



BILLING CODE: 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket ID OCC-2018-0028]

RIN 1557-AE51

OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury

ACTION: Notice of proposed rulemaking; revised guidelines.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its enforceable guidelines relating to recovery planning standards for insured national banks, insured federal savings associations, and insured federal branches (Guidelines) to increase the average total consolidated assets threshold for applying the Guidelines from \$50 billion to \$250 billion. In addition, the proposed change to the Guidelines would decrease from 18 months to 12 months the time within which a bank should comply with the Guidelines after the bank becomes subject to them. Finally, the proposal would make technical amendments to remove outdated compliance dates.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “OCC Guidelines Establishing Standards for Recovery

Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—“Regulations.gov”: Go to *www.regulations.gov*.

Enter “Docket ID OCC-2018-0028” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- E-mail: *regs.comments@occ.treas.gov*.

- Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Fax: (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2018-0028” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *www.regulations.gov*. Enter “Docket ID OCC-2018-0028” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Lori Bittner, Large Bank Supervision – Resolution and Recovery, (202) 649-6210; Andra Shuster, Senior Counsel or Rima Kundnani, Attorney, Chief Counsel’s Office, (202) 649-5490; or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The 2008 financial crisis provided valuable lessons about the need for financial institutions to have strong risk governance frameworks, including plans for how to respond to and recover from the financial effects of severe stress. This was particularly true for larger, more complex banks in light of systemic risks and contagion effects that they pose. In response to these lessons, on September 19, 2016, the OCC published the Guidelines establishing minimum standards for recovery planning by insured national banks, insured federal savings associations, and insured federal branches of foreign banks (banks) with average total consolidated assets¹ equal to or greater than \$50 billion (covered banks).² The Guidelines state that a recovery plan should identify (1) quantitative or qualitative indicators of the risk or existence of severe stress that reflect a covered bank's particular vulnerabilities and (2) a wide range of credible options that a covered bank could undertake in response to the stress to restore its financial strength and viability.

Under the Guidelines, a recovery plan should also address: (1) procedures for escalating decision-making to senior management or the board of directors, (2) management reports, and (3) communication procedures. In addition, the Guidelines explain how a bank should calculate its average total consolidated assets and reserve the OCC's authority to apply the Guidelines to a bank below the \$50 billion threshold if the agency determines a bank is highly complex or otherwise presents a heightened risk. Finally, the Guidelines set out phased-in compliance dates based on bank size.

II. Proposed Changes

¹ Average total consolidated assets is defined in the Guidelines and means the average total consolidated assets of the bank or covered bank as reported on the bank's or covered bank's Consolidated Reports of Condition and Income for the four most recent consecutive quarters. See 12 CFR 30, Appendix E, paragraph I.E.1.

² 81 FR 66791 (Sep. 29, 2016). The Guidelines were issued pursuant to section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p-1, which authorizes the OCC to prescribe enforceable safety and soundness standards.

Threshold. The OCC noted in the **Supplementary Information** section of the final Guidelines that large, complex institutions should undertake recovery planning to be able to respond quickly to and recover from the financial effects of severe stress on the institution. Based on its experience to date in reviewing recovery plans, the OCC believes that it is appropriate to raise the threshold for the Guidelines to focus on those institutions that present greater systemic risk to the banking system. These larger, more complex, and potentially more interconnected banks present the types of risks that could benefit most from having the types of governance and planning processes that identify and assist in responding to significant stress events.

In addition, at the time the Guidelines were published, the \$50 billion recovery planning threshold was consistent with the scope of Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System regulations³ that require systemically important financial institutions to prepare resolution plans under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁴ On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (Act) was enacted to promote economic growth, provide tailored economic relief, and enhance consumer protections.⁵ Section 401 of the Act raises from \$50 billion to \$250 billion the section 165 resolution planning threshold.

Accordingly, the proposal would increase from \$50 billion to \$250 billion the average total consolidated assets threshold at which the Guidelines apply to covered banks. This change would reduce the number of covered banks to which the Guidelines apply from 25 to 8, based on the most recent data available. It would provide necessary and appropriate burden relief to the affected banks while retaining the requirements for the largest, most complex institutions.

³ See 12 CFR 381.2(f) and 243.2(f), respectively. See also 12 CFR 360.10.

⁴ Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010).

⁵ Pub. L. 115-174, 132 Stat. 1296 (May 24, 2018).

Furthermore, the proposed increased threshold is consistent with section 401 of the Act's increase in the section 165 resolution planning threshold applicable to systemically important bank holding companies.

Compliance Date. Under the current Guidelines, a bank with less than \$50 billion in average total consolidated assets that subsequently becomes a covered bank is required to comply with the Guidelines within 18 months. The OCC proposes to amend this provision so that a bank that has less than \$250 billion in average total consolidated assets on the effective date of a final rule and subsequently becomes a covered bank should comply with the Guidelines within 12 months. Based upon supervisory experience, the OCC has observed that 12 months is a sufficient period of time for any bank that becomes a covered bank to comply with the Guidelines. Finally, the OCC proposes technical amendments to remove the compliance dates listed in the current Guidelines, as the dates have all passed.

Effective date

The proposed Guidelines would have an effective date of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The OCC requests comment on the proposed effective date.

Comment Invitation

The OCC invites comment on all aspects of the proposed revisions to the Guidelines.

Regulatory Analysis

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under

section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

As part of its analysis, the OCC considers whether the proposed rule will have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 886 small entities. Because the proposed rule will generally have no impact on banks with less than \$50 billion in total consolidated assets, no OCC-supervised small entities will be affected. Therefore, the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

This notice of proposed rulemaking includes changes to an approved collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). In accordance with PRA, the OCC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The OCC submitted the information collections contained in the notice of proposed rulemaking to OMB for review and approval, pursuant to 44 U.S.C. 3506 and section 1320.11 of the OMB implementing regulations (5 CFR part 1320).

The Guidelines found in 12 CFR part 30, appendix E, sections II.B., II.C., and III contain information collection requirements previously approved by OMB. Section II.B. specifies the elements of the recovery plan, including an overview of the covered bank; triggers; options for recovery; impact assessments; escalation procedures; management reports; and communication procedures. Section II.C. addresses the relationship of the plan to other covered bank processes

and coordination with other plans, including the processes and plans of its bank holding company. Section III outlines management's and the board's responsibilities. The threshold triggering these requirements is being changed under this notice of proposed rulemaking, resulting in a reduction in the number of respondents under this collection.

The following revised information collection was submitted to OMB for review.

Title: OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

OMB Control No.: 1557-0333.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Burden Estimates:

Total Number of Respondents: 8 National Banks.

Total Burden per Respondent: 7,543 hours.

Total Burden for Collection: 60,344 hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility; (2) the accuracy of the OCC's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). The OCC has determined that the proposed rule does not impose new mandates. Therefore, we conclude that the proposed rule will not result in an expenditure of \$100 million or more annually by state, local, and tribal governments, or by the private sector.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comment on how to make this proposed rule easier to understand.

For example:

- Has the OCC organized the material to inform your needs? If not, how could the OCC present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?

- What other changes can the OCC incorporate to make the proposed regulation easier to understand?

List of Subjects

12 CFR Part 30

Banks, Banking, Consumer protection, National banks, Privacy, Safety and soundness, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—SAFETY AND SOUNDESS STANDARDS

1. The authority citation for Part 30 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 371, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831p-1, 1881-1884, 3102(b) and 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

2. Appendix E to part 30 is amended by:

- a. Removing the phrase “\$50 billion” and adding in its place the phrase “\$250 billion” everywhere that it appears;

- b. Revising section I.B.1;

- c. Removing section I.B.2 and I.B.3;

- d. Redesignating the current section I.B.4 as I.B.2 and removing “January 1, 2017” and adding in its place the words “[EFFECTIVE DATE]”;

e. In newly designated section I.B.4, removing the phrase “18 months” and adding in its place the phrase “12 months”.

The revisions read as follows:

Appendix E to Part 30—OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

I. Introduction.

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B. Compliance date.

1. A covered bank with average total consolidated assets, calculated according to paragraph I.E.1. of this appendix, equal to or greater than \$250 billion as of [EFFECTIVE DATE] should be in compliance with this appendix on [EFFECTIVE DATE].

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Dated: September 11, 2018

Joseph M. Otting,
Comptroller of the Currency.

[FR Doc. 2018-20166 Filed: 9/18/2018 8:45 am; Publication Date: 9/19/2018]