



April 2016

RESOLUTION PLANS

Regulators Have Refined Their Review Processes but Could Improve Transparency and Timeliness

Accessible Version

GAO Highlights

Highlights of [GAO-16-341](#), a report to the Chairman, Committee on Financial Services, U.S. House of Representatives

Why GAO Did This Study

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires bank holding companies with \$50 billion or more in total assets and nonbank financial companies designated by the Financial Stability Oversight Council for supervision by the Federal Reserve to prepare plans for their rapid and orderly resolution under the Code. In 2011, the regulators issued a rule to require companies to annually file a resolution plan. If they jointly found a plan was not credible, the company could be subject to more stringent requirements. GAO was asked to review the regulators' programs for assessing resolution plans. This report examines each regulator's review processes, the progress made in assessing plans, and stakeholder views on the usefulness of the plans.

GAO analyzed FDIC's and the Federal Reserve's policies and procedures, documentation of plan reviews, guidance and feedback provided to companies, and public plans. GAO also interviewed the regulators, a judgmental sample of 25 companies (18 percent of all companies required to file a plan) based on assets, and a variety of market participants and academics based on their expertise, experience working with companies, or use of public plans.

What GAO Recommends

GAO recommends that FDIC and the Federal Reserve publicly disclose information about their assessment frameworks and reduced plan criteria for smaller companies and revise the annual filing requirement. The regulators agreed with GAO's recommendations.

View [GAO-16-341](#). For more information, contact Lawrence L. Evans, Jr., at (202) 512-8678 or EvansL@gao.gov

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What GAO Found

The Federal Deposit Insurance Corporation (FDIC) and Federal Reserve System (Federal Reserve) have developed separate but similar review processes for determining whether a resolution plan is "not credible" or would not facilitate a company's orderly resolution under the Bankruptcy Code (the Code). Both regulators have processes for staffing review teams, determining whether a plan includes all required information, assessing whether a plan's strategy mitigates obstacles to the company's orderly resolution, and documenting and vetting team findings and conclusions. Although the regulators' review processes are separate, the regulators coordinate with each other by meeting jointly with companies, working together to discuss and share review findings, and jointly issuing guidance and feedback to companies.

The regulators have made progress assessing resolution plans but have provided limited disclosures about their reviews. Following their 2012, 2013, and 2014 plan reviews, the regulators clarified and expanded their expectations for the plans—jointly providing companies with guidance or feedback. The regulators did not jointly make any not-credible determinations but reported they may do so for the 2015 plans. However, they have not disclosed their frameworks for determining whether a plan is not credible. They also developed but have not disclosed their criteria for reducing plan requirements for many smaller companies. Without greater disclosure, companies lack information they could use to assess and enhance their plans. The regulators view such information as confidential, but a federal directive on open government recognizes that transparency promotes accountability by providing more information on government activities. A lack of information on how the regulators assess plans and allow some companies to file reduced plans could undermine public and market confidence in resolution plans.

In addition, the resolution plan rule requires companies to annually submit plans approved by their board of directors. However, the annual filing cycle may not be feasible. GAO found that the regulators took 9 months, on average, to complete their reviews. FDIC said companies can take up to 3 months to obtain internal approval of their plans. The regulators attributed their long review time in part to the plans' complexity, and one regulator said that companies ideally should have 6 months to incorporate feedback. Absent a longer filing cycle, companies may not have sufficient time to revise their plans to incorporate regulatory feedback intended to enhance their resolvability under the Code.

According to companies and stakeholders that GAO interviewed, resolution planning has improved the resolvability of large financial companies under the Code. Companies with \$100 billion or more in nonbank assets generally said that resolution planning also had led to some operational improvements, but companies with less than \$100 billion in nonbank assets generally said that they had reaped few benefits from resolution planning. However, whether the plans of the largest companies actually would facilitate their rapid and orderly resolution under the Code is uncertain, in part because none has used its plan to go through bankruptcy. At the same time, the regulators told GAO that they were incurring costs to review the plans, and companies said that complying with the rule also had raised their costs.

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Abbreviations

the Code	U.S. Bankruptcy Code
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
FDIC	Federal Deposit Insurance Corporation
Federal Reserve	Board of Governors of the Federal Reserve System
FSOC	Financial Stability Oversight Council
ISDA	International Swaps and Derivatives Association
SEC	Securities and Exchange Commission
SIFI	systemically important financial institution

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April 12, 2016

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
House of Representatives

Dear Mr. Chairman:

A key lesson learned from the 2007-2009 financial crisis is the importance of advance planning for the efficient resolution—that is, the reorganization or liquidation—of systemically important financial institutions (SIFI) that fail.¹ For example, Lehman Brothers' unplanned bankruptcy filing reportedly contributed to its disorderly resolution and intensified the financial crisis.

Lehman Brothers' bankruptcy and the potential for more such failures led the U.S. government to intervene to provide tens of billions of dollars of capital and other support to a few large troubled SIFIs out of concern that allowing them to also go into bankruptcy would have further disrupted troubled credit markets and damaged confidence in the U.S. financial system.

To help improve the resolvability of SIFIs and thus increase stability during times of market stress, Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires these institutions to prepare and maintain plans (also called living wills) for their rapid and orderly resolution under the U.S. Bankruptcy Code (the Code).² In late 2011, the Federal Deposit Insurance Corporation (FDIC) and Board of Governors of the Federal Reserve System (Federal Reserve) jointly issued a final rule to implement the resolution plan

¹The term SIFI is commonly used by academics and other experts to refer to bank holding companies with \$50 billion or more in total consolidated assets and nonbank financial companies designated by the Financial Stability Oversight Council for Federal Reserve supervision and enhanced prudential standards, but the Dodd-Frank Wall Street Reform and Consumer Protection Act does not use the term. These entities, described above as SIFIs, are also those mandated by the Dodd-Frank Act to comply with the resolution plan requirements. Therefore, throughout this report, we will refer to those combined entities as SIFIs.

²Pub. L. No. 111-203, § 165(d), 124 Stat. 1376, 1426 (2010).

requirement.³ Under both the statute and the rule, FDIC and the Federal Reserve (the regulators) must review each plan and may jointly determine that a plan is not credible or would not facilitate an orderly resolution of the company under the Code.⁴ If a company ultimately fails to submit a plan that demonstrates its resolvability in bankruptcy, the regulators may jointly impose more stringent capital, leverage, or liquidity requirements on the company or its subsidiaries or restrictions on the company's growth, activities, or operations.

Although resolution plans may reduce the possibility for government support of "too big to fail" SIFIs, such plans are a new concept.⁵ For example, at the international level, the G20 leaders committed in 2009 to requiring SIFIs to develop internationally consistent resolution plans.⁶ In response, the Financial Stability Board issued international standards for resolution plans in 2011 that identified the objectives and essential elements of the plans but provided limited guidance on how to achieve those objectives.⁷ Similarly, while Section 165(d) of the Dodd-Frank Act allows FDIC and the Federal Reserve to make any determination jointly about whether a plan submitted by a company is not credible or would not facilitate the

³Resolution Plans Required, 76 Fed. Reg. 67323 (Nov. 1, 2011). The FDIC Board of Directors approved the rule in September 2011. The Board of Governors of the Federal Reserve System approved the rule in October 2011. The rule was published in the Federal Register on November 1, 2011, and became effective on November 30, 2011. Because of the publication date, the rule is referred to as the November 2011 rule.

⁴The statute and the rule require FDIC and the Federal Reserve to review plans but do not require them to determine whether the plans are not credible or would not facilitate an orderly resolution each time they review the plans.

⁵"Too big to fail" is a market notion that the federal government would intervene to prevent the failure of a SIFI to avoid harm to the economy. For additional information, see GAO, *Large Bank Holding Companies: Expectations of Government Support*, [GAO-14-621](#) (Washington D.C.: July 31, 2014). In that report, we found, among other things, that many market participants with whom we spoke believed that recent regulatory reforms have reduced but not eliminated the likelihood the federal government would prevent the failure of one of the largest SIFIs.

⁶The G20, established in 1999, is a forum for international cooperation on important issues of the global economic and financial agenda. Its members include 19 countries and the European Union. The G20 leaders established the Financial Stability Board as the successor to the Financial Stability Forum and made it responsible for coordinating and promoting the implementation of the G20 reform commitments.

⁷Financial Stability Board, "Key Attributes of Effective Resolution Regimes for Financial Institutions," October 2011. Under these standards, regulatory authorities, not SIFIs, are expected to prepare resolution plans.

company's orderly resolution, the act provides no direction on how to make such a determination. Further, as Congress has reflected on the Dodd-Frank Act, some Congress members, academics, and others have raised concerns about the ability of the act, including its resolution plan requirement, to end the notion of a government bailout for financial institutions considered "too big to fail."⁸

You asked us to examine the process that FDIC and the Federal Reserve use to review resolution plans submitted in response to Section 165(d) of the Dodd-Frank Act, including the transparency of the review process, associated costs, and potential usefulness of the plans. This report examines

- the processes the regulators use to review resolution plans;
- the extent to which the regulators have determined whether resolution plans are not credible or would not facilitate an orderly resolution under the Code; and
- stakeholder views on the usefulness of the resolution plans to companies and other stakeholders.

To examine the process used by the regulators to review resolution plans and the extent to which the regulators have determined whether resolution plans are not credible or would not facilitate an orderly resolution under the Code, we reviewed the Dodd-Frank Act, the final resolution plan rule, and FDIC and Federal Reserve documentation of plan reviews conducted for plan years 2012 through 2014, as well as guidance and feedback the regulators provided to companies. To examine what is known about the usefulness of the resolution plans to companies and other stakeholders, we systematically selected and interviewed 25 companies that filed a resolution plan in 2014 about the benefits, costs, and challenges associated with the plans. The companies we interviewed represented all filing groups, or waves, including 10 of the 18 Wave 1, Wave 2, and designated nonbank filers, and 15 of the 120 Wave 3 filers (see below for more description of the filing waves).⁹ In addition, we judgmentally selected and interviewed a sample of 20 stakeholders—including bankruptcy attorneys and consultants, industry groups,

⁸See, for example, Republican Staff, Committee on Financial Services, Subcommittee on Oversight and Investigations, *Failing to End "Too Big to Fail": An Assessment of the Dodd-Frank Act Four Years Later* (July 2014).

⁹Throughout this report, we use the terms "companies" and "filers" interchangeably.

credit rating agencies, investors, and academics—about the usefulness of the resolution plans.¹⁰ They were selected based on their subject matter expertise, experience helping companies prepare resolution plans, or use of the public versions of the resolution plans for their own purposes. We also interviewed officials from other federal agencies about their involvement with resolution plan reviews. For all objectives, we interviewed FDIC and Federal Reserve officials. For more information on our methodologies, see appendix I.

We conducted this performance audit from November 2014 to April 2016 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

Bank Holding Companies and the Bank Holding Company Act

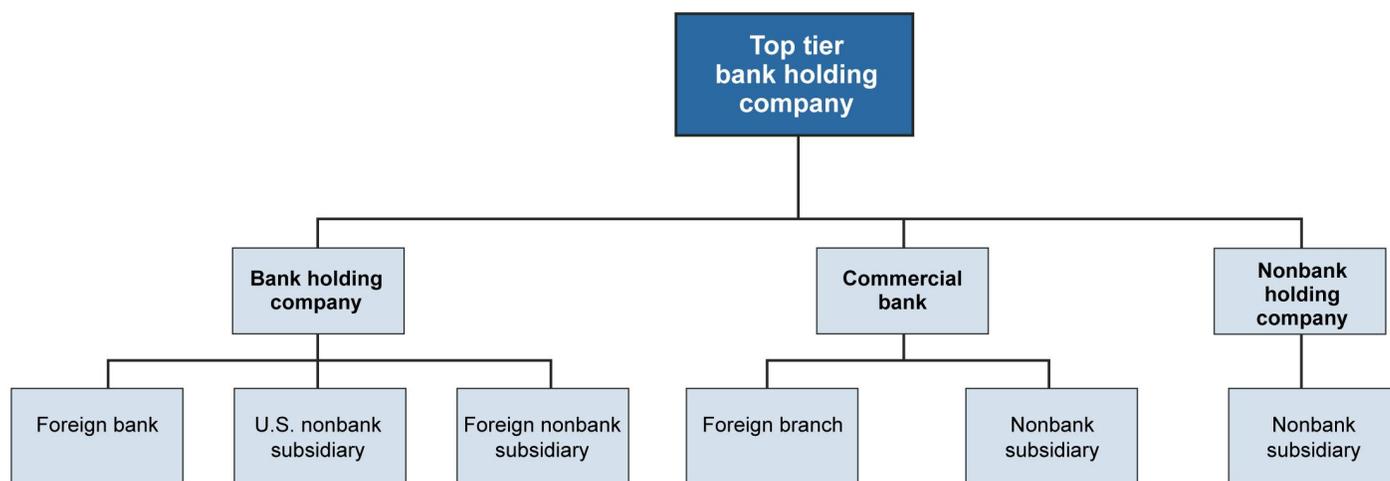
Large banking organizations in the United States generally are organized as bank holding companies, which are companies that can control, among other entities, one or more banks.¹¹ Typically, a large U.S. parent (or top tier) bank holding company owns a number of domestic depository institutions that also engage in lending and other activities. A holding company may also own nonbanking and foreign entities that engage in a broader range of business activities, which may include securities dealing

¹⁰To characterize companies' and stakeholders' views throughout the report, we consistently defined modifiers (e.g. "nearly all") to quantify each group of interviewees' views as follows: "all" represents 100 percent of the group, "nearly all" represents 80 percent to 99 percent of the group, "most" represents 60 percent to 79 percent of the group, "several" represents 40 percent to 59 percent of the group, and "some" represents 20 percent to 39 percent of the group. While the percentage of the group of interviews remains consistent, the number of interviews each modifier represents differs based on the number of interviews in that grouping: 10 Wave 1, Wave 2, and designated nonbank filers; 15 Wave 3 filers; and 20 stakeholders.

¹¹For additional information on bank holding companies, see, for example, GAO, *Government Support for Bank Holding Companies: Statutory Changes to Limit Future Support Are Not Yet Fully Implemented*, [GAO-14-18](#) (Washington, D.C.: Nov. 14, 2013) and [GAO-14-621](#).

and underwriting, insurance, real estate, leasing and trust services, or asset management. Some large U.S. bank holding companies have thousands of subsidiaries. Figure 1 provides a simplified example of a large bank holding company's structure.

Figure 1: Simplified Example of the Structure of a Large Bank Holding Company



Source: GAO. | GAO-16-341

The Bank Holding Company Act of 1956, as amended, contains a comprehensive framework for the supervision of bank holding companies and their nonbank subsidiaries.¹² Generally, any company that acquires control of an insured bank or bank holding company is required to register with the Federal Reserve as a bank holding company.¹³ Under the Bank Holding

¹²Bank Holding Company Act of 1956, Pub. L. No. 84-511, 70 Stat. 133 (1956) (codified as amended at 12 U.S.C. §§ 1841-1852). Bank holding companies are companies that own or control, among other entities, a bank, as defined in the Bank Holding Company Act. 12 U.S.C. § 1841(a)(1), (c).

¹³Any one of the following circumstances will trigger coverage under the Bank Holding Company Act: (1) stock ownership—the company owns, controls, or has the power to vote 25 percent or more of any class of the voting securities of a bank or bank holding company (either directly or indirectly or acting through one or more other persons); (2) ability to elect a board majority—the company controls the election of a majority of the directors or trustees of a bank or bank holding company; or (3) effective control of management—the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of a bank or bank holding company. For purposes of any such proceeding, it is presumed that any company that directly or indirectly owns, controls, or has power to vote fewer than 5 percent of any class of voting securities of a specific bank or bank holding company does not have the requisite control. See 12 U.S.C. § 1841(a)(1),(2).

Company Act, these companies are subject to, among other things, consolidated supervision by the Federal Reserve. Further, the act restricts the activities of the holding company and its affiliates to those that are closely related to banking or, for qualified financial holding companies, activities that are financial in nature.¹⁴

Resolution Plans and Orderly Liquidation Authority under the Dodd-Frank Act

The Section 165(d) resolution plan requirement is one of many Dodd-Frank Act provisions and related reforms designed to help restrict future government support for and reduce the likelihood and effects of the failure of SIFIs. Such reforms include the act's (1) restrictions on the Federal Reserve's emergency authorities to provide assistance to financial institutions; (2) new tools and authorities for FDIC and the Federal Reserve to resolve a failing SIFI outside of bankruptcy if its failure would have serious adverse effects on the U.S. financial system; (3) enhanced regulatory standards for SIFIs related to capital, liquidity, and risk management; and (4) other reforms intended to reduce the potential disruptions to the financial system that could result from a SIFI's failure, such as the Volcker rule and swaps clearing and margin requirements.¹⁵

Resolution Plans

Title I of the Dodd-Frank Act requires bank holding companies with \$50 billion or more in consolidated assets and nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) to periodically submit to FDIC, the Federal Reserve Board, and FSOC resolution plans that detail how the companies could be resolved in a rapid and orderly manner in the event of material financial distress or

¹⁴In 1999, the Gramm-Leach-Bliley Act provided that a bank holding company may elect to become a financial holding company that can engage in a broader range of activities that the Federal Reserve determines to be financial in nature or incidental to such financial activity. 12 U.S.C. § 1843(k)(1). The financial holding company can engage in activities that the Federal Reserve determines (1) to be financial in nature or incidental to such financial activity, or (2) are complementary to a financial activity and do not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally. The bank holding company and its depository institution subsidiaries must be well-capitalized and well-managed. 12 U.S.C. § 1843(l)(1).

¹⁵For additional information on these reforms, see [GAO-14-621](#).

failure.¹⁶ If FDIC and the Federal Reserve jointly determine that a resolution plan is not credible or would not facilitate an orderly resolution under the Code, they must notify the company in writing of such a determination and identify the aspects of the plan that the regulators jointly found deficient, and the company must submit a revised plan that remedies the deficiencies. If the company fails to resubmit a credible plan that adequately remedies the deficiencies, FDIC and the Federal Reserve may jointly impose more stringent capital, leverage, or liquidity requirements; restrict growth, activities, or operations; and, if within two years after the implementation of those requirements the company has failed to resubmit a resolution plan with the required revisions, in consultation with FSOC, require the company to divest itself of certain assets or operations.

Section 165(d) of the Dodd-Frank Act requires resolution plans to include the following information:

- 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;
- descriptions of the company's ownership structure, assets, liabilities, and contractual obligations; and
- identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and
- any other information that the Federal Reserve and FDIC jointly require by rule or order.

FDIC and the Federal Reserve's final resolution plan rule took effect in November 2011.¹⁷ The rule requires companies subject to the rule to file plans annually but implements filing deadlines on a staggered schedule

¹⁶For purposes of Title I of the Dodd-Frank Act, a bank holding company includes a foreign bank or company that is treated as a bank holding company under Section 8(a) of the International Banking Act of 1978. Pub. L. No. 111-203, § 102(a)(1), 124 Stat. 1376, 1391 (2010). The Dodd-Frank Act established FSOC to monitor the stability of the U.S. financial system and take actions to mitigate risks that might destabilize the system. The act also gave FSOC a number of significant authorities to help it execute its broad mission, including authority to designate nonbank financial companies for supervision by the Federal Reserve. For additional information on the designation process, see GAO, *Financial Stability Oversight Council: Further Actions Could Improve the Nonbank Designation Process*, [GAO-15-51](#) (Washington, D.C.: Nov. 20, 2014).

¹⁷76 Fed. Reg. 67323 (Nov. 1, 2011).

that is generally based on companies' total nonbank assets (or, in the case of foreign-based companies, their total U.S. nonbank assets). The groups of filers required to meet each deadline are known as waves (see table 1). As table 1 shows, the first wave—the largest bank holding companies—generally were required to file their initial resolution plans in 2012, while the other companies (Waves 2 through 4) were not required to file their initial plans until 2013 or later.

Table 1: Initial Resolution Plan Filing Schedule

Type of resolution plan filer	Filing deadline for initial plan	Number of companies filing initial plan
Wave 1: Companies with \$250 billion or more in total nonbank assets (or for foreign banking organizations, in total U.S. nonbank assets)	July 1, 2012	11 ^a
Wave 2: Companies with \$100 billion or more but less than \$250 billion in total nonbank assets (or for foreign banking organizations, in total U.S. nonbank assets)	July 1, 2013	4 ^b
Wave 3: Companies with \$50 billion or more in total consolidated assets but less than \$100 billion in total nonbank assets (or for foreign banking organizations, in total U.S. nonbank assets)	December 31, 2013	116 ^c
Wave 4: Nonbank financial companies (previously designated by the Financial Stability Oversight Council)	July 1, 2014	3 ^d

Source: GAO analysis of Federal Deposit Insurance Corporation and Federal Reserve documents. | GAO-16-341

^aTwo of the Wave 1 filers had less than \$100 billion in total nonbank assets but were included in Wave 1 because of their status as global systemically important banks.

^bThe regulators permanently adjusted the annual resolution plan filing deadline for three of the Wave 2 filers from July 1 to December 31. The fourth Wave 2 filer files its plan by July 1 with the Wave 1 filers.

^cThe total number of Wave 3 companies filing resolution plans in 2013, 2014, and 2015 was 116, 120, and 119, respectively.

^dThese three nonbank financial companies became subject to the resolution plan requirement upon their designation by the Financial Stability Oversight Council (FSOC) in July 2013 and September 2013. A fourth nonbank financial company became subject to the resolution plan requirement in December 2014. A court order on March 30, 2016 rescinded the fourth nonbank financial company's designation by FSOC and therefore, the requirement to file a resolution plan. However, as of April 4, 2016, the court's decision is open for appeal by FSOC. The regulators permanently adjusted the annual resolution plan filing deadline for all nonbank financial companies from July 1 to December 31.

According to the resolution plan rule, a company's plan must be divided into a public section and a confidential section. The latter section must include seven informational sections: (1) executive summary, (2) strategic analysis, (3) description of corporate governance relating to resolution planning, (4) description of organizational structure and related information, (5) management information systems, (6) interconnections

and interdependencies, and (7) supervisory and regulatory information.¹⁸ In the strategic analysis section—generally the most substantive component—each company must describe the key assumptions and supporting analysis underlying the plan, the specific actions the company must take to facilitate a rapid and orderly resolution, the strategy for maintaining the operations of and funding for the company and its material entities, and the actions the company will take to prevent or mitigate any adverse effects of a failure. The strategy must also describe any potential material weaknesses or impediments to the plan, and the actions and steps the company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified by the company.

As noted earlier, although any determination that a company's plan is not credible or would not facilitate an orderly resolution under the Code must be made jointly, neither the statute nor the resolution plan rule requires the regulators to make such a determination each time they review the plans, even if they identify shortcomings in a company's plan. As of January 2016, the regulators have not yet jointly determined that any companies' plans are not credible or would not facilitate an orderly resolution under the Code. Specifically, FDIC's Board of Directors determined that the Wave 1 filers' 2013 plans and three of the Wave 2 filers' 2014 plans were not credible or would not facilitate an orderly resolution under the Code. However, the Federal Reserve Board of Governors did not make a similar not credible determination, but instead said that the companies must take meaningful action to improve their resolvability under the Code. The Board of Governors noted that this action was consistent with the statement in the resolution plan rule's

¹⁸Under the final rule, domestic companies must present the seven informational sections with respect to their subsidiaries and operations that are domiciled in the United States, as well as their foreign subsidiaries, offices, and operations. Foreign-based companies generally must address the subsidiaries, branches and agencies, and key activities that are domiciled in the United States or are conducted in whole or in material part in the United States, with additional requirements for certain informational sections. However, the rule generally allows companies with less than \$100 billion in total nonbank assets and with at least 85 percent of their total consolidated assets in an insured depository institution to file a tailored resolution plan. The tailored plan must include the same seven informational elements as the full plan, but—for all but one of the elements—the presentation may be limited to the company and its nonbanking material entities and operations. Companies that are eligible to file a tailored plan must notify FDIC and the Federal Reserve of their intent to do so, and the agencies must jointly grant the company permission to file a tailored plan.

FDIC Insured Depository
Institution Resolution Plans

preamble that the initial resolution plans would provide the foundation for developing more robust plans over the next few years.

Complementing the 165(d) resolution plan requirement, FDIC adopted a final rule in January 2012 requiring an insured depository institution with \$50 billion or more in total assets to periodically provide FDIC with a contingent plan for the resolution of such institution in the event of its failure.¹⁹ The rule requires that the plan enable FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act.²⁰ The plan must ensure that depositors have access to their insured deposits within 1-business day of the institution's failure and that the plan maximizes the return from the sale or other disposition of any assets and minimizes the amount of loss realized by creditors.

Orderly Liquidation Authority

In cases where resolution of a financial company under the Code may result in serious adverse effects on U.S. financial stability, the orderly liquidation authority set out in Title II of the Dodd-Frank Act serves as the backstop alternative.²¹ Orderly liquidation authority gives FDIC the authority, subject to certain constraints, to resolve large financial companies, including nonbanks, outside of the bankruptcy process. FDIC may be appointed receiver for a financial company if the Secretary of the Treasury, in consultation with the President, determines, among other things, that the company's failure and its resolution under applicable federal or state law, including bankruptcy, would have serious adverse effects on U.S. financial stability and no viable private-sector alternative is

¹⁹Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets, 77 Fed. Reg. 3075 (Jan. 23, 2012).

²⁰12 C.F.R. § 360.10(a).

²¹Pub. L. No. 111-203, § 204, 124 Stat. 1376, 1454-1456 (codified at 12 U.S.C. § 5384). For additional information on orderly liquidation authority, see GAO, *Bankruptcy: Agencies Continue Rulemakings for Clarifying Specific Provisions of Orderly Liquidation Authority*, [GAO-12-735](#) (Washington, D.C.: July 12, 2012).

available to prevent the default of the financial company.²² While the Dodd-Frank Act does not specify how FDIC must exercise this authority, FDIC has been developing approaches to resolving a company under the orderly liquidation authority, including one that it refers to as the single-point-of-entry approach.²³

International Coordination on Resolution

U.S. regulators have coordinated with foreign counterparts through the G20 and the Financial Stability Board to develop a policy framework for addressing the risks posed by SIFIs. In November 2010, G20 leaders endorsed the Financial Stability Board's framework for reducing the probability and impact of the failure of SIFIs.²⁴ Key elements of this framework include developing effective resolution regimes for these institutions. FDIC, the Federal Reserve System, and Treasury helped to develop international standards that the Financial Stability Board issued for resolution regimes in October 2011.²⁵ According to the Financial Stability Board's November 2015 progress report, only a subset of its member jurisdictions, mostly those home to global, systemically important banks, have a bank resolution regime with a scope and range of powers that is broadly in line with the international resolution standards.²⁶ It also reported that all global, systemically important banks have recovery plans and

²²Pub. L. No. 111-203, § 203(b), 124 Stat. 1376, 1450 (codified at 12 U.S.C. § 5383(b)). Before the Secretary of the Treasury, in consultation with the President, makes a decision to seek the appointment of FDIC as receiver of a financial company, at least two-thirds of those serving on the Board of Governors of the Federal Reserve System and at least two-thirds of those serving on the Board of Directors of FDIC must vote to make a written recommendation to the Secretary of the Treasury to appoint FDIC as receiver. Pub. L. No. 111-203, § 203(a)(1)(A), 124 Stat. at 1450 (codified at 12 U.S.C. § 5383(a)(1)(A)). In the case of a broker-dealer, the recommendation must come from the Federal Reserve Board and the Securities and Exchange Commission, in consultation with FDIC, and in the case of an insurance company, from the Federal Reserve Board and the Director of the Federal Insurance Office, in consultation with FDIC. Pub. L. No. 111-203, § 203(a)(1)(B)-(C), 124 Stat. at 1450 (codified at 12 U.S.C. § 5383(a)(1)(B)-(C)).

²³Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76614 (Dec. 18, 2013).

²⁴Financial Stability Board, "Reducing the Moral Hazard Posed by Systemically Important Financial Institutions – FSB Recommendations and Time Lines," October 20, 2010.

²⁵Financial Stability Board, "Key Attributes of Effective Resolution Regimes for Financial Institutions," October 2011.

²⁶Financial Stability Board, "Implementation and Effects of the G20 Financial Regulatory Reforms: Report of the Financial Stability Board to G20 Leaders," November 9, 2015.

crisis management groups, but significant work remains to make resolution strategies and plans operational.

U.S. Bankruptcy Code, Financial Companies, and Federal Regulators

Bankruptcy is a federal court procedure conducted under the Code.²⁷ Under the resolution plan rule, companies must describe how they would be resolved or reorganized under Title 11 of the Code, which includes Chapter 11. A reorganization proceeding under Chapter 11 allows a debtor that is a commercial enterprise to continue to operate some or all of its operations subject to court supervision as a way to satisfy creditor claims. The debtor typically remains in control of its assets under a Chapter 11 proceeding, but in some cases the court may direct the U.S. Trustee to appoint a Chapter 11 trustee to take over the affairs of the debtor. Chapter 11 proceedings can be voluntary (initiated by the debtor) or involuntary (generally initiated by at least three creditors holding at least a certain minimum amount of claims against the debtor).²⁸

Certain financial institutions may not file as debtors under the Code, and other entities face special restrictions in using the Code.²⁹

- *Insured depository institutions:* Under the Federal Deposit Insurance Act, FDIC serves as the conservator or receiver for insured depository institutions placed into conservatorship or receivership under applicable law.³⁰
- *Insurance companies:* Insurers generally are subject to oversight by state insurance commissioners, who have the authority to place them into conservatorship, rehabilitation, or receivership.
- *Broker-dealers:* Broker-dealers can be liquidated under the Securities Investor Protection Act or under a special subchapter of Chapter 7 of

²⁷For additional information on bankruptcy, see GAO, *Financial Company Bankruptcies: Need to Further Consider Proposals' Impact on Systemic Risk*, [GAO-13-622](#) (Washington, D.C.: July 18, 2013).

²⁸Voluntary cases are permitted under 11 U.S.C. § 301. Involuntary cases are subject to 11 U.S.C. § 303.

²⁹Financial companies that the Secretary of the Treasury determines meet the conditions specified under orderly liquidation authority—including that their failure and resolution under otherwise applicable federal or state law would have serious adverse effects on financial stability in the United States—may be resolved under an FDIC receivership, broadly similar to that currently used to resolve insured depositories.

³⁰12 U.S.C. § 1821(c).

the Code. However, broker-dealers may not file for reorganization under Chapter 11.³¹

- *Commodity brokers*: Commodity brokers, also known as futures commission merchants, are restricted to using only a special subchapter of Chapter 7 for bankruptcy relief.³²

Regulators often play a role in financial company bankruptcies. With the exception of the Commodity Futures Trading Commission and Securities and Exchange Commission (SEC), the Code does not explicitly name federal financial regulators as a party of interest with a right to be heard before the court.³³ In practice, however, regulators frequently appear before the court in financial company bankruptcies. For example, as receiver of failed insured depository institutions, FDIC's role in bankruptcies of bank holding companies is typically limited to that of creditor. The Commodity Futures Trading Commission has the express right to be heard and raise any issues in a case under Chapter 7.³⁴ SEC has the same rights in a case under Chapter 11.³⁵ SEC may become involved in a bankruptcy particularly if there are issues related to disclosure or the issuance of new securities. The Commodity Futures Trading Commission and SEC also are involved in Chapter 7 bankruptcies of broker-dealers and commodity brokers. In the event of a broker-dealer liquidation, pursuant to the Securities Investor Protection Act, the bankruptcy court retains jurisdiction over the case and a trustee, selected by the Securities Investor Protection Corporation, typically administers the case.³⁶ SEC may join any Securities Investor Protection Act proceeding as a party.³⁷

³¹Chapter 7 of the Code contains special provisions for the liquidation of stockbrokers. 11 U.S.C. §§ 741-753.

³²Chapter 7 of the Code contains special provisions for commodity broker liquidation (11 U.S.C. §§ 753, 761-767), and the Commodity Futures Trading Commission's rules relating to bankruptcy are set forth at 17 C.F.R. § 190.01 *et seq.*

³³11 U.S.C. § 762; 11 U.S.C. § 1109.

³⁴11 U.S.C. § 762.

³⁵11 U.S.C. § 1109.

³⁶15 U.S.C. § 78eee(b)(4); 15 U.S.C. § 78eee(b)(2)(B) - (C) and (3); 15 U.S.C. § 78fff-1.

³⁷15 U.S.C. § 78eee(c).

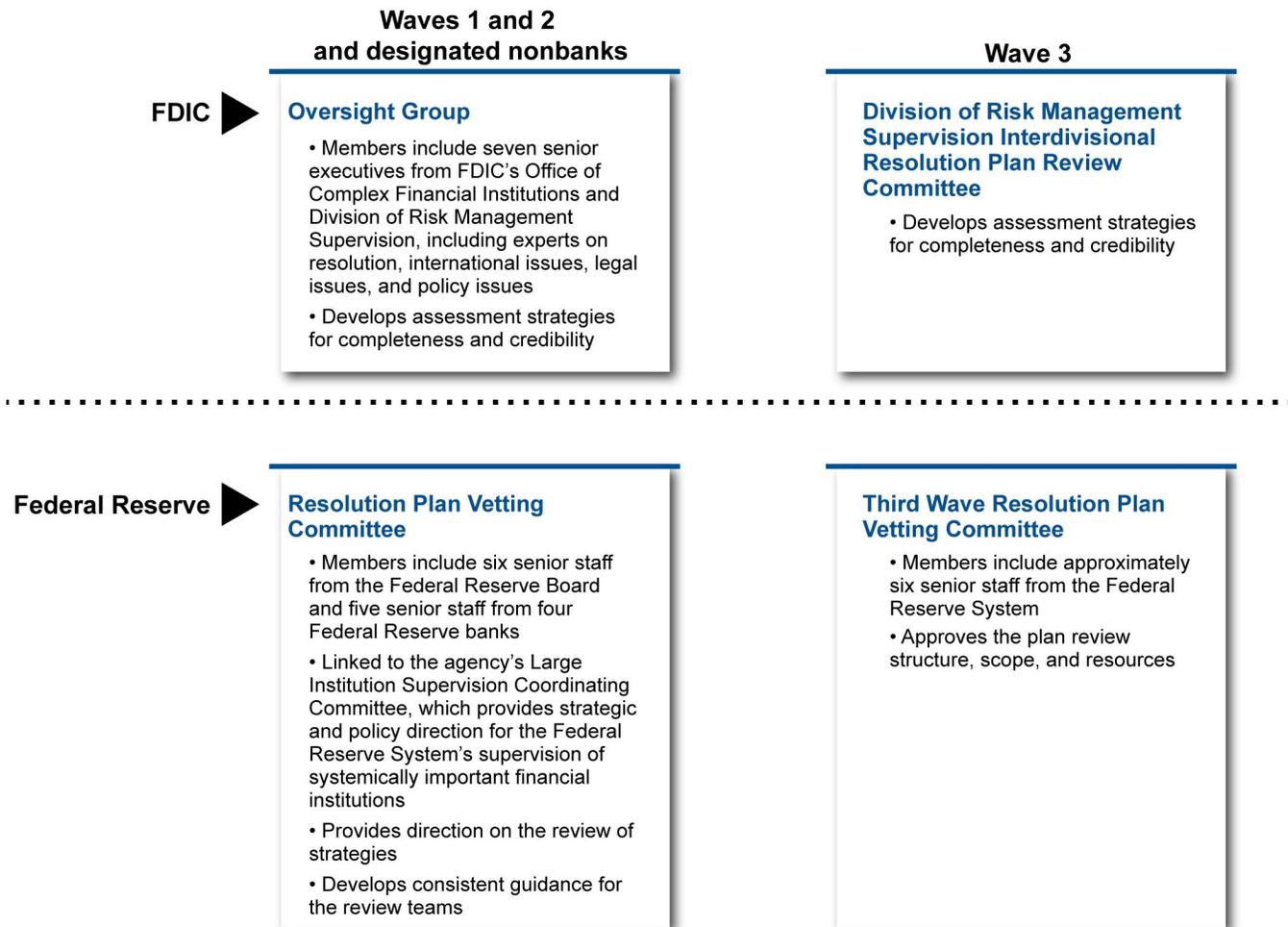
FDIC and the Federal Reserve Review Resolution Plans Separately but Coordinate on Key Aspects of Reviews

FDIC and the Federal Reserve have developed separate but similar processes for their reviews of companies' resolution plans. Both regulators have processes for staffing review teams, determining whether a plan includes all required information, assessing whether a plan's strategy mitigates obstacles to the company's orderly resolution, and documenting and vetting team findings and conclusions. Although the regulators' review processes are separate, the regulators coordinate with each other in various ways, such as in their discussions about review findings and their communications with companies.

Regulators Have Created Separate but Similar Processes for Reviewing Resolution Plans

FDIC and the Federal Reserve have separate but similar processes for reviewing resolution plans. For instance, both developed strategies for reviewing plans and provided their review teams with guidance on implementing the strategies. As shown in figure 2, FDIC and the Federal Reserve each have two committees—composed of senior staff—that offer direction to review teams on plan assessment strategies. We found that both FDIC and the Federal Reserve typically prepare scoping memorandums or project plans to structure their upcoming plan reviews. For example, two FDIC scoping memorandums we reviewed for Wave 2 companies included key areas of focus, background information from previous plans, and assignments of specific review components and products to be delivered. We also reviewed two Federal Reserve project plans for Wave 3 companies—one for larger companies and another for smaller companies—that included objectives of the review, governance, responsibilities, products to be delivered, and timelines, among other items.

Figure 2: Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Processes for Prereview Guidance



Source: GAO analysis of FDIC and Federal Reserve documents. | GAO-16-341

Both FDIC and the Federal Reserve have separate review teams for each wave of plan filers. As shown in figure 3, FDIC’s Office of Complex Financial Institutions and the Division of Risk Management Supervision’s Complex Financial Institutions Section share responsibility for reviewing resolution plans submitted by the Wave 1 filers, two of the four Wave 2

filers, and the nonbank filers.³⁸ The Division of Risk Management Supervision's Large Bank Supervision Branch reviews plans submitted by the Wave 3 filers and the other two Wave 2 filers. Subject matter experts in issue areas such as legal, resolution, and international from other FDIC divisions participate on reviews as needed.

Within the Federal Reserve System, 10 Federal Reserve banks review resolution plans of companies located in their district, with assistance, as needed, from subject matter experts.³⁹ The Federal Reserve Bank of New York conducts most of the reviews, given that more than 75 percent of the Wave 1 and 2 companies and designated nonbanks and about two-thirds of the Wave 3 companies are located in its district.

For the Wave 1 and 2 companies and designated nonbanks, both regulators assign a team of around five to six staff to review each company's plan. For Wave 3 companies, FDIC generally assigns a five-to-six person team to review multiple Wave 3 plans, and the Federal Reserve generally assigns a two person team to review each plan (see figure 3).

³⁸FDIC established the Office of Complex Financial Institutions in 2010 to, among other things, serve as the focal point for implementing FDIC's new systemic resolution authorities under the Dodd-Frank Act, including the 165(d) resolution plans and its orderly liquidation authority. The Division of Risk Management Supervision is responsible for FDIC's safety and soundness examinations and other supervisory duties, and its Large Bank Supervision Branch specializes in FDIC's supervision of large banking organizations.

³⁹The Federal Reserve provided information on (a) the number of Wave 1, 2, and 3 plans assigned to the Federal Reserve Bank of New York and (b) the number of Wave 3 plans assigned to other Federal Reserve banks for the review of filers' 2013 plans. We relied on the information the Federal Reserve provided and confirmed the home districts of all remaining Wave 1, Wave 2, and nonbank filers using publicly available information.

Figure 3: Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Vertical Review Teams, as of 2015

Filing wave	Review team lead	Other review staff (as needed for subject matter expertise)	Average number of staff per review team	Number of plans reviewed by team
FDIC				
Waves 1 and 2 and designated nonbanks^a	Office of Complex Financial Institutions Division of Risk Management Supervision – Complex Financial Institutions (co-leads)	Division of Resolution and Receiverships Legal Division	6	1
Wave 3^a	Division of Risk Management Supervision – Large Bank Supervision	Division of Resolution and Receiverships Division of Insurance and Research Legal Division Office of Complex Financial Institutions	5 ^b	3 to 10, depending on size and complexity
Federal Reserve				
Waves 1 and 2 and designated nonbanks	Federal Reserve Banks (Boston, Chicago, New York, Richmond, and San Francisco)	Federal Reserve Banks (other) ^c Federal Reserve Board Division of Banking Supervision and Regulation Federal Reserve Board Legal Division	5 ^d	1
Wave 3	Federal Reserve Banks (Atlanta, Boston, Chicago, Cleveland, Dallas, Minneapolis, New York, Philadelphia, Richmond, and San Francisco)	Federal Reserve Banks (other) Federal Reserve Board Division of Banking Supervision and Regulation Federal Reserve Board Legal Division	2	1 ^e

Source: GAO analysis of FDIC and Federal Reserve documents. | GAO-16-341

^aTwo of the four Wave 2 companies' plans are reviewed by the Office of Complex Financial Institutions, and the other two companies' plans are reviewed by the Division of Risk Management Supervision's Large Bank Supervision Branch with the Wave 3 companies.

^bNinety of the Wave 3 companies were allowed to file a reduced plan in December 2015 (see discussion below). One or two FDIC staff review all of the reduced plans.

^cThe Federal Reserve bank for the district in which a company is located leads that company's plan review, but subject matter experts from other Federal Reserve banks may be assigned to multiple plans.

^dWe used information on the Federal Reserve's staffing for its July 2015 plan review (11 Wave 1 filers and 1 Wave 2 filer) and its review of one Wave 2 filer's 2014 plan. Our calculation does not include staffing for nonbank filers' plan reviews.

^eAccording to Federal Reserve officials, the on-site team for each Wave 3 company typically reviews the company's plan. However, some staff serve on more than one on-site team.

During their plan reviews, FDIC and Federal Reserve teams assess whether submitted resolution plans are informationally complete. As noted, the resolution plan rule includes seven informational requirements, such as an executive summary, strategic analysis, and description of organizational structure. We found that to determine whether submitted plans contain all required information, both regulators use similar checklists to conduct and document their completeness reviews. Teams typically are given about 2 weeks to conduct the completeness review.

Following their completeness reviews, we found that FDIC and Federal Reserve teams then conduct two types of more substantive reviews of companies' plans. First, the regulators conduct vertical, or company-specific, reviews to identify issues, shortcomings, and obstacles to resolvability. As shown in table 2, FDIC and the Federal Reserve focus their vertical plan reviews on similar assessment areas.⁴⁰ For example, we found that both regulators assess how the companies plan to maintain, transfer, sell, or wind down their critical operations—defined in the final rule as the operations of the company for which the failure or discontinuance would pose a threat to the financial stability of the United States—in an orderly manner through the resolution process.⁴¹ Second, FDIC and Federal Reserve teams conduct horizontal reviews to examine selected issues across multiple companies. For example, FDIC's 2015 plan review included a horizontal review of the governance mechanism across all Wave 1 and 2 companies. According to FDIC officials, the horizontal reviews supplement the vertical assessment of key issue areas and promote consistency across the plan reviews. In addition, we found that the regulators use horizontal reviews to help inform their general guidance and decision-making around resolution planning.

⁴⁰FDIC piloted its assessment approach with two Wave 2 companies in 2014 and fully implemented it beginning with the review of plans submitted in July 2015.

⁴¹76 Fed. Reg. 67323, 67335 (Nov. 1, 2011) (codified at 12 C.F.R. § 381.2(g) and 243.2(g)).

Table 2: Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Resolution Plan Vertical Assessment Areas and Work Products

Regulator	Vertical reviews: assessment areas	Vertical reviews: work products ^a
FDIC	<ul style="list-style-type: none"> • Critical operations • Stress scenario • Material entity strategy • Operational readiness • Corporate governance 	<ul style="list-style-type: none"> • Individual memorandums for each assessment area^b • Summary memorandum
Federal Reserve	<ul style="list-style-type: none"> • Critical operations • Material entities • Strategy for orderly resolution • Obstacles to orderly resolution • Assumptions • Remediation plans 	<ul style="list-style-type: none"> • Individual memorandums for each obstacle to orderly resolution^c • Summary memorandum

Source: GAO analysis of FDIC and Federal Reserve documents. | GAO-16-341

^aWe found that typically FDIC and the Federal Reserve each produce a single summary memorandum for Wave 3 companies, although FDIC officials told us that they may produce supplemental reports for companies requiring more in-depth analysis.

^bFDIC officials told us that FDIC piloted this approach with two Wave 2 companies in 2014 and staff only prepared memorandums for two of the five assessment areas that year. Beginning with the 2015 review, staff will prepare memorandums for all five assessment areas.

^cThe regulators identified the obstacles in public guidance to companies in April 2013 (see discussion below). FDIC officials told us that the key obstacles are built into their assessment areas—particularly critical operations and material entity strategy—while the Federal Reserve treats the obstacles as a stand-alone assessment area but prepares individual memorandums for each obstacle.

The regulators each prepare an overall summary memorandum documenting each plan review and, in some cases, supporting memorandums for specific assessment areas. They also typically prepare memorandums documenting their horizontal reviews. Finally, the regulators have developed or are currently developing assessment frameworks that they use or plan to use to determine whether aspects of a resolution plan are deficient based on their vertical and horizontal reviews.⁴² Specifically, FDIC recently developed a framework that rolls up the findings of its five assessment areas into three broader areas, each of which includes a short list of key questions that—combined with staff judgment about each company’s facts and circumstances—are used to determine whether a plan is deficient. Federal Reserve officials told us that they are

⁴²For purposes of this report, we use “deficient” to mean that a resolution plan is not credible or would not facilitate a company’s rapid and orderly resolution under the Code.

currently developing a similar framework and have recently used FDIC's framework to guide interagency discussions. According to FDIC and Federal Reserve officials, teams generally complete their vertical reviews within about 2 months, and horizontal reviews can take approximately another 2 months.

Since their initial reviews in 2012, FDIC and the Federal Reserve periodically have revised parts of their review processes based on lessons learned. For example, as described earlier, in 2014, FDIC revised its approach to plan assessments by establishing key assessment areas to frame its review. In addition, FDIC officials told us that because of the large number of Wave 3 companies, FDIC developed an information technology tool for recording responses from Wave 3 filers' plans. The tool serves to allow staff to consistently capture information and run standard and customized reports as needed. The Federal Reserve reported that in 2013, it automated its obstacles log—an electronic database in which reviewers catalog each obstacle to rapid and orderly resolution at each material entity—by prepopulating cells with drop-down menus based on reviewers' 2012 findings on Wave 1 filers' plans. The Federal Reserve also noted that it simplified its completeness review process in 2013 as well as leveraged analyses it conducted in 2012 to identify Wave 1 companies' critical operations, rather than repeating the analyses.

After teams complete their reviews, their findings are subject to further review and vetting at a higher level. According to FDIC, for the regulator's Wave 1 and 2 reviews, the Oversight Group, an interdivisional group of senior executives, directs vertical and horizontal team efforts, reviews staff-level shortcomings and deficiencies to be included in company-specific feedback letters, recommends industry-wide guidance and action items, coordinates with Federal Reserve senior staff to help ensure consistency across reviews, and recommends staff-level findings to the FDIC Board of Directors. For FDIC's Wave 3 reviews, the Division of Risk Management Supervision's Large Bank Supervision Branch created an interdivisional resolution plan review committee, which serves a similar purpose as the Oversight Group for Wave 1 and 2 reviews. At the Federal Reserve, the Federal Reserve Board's Recovery and Resolution Planning Section performs the same tasks under the direction of the two Resolution Plan Vetting Committees and in consultation with the review teams and legal staff.

Finally, FDIC's Board of Directors and the Federal Reserve's Board of Governors separately review and vote on staff recommendations on the

credibility of plans, requests for filing extensions, and joint feedback letters provided to companies. Although each board votes separately, to make a joint determination under the act—for example, to determine that a plan is deficient—each board must vote to approve the action.

FDIC and the Federal Reserve Coordinate on Various Aspects of Their Reviews

FDIC and the Federal Reserve have coordinated not only on reviews of resolution plans but also on the development of the review process. For example, Federal Reserve officials stated that in 2012, the regulators initially held joint training sessions. Also, the Federal Reserve developed a preliminary methodology for identifying critical operations and collaborated with FDIC to implement it. Subsequently, FDIC and the Federal Reserve worked together to refine the list of critical operations and identified whether a company had critical operations and, if so, notified the company of the operations they deemed critical before the company submitted its initial plan.

During the review process, FDIC and the Federal Reserve coordinate with each other in a number of ways. For example, the two regulators independently determine the scope of their plan reviews, but FDIC officials told us that they compared their assessment areas and generally agreed on the same areas of focus. Similarly, FDIC and Federal Reserve officials said that the regulators shared their training materials with each other. Officials from both regulators also told us that they coordinated their meetings with companies to minimize any duplicative efforts, and that senior staff schedule weekly calls and periodic meetings to discuss findings and any issues identified during the review process. The officials noted that they were often in daily communication with each other during the plan reviews. Finally, while review teams from each regulator were not initially allowed to share internal review documents with one another without prior approval, FDIC authorized teams to share such information without prior approval beginning with the 2014 pilot reviews.

After the teams complete their separate reviews, the regulators work together to reach agreement on the findings and conclusions that they use to make recommendations for their respective boards' consideration. For example, FDIC officials told us that after the regulators completed their reviews of Wave 1 filers' 2013 plans, the regulators jointly identified a number of issues with the plans and then, with little dissension, agreed on prioritizing and addressing them. The regulators also have coordinated on the guidance and feedback they provide to companies.

Officials from both regulators told us that at this time, they were not considering combining their staffs to form one team to jointly review and assess resolution plans. According to FDIC officials, the FDIC Board needs to be able to make its credibility determinations based on its own independent analysis. Federal Reserve officials told us that because most of a plan review involved reading and analysis, there would be few efficiency gains from doing the work jointly. But officials from both regulators emphasized to us that the current process was collaborative because the review teams were in regular communication with each other. As we have previously reported, to achieve a common outcome, collaborating agencies should establish mutually reinforcing or joint strategies to achieve a common outcome.⁴³ Such strategies help in aligning the partner agencies' activities, core processes, and resources to accomplish the outcome. In addition, agencies should establish compatible policies, procedures, and other means—such as frequent communication—to work across agency boundaries. Given FDIC's and the Federal Reserve's similar review strategies, coordinated approach to communicating with companies, and frequent communication with one another, their resolution plan review processes—while conducted separately—are generally collaborative.

FDIC and the Federal Reserve Have Made Progress Assessing Resolution Plans but Have Faced Challenges Providing Transparent and Timely Feedback

FDIC and the Federal Reserve have made progress reviewing the resolution plans that companies submitted each year from 2012 to 2014 but have provided limited disclosures about their reviews and have not always provided companies enough time to incorporate feedback given the annual filing cycle. As previously noted, under the resolution plan rule, the regulators are required to review submitted plans and are allowed, but not required, to jointly determine whether the plans are deficient. FDIC's Board of Directors determined that all of the Wave 1 filers' 2013 plans and three of the Wave 2 filers' 2014 plans were not credible or would not facilitate an orderly resolution under the Code. However, the Federal Reserve Board of Governors did not make such a determination but instead said that the companies must take meaningful action to improve their resolvability under the Code. The Board of Governors noted that this action was consistent with the statement in the resolution plan rule's preamble that the regulators did not expect that the initial resolution plan

⁴³GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

iterations submitted after this rule takes effect will be found to be deficient and that the initial resolution plans would provide the foundation for developing more robust plans over the next few years. The regulators issued press releases in August 2014 and March 2015 stating that they expected to jointly determine that the resolution plans submitted by Wave 1 and 2 filers, respectively, in 2015 were deficient if the filers had not made sufficient improvements.⁴⁴

Regulators Have Refined Guidance and Feedback

Although the resolution plan rule sets forth the information companies must include in their plans, the regulators have clarified, revised, and, in some cases, expanded information requirements through their guidance and feedback. To a large extent, we found that the guidance and feedback has focused on the rule's strategic analysis, which must describe a company's plan for a rapid and orderly resolution under the Code. For example, to address shortcomings found in Wave 1 filers' 2012 plans, the regulators issued publicly available guidance (April 2013) instructing the filers, among other things, to support the assumptions underlying their resolution strategies, discuss steps to mitigate five obstacles the regulators identified as common during a resolution, and provide a detailed description of their planned bankruptcy process in their subsequent plans.⁴⁵ Following their review of the Wave 1 filers' 2013 plans, the regulators issued each filer a feedback letter that identified shortcomings and provided additional information and regulator-specified assumptions for the 2015 plans (see table 3). The feedback letters also directed the filers to improve their resolvability under the Code—for example, by establishing a rational and less complex legal structure, developing a holding company structure that supports resolvability, and ensuring the continuity of shared services that support critical operations and core business lines throughout the resolution process.

⁴⁴As of March 2016, the regulators expect to complete their review of the July 2015 plans in the coming months. The remaining plans were filed by December 31, 2015.

⁴⁵In the regulators' April 2013 guidance to Wave 1 filers, the five obstacles to a resolution included (1) the risks raised by multiple competing insolvencies, (2) the risk of a lack of global cooperation by foreign authorities, (3) the risk that interconnections could lead to disruptions if certain entities (internal or external) fail or stop providing services, (4) the risk that counterparty actions could create operational challenges, and (5) the risk of insufficient liquidity to maintain critical operations.

Table 3: Resolution Plan Filing Dates and Guidance or Feedback Issued by the Regulators, 2012 through 2014

Filers	2012 Plan response	2013 Plan response	2014 Plan response
Wave 1	11 companies filed plans by July 1, 2012. Regulators jointly issued guidance that instructed the companies on the information they should include in their 2013 resolution plans. The guidance included requests for (1) more detailed information on, and analysis of, obstacles to resolvability under the Code and (2) analysis to support the strategies and assumptions contained in the resolution plans.	11 companies filed plans by October 1, 2013. Regulators jointly issued each company a letter that identified (1) shortcomings in its 2013 plan, the additional information to be included in its 2015 plan, and the assumptions its plan should make and (2) additional areas the company should address in its 2015 plan.	11 companies filed plans by July 1, 2014. Regulators did not provide any written guidance or feedback.
Wave 2	(empty cell)	4 companies filed plans by July 1, 2013. Regulators jointly sent each company a letter that referred the companies to the 2013 guidance issued to Wave 1 filers.	4 companies filed plans by July 1, 2014, or October 1, 2014. Regulators jointly issued each company a letter that identified (1) shortcomings in its 2014 plan, the additional information to be included in its 2015 plan, and the assumptions its plan should make and (2) additional areas the company should address in its 2015 plan.
Wave 3	(empty cell)	116 companies filed plans by December 31, 2013. Regulators jointly issued each company a letter, providing them with direction for their 2014 plans based on the relative size and scope of each company's U.S. operations. Companies were instructed or permitted to file full, tailored, or reduced plans. ^a	120 companies filed plans by December 31, 2014. Regulators jointly issued each company a letter, providing them with guidance, clarification, and direction for their 2015 plans based on the relative size and scope of each company's U.S. operations. Companies were instructed or permitted to file full, tailored, or reduced plans. ^a
Nonbanks	(empty cell)	(empty cell)	3 nonbanks filed plans by July 1, 2014. Regulators jointly issued each nonbank a feedback letter that identified areas the company should address in its 2015 plan.

Source: GAO analysis of Federal Deposit Insurance Corporation and Federal Reserve documents and press releases. | GAO-16-341

^aThe more complex companies were required to file full plans; companies with less complex U.S. operations were permitted to file tailored plans; and companies with limited U.S. operations could file a reduced plan. A tailored resolution plan focuses on the nonbanking operations of the company and on the interconnections and interdependencies between the nonbanking and banking operations. A reduced resolution plan focuses on material changes to a company's initial plan and actions taken to strengthen the effectiveness of its initial plan. Beginning in 2015, reduced plan filers were also required to describe, where applicable, actions to ensure any subsidiary insured depository institution is adequately protected from the risk arising from the activities of nonbank affiliates of the company.

Consistent with the resolution plan rule’s preamble, which conveyed expectations that the review process would evolve, the guidance and expectations communicated to companies have evolved over time. The regulators—in addition to finding shortcomings in a number of the companies’ assumptions—also have had to clarify their expectations about such assumptions through several rounds of feedback. For example, from April 2013 to August 2014, the regulators clarified previously provided assumptions for Wave 1 filers—such as a company’s assumptions about its access to government funding. Additionally, the regulators clarified and expanded assumptions—for instance, about the likely behavior of foreign authorities, counterparties, and others—that companies were to make in their subsequent plans. In September 2014, FDIC and Federal Reserve officials jointly met with each Wave 1 filer to discuss the feedback letters. Based on our review of the meeting notes, we found that companies continued to ask for additional clarification about the assumptions and expanded requirements introduced in the feedback letters.

In December 2014, the regulators offered to preview certain elements of Wave 1 filers’ 2015 plans and then in February 2015 provided the filers written feedback on the plan previews. We reviewed the feedback to Wave 1 filers and found that it included company-specific feedback, identifying instances in which, for example, a company made an unallowable assumption or did not provide adequate support for an assumption. The regulators also clarified additional plan assumptions and requirements introduced in the August 2014 feedback letters.

Generally, the regulators took a similar approach with the Wave 2 and 3 filers (see table 3 above), sending them individual letters setting out general directions after reviewing their initial plans (filed in 2013). They also sent individual letters that provided more detailed guidance after reviewing the 2014 plans (see table 3). As discussed below, however, the regulators have exempted a majority of Wave 3 companies from most of the plan requirements.

Wave 1 and 2 companies we interviewed generally said the regulators’ feedback was limited. For example, most of the 10 companies we spoke with said that the guidance and feedback lacked specificity and seemed to be generally aimed at the industry as opposed to individual companies. One company told us that it was not clear how the regulators defined a “rational and less complex legal structure.” Nonbank financial companies we interviewed said the lack of specificity in regulators’ guidance was a significant challenge. At the same time, several companies also told us

that guidance and communication from the regulators had improved more recently. For example, as noted, the regulators met with the companies in September and December 2014 and then in February 2015 provided written feedback on the previews of companies' 2015 plans.

Nearly all of the 15 Wave 3 companies we interviewed told us that they generally had not received any company-specific feedback on their 2013 plans from the regulators. For example, two companies said the regulators told them to consult the guidance for Wave 1 companies and incorporate elements applicable to the company. Nearly all of the 15 companies told us that the lack of feedback from the regulators was a challenge in complying with the resolution plan requirement. Moreover, several Wave 3 companies we interviewed said that the regulators seemed to take a one-size-fits-all approach to resolution planning, and some pointed out that these companies were less complex than the Wave 1 companies and should be given guidance tailored to less complex companies.

FDIC and Federal Reserve officials generally said their guidance and processes have evolved through the iterations of plan reviews. According to the Federal Reserve officials, they initially focused their plan reviews on identifying potential obstacles to a resolution and, accordingly, they also focused their initial guidance on such obstacles. Officials also said that as their knowledge about the companies increased, they were able to issue more specific guidance and feedback to companies. Similarly, FDIC's officials told us that in the initial years of plan reviews, they focused on the obstacles and basic elements of the plans—including financial, operational, and structural aspects of a company's resolution strategy—and had little dialogue with the companies. Since then, officials added that they have issued more detailed guidance, conducted more substantive plan reviews, and increased communications with the companies. FDIC officials also said that while guidance generally has been targeted to Wave 1 filers, it has been adjusted for Wave 3 filers, given the differences in complexity between the Wave 3 and Wave 1 filers. Based on our review of the July 2015 feedback letters sent to Wave 3 filers, we generally found that the guidance did not include some of the requirements that were in the August 2014 feedback letters sent to Wave 1 filers, such as the need for companies to achieve a rational and less complex legal entity structure.

Regulators' Frameworks for Assessing Plans Are Not Transparent

FDIC and the Federal Reserve have each developed or are currently developing a framework for assessing whether plans are deficient, but they have not disclosed the frameworks to plan filers or the public. As discussed, for its 2015 reviews, FDIC refined its assessment approach by dividing its plan review into five components: (1) an assessment of a company's critical operations, (2) stress scenario leading to a bankruptcy filing, (3) strategy for resolving its material legal entities, (4) readiness to implement its strategy, and (5) resolution planning governance process. In addition, FDIC recently developed a framework that distills the five components into three principal areas and includes a series of questions that are used to determine whether aspects of a plan are deficient based on the staff review findings.⁴⁶ As summarized by FDIC officials, they use the framework to determine whether a resolution plan will work, whether a company can implement its plan, and whether the company has integrated resolution planning into its corporate governance structure. According to the officials, their resolution plan assessment framework has been shared with the Federal Reserve and agreed upon as a means to create a common intersection between the two regulators' independent plan review processes. Federal Reserve officials told us that they used FDIC's assessment framework to guide interagency discussions during their recent plan reviews. They added that they are currently developing and expect to finalize their own framework in early 2016, with slight differences based on lessons learned from their review of companies' 2015 plans.

However, companies lack a full understanding of the regulators' overall assessment frameworks for determining whether aspects of a plan are deficient. While the regulators jointly issued public guidance in April 2013 to Wave 1 filers, the guidance has been supplemented in part by subsequent written and oral feedback provided to each company that has clarified and expanded existing assumptions and requirements. Further, similar to bank examination findings, such feedback is considered confidential supervisory information, prohibiting the companies from disclosing or discussing it with each other. Although companies generally have been provided feedback about their plan shortcomings, they have not been provided with any assurances that addressing the shortcomings

⁴⁶According to FDIC officials, the objectives and fundamental elements of the review process are consistent across all companies. For Wave 3 filers, the assessment framework may be tailored based on a company's size and complexity.

would mean that the regulators would not find aspects of their plans deficient.⁴⁷

Further, FDIC's and the Federal Reserve's feedback did not fully clarify their overall assessment frameworks for the companies whose plans were under review. Nearly all of the eight Wave 1 and 2 companies we interviewed believed that credibility was a subjective standard that the regulators had not clearly defined, presenting challenges for the companies. Several companies described a sense of uncertainty about what changes they should make to their plans, with one specifically saying that the companies could waste time and money working toward an unclear objective. Two of the companies explained to us that there was more than one way to achieve resolution but that it was not clear which options the regulators would find credible. Finally, another company told us that because of the subjective nature of the credibility assessment, it was concerned about the penalties the regulators might assess if its plan was found deficient.

FDIC and Federal Reserve officials told us that, at the highest level, determining whether a plan was not credible involved judgment about the nature of each company and its resolution strategy. Because all companies and their resolution strategies are different, certain shortcomings may be much more important for one company than another, and the statute gives the regulators discretion in determining how findings under the various assessment factors affect a plan's overall credibility. The regulators' frameworks enable them to apply their expert judgment to the facts and circumstances of each company's plan. FDIC views its framework as confidential supervisory information and thus has not disclosed it. FDIC officials told us that they are considering the policy implications of such disclosure. Importantly, disclosing the assessment framework, at least in an abbreviated form, would provide companies with a more comprehensive understanding of the principal factors that the regulators use to identify plan deficiencies. In turn, companies could use such information to evaluate their own plans, identify potential deficiencies, enhance their plans, and prioritize their remediation efforts. The disclosure of the assessment framework would be similar to the disclosure of FDIC's and the Federal Reserve's bank examination

⁴⁷For example, in the regulators' September 2014 meetings with companies and their February 2015 written feedback on the companies' plan previews, staffs noted that their views did not necessarily reflect the views of and were not binding upon the regulators' boards.

manuals, which are publicly available on their websites. According to the Office of Management and Budget's directive on open government, transparency promotes accountability by providing the public with information about government activities.⁴⁸ Similarly, our prior work has recognized that transparency—balanced with the need to maintain sensitive regulator information—is a key feature of accountability.⁴⁹ Without more fully disclosing the regulators' frameworks for reviewing plans and identifying plan deficiencies, the companies lack key information for assessing and improving their plans. In addition, companies and the public have a limited basis for understanding how the regulators are fulfilling their responsibility under the resolution plan rule, which could undermine the public's confidence in the resolution planning process. For example, companies and the public would not know the extent to which FDIC's and the Federal Reserve's frameworks for determining whether a plan is deficient are similar or different.

Regulators Have Reduced the Plan Requirements for the Majority of the Wave 3 Companies but Have Not Disclosed Their Criteria for Doing So

FDIC and the Federal Reserve recognize the limited benefit of requiring many smaller, less complex Wave 3 companies to file a full resolution plan, but officials said that it was important to continually monitor Wave 3 companies for potential sources of systemic risk through their plan submissions. In addition to permitting companies with limited nonbanking operations to file a tailored plan, the rule permits the regulators to further reduce the information required in a company's plan.⁵⁰ Following their review of Wave 3 companies' 2013 plans, the regulators exercised this authority—allowing 61, or about 52 percent, of the companies to file “reduced plans” in 2014. Under the 2014 reduced plans, companies were exempted

⁴⁸Office of Management and Budget, Open Government Directive, OMB Memorandum M10-06 (Washington, D.C.: 2009). The directive also recognizes that the presumption of openness does not preclude the need to protect confidential information.

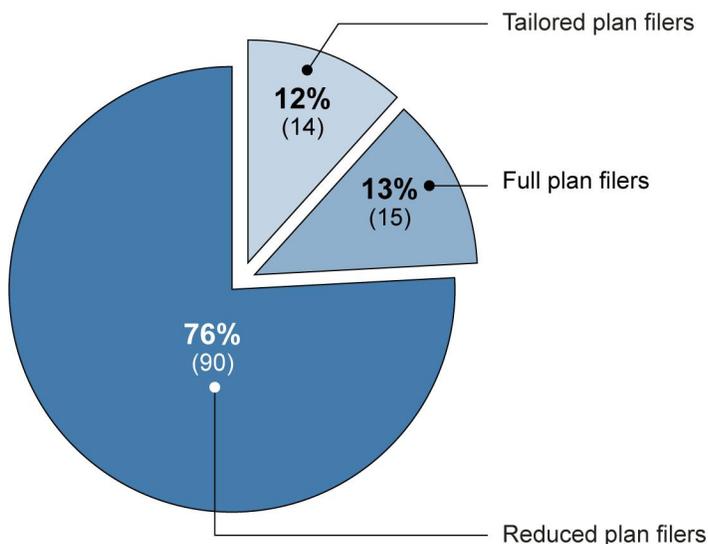
⁴⁹See GAO, *Troubled Asset Relief Program: Continued Stewardship Needed as Treasury Develops Strategies for Monitoring and Divesting Financial Interests in Chrysler and GM*, [GAO-10-151](#) (Washington, D.C.: Nov. 2, 2009).

⁵⁰Generally, companies with less than \$100 billion in total nonbank assets and which have total insured deposit institution assets comprising 85 percent or more of the company's consolidated assets are eligible to file a tailored resolution plan. A tailored plan focuses on the nonbanking operations of the company and on the interconnections and interdependencies between the nonbanking and banking operations. 76 Fed. Reg. 67323, 67336 (Nov. 1, 2011) (codified at 12 C.F.R. §§ 381.4(a) and 243.4(a)). For reduced plans, see 76 Fed. Reg. 67323, 67339 (Nov. 1, 2011) (codified at 12 C.F.R. §§ 381.4(k) and 243.4(k)).

from most of the resolution plan rule's informational requirements and were required to only report whether they had (1) made any material changes that required their prior plans to be modified or (2) taken any actions to improve their resolvability.⁵¹ In that regard, reduced plans still provide the regulators with a way to monitor such companies.

Following their review of the Wave 3 filers' 2014 plans, the regulators permitted 90 of the filers, or about 76 percent, to file a reduced plan for the 2015 plans, and another 12 percent were permitted to file tailored plans (see fig. 2). According to FDIC officials, all 90 companies that are permitted to file a reduced plan are foreign banking organizations with limited U.S. operations.

Figure 4: 2015 Plan Types for Wave 3 Companies



Source: GAO analysis of FDIC and Federal Reserve documents. | GAO-16-341

Notes: Percentages do not add up to 100 due to rounding.

The companies with less complex U.S. operations were permitted to file tailored plans, and companies with limited U.S. operations could file a reduced plan. A tailored resolution plan focuses on the nonbanking operations of the company and on the interconnections and interdependencies between the nonbanking and banking operations. A reduced resolution plan focuses on material changes to a company's initial plan, actions taken to strengthen the effectiveness of its initial plan, and, where applicable, any actions taken to adequately protect subsidiary insured depository

⁵¹Wave 3 companies currently filing a reduced plan must have previously filed at least one full or tailored plan with the agencies.

institutions from any risks created by a company's nonbanking activities.

FDIC officials told us that the regulators considered a number of factors in permitting certain Wave 3 companies to file reduced plans. They said that the regulators gained a better understanding of the companies, their plans, and the potential effect of their failure on U.S. financial stability, and adjusted some of their criteria to allow a greater number of Wave 3 filers to file reduced plans in 2015. However, the regulators did not disclose their criteria for granting the exemptions from most of the plan requirements in their joint feedback letters to the Wave 3 companies or publicly. Generally, FDIC and Federal Reserve officials said that the application of their criteria could reveal confidential information, and FDIC officials stated that this was in part because their criteria may reflect proprietary or sensitive company information. As noted earlier, the Office of Management and Budget's directive on open government and our prior work have recognized that transparency is a key feature of accountability, even when there is a need to safeguard certain sensitive information to protect companies and markets.⁵² Without greater transparency, the lack of a clear understanding of the regulators' decisions, including the reasons for viewing certain companies as less risky and allowing certain companies to file reduced plans, may weaken public and market confidence in resolution planning and limit the extent to which the regulators can be held accountable for their decisions. For example, without knowing why the companies qualified for filing a reduced plan, they and other Wave 3 companies would not know what steps, if any, they could take to decrease their risk profile and qualify for a reduced-plan filing in future years. Moreover, Wave 3 filers and the public also would not know whether the reduced-plan benefit was provided consistently.

Annual Filing Requirement Has Created Challenges for Regulators and Companies

Although the Dodd-Frank Act did not specify the frequency with which companies had to file their resolution plans, FDIC and the Federal Reserve stipulated in the resolution plan rule that companies had to file plans approved by their boards on an annual basis. However, the rule does not require FDIC and the Federal Reserve to substantively review the plans or provide feedback within any set time frame.⁵³ As shown in

⁵²Office of Management and Budget Memorandum M10-06 and [GAO-10-151](#).

⁵³The resolution plan rule requires FDIC and the Federal Reserve to review plans within 60 days to determine whether the plans are informationally incomplete.

table 4, our analysis of the 2012, 2013, and 2014 resolution plan reviews found that the regulators required around 5 to 13 months (or close to 9 months on average) to review the plans and jointly provide companies with written guidance or feedback. The review process can be resource-intensive: As discussed, the review process involves a number of steps—including vertical and horizontal assessments, internal and interagency discussions, drafting of guidance and feedback, and board determinations. Unless the regulators extended the plan submission date, companies would have about 3 months, on average, to incorporate the feedback, obtain their boards of directors’ approval, and file their plans for the next year.

Table 4: Months between the Submission Date of Resolution Plans and the Date the Companies Receive Feedback, 2012 through 2014

Filers	2012 Approximate number of months	2013 Approximate number of months	2014 Approximate number of months
Wave 1 filers	9.5 months	10 months	N/A ^b
Wave 2 foreign filers	N/A ^a	9.5 months	9 months and 6 months ^c
Foreign filers			5 months
U.S. filer			
Wave 3 filers	N/A ^a	7.5 months	7 months
Nonbank filers	N/A ^a	N/A ^a	13 months

Source: GAO analysis of Federal Deposit Insurance Corporation and Federal Reserve documentation and press releases. | GAO-16-341

^aThe resolution plan filing requirement had not yet taken effect for these filers.

^bThe regulators did not provide the filers with any written feedback because about a month after the 2014 plans were filed, the regulators provided company-specific and industry-wide guidance—based on their review of the 2013 plans—to inform companies’ 2015 plans.

^cThe regulators provided feedback to the three Wave 2 foreign filers on their 2014 plans in March 2015. However, two of the companies received an extension and were allowed to submit their plans by October 1, 2014, instead of by July 1, 2014. Thus, one company received feedback on its plan approximately 9 months after filing its 2014 plan, and two companies received feedback on their plans approximately 6 months after filing their 2014 plans.

Because of the amount of time required to review the Wave 1 filers’ initial, or 2012, plans, FDIC and the Federal Reserve jointly extended the filers’ 2013 resolution plan filing date from July 1, 2013, to October 1, 2013.⁵⁴

⁵⁴Additionally, the agencies granted two Wave 2 companies’ requests for an extension for filing their 2014 plans, from July 1 to October 1.

However, the Wave 1 filers submitted their 2014 plans before the regulators could provide them with feedback on their 2013 plans. As a result, the regulators instructed the Wave 1 filers to incorporate the feedback in their 2015 plans and conducted an abbreviated review of the Wave 1 filers' 2014 plans.

FDIC and the Federal Reserve generally prepared project plans or similar documents for each review of a wave of resolution plan submissions that included target dates for completing key tasks. However, in reviewing the regulators' project plans, we found that the plans did not always include a date for providing joint feedback, and for those project plans that did, target dates were missed. For example, although FDIC and the Federal Reserve set dates for completing specific phases of their plan reviews, the regulators did not set a date for providing joint feedback to the Wave 1 filers' 2013 plans. The Federal Reserve planned to provide Wave 2 filers with feedback on their 2013 plans by the end of 2013 but did not provide them with feedback until mid-April 2014. Similarly, the Federal Reserve set target dates for providing Wave 3 filers with feedback on their 2013 plans but required more time.

FDIC and Federal Reserve officials told us that the 2013 plans were complex and had multiple shortcomings that caused delays in providing feedback. According to Federal Reserve officials, the teams generally completed their review of the plans and prepared necessary internal work products in about 4 months, in accordance with the proposed deadlines. Moreover, FDIC officials said that regulators generally agreed with each other about the facts and findings. Officials from both regulators said their main challenge was sorting through the various fundamental issues that appeared across the filers' plans, developing agency plans to address those issues, and crafting language to include in feedback. The officials told us that the regulators wanted to make sure they provided the appropriate response and chose the best approaches to address the issues. Federal Reserve officials also said that reaching joint agreement on issues and feedback added some time.

FDIC and Federal Reserve officials told us that they recognize the constraints the companies have experienced because of the timing of the regulators' feedback. FDIC officials said that they expected the content and timing of feedback to be more specific to each company's plan in the future, which could affect the timing of the feedback. Although Section 165(d) of the Dodd-Frank Act directed the Federal Reserve to require companies to file their resolution plans periodically, FDIC and the Federal Reserve required companies to annually file resolution plans approved by

their board of directors in the resolution plan rule. However, the resolution plan rule's annual filing cycle may not be feasible. We found that the regulators took 9 months, on average, to review plans and provide companies with joint feedback. At the same time, FDIC officials said that companies need up to 3 months to obtain internal approval of their plans, and FDIC staff keep that in mind when requesting turnaround times from companies. Federal Reserve officials attributed their long review time, in part, to the plans' complexity and said that companies ideally should have 6 months to incorporate regulatory feedback.⁵⁵ However, Federal Reserve officials said that it currently is not realistic to expect the regulators to review plans in 6 months or the companies to address the feedback fully in their allotted remaining time. Federal internal control standards state that agencies should externally communicate the necessary quality information to achieve their objectives and that information should be readily available to recipients when needed.⁵⁶ With regard to resolution plans, the agencies must be able to provide not only quality information—such as guidance or feedback—to companies but also sufficient time for the companies to incorporate the information in their plans. Absent a longer filing cycle, the rule may not effectively allow for the achievement of its intent.

Companies faced challenges because of the lack of timely guidance or feedback from the regulators. More than half of the 25 companies we interviewed, including companies from each wave, identified concerns about the timing of the regulators' feedback. Two companies told us they received feedback late in their planning process, making it difficult or impossible for them to incorporate the feedback into their next plans. Similarly, another company told us that it was expensive to revise its plan when feedback was provided in the late stage of the planning process. Furthermore, eight of the Wave 1 and 2 and nonbank filers told us that the amount of time it took them to prepare their resolution plans ranged from 6 months to a year. Finally, four other companies told us that the timeliness of the feedback needed to be improved, with one suggesting that the regulators issue feedback at the beginning of the planning year.

⁵⁵Consistent with that view, the resolution plan rule states that if the regulators change a filing date, they must give companies at least 180 days—or approximately 6 months—notice before the new filing date. 76 Fed. Reg. 67323, 67335 (Nov. 1, 2011) (codified at 12 C.F.R. §§ 381.3(a)(4) and 243.3(a)(4)).

⁵⁶GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

Stakeholders' Views on the Usefulness of Resolution Plans Vary

According to companies and stakeholders that we interviewed, resolution planning has improved the resolvability of SIFIs under the Code. The larger filers we interviewed generally said that resolution planning had led to some operational improvements, while the smaller filers we interviewed generally said that they had reaped few benefits from resolution planning. Additionally, regulators are using plans to enhance their supervision of large financial companies. However, uncertainty exists about the plans' ability to provide for a rapid and orderly resolution of the largest SIFIs, in part because none has used its plan to go through bankruptcy. At the same time, the regulators told us that they were incurring considerable costs to review the plans, and companies said that complying with the rule also had raised their costs.

Companies and Stakeholders Generally View Resolution Planning as Improving Resolvability

In concept, resolution plans are expected to make the U.S. financial system safer and help end "too big to fail" by enabling SIFIs to be resolved in an orderly manner that does not have adverse effects on U.S. financial stability or require taxpayer funds. Because of the size, complexity, or interconnectedness of the Wave 1 companies, the failure of one of them poses the threat of disrupting U.S. financial stability. Under the rule, companies must prepare strategies and financial projections in their resolution plans using assumptions about funding, liquidity, and market conditions under baseline, adverse, and severely adverse economic conditions. In response to the resolution plan rule, the Wave 1 filers have prepared resolution plans and made structural and other changes to become more resolvable.

Most of the 10 Wave 1, Wave 2, and nonbank filers and 20 stakeholders whom we interviewed told us that going through the planning process better positioned companies for an orderly resolution or had the potential to reduce systemic risk. For example, a bankruptcy attorney told us that resolution planning had benefited companies by forcing them to engage in comprehensive thinking for the first time about how to undergo a resolution. Additionally, a consultant said that the value of resolution planning lay in the development of the companies' underlying operational and business capabilities to undergo a resolution process. Officials from a Wave 1 filer also told us that through resolution planning, the company had identified and mitigated obstacles to its resolution, better positioning it to be resolved under the Code.

At the same time, around half of these filers and other stakeholders told us that they did not expect companies to be able to use their plans as a playbook in the event of failure. For example, one bankruptcy attorney

said that the written plan itself was less beneficial than the planning process because the actual cause of bankruptcy could differ from the hypothetical scenario in the plan. Another bankruptcy attorney told us that it was important for companies to think through how they might react under various circumstances, but a resolution plan was just a strategy and did not reflect exactly what a company would do if it failed. A consultant said that the resolution plans themselves were not a source of value, because the likelihood that a company's resolution plan would match the actual conditions or events under which the company undergoes a resolution process was low. Additionally, officials of a Wave 1 filer explained that they distinguished between planning and writing the plan and noted that while the planning process had been beneficial, the resolution plan itself likely would not be useable in the event of failure.

In their 2015 public plan disclosures, the Wave 1 filers generally stated or indicated that they believed that their resolution plans would effectively resolve them within a reasonable time frame, without systemic disruption, and without taxpayer assistance. In addition, these companies identified in their public plans an array of actions they had taken or were in the process of undertaking to enable them to be resolved in an orderly manner under the Code. For example, actions taken by Wave 1 filers in response to the August 2014 feedback letters include the following.

Establish a rational and less complex legal structure that would take into account the best alignment of legal entities and business lines. To achieve this objective, at least 9 of the 11 filers stated in their public plans that they have taken one or more of the following actions: (1) reduced assets, businesses, and legal entities; (2) grouped legal entities with common features into separate ownership chains under common holding companies to simplify the spin-off of businesses in a resolution scenario; (3) exited certain lines of businesses or services; or (4) created separate retail and institutional broker-dealers. Through these changes, a company can improve its resolvability by reducing the effect of one subsidiary's failure on an affiliate and improving the ability to separate and transfer specific businesses within the company.

Develop a holding company structure that supports resolvability. To achieve this objective, at least six of the filers' top-tier holding companies do not issue new debt with an original maturity of less than 1 year, limit their derivatives transactions with third parties, or do not permit subsidiaries to guarantee the debt of the parent. Such actions

enhance the ability of a top-tier holding company to execute a single-point-of-entry strategy—that is, a strategy that allows the holding company to enter bankruptcy while its operating subsidiaries remain solvent.⁵⁷ These actions also enhance resolvability for other resolution strategies. By not issuing short-term debt, a company reduces the risk and effects of a potential run by its creditors in times of stress.⁵⁸ According to Federal Reserve officials, limiting a holding company's derivatives transactions reduces the probable effects on financial stability caused by third-party counterparties liquidating their collateral and seeking replacement trades with other counterparties. Not permitting subsidiaries to guarantee the parent company's debt eliminates the potential that subsidiaries will suffer significant losses or fail as a result of their obligation to perform on the guarantees. In

⁵⁷Under the single-point-of-entry strategy, the parent holding company would fail. Its assets, any short-term liabilities, and any secured obligations would then be transferred to a new bridge institution while its stock and long-term unsecured debt would be left behind in the old institution. This approach allows the subsidiaries carrying out critical services to remain open and operating and is similar to the approach that FDIC has developed for resolving companies under the Title II orderly liquidation authority.

⁵⁸On November 30, 2015, the Federal Reserve proposed a rule that would require the eight domestic Wave 1 filers and designated nonbanks to have a minimum amount of loss-absorbing instruments outstanding, including unsecured long-term debt and additional loss-absorbing capacity. According to the Federal Reserve, requiring these companies to hold sufficient amounts of long-term debt, which can be converted to equity during resolution, would provide a source of private capital to support the companies' critical operations during resolution, reducing the systemic impact of failure. For the proposed rule, see 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; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies, 80 Fed. Reg. 74926 (proposed Nov. 30, 2015).

Challenges in the Lehman Brothers Bankruptcy

On September 15, 2008, Lehman Brothers Holding, Inc. filed for bankruptcy in the largest bankruptcy proceeding ever filed, which triggered an intensification of the financial crisis. The company's resolution faced many problems, which Wave 1 filers' plans are intended to mitigate or eliminate. According to our review of the examiner's report and other literature, Lehman Brothers' challenges during bankruptcy included the following:

- The company consisted of thousands of entities that were organized by product line, not legal entity, so that fixed assets were intermingled.
- Lines of business were fragmented across numerous subsidiaries on three different continents.
- The filing created an "event of default" for its derivatives, resulting in the termination of more than 900,000 contracts.
- The lack of access to computer systems and personnel made it difficult to manage the wind down of the company after the broker-dealer had been sold.
- Intercompany financial information was shut down when a subsidiary entered insolvency, enormously affecting the company's ability to generate information, efficiently liquidate assets, and realize maximum value.
- Information was spread across 2,700 software applications across the globe and had to be retrieved from among thousands of accounts and cross-referenced for accuracy.

Source: GAO analysis of Lehman Brothers examiner's report and academic literature. | GAO-16-341

addition, in accordance with a Federal Reserve rule, the four foreign Wave 1 companies are establishing intermediate holding companies in the United States to, among other things, support resolvability.⁵⁹

Amend qualified financial contracts to address the risk of counterparty actions. To achieve this objective, at least eight of the Wave 1 filers have adhered to the International Swaps and Derivatives Association (ISDA) Stay Protocol. The ISDA Stay Protocol overrides a broad range of default rights, including termination of transactions, which are triggered by the parent or other affiliate entering resolution. The protocol serves to provide time to facilitate an orderly resolution of a company by imposing a stay on derivatives contracts and other qualified financial contracts, following the company's bankruptcy.

Demonstrate that shared services, supporting critical operations and core business lines—such as information technology services—would continue throughout the resolution process. To achieve this objective, at least 10 of the filers have taken one or more of the following actions: (1) developed employee retention plans to support critical operations and core business lines from stress to resolution; (2) placed critical shared services staff and assets in service subsidiaries that operate as stand-alone entities or subsidiaries of the company's bank; or (3) enhanced legal agreements between material entities to enable continued access to intellectual property and information technology in a resolution scenario. Through such structural, contractual, and other changes, a company can help ensure that it has continued access to critical shared services, information, and employees needed to execute its resolution strategy in an orderly and timely manner.

⁵⁹The Federal Reserve finalized a rule to require larger foreign banking organizations based overseas and having material U.S. operations to establish a U.S. intermediate holding company for consolidated supervision of their U.S. subsidiaries. A U.S. intermediate holding company is a top tier U.S. holding company that must be created by July 1, 2016, by a foreign banking organization with \$50 billion or more in U.S. nonbranch assets on July 1, 2015. By July 1, 2016, the U.S. intermediate holding company must hold the foreign banking organization's ownership interests in any U.S. bank holding company subsidiary, any depository institution subsidiary, and in U.S. subsidiaries representing 90 percent of the foreign banking organization's assets not held by the bank holding company or depository institution. But the foreign banking organization has until July 1, 2017, to transfer its ownership interests in any residual U.S. subsidiaries to the U.S. intermediate holding company. Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17240 (Mar. 27, 2014).

Demonstrate that operational capabilities—such as providing information on a timely basis—that are necessary for resolution are in place. To address this objective, at least 10 of the filers have taken steps to enhance their operational capabilities, such as by enhancing their (1) collateral management reporting to provide an enterprise-wide view of collateral holdings in each jurisdiction, by legal entity, and by line of business; or (2) management information system capabilities to produce, for example, information for each material legal entity. Access to timely information is important in helping to facilitate the resolution of large, complex companies with extensive, global operations. For example, these reporting capabilities would help the company to access critical information, such as the location of collateral or the identity of key employees or counterparties, and avoid disruptive aspects during resolution.

Companies' Views on Usefulness of Resolution Planning Varied by Wave

According to nearly all 10 of the Wave 1, Wave 2, and nonbank filers we interviewed, some of the steps they have taken to improve their resolvability also have improved aspects of their business operations. For example, one filer said that examining contracts to avoid internal contagion—the possibility that problems in one legal entity could spill over to other legal entities—had benefited the company's risk management. Another filer told us that the company had a better understanding of its subsidiaries, which is useful in running the company, because of the changes it had made to its management information systems in response to resolution planning. In its public plan, one company said that it had incorporated resolution planning into its business processes when considering whether it should engage in acquisitions or new products. Some companies also said that the resolution plan requirement had accelerated or expanded projects that already were underway to improve business operations. Other ancillary benefits cited by the filers include helping educate employees about the company and bringing more transparency to settlement risk and intraday liquidity.⁶⁰

In contrast to the larger filers, most of the 15 Wave 3 filers we interviewed told us that they had reaped few to no benefits from resolution planning, although several Wave 3 companies noted that the process had given them a better understanding of the company. Several of these companies

⁶⁰Intraday liquidity refers to funds that can be accessed during the business day, usually to make payments in real time.

said that because of their simple organizational structure, they did not make any material changes or improvements in response to resolution planning and therefore did not achieve many, if any, benefits. For example, one reduced-plan filer said that the resolution plan was simply another report that the company was required to file. In contrast, four Wave 3 companies we interviewed told us their companies had benefited from resolution planning. For example, one of these filers said that the company's new focus on legal entities helped it realize more operating efficiencies.

Regulators Expect to Use Plans to Enhance Their Supervision or Related Activities

FDIC and the Federal Reserve also expect to use resolution plans to enhance their supervision of large financial companies. In addition to helping ensure that such companies can be resolved in a rapid and orderly manner, the regulators detailed in the final rule's preamble three ways in which they planned to use the resolution plans:

- to support FDIC's planning for the exercise of its resolution authority pursuant to the resolution authority granted in Title II of the Dodd-Frank Act and the Federal Deposit Insurance Act,
- to assist the Federal Reserve in its supervisory efforts to ensure these companies operate in a safe and sound manner that does not pose risks to U.S. financial stability, and
- to enhance their understanding of the U.S. operations of foreign banks and improve efforts to develop a comprehensive and coordinated resolution strategy for a cross-border company.

Established in 2010, FDIC's Office of Complex Financial Institutions is responsible for, among other things, reviewing 165(d) resolution plans and preparing and implementing resolution plans to be used under FDIC's Title II authority. The office has been developing Title II resolution plans for the largest financial companies covered by Title II to ensure that FDIC is prepared to serve as receiver if any of these companies fail. Importantly, such plans may draw on the strategy and information elements in a company's 165(d) plans. According to FDIC officials, the regulator has tools that the companies do not have under the Code, such as access to temporary liquidity, but the 165(d) resolution plans have been helpful in planning for their resolution authority under Title II. The officials said that FDIC would need to address many of the same obstacles to rapid and orderly resolution that the companies are confronting in their plans. These obstacles include reducing the interconnectedness of material entities and improving the timely access to information necessary to resolution.

According to Federal Reserve officials, they are actively working to integrate resolution preparedness into their permanent supervisory work. For example, the regulator's Large Institution Supervision Coordinating Committee recently implemented the Supervisory Assessment of Recovery and Resolution Preparedness, a horizontal exercise that evaluates certain large companies' options to support recovery and progress in removing impediments to orderly resolution.⁶¹ As detailed in the August 2014 feedback letters, the actions the regulators expected the Wave 1 filers to take to improve their resolvability formed the basis for the horizontal exercise, according to Federal Reserve officials. They plan to undertake the exercise annually. Moreover, the officials said that the Supervisory Assessment of Recovery and Resolution Preparedness was the first step in incorporating resolution planning into their overall supervisory framework, and the Federal Reserve plans to continue to build on this effort.

As part of the regulators' enhanced understanding of foreign banks through resolution planning, FDIC and the Federal Reserve have undertaken efforts to promote cross-border coordination and cooperation on the resolution of global, systemically important banks. For example, FDIC and the Bank of England, in conjunction with prudential regulators in their respective jurisdictions, developed contingency plans for the failure of one of these companies with U.S. and United Kingdom operations. Similarly, FDIC and the European Commission have established a joint working group to focus on resolution and deposit insurance issues, and FDIC also has collaborated with regulators in Switzerland, Germany, and Japan to discuss cross-border issues and impediments affecting the resolution of these companies. As part of a mandate, the Federal Reserve established company-specific crisis management groups for each of the globally systemically important banks headquartered in the United States, which are co-hosted with the FDIC and comprised primarily of each company's prudential supervisors and resolution authorities in the United States and key foreign jurisdictions. According to a Federal Reserve official, these groups are working to mitigate potential cross-border obstacles to an orderly resolution of these

⁶¹The Federal Reserve created the Large Institution Supervision Coordinating Committee to fulfill its mandate under the Dodd-Frank Act for the supervision of SIFIs and to reorient its supervisory program in response to the supervisory lessons learned from the 2008 financial crisis. The committee is tasked with overseeing the supervision of the Wave 1 filers, designated nonbank filers, and one Wave 2 filer.

companies.⁶² Federal Reserve officials told us their participation in these discussions has been beneficial to help clarify confusion among foreign authorities about the difference between Title I and Title II resolution under the Dodd-Frank Act.

Whether the Plans Provide for a Rapid and Orderly Resolution Is Uncertain, and Plans for Wave 3 Companies May Not Be as Critical for Systemic Risk Reduction

Ability of Plans to Provide for an Orderly Resolution Is Uncertain

Although companies have made progress developing resolution plans to improve their resolvability under the Code, stakeholders and others have identified several factors that create uncertainty about the plans' ability to provide for a rapid and orderly resolution of the largest SIFIs. First, all but two of the domestic Wave 1 and Wave 2 companies use a single-point-of-entry strategy in their 2015 resolution plans, but this is a legally novel strategy. The foreign Wave 1 companies use a combination of closing and selling businesses in their plans, but prefer a single-point-of-entry strategy for their global resolution plans. According to their public plans, these companies generally intend to revisit this strategy for their U.S. resolution plans after establishing their intermediate holding companies. As of March 2016 and since the resolution plan rule was finalized, none of the plan filers has gone through bankruptcy and legally tested the single-point-of-entry strategy. Some companies and experts that we interviewed view single-point-of-entry as a promising strategy but acknowledge that its ability to facilitate a rapid and orderly resolution of a large SIFI is still uncertain. Some academics have noted that the strategy may work if the failure is limited to the U.S. holding company but may not work if a foreign subsidiary of the U.S. holding company is the source of the failure.

⁶²Michael S. Gibson, Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, statement before the Senate Subcommittee on National Security and International Trade and Senate Finance Committee on Banking, Housing, and Urban Affairs, 113th Cong., 1st sess., May 15, 2013.

Second, most of the 20 stakeholders we interviewed maintain that the Code may not be adequately designed to resolve large SIFIs. In prior reports, we have detailed a number of challenges the Code presents in relation to the resolution of these companies.⁶³

- Financial regulators that may be aware of potential systemic consequences, do not have standing to be heard before the court as a party of interest or the ability to file an involuntary bankruptcy petition against a financial company, including in response to balance-sheet insolvency.⁶⁴
- The Code does not provide for guaranteed funding for failing companies. Experts generally considered funding mechanisms essential for the orderly resolution of large financial companies. Title II provides FDIC with access to an emergency liquidity fund, but there is nothing comparable under the Code.
- Qualified financial contracts, such as derivatives and repurchase agreements, receive safe-harbor treatment under the Code. These contracts are not subject to the Code's automatic stay and can be liquidated, terminated, or accelerated in the event of insolvency. The ISDA Stay Protocol, as mentioned above, begins to address this issue and overrides a broad range of default rights through contractual changes. However, the ISDA Stay Protocol covers only companies that voluntarily agree to the protocol. In November 2014, 18 major global banks signed the protocol.⁶⁵
- The Code generally covers only the U.S. operations of companies and has limited provisions for cross-border cooperation between the bankruptcy courts and other jurisdictions.⁶⁶

⁶³GAO, *Bankruptcy: Complex Financial Institutions and International Coordination Pose Challenges*, [GAO-11-707](#) (Washington D.C.: July 19, 2011); [GAO-12-735](#); and [GAO-13-622](#).

⁶⁴As previously mentioned, the Commodity Futures Trading Commission and SEC are the only two financial regulators that have the express right to be heard and raise any issues in a case under Chapter 7 or Chapter 11, respectively.

⁶⁵In November 2015, ISDA announced a new version of the protocol called the ISDA 2015 Universal Resolution Stay Protocol that expanded the universe of financial contracts covered under the protocol to include securities financing transactions. At its launch, 21 financial groups had signed the new protocol.

⁶⁶As discussed above, the Financial Stability Board has proposed actions to address cross-border resolution issues, but reported in November 2015 that substantial work remains to make member jurisdictions' cross-border arrangements fully operational.

Individual Wave 3 Companies
May Not Pose Systemic Risk

Congress has considered revising the Code, especially in reference to addressing the treatment of qualified financial contracts.⁶⁷ The Hoover Institution resolution project group has also proposed a new chapter—Chapter 14—of the Code to address issues related to bankruptcies of large financial companies.⁶⁸

Finally, a resolution plan is not legally binding, including on a bankruptcy court or other resolution authority. According to a House of Representatives report, large financial companies are not required to file for bankruptcy and could have an incentive to wait to file to force FDIC to resolve the company under Title II.⁶⁹ Resolution planning also involves a broad array of assumptions about how other stakeholders will behave, including creditors and other counterparties who must accept the reorganization plan and judges who confirm the final plan. These assumptions introduce uncertainty, both for the companies in developing their plans and the regulators in determining whether they are not credible.

According to nearly all 15 of the Wave 3 companies and most of the 20 stakeholders we interviewed, resolution plans for most of the Wave 3 filers may not reduce systemic risk. Most stakeholders told us that the

⁶⁷Legislation filed in the 114th Congress treat the qualified financial contracts (QFC) in a few different manners. For example, in the Financial Institutions Bankruptcy Act of 2015 (H.R. 2947 in the House) and the Taxpayer Protection and Responsible Resolution Act (S. 1840 and S. 1841 in the Senate), which are generally specifically applicable to financial institutions, the rights to terminate, offset, or net QFCs would be stayed for up to 48 hours after bankruptcy filing. Additionally, the 21st Century Glass-Steagall Act of 2015 (S. 1709 in the Senate and H.R. 3054 in the House) contains a provision that would repeal all safe-harbor provisions for QFCs. None of these examples have been passed by both houses of Congress or signed into law as of March 2016.

⁶⁸The Hoover Institution resolution project group was established in 2009 under the auspices of the Working Group on Economic Policy at the Hoover Institution at Stanford University. The group revised its proposals in 2014. For its proposals, see Kenneth E. Scott and Thomas Jackson, eds., *Bankruptcy Not Bailout: A Special Chapter 14* (Stanford, Calif.: Hoover Institution Press, 2012) and Tom Jackson, *Building on Bankruptcy: A Revised Chapter 14 Proposal for the Recapitalization, Reorganization, or Liquidation of Large Financial Institutions*, draft report, the Resolution Project, Hoover Institution, Stanford University (Stanford, Calif.: July 9, 2014). Accessed on April 13, 2015, <http://www.hoover.org/research-teams/economic-policy-working-group/resolution-project>.

⁶⁹Republican Staff, Committee on Financial Services, Subcommittee on Oversight and Investigations, *Falling to End "Too Big to Fail": An Assessment of the Dodd-Frank Act Four Years Later* (July 2014).

failure of most Wave 3 companies would not threaten U.S. financial stability generally because of their limited size and complexity. As noted earlier, the regulators have exempted 90 Wave 3 filers from most plan information requirements, recognizing the limited benefit of requiring these companies to file a full resolution plan. At the same time, FDIC officials said that it was important for the regulators to continue to monitor these companies because of their potential to change in size or complexity that could pose systemic risk. Additionally, FDIC officials said that because the Wave 3 companies had a sizable collective presence and were interconnected with other companies in the U.S. financial system, their resolution plans could provide valuable information in understanding company operations and resolution strategies on an industry-wide basis. They explained they might explore other areas of potential risk related to these companies. Federal Reserve officials also noted that while most Wave 3 filers did not pose a systemic risk, there could be a situation in which they did—for instance, if all companies in a region experienced financial stress at the same time.

A Federal Reserve Governor and some members of Congress have questioned the \$50 billion threshold for the resolution planning requirement and other enhanced prudential standards under the Dodd-Frank Act. In a 2014 speech, a Federal Reserve Governor said that he favored increasing the asset threshold for companies that fall under the resolution plan requirement, because the failure of most of these companies would not produce considerable negative effects on the financial system.⁷⁰ In addition, Congress is considering raising the automatic SIFI threshold from \$50 billion or more in total assets to \$500 billion or more in total assets.⁷¹ For bank holding companies with \$50 billion to \$500 billion, the bill would create a multistep process to determine if a bank holding company should be designated as systemically important and required to abide by the additional rules to which those bank holding companies are subject, such as the resolution plans. The systemically important determination is based on a foundational determination that material financial distress of that entity could pose a threat to U.S.

⁷⁰Daniel K. Tarullo, Member, Board of Governors of the Federal Reserve System, *Rethinking the Aims of Prudential Regulations*, remarks at the Federal Reserve Bank of Chicago Bank Structure Conference, Chicago, May 8, 2014.

⁷¹For example, Financial Regulatory Improvement Act of 2015, S.1484, 114th Cong. § 201, 202 (2015). The monetary amounts would be adjusted annually, based on inflation.

financial stability. This change could eliminate the resolution plan requirement for some Wave 3 companies, but the extent to which this could happen cannot be determined because the designation process involves regulatory and FSOC discretion.

We found that U.S. bank holding companies that are Wave 3 filers were typically smaller, less interconnected, and less complex than those that are Wave 1 and 2 filers.⁷² To assess the extent to which filers in different waves have the potential to adversely affect the financial system or the broader economy if they become distressed, we constructed indicators of filers' size, interconnectedness, and complexity as of the second quarter of 2015.⁷³ Our indicator of size is a filer's total assets. Our indicators of interconnectedness are the gross notional amounts of credit default swaps outstanding for which a filer is the reference entity and a filer's total debt outstanding, excluding deposits. Our indicators of complexity are the number of a filer's legal entities, the number of a filer's foreign legal entities, and the number of foreign countries in which a filer's foreign legal entities are located. We then compared the median values of the indicators for domestic Wave 1 and 2 filers to the median values for domestic Wave 3 filers (see table 5). These indicators suggest that domestic Wave 3 companies have less potential to adversely affect the financial system or broader economy if they become distressed.

⁷²Our analysis excludes Wave 1, 2, and 3 filers that are (1) branches and agencies of foreign banks; and (2) U.S. companies but are not bank holding companies, such as institutions whose material financial distress or activities the Financial Stability Oversight Council determines could pose a threat to U.S. financial stability and therefore should be subject to Federal Reserve supervision and enhanced prudential standards.

⁷³These indicators are the same as the indicators we constructed to assess the potential for U.S. bank holding companies with assets of \$50 billion or more to adversely affect the financial system or the broader economy if they become distressed. See GAO, *Dodd-Frank Regulations: Impacts on Community Banks, Credit Unions and Systemically Important Institutions*, [GAO-16-169](#) (Washington D.C.: Dec. 30, 2015).

Table 5: Indicators of Size, Interconnectedness, and Complexity for U.S. Bank Systemically Important Financial Institutions as of 2nd Quarter of 2015 (Total Assets, Credit Default Swap Gross Notional Amounts Outstanding, and Total Debt Outstanding in Billions of Dollars)

	Category	Domestic Wave 1 and 2	Domestic Wave 3
Size	Median assets ^a	\$1,290.27	\$131.81
Interconnectedness ^b	Median gross notional amounts of credit default swaps outstanding for which the company is the reference entity ^c	\$31.36	\$10.15
	Median total debt outstanding (excluding deposits)	\$645.46	\$21.80
Complexity	Median numbers of legal entities	1,496	82
	Median numbers of foreign legal entities	577	12
	Median numbers of countries in which foreign legal entities are located	50	6

Source: GAO analysis of data from Bloomberg and the Board of Governors of the Federal Reserve System. | GAO-16-341

Notes: Our analysis excludes Wave 1, 2, and 3 filers that are (1) branches and agencies of foreign banks; and (2) U.S. companies but are not bank holding companies, such as institutions whose material financial distress or activities the Financial Stability Oversight Council determines could pose a threat to U.S. financial stability and therefore should be subject to Federal Reserve supervision and enhanced prudential standards. To calculate the median measures, we calculated the relevant indicator measure for each bank holding company, and then reported the median for domestic Wave 1 and 2 companies or the median for domestic Wave 3 companies.

^aTotal assets includes both domestic and foreign assets.

^bThe gross notional amounts of credit default swaps outstanding for which the company is the reference entity and total debt outstanding are both indicators of interconnectedness, but they are not the only possible indicators of interconnectedness.

^cOnly companies that are single-name reference entities for credit default swap contracts are included in the data for this row. Seven domestic Wave 1 and 2 companies are included, and three domestic Wave 3 companies are included.

While our approach allows us to compare indicators of size, interconnectedness, and complexity for domestic Wave 1 and 2 filers to those for domestic Wave 3 filers, our indicators have limitations and should be interpreted with caution. For example, our indicator of size does not include off-balance-sheet activities and thus may understate the amount of financial services or intermediation a filer provides. In addition, our indicators of interconnectedness may not reflect all of the channels through which a filer could affect other parts of the financial system. Similarly, our indicators of complexity may not capture all relevant types of complexity. Nevertheless, differences in our indicators provide important context regarding the relative potential for filers in different waves to adversely affect the financial system or the broader economy if they become distressed.

Stakeholders Believe the Public Plans Are of Limited Use and Raised Concerns about the Lack of Transparency from the Regulators

As previously mentioned, the resolution plans include a public and private section, and the public sections generally have been of limited use to stakeholders, but FDIC and the Federal Reserve have taken action to improve their usefulness. Under the final rule, a company's resolution plan must have a public section that includes a high-level description of the resolution strategy, information on material entities and core business lines, and information helpful in understanding how the resolution plan would be executed. According to FDIC officials, market participants should be able to understand the progress, or lack of progress, companies are making towards resolution from the public plans.

However, stakeholders generally did not find the initial public sections to be useful. For example, nearly all nine of the academics and credit rating agencies that we interviewed told us that the 2012 through 2014 public sections were not informative—noting that the information was limited or already publicly available in other sources. Similarly, a 2013 study analyzing the 2012 public sections of the 11 Wave 1 filers found that the public disclosures did not facilitate market discipline and, in some cases, did not increase public understanding of the financial institution or its business.⁷⁴ In addition, most of the companies we interviewed had received few or no comments from shareholders or creditors on their resolution plan. In our review of transcripts from investor conferences held by five of the Wave 1 and 2 filers between August 2014 and June 2015, we found that the companies generally did not discuss resolution plans in their presentations, and three securities analysts raised questions about the implementation status of resolution plans, indicating that investors generally did not use the public sections of resolution plans in their evaluations of these companies.

In a February 2015 written communication to the Wave 1 companies and the Wave 2 company that filed in July 2015, the regulators jointly provided new guidance that directed the companies to provide more detailed information in their 2015 public plan sections. These areas included more detail on each material entity, the strategy for resolving each material entity in a manner that mitigates systemic risk, a high-level description of what the company would look like following resolution, and the steps taken to improve resolvability under the Code. After the release of the

⁷⁴Jacopo Carmassi and Richard John Herring, "Living Wills and Cross-border Resolution of Systemically Important Banks," *Journal of Financial Economic Policy*, vol. 5, no. 4, (2013): 361 – 387.

2015 public plans, we followed up with stakeholders who had commented on the previous public plans to obtain their views on the 2015 public plans. Most of these stakeholders told us that the 2015 public plans were an improvement over previous years' plans but that additional information would be helpful. For example, improvements included additional information on a company's organizational structure and intergroup funding. Suggestions for improvement included adding a consolidated balance sheet and having consistent components to facilitate analysis across multiple companies. One Wave 1 company said that because the 2015 public portion of the plan contained more detailed information than previous years, it was prepared for more questions from shareholders but did not experience any increase in inquiries or comments about the plan.

FDIC performed a horizontal review of the July 2015 public plans to see that they met the new requirements in the February 2015 joint communication, according to FDIC officials. FDIC officials said that some companies did a good job of showing items visually and that they planned to capture best practices and give additional feedback for the next filing. The officials told us that the regulators also directed the three foreign Wave 2 companies and nonbank filers to disclose additional information in the public sections of their December 2015 plans. However, they did not give such instructions to Wave 3 companies.

In addition to their concerns about the public plan sections, several of the 20 stakeholders we interviewed raised concerns about the regulators' lack of transparency about their review processes. As previously discussed, the regulators have developed and revised their approaches for analyzing and assessing the plans but have publicly disclosed limited information about their reviews. Two academics whom we interviewed told us that after the failure of financial regulators during the 2008 financial crisis, the public was being asked to put too much trust in the regulators without any transparency. A bankruptcy attorney provided another perspective on transparency and said that everyone would benefit if the regulators were more transparent about their standards and allowed the companies to talk among themselves to solve impediments to resolution that were common to multiple companies.

FDIC and the Federal Reserve are considering publicly providing more information about their resolution plan reviews. Federal Reserve officials told us that while they were continuously evaluating the release of more plan information into the public domain, they did not have a time frame for reaching a decision on this issue. FDIC officials also told us that the regulator was considering disclosing more information about its review

process but had not yet reached the point of sharing such information with the public.

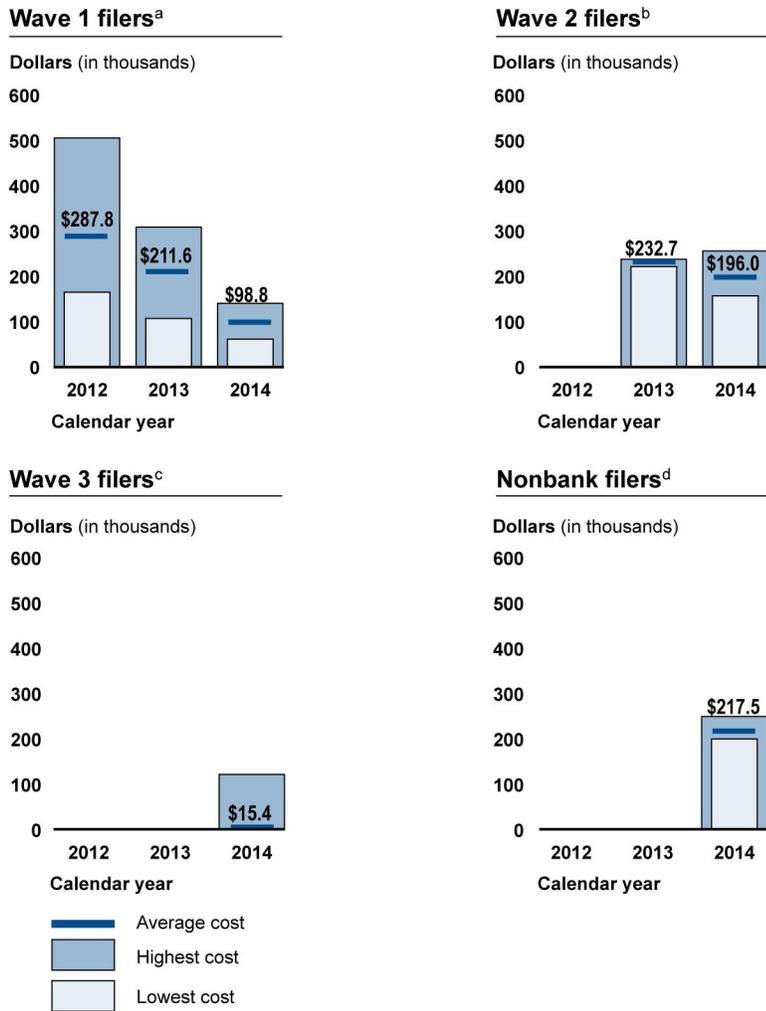
Resolution Plan Rule Imposes Costs on the Regulators and Companies

Regulator Costs

FDIC and the Federal Reserve have incurred costs in their annual review of each company's resolution plan but differ in the extent to which they have tracked these costs. Staff resources are one of the most significant costs. According to FDIC data, the regulator spent around \$3.2 million, \$3.3 million, and \$4.2 million on staff payroll related to resolution planning in calendar years 2012, 2013, and 2014, respectively.⁷⁵ As shown in figure 5, FDIC incurred the highest average payroll cost per company in 2012 for activities related to Wave 1 filers, which generally are the largest or most complex companies. Figure 5 also shows that FDIC's average payroll cost related to Wave 1 and 2 filers declined in the subsequent year. However, as discussed above, FDIC (like the Federal Reserve) did an abbreviated review of the Wave 1 filers' 2014 plans, resulting in a much lower average cost in 2014. FDIC officials told us that they expected the resources required to review the resolution plans for Wave 1 companies to increase in 2015, because the plans contain more detailed information to be reviewed, such as project plans. FDIC officials also told us that the regulator assigned regional and division staff on a short-term basis to review plans submitted by Wave 3 filers to reduce costs by avoiding hiring additional staff.

⁷⁵We excluded expenses for companies that did not file a 165(d) resolution plan. Additionally, FDIC's payroll cost data included only 108 of the 116 Wave 3 banks that filed a resolution plan in December 2013. According to FDIC officials, the absence of the remainder of the Wave 3 filers indicates that not all activities had been properly coded. Despite FDIC's acknowledgment of some minor coding errors, we believe our use of the data provides a reasonably accurate estimate to illustrate the trends in FDIC's spending on resolution plans.

Figure 5: Federal Deposit Insurance Corporation (FDIC) Payroll Costs Related to Resolution Planning per Company by Wave 1, 2, 3, and Designated Nonbank Filers, Calendar Years 2012 through 2014



Source: GAO analysis of FDIC payroll data. | GAO-16-341

Note: The cost data also include some costs related to FDIC’s review of insured depository institution plans of banks that also file a 165(d) resolution plan. The figure only includes payroll costs for years in which FDIC was reviewing plans filed by the companies in that wave. FDIC incurred additional payroll costs of about \$3,000 for 1 Wave 2 company in 2012, about \$57,000 for 14 Wave 3 companies in 2013, and about \$3,000 for 4 nonbank filers in 2013.

^aWave 1 filers include 11 companies that filed their first plans in July 2012.

^bWave 2 filers include 4 companies that filed their first plans in July 2013.

^cWave 3 filers include 116 companies that filed their first plans in December 2013, but FDIC did not provide data for all of them. Our statistics capture the data for 108 companies. The average is calculated using the total number of companies included in the data (108) not the total number of Wave 3 filers (116).

^dNonbank filers include 3 companies that filed their first plans in July 2014. A fourth nonbank financial company became subject to the resolution plan requirement in December 2014, but is not included in the figure because it did not file a resolution plan in 2014. A court order on March 30, 2016 rescinded the fourth nonbank financial company's designation by the Financial Stability Oversight Council (FSOC) and therefore, the requirement to file a resolution plan. However, as of April 4, 2016, the court's decision is open for appeal by FSOC.

In contrast, the Federal Reserve tracks the number of staff assigned to review resolution plans but does not track staffing costs specific to resolution plan review. According to Federal Reserve officials, instead of having a dedicated staff working on resolution plan review, the regulator enlists existing staff from various parts of the Federal Reserve System to provide appropriate expertise. For its review of the 2015 plans submitted by the 11 Wave 1 filers, the Federal Reserve assigned 144 staff. Of these staff, 95 of them (66 percent) were from the Federal Reserve banks: 67 staff were from the Federal Reserve Bank of New York, and 28 staff were from the Federal Reserve Banks of Boston, Chicago, Richmond, and San Francisco. The remaining 49 staff were from the Federal Reserve Board. Federal Reserve officials told us that staffing costs have been consistent each year, but work hours have decreased as staff have become more efficient at reviewing plans.

In addition to payroll costs, FDIC has incurred other costs related to resolution planning. For example, in 2012 FDIC paid a consulting company about \$278,000, which FDIC officials said provided them with insights on the obstacles and challenges that Lehman Brothers faced during its bankruptcy. FDIC also incurred approximately \$827,000, \$326,000, and \$10,000 in travel costs in calendar year 2012, 2013, and 2014, respectively.⁷⁶ FDIC incurred the majority of these travel costs in connection to plans submitted by Wave 1 filers. The Federal Reserve did not track travel costs specific to resolution plan review, but Federal Reserve officials told us that travel costs had increased slightly because they increased the number of meetings with Wave 1 companies in New York City prior to the July 2015 filings.

Company Costs

All of the 25 companies we interviewed said that they had incurred compliance and other costs to prepare their resolution plans, but they did not measure costs the same way. Of the nine Wave 1, Wave 2, and

⁷⁶According to FDIC officials, most of the early travel costs were a result of using temporary staff from other FDIC regions after enactment of the statute and creation of the Office of Complex Financial Institutions.

nonbank filers that provided us with estimates, the cost of preparing resolution plans from 2012 through 2015 ranged from about \$500,000 to about \$105 million per plan. However, these estimates varied significantly because the companies used different approaches to estimate costs and did not always include the same cost components in their estimates. Officials from the Wave 1, Wave 2, and nonbank filers we interviewed largely separated their resolution plan costs into two categories: (1) internal staff and (2) external consultants and attorneys, with some filers also including the costs of projects to enhance their resolution capabilities. For the low-end cost estimate, the company provided us only with data on the fees it paid to external consultants and attorneys. The high-end estimate included the cost of internal staff, external consultants and attorneys, and capabilities projects.

According to the Wave 1, Wave 2, and nonbank filers we interviewed, preparation of the resolution plans requires considerable internal staff resources. Most of these companies have created a team of full-time employees dedicated to resolution planning—ranging from 3 professionals to 30 professionals. At the same time, many other staff from across the company, such as business line managers and support managers from legal, treasury, and technology departments and senior management and board members, are involved in the preparation or review of the plan. Several companies estimated that hundreds of employees worked at least part-time on their resolution plan. The number of work hours spent annually on resolution planning varied among the companies providing an estimate—ranging from 55,000 work hours to about 1 million work hours. The work hours varied, in part because like the cost estimates, companies used different methods to estimate work hours. For example, one company also included work hours for its recovery and resolution plans in other countries in its estimate.

Nearly all of the Wave 1, Wave 2, and nonbank filers we interviewed had hired outside consultants or attorneys to help them prepare their resolution plans, but such costs varied across and within companies. Several officials told us that they relied heavily on outside experts for their initial plans, because they were unsure of how to comply with the rule or did not have the in-house expertise. The amount of consulting or attorney fees paid by the companies in a given year ranged from around \$500,000 to \$25 million. Two companies' officials told us that their use of external experts had decreased as their companies built up their in-house expertise, but officials of another company told us that their company spent more on external consultants for its 2015 plan because it was undertaking major infrastructure initiatives.

According to most of the Wave 1, Wave 2, and nonbank filers we interviewed, their resolution planning costs are increasing, in part because of the projects they are undertaking to enhance their capabilities to execute the resolution plan. As discussed, such projects include enhancing collateral management reporting and management information systems. For example, one company estimated that it spent about \$50 million on capability enhancements and expected these costs to triple in the next 2 to 3 years. Officials from two other companies also told us they expected their internal staff or external costs to increase dramatically as they implemented capability-enhancement projects.

According to officials from FDIC and the Federal Reserve, the regulators have not considered actions to reduce the compliance costs for these filers because companies make their own decisions on how to comply with the resolution plan rule based on their structure. FDIC officials said that the regulator was not requiring companies to choose a specific model for responding to the rule. Federal Reserve officials said that resolution planning was a substantial undertaking for many of these companies because they had not considered resolvability before and did not have a system in place to gather the relevant information. FDIC officials said companies should have had some of these systems in place before the 2008 financial crisis, but the crisis revealed that they often did not.

According to most of the Wave 1, Wave 2, and nonbank filers we interviewed, the resources devoted to resolution planning have had an opportunity cost but have not yet had a clearly measurable effect on their business or competitiveness. Half of these companies said that while it was too soon to know whether the resolution plan requirement would have any negative effects on their competitiveness, they were concerned about that potential impact. In contrast, two other companies said that compliance did not put them at a disadvantage, with one explaining that its competitors had the same requirements. Additionally, most of these companies said that they had not had to make many, if any, cost adjustments in other areas due to resolution planning. For example, one Wave 1 filer stated that resolution plan costs are not a large percentage expense for the company overall, representing approximately 2 percent of its initiative budget. Nearly all said that complying with the resolution plan rule was on par with or less costly than other prudential regulations, such

as the Comprehensive Capital Analysis and Review (stress testing), Basel III capital requirements, and Volcker rule.⁷⁷

Of the 13 Wave 3 filers that provided us with cost estimates, the cost of preparing their initial resolution plan varied widely. Four companies estimated that they spent less than \$400,000 to prepare their initial tailored plans, with two estimating their costs to be \$35,000 and \$15,000. For the other companies that provided estimates, their costs ranged from about \$1 million to about \$6 million, with no consistent difference between companies filing a full or tailored plan. Like the larger filers, nearly all of these Wave 3 filers hired external consultants or attorneys to help them prepare their initial plans, with total fees ranging from \$15,000 to \$3.5 million. But nearly all told us that they reduced their use of external experts for their subsequent plans and that the cost of preparing their subsequent plans declined. Additionally, the number of internal work hours associated with resolution planning varied considerably among the Wave 3 companies. Of the companies that provided estimates, two estimated over 10,000 work hours, three estimated 1,000 to 6,000 work hours, and four estimated less than 1,000 work hours to complete the resolution plan. Cost estimates varied, in part because companies used different approaches to measure costs.

Similar to the larger companies, several of the Wave 3 filers we interviewed said that the time and resources dedicated to resolution planning represent an opportunity cost. Without the resolution plan requirement, the companies could expend these resources and staff time

⁷⁷The Federal Reserve conducts an annual Comprehensive Capital Analysis and Review (stress testing) to assess whether bank holding companies with more than \$50 billion in total consolidated assets have sufficient capital to continue operations throughout times of economic and financial stress and that they have robust, forward-looking capital planning processes that account for their unique risks. The Basel III framework is a comprehensive set of reforms to strengthen global capital and liquidity standards. In 2013, the U.S. federal banking regulators adopted regulations to implement many aspects of the Basel III capital framework that apply to banks, savings associations, and top-tier U.S. bank and savings and loan holding companies (with certain exceptions). Finally, the final rule implementing Section 619 of the Dodd-Frank Act, commonly known as the Volcker rule, was adopted by the Federal Reserve, FDIC, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission on December 10, 2013. The Volcker final rule prohibits insured depository institutions and companies affiliated with insured depository institutions, from engaging in short-term proprietary trading of certain securities, derivatives, commodity futures, and options on those instruments for their own accounts. It also imposes limits on banking entities' investments in hedge funds or private equity funds, subject to certain exceptions.

on revenue-generating activities, according to the companies. However, most of these companies said that resolution planning had not had a measurable effect on their business or competitiveness, and several said that they generally had not made cost adjustments in other areas due to resolution planning. In comparison to other regulations, several of the Wave 3 companies said that complying with the resolution plan rule was on par with or less costly than the Comprehensive Capital Analysis and Review (stress testing), Basel III capital requirements, and the Volcker rule.

According to Federal Reserve officials, the regulators helped to reduce the burden on these companies by giving some the option of filing tailored plans and exempting others from most of the informational requirements. As previously mentioned, the regulators have exempted 90 Wave 3 filers from most plan information requirements. However, FDIC officials said that this exemption was related more closely to the companies' lower levels of complexity and effect on U.S. financial stability than it was to reducing the companies' costs. The regulators are considering ways to reduce compliance costs for these filers while still obtaining the necessary information, according to officials from both FDIC and the Federal Reserve.

Conclusions

FDIC and the Federal Reserve have made progress implementing the Dodd-Frank Act's framework for resolution planning for large financial institutions. For the smaller financial companies, the regulators have taken steps to reduce the burden of planning under the resolution plan rule, including by significantly reducing the plan informational requirements for the majority of such filers. However, weaknesses remain in the following areas:

- **Disclosure and transparency.** The regulators have not disclosed their assessment frameworks and criteria for confidentiality reasons, which limits the potential for companies to better achieve the Dodd-Frank Act's objective. For example, a better understanding of the regulators' assessment frameworks could give the larger companies a more complete understanding of the key factors that can lead to plan deficiencies. Likewise, disclosure of the regulators' criteria could help motivate smaller companies to reduce their systemic risk and understand how they might qualify to file reduced plans. Greater disclosure and transparency also could enhance the accountability of the regulators' decisions by, among other things, better informing the public on how the regulators are assessing resolution plans and

reducing plan requirements for smaller companies, thereby bolstering public and market confidence.

- **Timeliness of guidance and feedback.** FDIC and the Federal Reserve have taken about 9 months on average to review resolution plans and jointly provide companies with guidance or feedback. Because the resolution plan rule requires companies to file plans annually, some companies may not have sufficient time to fully incorporate such guidance or feedback into their subsequent plans and obtain their board of directors' approval of the plans by the submission deadline. For example, some companies completed and submitted their 2014 plans before receiving the regulators' feedback on their previous year's plans, resulting in a less effective and efficient use of time and resources for both the companies and the regulators.

Recommendations for Executive Action

We are making the following three recommendations:

To enhance disclosure and strengthen transparency and accountability, FDIC and the Federal Reserve should take the following actions:

- Publicly disclose information about their respective frameworks for assessing and recommending to their boards whether a plan is not credible or would not facilitate an orderly resolution under the Code. For example, the regulators could disclose aspects of their assessment frameworks as a supplement to their initial guidance publicly issued in April 2013.
- Publicly disclose aspects of their criteria used to decide which Wave 3 companies are allowed to file a reduced plan.

In addition, to strengthen the efficiency and effectiveness of resolution planning, FDIC and the Federal Reserve should revise the resolution plan rule's annual filing requirement to provide sufficient time not only for the regulators to complete their plan reviews and provide feedback but also for companies to address and incorporate regulators' feedback in subsequent plan filings. For example, the regulators could extend the annual filing cycle to every 2 years or provide companies at least 6 months from the date of feedback or guidance to file another plan.

Agency Comments

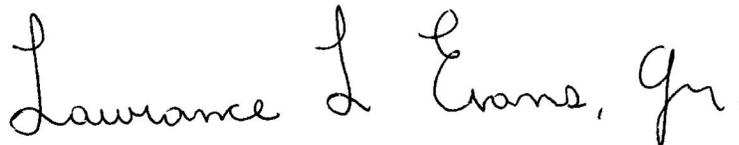
We provided a draft of this report to FDIC and the Federal Reserve for review and comment. In their joint written comments (reproduced in appendix II), the regulators concurred with our findings and recommendations regarding transparency and timeliness. They stated that they are committed to enhancing public disclosure around resolution

planning and plan to make public the information needed to understand their frameworks. They also stated that they intend to work to find the most appropriate way to ensure that sufficient time is provided for the regulators to complete their reviews and for plan filers to incorporate the regulators' feedback in their subsequent plan filings. FDIC and the Federal Reserve also provided technical comments on the draft report, which we incorporated as appropriate.

We are sending copies of this report to the House Committee on Financial Services, FDIC, and the Federal Reserve. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or evansl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in cursive script that reads "Lawrence L. Evans, Jr.".

Lawrance L. Evans, Jr.
Director, Financial Markets and
Community Investment

Appendix I: Objectives, Scope, and Methodology

Our objectives were to examine (1) the processes used by the Federal Deposit Insurance Corporation (FDIC) and Board of Governors of the Federal Reserve System (Federal Reserve) (jointly, the regulators) to review resolution plans; (2) the extent to which the regulators have determined whether resolution plans are not credible or would not facilitate an orderly resolution under the Bankruptcy Code; and (3) stakeholder views on the usefulness of the resolution plans to companies and other stakeholders.

To examine the process used by the regulators to review resolution plans and the extent to which the regulators have determined whether resolution plans are not credible or would not facilitate an orderly resolution under the Code, we reviewed Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the final resolution plan rule, and FDIC's and the Federal Reserve's policies and procedures. We analyzed the regulators' internal guidance, training documents, and workpapers related to plan reviews conducted for plan years 2012 through 2014, guidance and feedback provided to the companies, and FDIC's and the Federal Reserve's Board meeting minutes where credibility determinations were discussed.

To examine what is known about the usefulness of the resolution plans to companies and other stakeholders, we selected a sample of 25 companies that filed a resolution plan in 2014 and interviewed them to obtain their views on the benefits, costs, and challenges associated with the plans. We selected 10 of these companies from the 18 Wave 1, Wave 2, and designated nonbank filers, and 15 from the 120 Wave 3 filers. We grouped the Wave 1, Wave 2, and designated nonbank filers together because they generally represent the largest filers and FDIC and the Federal Reserve generally use the same processes for reviewing these companies' plans. From this group, we systematically selected and attempted to contact 10 filers. We were able to conduct interviews with 9 of these companies, and we supplemented the sample with 1 additional filer that had been interviewed prior to the sample selection. For the Wave 3 filers, FDIC provided us with a breakdown of the companies by the type of plan they were allowed to file in 2014: (1) 30 companies that filed a full resolution plan, (2) 30 companies that were approved to file a tailored plan, and (3) 60 companies that were approved to file a reduced plan. Within these categories, we randomly selected 4 full plan filers, 3 tailored plan filers, and 3 reduced plan filers. In two cases, officials from the sampled company declined to participate, so we randomly selected a substitute from the same plan type category. We also supplemented the sample of Wave 3 filers with 1 full plan filer and 3 tailored plan filers that

had been interviewed prior to the sample selection and 1 full plan filer that requested to be included for a total sample of 15 Wave 3 filers. The information collected from this sample of companies cannot be generalized to the larger population of all companies that are required to file a resolution plan. These interviews were also used in our analysis for the second objective.

In addition, we judgmentally selected a sample of 20 stakeholders that we interviewed to obtain their views on the usefulness of the resolution plans. We selected stakeholders who (1) had subject matter expertise, such as academics and industry groups; (2) had experience advising companies on their resolution plans, such as bankruptcy attorneys and consultants; or (3) used the plans in their work, such as credit ratings agencies, investors, and creditors. To characterize companies' and stakeholders' views throughout the report, we consistently defined modifiers (e.g. "nearly all") to quantify each group of interviewees' views as follows: "all" represents 100 percent of the group, "nearly all" represents 80 percent to 99 percent of the group, "most" represents 60 percent to 79 percent of the group, "several" represents 40 percent to 59 percent of the group, and "some" represents 20 percent to 39 percent of the group. While the percentage of the group of interviews remains consistent, the number of interviews each modifier represents differs based on the number of interviews in that grouping: 10 Wave 1, Wave 2, and designated nonbank filers; 15 Wave 3 filers; and 20 stakeholders. Table 6 provides the number of interviews in each modifier for each group of interviews.

Table 6: Definition of Modifiers by Interview Grouping

Modifier	Percent of interviews	Number of interviews		
		Wave 1, Wave 2, and designated nonbank filers	Wave 3 filers	Stakeholders
All	100%	10	15	20
Nearly all	80-99%	8-9	12-14	16-19
Most	60-79%	6-7	9-11	12-15
Several	40-59%	4-5	6-8	8-11
Some	20-39%	2-3	3-5	4-7

Source: GAO. | GAO-16-341

Furthermore, we met with officials from the Securities and Exchange Commission, the Securities Investor Protection Corporation, the National Association of Insurance Commissioners, and two state insurance departments about their involvement with resolution plan reviews. We

also analyzed the 2015 public plans of all Wave 1 filers and 1 Wave 2 filer and the 2014 public plans of all Wave 3 filers and 2 designated nonbank filers, and reviewed government, academic, and other studies on resolution plans' implementation and usefulness.¹

For our discussion of the extent to which filers have the potential to adversely affect the financial system or the broader economy if they become distressed, we used data from Bloomberg and the Federal Reserve as of the second quarter of 2015 to construct indicators of filers' size, interconnectedness, and complexity. Our indicator of size is a filer's total assets. Our indicators of interconnectedness are the gross notional amounts of credit default swaps outstanding for which a filer is the reference entity and a filer's total debt outstanding, excluding deposits. Our indicators of complexity are the number of a filer's legal entities, the number of a filer's foreign legal entities, and the number of foreign countries in which a filer's foreign legal entities are located. We then compared the median values of the indicators for domestic Wave 1 and 2 filers to the median values for domestic Wave 3 filers. We assessed the reliability of the data from Bloomberg for the purpose of constructing our indicators of size and interconnectedness by reviewing relevant documentation and by electronically testing the data for outliers, missing values, and obvious errors, and we found them to be sufficiently reliable for this purpose. We assessed the reliability of data from the Federal Reserve for the purpose of constructing our indicators of complexity by corresponding with Federal Reserve officials, and we found them to be sufficiently reliable for this purpose.

For our analysis of FDIC's payroll expense data, we connected the companies for which FDIC reported resolution planning-related expenses with the parent companies that are required to file resolution plans under Section 165(d) of the Dodd-Frank Act. We then sorted the parent companies by filing wave to identify the average, minimum, and maximum payroll costs that FDIC staff incurred for each filing wave by calendar year (2012 through 2014). FDIC's data included 11 Wave 1 filers that filed their first plans in July 2012, 4 Wave 2 filers that filed their first plans in July 2013, 108 Wave 3 filers that filed their first plans in December 2013, and 3 nonbank filers that filed their first plans in July 2014. According to FDIC

¹At the time of our review, the 2014 public plans of Wave 3 and designated nonbank filers were the most recent available plans. These companies—as well as three of the four Wave 2 companies—filed their 2015 plans on December 31, 2015.

officials, the absence of the remaining 8 of 116 Wave 3 filers from December 2013 indicates that not all activities had been properly coded. We excluded expenses for companies that did not file a 165(d) resolution plan. Despite FDIC's acknowledgment of some minor coding errors, we believe our use of the data provides a reasonably accurate estimate to illustrate the trends in the regulator's spending on resolution plans.

In addition, we met with officials from the offices of the FDIC and Federal Reserve that are responsible for reviewing resolution plans, including FDIC's Office of Complex Financial Institutions and Division of Risk Management Supervision, the Federal Reserve's Division of Banking Supervision and Regulation, and the Federal Reserve Bank of New York. We discussed their policies and procedures related to plan reviews as well as their views on plans' usefulness.

We conducted this performance audit from November 2014 to April 2016 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.

Appendix II: Comments from the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System



March 14, 2016

Lawrence L. Evans, Jr.
Director, Financial Markets and Community Investment
Government Accountability Office
441 G St. NW
Washington, D.C. 20548

Dear Mr. Evans:

The Board of Governors of the Federal Reserve System ("Federal Reserve") and the Federal Deposit Insurance Corporation ("FDIC", and, together with the Federal Reserve, "the Agencies") appreciate the opportunity to review the GAO draft report, *Resolution Plans: Regulators Have Refined Their Review Processes but Could Improve Transparency and Timeliness* ("Report") (GAO-16-341).

The Report acknowledges the Agencies' progress in implementing the "Resolution Plan" requirements of Section 165 (d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, the Report acknowledges the Agencies' collaborative plan review process and coordinated approach to communicating with plan filers. In addition, the Report recognizes the Agencies' ongoing work to improve the public portion of resolution plans – and the steps the Agencies have taken to reduce the filing requirements on the majority of smaller filers.

The Agencies agree with the Report's three recommendations regarding transparency and timeliness. The Report suggests that the Agencies publicly disclose information about their respective frameworks for assessing whether a plan is not credible or would not facilitate an orderly resolution under the Bankruptcy Code. The Agencies are committed to enhancing public disclosure around resolution planning and the Agencies plan to make public the information needed to understand their frameworks.

Finally, the Report recommends that the Agencies revise the annual filing requirement to provide sufficient time for the Agencies to complete their reviews and for plan filers to incorporate the Agencies' feedback in subsequent plan filings. The Agencies agree with this recommendation and will work to find the most appropriate way to ensure that sufficient time is provided.

**Appendix II: Comments from the Federal
Deposit Insurance Corporation and the Board
of Governors of the Federal Reserve System**

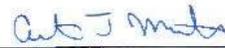
The Agencies are committed to the goals of transparency and timeliness in the resolution planning process. As the Agencies prepare to provide feedback to firms on their 2015 resolution plans, we will endeavor to continue to make progress toward these goals.

Sincerely,



Michael S. Gibson
Director
Banking Supervision and Regulation
Board of Governors of the
Federal Reserve System

Sincerely,



Arthur J. Murton
Director
Office of Complex Financial Institutions
Federal Deposit Insurance Corporation

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Lawrance L. Evans, Jr., (202) 512-8678, evansl@gao.gov

Staff Acknowledgments

In addition to the contact named above, Richard Tsuhara (Assistant Director), Lisa Reynolds (Analyst-in-Charge), Nancy Barry, Katherine Carter, Emily Chalmers, William Chatlos, Risto Laboski, Courtney LaFountain, Kun-Fang Lee, Jessica Sandler, and Jena Sinkfield made significant contributions to this report.

Appendix IV: Accessible Data

Agency Comment Letter

Text of Appendix II:
Comments from the
Federal Deposit Insurance
Corporation and the Board
of Governors of the
Federal Reserve System

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FDIC

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Director, Financial Markets and Community Investment

Government Accountability Office

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Washington, D.C. 20548

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Page 2

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Sincerely,

Michael S. Gibson

Director

Banking Supervision and Regulation

Board of Governors of the

Federal Reserve System

Sincerely,

Arthur J. Murton

Director

Office of Complex Financial Institutions

Federal Deposit Insurance Corporation\

Data
Tables/Accessible
Text

Accessible Text for Figure 2: Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Processes for Prereview Guidance

FDIC

Oversight Group (Waves 1 and 2 and designated nonbanks)

- Members include seven senior executives from FDIC’s Office of Complex Financial Institutions and Division of Risk Management Supervision, including experts on resolution, international issues, legal issues, and policy issues
- Develops assessment strategies for completeness and credibility

Division of Risk Management Supervision Interdivisional Resolution Plan Review Committee (Wave 3)

- Division of Risk Management Supervision Interdivisional Resolution Plan Review Committee

Federal Reserve

Resolution Plan Vetting Committee (Waves 1 and 2 and designated nonbanks)

- Members include six senior staff from the Federal Reserve Board and five senior staff from four Federal Reserve banks
- Linked to the agency’s Large Institution Supervision Coordinating Committee, which provides strategic and policy direction for the Federal Reserve System’s supervision of systemically important financial institutions
- Provides direction on the review of strategies
- Develops consistent guidance for the review teams

Third Wave Resolution Plan Vetting Committee (Wave 3)

- Members include approximately six senior staff from the Federal Reserve System
- Approves the plan review structure, scope, and resources

Source: GAO analysis of FDIC and Federal Reserve documents. | GAO-16-341

Data Table for Figure 4: 2015 Plan Types for Wave 3 Companies

Full plan filers	15 (13%)
Tailored plan filers	14 (12%)
Reduced plan filers	90 (76%)

Data Table for Figure 5: Federal Deposit Insurance Corporation (FDIC) Payroll Costs Related to Resolution Planning per Company by Wave 1, 2, 3, and Designated Nonbank Filers, Calendar Years 2012 through 2014

Wave1	Highest	Lowest	Average
"2012	505.7	165.2	287.8
"2013	308.9	107.1	211.6
"2014	140.7	61.6	98.8

Wave 2	Highest	Lowest	Average
"2012	No data	No data	No data
"2013	237.9	221.8	232.7
"2014	256.2	157.3	196

Wave 3	Highest	Lowest	Average
"2012	No data	No data	No data
"2013	No data	No data	No data
"2014	122.1	0.5	5.5

Nonbank	Highest	Lowest	Average
"2012	No data	No data	No data
"2013	No data	No data	No data
"2014	250	200.3	217.5

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