Remarks of Jonathan V. Gould

Comptroller of the Currency

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Thank you to the ABA Banking Law Committee for having me today and thank you all for being here. The banking bar plays an important role in shaping and implementing both law and policy, and today I will discuss issues of law and policy around a perennial problem of bank regulation.

Bank failures have been occurring for approximately as long as banks have been chartered, and I think it safe to assume that policymakers have been contending with their resolution for just as long. The OCC knows a bit about this having appointed receivers for failed banks beginning decades before the Great Depression and the creation of the Federal Deposit Insurance Corporation ("FDIC"). Although the term "too big to fail" appears to have first arisen many decades later in the context of the 1984 failure of Continental Illinois, concerns regarding the systemic consequences of bank failure presumably preceded that phrase. Today I'd like to examine how well resolution planning, a new tool to address this perennial problem, is working.

Congress has grappled with bank resolution for at least as long as the OCC. In the 42 years since Continental Illinois failed, it has frequently revisited and revised the resolution framework for banks (and beyond), sometimes expanding the authorities of the FDIC and sometimes constraining them. After the 2008 financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or "Dodd-Frank") expanded resolution related authorities in a number of ways, including by requiring large bank holding companies

("BHCs") to periodically submit resolution plans.[1] This "living will" requirement was one subsection of one title of Dodd-Frank, and out of that an industry was created. Almost 16 years in, we need to examine the propriety and efficacy of this industry: Are resolution plans used or useable in an actual resolution? Have resolution planning requirements strayed from Congressional authorization or intent? Is the vast amount of agency and bank resources required to produce and review them appropriate or better spent elsewhere?

I will share my own thoughts regarding these questions today and hope to elicit those of others. My thoughts are based on my firsthand experience drafting resolution plans for both banks and nonbanks of various sizes and business profiles, dating back to the requirement's inception. My views are also informed by other past and present roles: as a bank supervisor and policymaker who has seen how resolution planning affects banks' business-as-usual ("BAU") activities; as an FDIC board member charged with assessing resolution plans (not to mention actually resolving banks!); and as an attorney experienced in assessing the legal validity of regulatory actions. But my experiences do not give me a monopoly on common sense; any careful observer of the industry over the last several decades may reach the same conclusions. From this vantage point, I will first discuss the FDIC's resolution planning requirements for banks[2] and then turn to the Dodd-Frank Act's requirements for bank holding companies.

<u>CIDI Plans</u>

A little over a year after the Dodd-Frank Act was passed, the FDIC issued an interim final rule requiring insured depository institutions over a certain size (referred to as "covered IDIs" or "CIDIs") to submit plans for the banks' resolution under the Federal Deposit Insurance Act

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[1] Section 165(d) of the Dodd-Frank Act requires certain large bank holding companies and nonbank financial companies supervised by the Federal Reserve to submit resolution plans. 12 USC 5365(d). As there currently is no nonbank financial company supervised by the Federal Reserve, I will refer only to BHCs.
[2] References to "bank" or "banks" herein include all types of insured depository institutions ("IDIs").

("FDI Act").[3] These plans are commonly called CIDI Plans. Unlike the resolution plans contemplated by Dodd-Frank, there is no explicit statutory requirement or authorization for CIDI Plans. I recently read each statutory provision the FDIC cited in promulgating the CIDI Plan to make sure I understood the statutory authorities asserted for the CIDI Plans. I include these citations in a footnote in this speech and invite everyone here to spend 15 minutes doing the same.[4] When doing so, you might keep in mind that Congress has shown that it knows how to clearly direct an agency to require resolution plans if it intends to do so, and, when you read the more general grants of authority in the FDI Act, that Congress "does not hide elephants in mouseholes."[5]

This legal exercise alone may call into question the continuing legitimacy of CIDI Plans. As a general matter, I think agencies may (and in some cases perhaps should) explore the limits of their statutory authority to achieve the clarity that a statute may on its face lack; we have courts to tell them when they overstep. But I believe it is harmful to the legitimacy of any agency and the rule of law to clearly exceed the agency's statutory authority. Even if the mistake were made years ago under a prior administration, I believe we have an obligation to correct it now to reduce such harms.

But there are conceptual issues with CIDI Plans as well. One of the FDIC's core statutory missions is acting as receiver in the event of a bank's failure.[6] I do not believe the FDIC should outsource the very reason for its existence to a third party, much less to a bank that is the object

[3] 76 *Fed. Reg*. 58379 (Sept. 21, 2011).
[4] For its statutory authority, the FDIC cited 12 USC 1819(a) Tenth, 1820(b)(3), and 1821(d)(1). *See* 77 *Fed. Reg*. 3075, 3076 (Jan. 23, 2012).
[5] *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001); *see also West Virginia v. EPA*, 597 U.S. 697, 723 (2022) ("Agencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" (quoting Ernest Gellhorn & Paul Verkuil, *Controlling Chevron-Based Delegations*, 20 CARDOZO L. REV. 989, 1011 (1999))).
[6] *See* 12 USC 1821(c).

of its resolution authority. In its earlier iterations and still to an extent today, the CIDI Plan requirement seems an attempt to shift the FDIC's own statutory responsibilities to banks.

Concerns about the legal and conceptual underpinning of CIDI Plans could, in theory, be moderated by the scope and efficacy of the plans. Their scope has fluctuated from one administration to the next, but more fundamental and permanent changes elude us as yet. Nor have I found clear evidence of CIDI Plans actually helping the FDIC resolve large banks. One need only look to the 2023 resolutions of Silicon Valley Bank and First Republic Bank to see that the existence of CIDI Plans has not prevented substantial losses to the Deposit Insurance Fund. I would venture to guess, for example, that neither the FDIC nor SVB planned for SVB's resolution to be the establishment of a deposit insurance national bank or DINB[7] on Friday morning followed by use of the systemic risk exception on Sunday.

These bank failures raise important questions about the FDIC's readiness to resolve regional and even midsize banks, notwithstanding decades of statutory reforms and major investments by the agency and by the banks into resolution planning. Following these failures, the FDIC Office of the Inspector General "determined that the agency's readiness to resolve large regional banks under the FDI Act was not sufficiently mature to facilitate consistently efficient response efforts in a potential crisis failure environment."[8] Similar concerns have been echoed by others in the banking industry.[9] The various inquiries and reports made following

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[7] Deposit insurance national bank. *See* 12 USC 1821(m).

[8] *See* FDIC Office of the Inspector General, *FDIC Readiness to Resolve Large Regional Banks*, No. EVAL-25-02 (Dec. 10, 2024), https://www.fdicoig.gov/sites/default/files/reports/2025-04/Final Report EVAL-25-02 FDIC Readiness to Resolve Large Regional Banks.pdf. In addition to finding that the FDIC should improve its large regional bank resolution procedures and making other findings, the report found that the FDIC should also improve its large regional bank CIDI Plans, due, in part, to the 2018 to 2021 CIDI Plan moratorium and insufficient staffing for plan review. *Id.* at 27 – 28.

[9] *See e.g.,* Greg Baer, *Some Thoughts on Reforming the FDIC,* Open Banker (Oct. 15, 2024), https://openbanker.beehiiv.com/p/gregbaer; *see also* Tara Payne, *The Public Deserves to Know More About the FDIC's Actions Following 2023 Bank Failures*, Bank Policy Institute.

these failures did not afford the public a clear view into what happened during the resolution of SVB, Signature Bank, and First Republic. Preserving confidence in institutions and agencies is important in banking, but not when it discourages tough conversations, impedes public transparency, or frustrates addressing underlying problems.

Things do not seem to have gone to plan, so to speak, since the creation of the CIDI Plan requirement; the FDIC arguably had a better record of performance for resolving banks before it started receiving CIDI Plans. Michael Ohlrogge, Professor of Law at New York University School of Law has recently noted that, since the start of the financial crisis, the United States has seen a dramatic increase in FDIC costs of resolving failed banks, among other things.[10] By Professor Ohlrogge's estimates, this has "resulted in at least $45 billion in additional resolution expenses over the past fifteen years," with "$41 billion attributable to new inefficiencies in the resolution process."[11] These are big numbers, and I worry that resolution planning efforts may have contributed to the decline in the FDIC's performance. On the upside and with new leadership, there are signs that the FDIC is taking a more critical and self-aware look at its role in bank resolutions than it has thus far.[12]

In addition to these issues, CIDI Plans have also created a significant backdoor through which the FDIC can influence and direct the BAU activities and structures of CIDIs. Among other things, the CIDI Plan rule requires integration of resolution planning into management information systems and corporate governance.[13] And the FDIC plans to engage in "capabilities

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[10] *See* Michael Ohlrogge, *Why Have Uninsured Depositors Become De Facto Insured?*, 100 N.Y.U. L. Rev. 345 (2025),https://nyulawreview.org/wp-content/uploads/2025/05/100-NYU-L-Rev-345.pdf; s*ee also* Kiah Haslett, *Why Don't Uninsured Deposits Take Losses Anymore?* (Dec. 18, 2025), https://podcasts.apple.com/us/podcast/why-dont-uninsured-deposits-take-losses-anymore/id1845925869?i=1000741828214.
[11] *Id.* at 345.
[12] *Compare to* FDIC Systemic Risk Advisory Committee meeting (Dec. 5, 2023), https://www.fdic.gov/about/advisory-committees/systemic-resolutions/pdfs/2023-12-05-transcript.pdf.
[13] E.g., 12 CFR 360.10(d)(22)(iii) and .10(d)(25).

testing" at banks for which it is not the primary federal regulator early this year. The involvement of the FDIC in the BAU activities of banks supervised by the OCC and Federal Reserve runs contrary to the carefully constructed statutory scheme of primary federal regulators that Congress enacted for the U.S. banking system. As reflected in the OCC's mission, national banks and federal savings associations are responsible for operating in a safe and sound manner, providing fair access to financial services, treating customers fairly, and complying with applicable laws and regulations.[14] The business of banking does not include planning for one's failure. Encouraging or requiring banks, particularly the smaller covered banks, to structure themselves to fail is just another facet of too low a risk tolerance for our banking system, and such structures can hinder banks' efficient delivery of services to their customers.

<u>165(d) Plans</u>

There are several important differences between the CIDI Plans and the resolution planning requirement under section 165(d) of the Dodd-Frank Act (165(d) Plans), which applies to large bank holding companies and nonbank financial companies supervised by the Federal Reserve.[15] As a result, my concerns with 165(d) plans are different. First, unlike the CIDI Plans, 165(d) plans have a clear statutory mandate. The Dodd-Frank Act requires bank holding companies of a certain size, along with any nonbank systemically important financial institutions designated by the Financial Stability Oversight Council, to submit "periodically" the company's plan "for rapid and orderly resolution in the event of material financial distress or failure."[16]

The other important difference from CIDI Plans is that bank management's involvement in resolution makes sense in the 165(d) context since it occurs under the U.S. Bankruptcy Code

[14] 12 USC 1.
[15] 12 USC 5365(d)(1).
[16] *Id.*

rather the specialized insolvency regime of a bank receivership. As you probably know, under the U.S. Bankruptcy Code management typically has a well-defined role to play in the preparation and decision to file for the company's bankruptcy, literally submitting a *plan* to the bankruptcy court for its review and approval. There is no analogue under the FDI Act. Likewise, the FDIC and Federal Reserve have no real role under the U.S. Bankruptcy Code in resolving a bank holding company (although they have an interest) and thus have no direct experience in doing so. In other words, Dodd-Frank's requirement that bank holding companies themselves explain how they can be resolved in the 165(d) Plan context makes more sense than banks explaining how the FDIC should act as their receiver.

Despite the legal and conceptual differences from the CIDI Plan, I suspect most people involved in 165(d) Plans would agree that there is room for improvement. To borrow a term, I will next highlight some "shortcomings"—one of many 165(d) Plan terms not found in law—or "deficiencies" with the agencies' resolution planning process.

For one, I have concerns with the process surrounding the 165(d) Plan guidance on which the largest, most systemically important bank holding companies' resolution plans are based. A little history is necessary here. In 2016, the Federal Reserve and FDIC found that five of the eight U.S. global systemically important bank holding companies' ("GSIBs") resolution plans failed the standard set by Dodd-Frank and, at the same time, issued "guidance" for the U.S. GSIBs' 2017 plans. The GSIBs generally conformed to this guidance to ensure their 2017 plans passed the subsequent test. In 2018, the agencies proposed largely the same guidance for comment, and they finalized the guidance in 2019.

Under administrative law, guidance generally should not be binding, and most anything that is binding should be subject to notice and comment *before* it becomes effective. However, the bank holding companies appear to have treated the guidance issued in 2016 as binding requirements—and for good reason. For example, the guidance instructed the GSIBs to "satisfactorily address" it. Moreover, the potential consequences for not doing so would have been significant; Dodd-Frank ultimately gives the Federal Reserve and FDIC authority to require changes to an organization or even break it up if the agencies jointly determine that the plan fails the Dodd-Frank standard, and the organization does not timely remedy the identified issues. This guidance still survives and, although it was put through notice and comment after the fact, I understand it still sets effectively binding requirements despite language purporting not to do so and despite the banking agencies' supposedly binding rule against setting binding requirements by guidance.[17]

In addition, resolution planning guidance imposes current consequences for bank holding companies; like CIDI Plans, this is not just about adding to or changing the words of the plan. Concepts that the agencies created from whole cloth and that appeared for the first time in the guidance and related feedback letters include capital and liquidity projections and expectations, commonly referred to by their acronyms RCAP, RCEN, RLAP, and RLEN. I have seen these "models" up close, having been retained by banks to validate them; at their core, they are highly assumptions-driven and lack the rigor associated with other financial models. Nonetheless, they can be, and I understand have been, binding constraints on bank holding companies. Moreover, they have been built into the internal governance and financial obligations of the organization, so these speculative requirements that live only in guidance could very well help determine when

[17] *See* 12 CFR part 4, subpart F; 12 CFR part 262.7 and Appendix A; 12 CFR part 302. The Federal Reserve also issued recovery planning guidance in 2014 without notice and comment. *See* Federal Reserve SR 14-8 (Sept. 25, 2014), https://www.federalreserve.gov/supervisionreg/srletters/sr1408.htm. This guidance is also worthy of review under the bank agencies' rules regarding guidance and administrative law. In contrast and to its credit, the OCC set recovery planning requirements through notice and comment rulemaking, which we have now proposed to eliminate.

and how a U.S. GSIB enters bankruptcy. Similarly, "legal entity rationalization" expectations have caused bank holding companies to reshape and reform their organizations and to build these concepts "into the firm's ongoing process for creating, maintaining, and optimizing its structure and operations on a continuous basis."[18] Guidance documents should not dictate the structure of bank holding companies, nor set capital and liquidity requirements at banks.

Beyond the inappropriate use of guidance, I question how useful these voluminous plans actually are. Neither Credit Suisse nor SVB followed the firms' resolution plans. As the then Swiss finance minister noted, "… a globally active systemically important bank cannot simply be wound up according to the 'too big to fail' plan.' Legally this would be possible. In practice, however, the economic damage would be considerable."[19] That doesn't sound like an endorsement to me. In my experience with 165(d) Plans, they are created and reviewed by multiple teams of people at both the banks and at the agencies over months, if not years, given the lengthy narratives and interminable appendices and supplements. Opening one of these up to read or edit makes clear that the plans are the output of an extensive compliance exercise rather than an accessible reference for management, directors, or agencies trying to address a failing organization.

Finally, the agencies' history of reviewing the 165(d) Plans is weak, with feedback often untimely, changing direction, and increasing burden. The first 165(d) Plans were submitted in 2012, when the agencies required firms to submit a resolution plan every year.[20] A few months before the 2013 plans were due for these first filers, the agencies added more informational

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[18] 84 *Fed. Reg*. 1438, 1455 (Feb. 4, 2019).
[19] Steve Mollman, *The 'too big to fail' regime for banks just doesn't work, Swiss minister says. 'The economic damage would be considerable'*, Fortune (Mar. 25, 2023), https://fortune.com/2023/03/25/ubs-credit-suisse-finance-minister-karin-keller-sutter-too-big-to-fail-banks/.
[20] I focus on the initial years of the first "wave" of U.S. filers, but there are similar examples for other 165(d) and CIDI Plan review cycles.

requirements via—wait for it—guidance and pushed back the due date by a quarter to October 2013.[21] The agencies provided feedback on the 2013 plans in August 2014, guidance which the agencies had to clarify in February 2015.[22] The bank holding companies, having been told to skip the 2014 submission and trying to incorporate this *ad hoc* agency guidance, submitted their next plans in July 2015, which the agencies then determined were not credible in April 2016 based on expectations never before publicly articulated by the agencies.[23] So, within the first four years of 165(d) Plan review, we saw the agencies issue multiple rounds of guidance and feedback letters, push back the time for one resolution plan submission, skip another submission entirely, and then fail over 50 percent of the class of filers when the new plans did not meet never-before-released requirements. This is not what good or even competent government looks like. Thankfully, this review process has improved some and filers that were less systemically significant did not bear the same burden as the largest organizations. But I am confident that there is more that can be done to ensure the burden comes closer to aligning with whatever value there is in further iterations of 165(d) Plans.

The Resolution Planning Industry

If resolution planning is as riddled with legal and conceptual issues and of limited value as I have stated, why have we not made fundamental reforms to eliminate or at least improve it after 15 years? It is undoubtedly the result of many factors including institutional inertia, fear of being seen as weak on banks, and the rise of the resolution planning industry. Though the latter is perhaps past its heyday, such alignment of interests could easily return in force should we fail to

[21] Federal Reserve and FDIC, *Agencies provide additional instructions for submission of some resolution plans* (April 15, 2013), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20130415c.htm.
[22] Federal Reserve and FDIC, *Agencies provide feedback on second round resolution plans of "First-Wave" filers* (Aug. 5, 2014), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20140805a.htm.
[23] Federal Reserve, *Agency Feedback Letters for 2015*, https://www.federalreserve.gov/supervisionreg/agency-feedback-letters-2015.htm.

take action while we have the chance. The resolution planning industry comprises whole divisions at regulators and large banks alike that justify their existence and resources in terms of these ongoing compliance exercises, as well as the consultants and lawyers who support and profit from their efforts. I was part of this world. It provides a service. I am not here to cast aspersions on those of us who have participated in it. But as a bank regulator, I will call out compliance exercises that have little to no value. The goal of bank regulation is not to create agency jobs and bureaucracies, or opportunities for consultants and lawyers to navigate and feed them, but to promote the safety and soundness of the system. And if these compliance exercises are actually hurting the performance of an agency's core statutory functions or impeding the ability of banks to serve their customers efficiently, then they need to be addressed head on.

<u>Next Steps</u>

So, what exactly should we do? 165(d) Plans are required by law and their existence makes some sense; so, unlike the CIDI Plans, this requirement must be kept. However, the agencies appear to have broad discretion in the statute to determine how often to require the plans to be submitted and the substantive requirements for those submissions. Therefore, further reducing the frequency of the plans and what is required in them seems like an easy place to begin. If there is little incremental value to be gained in additional resolution plan submissions, as I suspect, then one submission every five to ten years, refreshing the information in plans to the extent it has changed seems perfectly reasonable to me. Taking a hard look at resolution planning "guidance," identifying effectively binding requirements, and either rescinding those requirements or proposing them in an actual binding rule would also seem like an initial—and potentially legally obligatory—step toward rationalizing 165(d) resolution planning. At a minimum, we should ensure that RLAP, RLEN, RCAP, and RCEN exist with sound legal and analytical foundations or, better yet, do not exist at all. The “governance mechanisms” that large bank holding companies have incorporated into their governance structure is also worth a close reexamination, especially to the extent that any “playbook” or “triggers” have incorporated RLAP, RLEN, RCAP, and RCEN. Likewise, feedback that pushes bank holding companies to do even more than they have through extra-statutory “shortcomings” seems inappropriate on both legal and policy grounds.

As noted, CIDI Plans are different. They are not based on an explicit statutory requirement or authorization. I see material drawbacks and costs associated with them, and I do not see their benefit. The FDIC’s resources could have been spent developing internal capabilities to resolve large banks, such as improvements to the receivership bidding process, rather than evaluating how banks think the FDIC should resolve them. Bank resources could have been better spent ensuring that they provide access to financial services in a safe and sound manner rather than working on how to fail and feeding an agency’s resolution planning bureaucracy.

Under Chairman Hill’s leadership, the FDIC has already taken steps to move in the right direction, including rationalizing CIDI Plans. I look forward to working with him to continue the agency’s shift away from CIDI Plans and toward improving internal capabilities to resolve banks. As Comptroller of the Currency, I will ensure the FDIC has timely access to the information it needs from national banks and federal savings associations to run an auction and engage in any other function necessary for a receivership, and I am willing to memorialize that commitment if helpful.

More broadly, I hope my speech today encourages others to be vocal about their own experiences with resolution planning, and invigorates further discussion on the merits, or lack thereof, of resolution planning, and the far more important need as demonstrated by the 2023 bank failures to rebuild our resolution execution capabilities. I look forward to working with my colleagues at the FDIC and Federal Reserve—and many of you in this room—to address these issues.

Thank you for your time today.