



**Americans for Financial Reform**  
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January 8, 2013

To: Board of Governors of the Federal Reserve Bank and  
the Federal Deposit Insurance Corporation

Re: Resolution Plans And Credit Exposure Reports Filed Under Dodd-Frank Section 165(d)

To Whom It May Concern:

The resolution planning process mandated in Section 165(d) of the Dodd-Frank Act is a crucial part of the commitment to end the implicit public guarantee to the nation's largest banks. By requiring resolution plans the process should encourage or, if necessary, require simpler structures for financial companies, structures that are compatible with the possibility of successful resolution (including through a standard bankruptcy). This would minimize the risks of broader financial contagion created by the failure of any one entity and dramatically reduce the pressure for future bailouts. The resolution plans are a crucial tool that regulators must use to make sure that overly complex financial companies are transformed into entities whose failure could be successfully contained.

One important element of the 'living will' process is the public versions of resolution plans that regulators have chosen to require. The decision to require a public disclosure of appropriate elements of the resolution plan was a positive step by regulators, and complements other steps toward increased transparency such as the new disclosures proposed in the Basel rules. By creating an appropriate level of public transparency for the corporate and financial structure of our major banks, the resolution plan disclosures could signal to the public that major banks are indeed no longer "too big to fail." The public plans could also help give stockholders, investors, creditors and counterparties insight that could create market pressures to simplify bank structures and lessen risks before those risks undermine the stability of the financial institutions and the financial system. This transparency and market discipline would be especially helpful as many, including important regulators such as William Dudley of the New York Federal Reserve, have expressed doubts that the regulatory process alone is making adequate progress in creating credible and effective resolution plans.<sup>1</sup>

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<sup>1</sup> Johnson, Simon, "[Fed's Dudley Signals a Shift Toward Bank Reform](#)", Bloomberg View, November 25, 2012; Miller, Brad, "[Regulators: Demand Credible Living Wills Now, Not 'Ultimately'](#)", The American Banker, Bank Think, December 26, 2012.

Unfortunately, the public resolution plans filed by the 11 largest financial institutions fall far short of accomplishing any of these goals. In our view the public plans come nowhere near reaching the standard laid out in your rule implementing the resolution plans: namely “information in the public section of a resolution plan” that is “sufficiently detailed to allow the public to understand the business of the covered company.”<sup>2</sup> The public plans contain virtually no new information beyond items already easily available in the firm’s public SEC filings. They contain no new and specific information that contributes to any fuller understanding of: (1) the ownership structure, assets, liabilities, and contractual obligations of the company; (2) the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company; (3) the identification of the cross-guarantees tied to different securities and derivatives transactions, and of the company’s major counterparties, and (4) any significant derivatives positions of the covered company.<sup>3</sup> The impression that the public plans are for the most part boilerplate summaries of information already available in public SEC filings can only add to public doubts about the credibility of the resolution process.

We understand that it is necessary and appropriate for your agencies to protect the confidentiality of trade secrets or other legitimately confidential commercial or financial information, which may comprise a significant proportion of the resolution plans. Such elements must remain confidential. We also understand that the confidential supervisory review process is central to the practices of the prudential regulatory agencies.

However, there are many types of information required by the Dodd-Frank Act that are not reasonably viewed as confidential or as protected in supervisory review, and would provide valuable information to stockholders, investors, creditors, and counterparties of the company, as well as other members of the public. For instance, the ownership structure and the incorporation or other formational documents of all of these legal entities are already publicly available at various regulatory sites in the jurisdictions in which the entities were formed. But, because of the extraordinary complexity of global megabanks, it would be very difficult for any member of the public to track down or organize the information. For example, a recent Federal Reserve study estimates that JP Morgan Chase has 3,391 legal entity subsidiaries, 451 of which are international.<sup>4</sup> Only a small number of these entities are listed in the company’s public SEC filings.

The resolution plans could provide valuable data to the public concerning the bank’s corporate structure by simply including a chart of the financial institution showing its subsidiaries and internal ownership structure, and showing the states or countries of formation. Yet the public

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<sup>2</sup> Federal Register Volume 76, Number 211 (Tuesday, November 1, 2011), p. 67332.

<sup>3</sup> Section 165(d) of the Act is codified at 12 U.S.C. § 5365(d).

<sup>4</sup> Avraham, Dafna, Selvaggi, Patricia and Vickery, James, “A Structural View of U.S. Bank Holding Companies,” FRBNY Economic Policy Review/July 2012, at p. 71, available at <http://www.newyorkfed.org/research/epr/12v18n2/1207avra.pdf>.

portion of JPMorgan's resolution plan provides almost no helpful information in this regard, listing only 25 material entities and expressly stating the formational jurisdictions of just four of those. Nor is it possible to determine whether specific assets are held by particular subsidiaries, or the total level of assets and liabilities in individual subsidiaries.

To take just a few other examples, based on the data currently in the public plans it is impossible to:

- Understand anything concerning the existence or structure of material cross-collateralizations, cross-defaults or intra-company guarantees within the institution
- Understand whether and the extent to which the institution has re-hypothecated collateral to other financial purposes
- Determine the distribution of assets and liabilities across different international insolvency regimes.

All of these issues are crucial to the public's confidence that the covered companies could be resolved under Dodd Frank and to enabling informed choices by market actors. The non-confidential disclosures that we request will foster confidence in the financial system and help stockholders, investors, creditors, counterparties, and the public to understand the business of the covered company and make rational decisions in the marketplace. While granular detail in some of these areas may legitimately be confidential, there is a great deal of information not provided in the current public plans that is not, and would be useful to analysts and market participants in making objective comparisons between banks. The major banks would be encouraged by such scrutiny to undertake greater efforts to ensure that they are organized to provide sufficient security to their stakeholders in the event of financial stress, and to take appropriate remedial action.

To address these issues, we urge you to require far more extensive and rigorous presentations in the public resolution plans. These presentations should be aimed at promoting the financial stability sought by the Dodd Frank Act and providing the information necessary for market discipline to assist in this effort. Public plans should give present and prospective investors, creditors, depositors, interested parties, and other members of the public the information they need to make informed decisions in the marketplace in advance of any material distress or failure. Such increased disclosures, analysis and transparency will increase confidence in the stability of the covered companies and the financial markets, will contribute to the level of transparency that is essential to the proper functioning of all markets including the financial markets, and that is expressly required by section 165(d) of the Act.

In the attached Appendix, we give more detail on the various areas of these public disclosures that we believe are inadequate.

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services

- Home Defender's League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group

- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

*List of State and Local Affiliates*

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY

- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG

- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

***Small Businesses***

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET