

OCC Adds Recovery Planning to the Comptroller's Handbooks

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The increased emphasis by the prudential banking agencies on recovery planning is evidenced by the Comptroller's recent publication of a new recovery planning module for the Comptroller's Handbook. The addition of this module to the handbook flows from the OCC's previously published guidelines^[1] on recovery planning.^[2] Recovery planning for large national banks and their holding companies is now subject to both Federal Reserve^[3] guidance and OCC guidelines. It will be part of the Federal Reserve's new LFI rating system,^[4] and banking organizations will find that their governance and processes around recovery and resolution planning will be increasingly linked. There will also be alignment with stress testing.

In the handbook, the OCC provides an overview of the goal of any recovery plan: the efficient and effective response to severe stress events and avoidance of failure or resolution. Like the Federal Reserve, the OCC requires that recovery planning should be ongoing and integrated into the bank's risk governance framework. The bank should leverage and align its recovery plan with stress testing and resolution planning while keeping in mind that each one should be separate and distinct, with the recovery plan appropriately focused on allowing the bank itself to remain viable under severe stress.

The OCC's guidelines for a recovery plan are similar, but not identical to, the guidance provided by the Federal Reserve Board. One key difference is that the OCC does not require that a bank consider potential effect of its recovery plan on the U.S. financial system, which the Federal Reserve Board does require. One helpful, although puzzling, statement in the handbook is that a bank "may share its [recovery] plan with other regulators or supervisors without consulting or obtaining the OCC's permission, provided that the plan does not include confidential supervisory information." On the one hand, this statement about sharing with other regulators is quite helpful since, as a prudential matter, other banking agencies and

US and foreign regulators (such as CMG groups) will want access to these plans. On the other hand, given the lack of clarity around what is CSI in the recovery plan under the relevant regulations and the strong punishments for any foot faults^[5], it is difficult to see how any recovery plan might be shared without following the normal interagency permission procedures laid out in the regulations. One wonders if this part of the handbook was drafted without a full internal legal review at the OCC.

The OCC also lays out a procedure an examiner will take when evaluating a recovery plan. Under these procedures, examiners will evaluate: (i) the scope of the recovery plan, (ii) the elements of the recovery plan itself, (iii) management and the board's responsibilities under the recovery plan, and (iv) conclusions as to whether the a recovery plan conforms to the OCC's published guidelines^[6], as well as any concerns the examiner has and any commitments for corrective actions from the bank.

Law Clerk John O'Donnell contributed to this post.

^[1] The OCC published its recovery planning guidelines, which applies only to certain covered banks, in September 2016. 12 CFR 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*. The OCC's guidelines are being phased in over time, culminating in July 2018. Covered banks with at least \$750 billion in average total consolidated assets as of January 1, 2017, are required to comply by July 1, 2017; covered banks with at least \$100 billion and less than \$750 billion are required to comply by January 1, 2018; and covered banks with at least \$50 billion and less than \$100 billion are required to comply by July 1, 2018.

^[2] The handbook may be subject to *Auer* deference, as a recent case points out. *California Pacific Bank v. FDIC*, No. 16-70725, 2018 WL 1247159 (9th Cir. Mar. 12, 2018).

^[3] SR 14-1, *Heightened Supervisory Expectations for Recovery and Resolution Preparedness for Certain Large Bank Holding Companies—Supplemental Guidance on Consolidated Supervision Framework for Large Financial Institutions* (January 24,

2014), and SR 14-8, *Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies*(September 25, 2014).

^[4] *Large Financial Institution Rating System; Regulations K and LL*, 82 Fed. Reg. 158 (Aug. 7, 2017) (proposing amendments to 12 CFR Parts 211 and 238).

^[5] Margaret E. Tahyar, *Are Bank Regulators Special?*, 6 *Banking Perspectives* 23 (2018). See 18 U.S.C. § 1906.

^[6] 12 CFR Appendix E to Part 30.