Bank to JPMorgan Chase. The proposed guidance enhances resolution plans by clarifying that orderly liquidation authority is a regulatory last resort to prevent using the liquidation authority to bail out large firms.

The proposed resolution plan guidance adapts and expands the existing guidance for Category I globally systemically important banks (GSIBs) to a broader set of similarly situated firms in Categories II and III of the FRB's tailored supervision framework. Consistent with the current GSIB guidance, the proposed guidance clarifies the agencies' expectations for how banks should perform different elements of the plan.[4] The agencies expect that this guidance should improve the resolution capabilities of supervised firms in these categories and clarify the agencies' expectations for future filings. Category II and III banking organizations are those with over $250 billion in total assets that are not U.S. GSIBs. This includes five domestic firms and the intermediate holding companies and U.S. operations of nine foreign firms. The proposal, modeled after the Category I guidance, extends resolution plan guidance to the complete set of domestic firms and additional foreign banking organizations that are triennial full filers. The proposed guidance improves the existing regulatory oversight of resolution plans. AFREF is supportive of the approach and need for the proposed guidance and recommends some additional clarity and direction to further strengthen the resolution guidance.

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[3] GRIP, Global Relay, [FDIC's Gruenberg calls for tougher resolution plans for large regional banks](), Julie DiMauro, August 16, 2023.

[4] Category II is defined as firms with ≥ $700b Total Assets or ≥ $75b in Cross Jurisdictional Activity Fed tailoring framework. Category III is defined as firms with ≥ $250b Total Assets or ≥ $75b in nonbank assets, with short term wholesale funds, or off-balance sheet exposure. Source: Requirements for Domestic and Foreign Banking Organizations, [Tailoring Rule]() visual.

Guidance complements other financial reform proposals to improve large banks' safety and soundness, strengthen resolution planning, and preserve financial stability and banking sector resilience: The proposed guidance is part of the set of needed safety and soundness, systemic risk, and resolution plan regulatory proposals intended to reduce the risk of bank failures and promote orderly resolution in the event of bank failure. The most important of these is the pending Basel III endgame regulatory capital proposal that should strengthen banking organizations' resiliency to prevent bank failures. Additionally, during the third quarter of 2023, the FDIC introduced a parallel proposal to expand the applicability of resolution plan filings at the depository level. The agencies also jointly released a complementary proposal for big banks to hold a certain amount of long-term debt.

Guidance extends requirements to institutions previously excluded from them; a change that the 2023 crisis provided powerful evidence is necessary. The 2023 cascading failures of Silicon Valley Bank, Signature Bank, and First Republic Bank highlighted the importance of these guardrails and their applicability to a broader array of financial institutions in the large bank tailoring framework. Together, these pending rulemakings and this guidance would provide the FDIC and the other agencies with better resolution roadmaps and the capital resources to improve firms' safety and soundness, not only as going concerns, but also in an insolvency scenario to carry out a resolution.

Guidance critically raises the bar for the quality of information and underlying assumptions — essential ingredients for any resolution plan's reliability (foreign guidance, question 1): A key lesson from historical bank failures is that effective resolution plans must be based on reliable information and credible underlying assumptions and supervisors must robustly interpret agency requirements for all aspects of the resolution plan. The agencies' review of the 2021 plans of the organizations covered by this guidance, comprising large domestic and large foreign owned subsidiaries and branches of foreign banks, revealed significant inconsistencies in the volume and quality of the information they provided on critical elements required by the rule. The 2021 review also found that some plans included overly optimistic assumptions regarding the availability of financial resources at the time of a bankruptcy filing as well as the ability of a firm to access the financial assistance before and during resolution.

The FDIC needs reliable critical information and assumptions to preside over an orderly resolution of a category II or III firm. Further, even a single bank's failure, if not carried out in an orderly manner, especially if prompted by a deposit run, is more likely to trigger depositor and counterparty runs on other large firms with similar financial weaknesses. Contagion accelerates as depositors, counterparties, and investors retreat from large, interconnected firms and markets thought to be most vulnerable. This could spark financial crisis conditions as happened in the spring of 2023 triggered by the 2nd, 3rd, and 4th largest bank failures in U.S. history.

Contagion spreading from one large bank to another and resulting failures, particularly when not carried out in an orderly manner, can have devastating consequences for the individuals, businesses, and communities served by the bank and impacts to consumers and taxpayers of any resulting bailouts. The proposed guidance should strengthen the quality of large banks' resolution plans and provide the FDIC with the tools it needs to facilitate orderly resolutions that do not disrupt customers and the public's access to financial services.

Guidance essential to effective planning — large banks should implement quickly to avoid repeat of financial crisis conditions in the spring of 2023 (Question 1 and question 7 in domestic guidance): The agencies should not allow any more time than the proposed six months for the specified firms to adapt their plans to the expectations in the proposed guidance because accurate information and reliable assumptions are essential for firms and supervisors. Once the guidance is final, the agencies should encourage firms scheduled to file their bi-annual plans within the subsequent 6 months to align their submissions with the new standards as much as possible. All filings due after 6 months should conform fully with the guidance.

Six months provides a reasonable transition period for banks to strengthen the quality of critical information and underlying assumptions, allowing any covered companies that will be first-time filers to incorporate this improvement in these aspects of their resolution strategy. This should include the introduction or strengthening of the operational processes and controls for updating the plans and the ability to demonstrate to the banking agencies that the firm has the capital, liquidity, and appropriately structured long-term debt to realistically support a chosen resolution strategy.[5] A cap of six months takes into account that all banking organizations with total assets of $50 billion or more have been subject to some form of resolution planning requirement since the passage of the original 2012 rule implementing resolution plan required filings.[6]

A 6-month transition is also reasonable for firms switching resolution entry strategies. A longer transition period would risk extending the period between the review of the old strategy and the subsequent review of the new strategy, once it has been implemented. A bank should determine that it has the capital and total loss absorption capacity to pursue its proposed strategy *prior* to initiating the switch, which would limit the time necessary to put in place the processes to comply with operational, legal, and data requirements of the different strategy.

Pending long-term debt proposal is an important complement to the resolution plan and must proceed (Question 2 and 3 domestic guidance, questions 3 and 4 in foreign guidance): Strengthening large banks' liabilities as going concerns and their resolvability in a resolution are beneficial for category II and III firms irrespective of the entry strategy selected. The firms included in this proposal's scope have mainly pursued multiple-points-of-entry resolution strategies, when a parent holding company would enter bankruptcy and the insured depository institution (IDI) subsidiary would separately undergo FDIC-led resolution under the Federal Deposit Insurance Act. The FRB and FDIC are not proposing additional capital-related

[5] The first of two bankruptcy paths is the Single-Point-of-Entry (SPOE) strategy in which the parent fails while the material subsidiaries remain as going concerns. The second is the Multiple-Points-of-Entry (MPOE) strategy in which most material entities do not continue as going concerns upon entering into resolution.

[6] Federal Reserve System, Federal Deposit Insurance Corporation. Required Resolution Plans. 76 Fed. Reg. 211, November 1, 2011 at 67323 et seq.

resolution plan requirements for the multiple-points-of-entry resolution strategy since a parent's subsidiary material entities are not expected to continue as going concerns under that strategy. However, in AFREF's view, the availability of capital in resolution in the form of the proposed required long-term debt benefits the multiple-points-of-entry strategy as well, providing a cushion for losses associated with the sale of assets and unwinding of liabilities and supporting an orderly, least cost resolution. The agencies should proceed with the long-term debt requirement irrespective of entry strategy.

A key attribute of an effective resolution plan is the robustness of its assumptions, and the proposed guidance clarifies supervisors' expectations that assumptions not be overly optimistic. During the transition period, firms should only assume their existing outstanding long-term debt in their resolution plans and not the projected long-term debt that would be in place once the firm has achieved full compliance with the long-term debt proposal. The long-term debt proposal provides firms with a transition period for issuing the full amount of their long-term debt requirement. If institutions assume that the entire amount of debt required has been issued for resolution planning purposes, it could create a false impression among firms' decision makers that the full amount of long-term debt is available to absorb the losses at a parent in the event of insolvency.

Guidance should strengthen expectations for liquidity in resolution (Question 5 domestic guidance, question 5 foreign guidance): During the 2008 financial crisis, some troubled and failing firms, including AIG, were unable to resolve trapped liquidity in a timely manner due to obstacles to the transfer of liquidity across regulated entities, jurisdictions, or businesses post-failure even if those transfers were fully authorized. Under existing rules, the agencies require a firm to have the liquidity capabilities necessary to execute its preferred resolution strategy, and its plan should include analysis and projections of a range of liquidity needs during resolution.

The proposed guidance should require a procedure or protocol for liquidity related decisions, irrespective of resolution strategy. Nonetheless, as with capital decisions in the period leading up to insolvency, the proposed guidance should clarify that firms pursuing a MPOE strategy must develop a procedure or protocol for making all liquidity-related decisions across the material entities in the hours or days prior to filing for bankruptcy. The guidance should identify the importance of overcoming legal, operational, or systems related barriers to moving liquidity across material legal entities in a crisis. It should clarify which types of transfers of liquidity are permissible for each of the material legal entities in the period leading up to and after resolution and key liquidity roles and responsibilities.

***Guidance should require covered companies to include governance mechanisms irrespective of the entry strategy selected (Question 6 domestic and foreign guidance)*:** Robust governance is critical for informing the FDIC and other agencies as well as the executives in charge making decisions about liquidity in the period leading up to and after bankruptcy. The FRB and FDIC should apply similar governance mechanisms irrespective of the points of entry in banks' resolution strategies since many aspects of the resolution planning are the same or similar for both strategies. The MPOE resolution strategy would require substantial coordination among legal counsel representing the multiple material entities in bankruptcy.

The agencies should consider strengthening the proposed guidance to clarify that firms should articulate their internal legal strategy, processes for making key decisions and related oversight, and roles and responsibilities in the period leading up to and after the multiple material entities' bankruptcy.

Guidance seeks FDIC flexibility in resolution with bridge depository institution; should include quantification and description of assets to be liquidated and premiums on sale: (Questions 9 and 10 in domestic and foreign guidance): The guidance should require covered companies to include arrangements for a bridge depository institution (BDI) to resolve material subsidiary depository institutions. True to its name, a bridge bank serves to "bridge" the gap between the failure of a bank and the implementation of an orderly resolution and liquidation of assets of a failed institution. If the FDIC determines that temporarily continuing the operations of the failed insured depository institution is less costly than a payout liquidation, it may organize a BDI to purchase certain assets and assume certain liabilities of the failed IDI.

This is most important for the larger, more complex banks. Deposits, assets, and franchises can be transferred into the BDI for an interim period, pending disposition, giving the post-resolution BDI more time to sell or otherwise dispose of assets and liabilities at least cost to the Deposit Insurance Fund. The plan should include a detailed description of the balance sheet components that would transfer to the bridge depository institution. This should include a description of the process followed to value the transferred components, including pro forma balance sheet and income statements.

To afford the FDIC the needed flexibility to oversee an orderly resolution, the proposed guidance should direct covered firms that use a bridge depository institution to resolve their subsidiary material entity IDIs to describe and quantify:

- *The amounts to be realized through liquidating the failed IDI's assets and any expected premiums associated with selling the institution's deposits*. Any filer intending to deploy a BDI strategy should have a specific plan that describes and quantifies the expected value of the assets to be liquidated and the anticipated premiums from the sale of deposits. The safe and sound transfer of value requires appropriate levels of transparency about the amounts to be realized through liquidating the failed insured depository institution's assets and any expected premiums.

- *Any franchise value bid premiums expected to be realized through maintaining certain ongoing business operations in a BDI*. The filer and the FDIC need accurate and specific information on the franchise value bid premiums expected to be realized through ongoing operations in the BDI to assess the least cost resolution comparison.

- *A comparison of the loss to the Deposit Insurance Fund realized from a payout liquidation and from utilizing a BDI to confirm that it would result in the least costly resolution*. All covered depository institutions must have a resolution plan that presents a strategy to fulfill the statutory requirements for failed IDI resolution, including that the resolution presents the least-cost resolution to minimize losses to the Deposit Insurance Fund. This necessitates a comparison of the loss to the Deposit Insurance Fund realized from a payout liquidation versus from using a bank depository institution.

The proposed guidance should clarify that firms using a bridge depository institution resolution strategy should include detailed balance sheet components that would be transferred to the BDI, how those assets would be valued, and the roles and responsibilities for performing and independently overseeing post-bankruptcy valuation of assets and liabilities. The supervisors and filers should have to agree to the assumptions and independent verification of exposure valuations prior to the transfer of assets and liabilities and related risk exposures to the bank depository institution.

Guidance should provide guardrails for often complex derivatives and trading activities of firms that utilize an SPOE resolution strategy — key for orderly unwind (Questions 11 and 12 in domestic and foreign guidance): The guidance should include protocols as well as roles and responsibilities for valuation and unwind of derivatives and sale of trading assets into the market. The agencies should make clear the necessary types of derivatives and trading exposure reporting in resolution plans, including the need for disaggregated long and short derivative exposure and granular drill-down capability into individual counterparty exposures. An effective resolution plan should include information and assessments of the risk in overseas or cross-border derivatives activity to avoid scenarios found in the Lehman Brothers bankruptcy when jurisdictional and other barriers hindered orderly resolution. Guidance on derivatives trading should require firms to delineate in their resolution plan documentation the types of barriers to swift unwind of derivative activities that originate in the U.S. but are booked outside the U.S. and potential actions that can be taken to overcome those barriers.

Firms covered by the rule need to be able to generate derivative reports that aggregate exposure as well as disaggregated, granular (down to the level of single counterparties and trading assets) reports to facilitate risk management and control and make timely decisions about wind down of trading assets and derivative exposures at least cost. An SPOE strategy must specify a plan for the orderly unwinding of derivatives between affiliates and those with external counterparties, and the sale of some trading positions.

Guidance must require appropriately conservative assumptions about accessing the Fed's Discount Window or other regulatory lending facilities (Question 13 for domestic guidance and question 14 for foreign guidance): The guidance should direct firms to incorporate into their resolution plans any assumptions that they will have access to the Discount Window and/or other government sponsored borrowings during the period immediately prior to entering bankruptcy. The resolution plan should support that assumption with operational testing to facilitate access in a stress environment, placement of collateral, and the amount of funding accessible to the firm. The agencies should consider providing additional guidance on the assumptions related to the amount, timing, and limitations of liquidity that might become available from these sources.

AFREF commends the FRB and FDIC for promulgating resolution plan guidance to prepare large banks for a scenario in which they fail. The proposed resolution planning guidance, together with the related proposed rules on resolution plans and long-term debt can be an important complement — but not a substitute — for the higher capital standards currently being considered. More robust capital standards provide the best regimen to strengthen safety and soundness and provide resiliency against systemic risk. Thank you for the opportunity to comment and for the consideration of these recommendations in the development of this resolution planning guidance.

Sincerely

Americans for Financial Reform Education Fund