



October 9, 2014

### Living Will Requirements for Banking Organizations

The Dodd-Frank Act requires banking organizations with \$50 billion or more of consolidated assets to file resolution plans annually with the Federal Reserve and FDIC. Each resolution plan, also known as a “living will,” must describe the organization’s strategy for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of the organization’s material financial distress or failure.

#### Filing Requirements

As a general matter, banking organizations with more than \$100 billion in U.S. nonbank assets file their living wills on or before July 1 each year. All other organizations must file their plans by December 31. Eleven large banking organizations were the first to file plans in 2012, and are therefore often referred to collectively as the “first-wave filers.” Organizations that filed subsequently are sometimes referred to as “second-wave filers” or “third-wave filers,” depending on when they submitted their first plans.

#### Review Process

The Federal Reserve and FDIC review each living will as a part of the overall supervisory process, and there can be consequences if the plans are deemed deficient. Specifically, if the Federal Reserve and FDIC jointly determine that an organization’s living will is not credible or would not facilitate an orderly resolution under the Bankruptcy Code, they must notify the organization of the deficiency, and the organization would then have 90 days to submit a revised plan. If the Federal Reserve and FDIC then jointly determine that the resubmitted plan fails to cure the deficiencies, they may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the organization. The organization would then have two additional years to resubmit a plan that cures the deficiencies, and if it fails to do so, the Federal Reserve and FDIC, in consultation with FSO, would have the authority to jointly direct the organization to divest certain assets or operations.

#### Recent Guidance to First-Wave Filers

On August 5, 2014, the Federal Reserve and FDIC issued a joint release regarding the first-wave filers’ 2013 living wills and provided individual feedback via firm-specific letters. This was the first formal feedback that regulators provided to organizations since the first living wills were filed in 2012. In the release, the Federal Reserve and FDIC identified a number of areas where the organizations needed to demonstrate significant progress in their next filings due July 2015. Areas of concern included complexity of legal structures, the need for a holding company to facilitate resolution, early termination rights associated with certain financial contracts, and continuity of shared services and operation capabilities.

#### Further Reading

- Public Portions of Resolution Plans Filed with the Federal Reserve: [www.federalreserve.gov/bankinfo/resolution-plans.htm](http://www.federalreserve.gov/bankinfo/resolution-plans.htm)
- *Statement of the Board of Governors of the Federal Reserve System Regarding the 2013 Resolution Plans Filed by 11 Large Banking Organizations:* [www.federalreserve.gov/newsevents/press/bcreg/bcreg20140805-statement.htm](http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140805-statement.htm)
- *Statement by Martin J. Gruenberg, Chairman, FDIC on the Issuance of Joint Letters to the First-Wave Resolution Plan Filers:* [www.fdic.gov/news/news/speeches/spaug0514.html](http://www.fdic.gov/news/news/speeches/spaug0514.html)

[The Clearing House](http://www.theclearinghouse.org), established in 1853 to bring order to clearing and settlement between banks, is the nation’s oldest banking association and payments company. Past issues of the Banking Brief are available [here](#). For additional information, please contact: Jill Hershey ([Jill.Hershey@theclearinghouse.org](mailto:Jill.Hershey@theclearinghouse.org), 202-649-4601), John Van Etten ([John.VanEtten@theclearinghouse.org](mailto:John.VanEtten@theclearinghouse.org), 202-649-4617) or Kristin Richardson ([Kristin.Richardson@theclearinghouse.org](mailto:Kristin.Richardson@theclearinghouse.org), 202-649-4616).