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FDIC Releases Joint Notice of Proposed Rulemaking on Resolution Plans and Credit Exposure Reports

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Requiring systemically important financial institutions to prepare living wills has the potential to be one of the most effective tools in improving risk management, reducing systemic risk and mitigating the “too big to fail” and the “too big to save” problems. But these benefits will only be realized at a sensible cost if living will requirements are administered reasonably, with adequate attention to both costs and benefits.

On March 29, 2011, the FDIC released a joint notice of proposed rulemaking that would implement the resolution plan requirements in Section 165(d) of the Dodd-Frank Act. The NPR provides comprehensive guidance on what the FDIC and the Federal Reserve expect to be contained in resolution plans submitted under Section 165(d), who must submit them, when they must be submitted and how the credibility of such plans are to be judged. But it also raises a number of very serious legal and policy issues and leaves a number of fundamental issues unanswered.

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