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**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:** Final guidelines.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its enforceable guidelines relating to recovery planning standards for insured national banks, insured federal savings associations, and insured federal branches (Guidelines) by increasing the average total consolidated assets threshold for applying the Guidelines from \$50 billion to \$250 billion. In addition, the OCC is changing the Guidelines to 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 Finally, the OCC is making technical amendments to remove outdated compliance dates.

**DATES:** The final guidelines are effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]

**FOR FURTHER INFORMATION CONTACT:** 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 7<sup>th</sup> 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 given the potential they pose for systemic risk. In response to these lessons, on September 29, 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 assets<sup>1</sup> equal to or greater than \$50 billion (covered banks).<sup>2</sup> 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.

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<sup>1</sup> 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 part 30, appendix E, paragraph I.E.1.

<sup>2</sup> 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.

## II. Description of the Proposal, Comments Received, and Final Guidelines

The OCC received three comments on the proposal. One comment came from an individual, one from a trade association (Trade Association Comment), and the other from four regional national banks (Banks Comment).

*Asset Threshold.* The OCC noted in the **Supplementary Information** section of the 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 risk to the banking system. These larger, more complex, or 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 regulations<sup>3</sup> that require certain entities to prepare resolution plans under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>4</sup> 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.<sup>5</sup> Section 401 of the Act raises from \$50 billion to \$250 billion the section 165 resolution planning threshold.

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<sup>3</sup> See 12 CFR 381.2(f) and 243.2(f), respectively. See also 12 CFR 360.10.

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

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

Accordingly, the OCC proposed to increase from \$50 billion to \$250 billion the average total consolidated assets threshold at which the Guidelines apply to banks.<sup>6</sup> 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.

All three of the comments received addressed the threshold change. The individual commenter expressed concern that raising the Guidelines' asset threshold would provide too much leniency for banks in light of the 2008 financial crisis. The Trade Association Comment strongly supported the OCC's proposal to raise the threshold for the Guidelines from \$50 billion to \$250 billion in average total consolidated assets because it provides burden relief to the affected banks and permits the OCC to allocate its resources over a smaller number of banks. The Banks Comment suggested that the OCC replace the threshold with a risk-sensitive alternative that more accurately reflects a bank's business model and risk profile, like the systemic indicator score, which was described as a more useful and better-calibrated measure of the complexity and risk inherent in a bank's business model.

The OCC believes this threshold change is consistent with providing necessary and appropriate burden relief to the affected banks while retaining the requirements for the largest, most complex institutions. Furthermore, the 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. Therefore, the OCC is adopting as final the proposed Guidelines' \$250 billion average total consolidated assets threshold.

*Tailoring Approach for Banks Subject to the Guidelines.* Both the Trade Association Comment and the Banks Comment requested that the OCC consider a tailored approach to the

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<sup>6</sup> 83 FR 47313 (Sep. 19, 2018).

application of the Guidelines to covered banks in order to focus recovery planning on issues that are most relevant to the bank based on its risk profile and business model. The trade association also requested that the OCC consider whether the Guidelines should be applicable to all covered banks given the varying degree of riskiness and complexity of these banks.

The Guidelines already recognize that each covered bank is unique and expressly permit a bank to tailor its recovery plan so that it is “specific to that covered bank and appropriate for its individual size, risk profile, activities, and complexity, including the complexity of its organizational and legal entity structure.”<sup>7</sup> Therefore, a covered bank that is less complex or has less risk may tailor its recovery plan under the Guidelines accordingly. Given this flexibility, the OCC does not think it is necessary to specifically tailor the Guidelines based on different business models and risk profiles of the covered banks nor do we think it is appropriate to further reduce the number of banks subject to the Guidelines. In fact, it may be even more important for a covered bank that is less complex or has less risk due to fewer interconnections to have a robust recovery plan. Such a bank may have identified fewer options for recovery and therefore may be constrained in its ability to restore financial strength in severe stress.

*Biennial Cycle.* Both the Trade Association Comment and the Banks Comment suggested that the OCC should consider moving from an annual to a biennial recovery plan cycle. The Trade Association Comment noted that as was the case with resolution planning, this would give the OCC more time to provide feedback and would give the covered banks more time to prepare the plans, likely resulting in a better quality plan. Both commenters also requested that the OCC allow each covered bank to elect the timing of its two-year recovery plan cycle. This would permit each bank to make a determination of whether or not to align the preparation of its

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<sup>7</sup> Appendix E to part 30, II.A. *See also* Comptroller’s Handbook for Recovery Planning, version 1.0 April 2018 at p. 6.

recovery plan with the preparation of its resolution plan. Further, the Trade Association Comment requested that the OCC not require re-approval of the recovery plan by the board of directors if there has been no material change or event that has had a fundamental and major impact on the covered bank's recovery plan since the board previously approved the recovery plan.

The recovery plan and the recovery planning framework are important to a bank's safety and soundness and enterprise governance and, thus, the OCC believes that covered banks should review and revise the recovery plan as necessary at least annually. With regard to electing the timing of the recovery plan cycle, the preamble to the Guidelines noted that "management should have flexibility to conduct its annual reviews on its preferred schedule" and that "OCC examiners will assess the appropriateness and adequacy of the covered bank's ongoing recovery planning process as part of the agency's regular supervisory activities...[to] provide covered banks with the flexibility they need."<sup>8</sup> In addition to this flexibility, the Guidelines already permit an appropriate committee of the board, rather than the entire board, to review and approve the recovery plan.<sup>9</sup> Therefore, no change has been made to this part of the Guidelines.

*Transparency of Standards and Horizontal Review.* The Trade Association Comment suggested that recovery planning standards should be more transparent in the future and that a supervisory horizontal review of recovery plans may be difficult and less meaningful given the differences in risk profiles and business models among the covered banks. The OCC believes that the current process, which includes discussion between the examiners and the covered banks, provides the necessary transparency for recovery planning standards. While other

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<sup>8</sup> 81 FR 66797 (Sept. 29, 2016).

<sup>9</sup> Appendix E to part 30, III.B.

agencies may use horizontal review for resolution planning purposes, the OCC does not intend to use such reviews in connection with recovery planning.

*Clarification for Banks under \$250 Billion.* The Trade Association Comment requested that the OCC immediately clarify that no recovery plans are expected of banks on or after January 1, 2019 if they do not meet the \$250 billion average total consolidated assets threshold in order to avoid the significant and needless burden associated with preparing the recovery plan. Given that these revised final Guidelines will be effective in a short period of time, the OCC would not expect banks with less than \$250 billion in average total consolidated assets to complete the annual process for review by management and review and approval by the board of their 2018 recovery plans or to begin preparing a 2019 recovery plan.

*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 proposed amending this provision so that a bank that has less than \$250 billion in average total consolidated assets on the effective date of the 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 proposed technical amendments to remove the compliance dates listed in the current Guidelines, as the dates have all passed. The OCC did not receive any comments on these changes. Therefore, these amendments will be adopted as proposed.

## **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 considered whether these revised final Guidelines will have a significant economic impact on a substantial number of small entities, pursuant to the RFA. Because these revised final Guidelines 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 OCC certifies that these revised final Guidelines will not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act of 1995*

These revised final Guidelines include 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 the 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 collection requirements contained in the rule to the OMB at the proposed rule stage. Pursuant to 5 CFR 1320.11(c), the OMB filed a comment on the submission directing the OCC to examine any public comment in response to the information collection requirements, prepare a description of how the OCC has responded to the comments (including comments on maximizing the practical utility of the collection and minimizing the



burden), and resubmit the information collection requirements in connection with these revised final Guidelines.

The Guidelines found in 12 CFR part 30, appendix E, sections II.B., II.C., and III contain information collection requirements previously approved by the 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 these revised final Guidelines, 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 were 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. We received no comments on the proposed information collection.

#### *Unfunded Mandates Reform Act of 1995*

The OCC analyzed these revised final Guidelines 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 these revised final Guidelines include 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 these revised final Guidelines do not impose new mandates. Therefore, we conclude that these revised final Guidelines will not result in an expenditure of \$100 million or more annually by State, local, and tribal governments, or by the private sector.

#### *Effective Date*

The Administrative Procedure Act (APA) requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or relieves a restriction. Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule, unless, among other things, the agency determines for good cause that the regulations

should become effective before such time. These revised final Guidelines will be effective 30 days after publication in the *Federal Register*, which meets the APA effective date requirements. Given that these revised final Guidelines do not impose any additional reporting, disclosure, or other requirements on insured depository institutions, but rather reduce reporting requirements, the effective date of 30 days after publication in the *Federal Register*, rather than the first day of the calendar quarter following publication, is consistent with RCDRIA.

Section 302 of RCDRIA also requires the OCC to consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens these revised final Guidelines would place on insured depository institutions, including small depository institutions, and their customers as well as the benefits of such regulations when determining the effective date and administrative compliance requirements of new regulations that impose new reporting, disclosure, or other requirements on insured depository institutions. The OCC has considered the changes made by these revised final Guidelines and believes that the effective date of 30 days after publication in the *Federal Register* is appropriate.

#### *Plain Language*

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809(a)), requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC received no comment on these matters and believes that these revised final Guidelines are written plainly and clearly.

#### **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 and 12 U.S.C. 1831p-1, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

#### **PART 30—SAFETY AND SOUNDNESS 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 section I.B.4 as section I.B.2;

e. In newly redesignated section I.B.2:

i. Removing “January 1, 2017” and adding in its place the words “[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]”; and

ii. Removing the phrase “18 months” and adding in its place the phrase “12 months”.

The revision reads 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**

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I. \* \* \*

B. \* \* \*

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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] should be in compliance with this appendix on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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Dated: December 18, 2018.

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William A. Rowe,  
Chief Risk Officer.  
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