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OCC proposes revisions to its recovery planning guidelines

Initial perspectives related to the Office of the Comptroller of the Currency proposal to amend its recovery planning guidelines

On June 24, 2024, the Office of the Comptroller of the Currency (OCC) issued a proposal to revise its recovery planning guidelines, codified at 12 CFR part 30, Appendix E (Proposed Guidelines).[1] The proposal comes a month after Acting Comptroller Hsu delivered remarks on the importance of recovery planning in mitigating "too-big-to-fail"[2] and just a week after the Federal Deposit Insurance Corporation (FDIC) finalized a rule to strengthen resolution planning requirements for large insured depository institutions (IDIs).[3] Comments from the public are due 30 days from the date of publication in the *Federal Register*.

5 insights you should know

Lower threshold of $100 billion: While the current OCC Recovery Planning Guidelines generally apply to banks with average total consolidated assets of greater than $250 billion, the Proposed Guidelines would lower the applicable threshold to banks with average total consolidated assets of $100 billion or more. Prior to 2018, the Recovery Planning Guidelines applied to banks with total consolidated assets of more than $50 billion. Additionally, the Proposed Guidelines retain the OCC's reservation authority to extend the requirements to banks under the relevant threshold as the agency determines.

New testing requirement: The Proposed Guidelines include a new requirement for covered banks to test their overall recovery plan and each element of the plan at least annually. Although the Proposed Guidelines do not provide a specific testing format or methodology, testing should be risk-based and reflect the covered bank's size, risk profile, activities, and complexity. Regardless, the simulated testing scenario should include both financial and non-financial stress scenarios that help confirm the plan is likely to work as intended when the bank may experience a real-life stress scenario.

Highlighting non-financial risk: The Proposed Guidelines add language stating that a covered bank's recovery plan should appropriately consider both financial risk and non-financial risk, including operational and strategic risk. The OCC noted in the proposal that the added language was not in response to any deficiencies in banks addressing financial risks in their recovery plans, but rather observations of inconsistent considerations of non-financial risks within banks' recovery plans.

Increasing regulatory scrutiny: Recent rulemaking from the Federal Reserve Board of Governors (FRB) and FDIC, along with the OCC's Proposed Guidelines, illustrates the increasing scrutiny on banks' resolution and recovery capabilities.[4] After a period of raising key regulatory thresholds, regulators are expected to expand prudential requirements onto smaller banking organizations, demonstrating the continued impacts of the spring 2023 banking turmoil on the regulatory agenda.[5]

Transition period: As proposed, newly covered banks would need to come into compliance with the Proposed Guidelines within 12 months, except for the testing requirements with which the bank should comply within 18 months. However, the OCC is accepting comments on whether the proposed compliance period is appropriate for newly covered banks or whether changes should be considered, including potentially shorter periods such as 3 or 6 months. Therefore, institutions should be prepared to a potentially shorter transition period.

5 considerations to evaluate

1

Conduct a gap analysis and build recovery capabilities: Banks should conduct an initial gap analysis of their recovery plans against the Proposed Guidelines' revised standards and, as necessary, prepare to build recovery capabilities accordingly. For newly covered banks, this may include revising policies and procedures and developing new or integrate into existing governance frameworks. Even in the proposed state, banks should consider incorporating the Proposed Guidance's elements (e.g., annual testing and incorporation of non-financial risks) within their recovery plans as part of good governance practices.

2

Develop a framework for testing recovery plan: Testing should enable management and the board to verify that the bank has identified credible options to respond to potential stress scenarios and is adequately prepared to carry out these options, as needed. The results of testing should be carefully reviewed, and any lessons learned incorporated into the institution's recovery plan. Responsibility for any remedial actions identified as part of the testing exercise should be clearly assigned and monitored for progress.

3

Incorporate non-financial risks into recovery plan: It is important for banks to not overlook the threats that non-financial risks can pose to a bank's financial strength and viability. For example, this may consider factors such as Cyber Resiliency as an input, or changes in an institution's digitization or other innovation efforts could create more complex operations that may raise the risks of a severe non-financial stress that affects a bank's financial strength and viability. Institutions should maintain a detailed inventory of their non-financial risks and consider incorporating relevant triggers into the recovery plans.

4

Build operational resilience credibility: With the increased scrutiny on bank's operational resilience capabilities, it is critical that institutions build credibility with regulators. Banks resolution and recovery plans should demonstrate reasonable assumptions, be backed by verifiable data and information, and closely engage second and third lines. It is important to develop detailed communication plans, assign clear roles and responsibilities, and evidence operational readiness.

5

Develop a roadmap: Given the uncertain transition period, banks should consider developing an early roadmap to effectively address the new recovery planning requirements. This should include potential necessary investments in staff resources, technology infrastructure, and data capabilities. Careful attention should be paid to the institution's readiness under different timeline scenarios and potential alternative paths to coming into compliance.

Endnotes

[1] Office of the Comptroller of the Currency (OCC), "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches," June 24, 2024.

[2] OCC, "Mitigating TBTF With Recovery Planning," May 27, 2024.

[3] Federal Deposit Insurance Corporation (FDIC), "Resolution Plans Required for Insured Depository Institutions with $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions with At Least $50 Billion but Less Than $100 Billion in Total Assets," June 20, 2024; *See* Deloitte, "Federal banking agencies propose new resolution planning requirements," September 2023.

[4] FDIC, Federal Reserve Board of Governors (FRB), "Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers," Federal Register, September 19, 2023.

[5] *See* FRB, "Federal Reserve Board finalizes rules that tailor its regulations for domestic and foreign banks to more closely match their risk profiles," press release, October 10, 2029; OCC, "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments," *Federal Register*, December 27, 2018.

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