August 2, 2024

Chief Counsel's Office
Attention: Comment Processing (Docket ID OCC-2024-0008)
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, DC 20219

Re: OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Docket ID OCC-2024-0008; RIN 1557-AF27; 89 FR 55114 (July 3, 2024)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the above-captioned enforceable guidelines ("Proposal") issued by the Office of the Comptroller of the Currency ("OCC" or "Agency").[2] The Proposal makes several updates to the OCC's existing Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches of Foreign Banks, initially issued in 2016[3] and subsequently revised in 2018.[4]

---

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies – including many in finance – to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Docket ID OCC-2024-0008; RIN 1557-AF27; 89 FED. REG. 55114 (July 3, 2024); https://www.federalregister.gov/documents/2024/07/03/2024-13960/occ-guidelines-establishing-standards-for-recovery-planning-by-certain-large-insured-national-banks.

[3] OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments; Docket ID OCC-2015-0017; RIN 1557-AD96; 81 FED. REG. 66791 (Sept. 29, 2016); https://www.federalregister.gov/documents/2016/09/29/2016-23366/occ-guidelines-establishing-standards-for-recovery-planning-by-certain-large-insured-national-banks.

[4] OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments; Docket ID OCC-2018-0028; RIN 1557-AE51; 83 FED. REG. 66604 (Dec. 27, 2018); https://www.federalregister.gov/documents/2018/12/27/2018-27952/occ-guidelines-establishing-standards-for-recovery-planning-by-certain-large-insured-national-banks.

The Proposal defines recovery planning as the process of a bank developing and maintaining a comprehensive and dynamic plan that complements the bank's other risk governance functions and supports its safe and sound operation. In turn, recovery plans support the broader financial system by reducing the harmful effects and promoting the recovery after periods of severe stress in the banking system.[5]

The Proposal contains three key revisions, intended to strengthen and expand it from the 2018 guidelines:

1. **Expand the scope of coverage:** The Proposal would apply to banks with an average of $100 billion in total assets over a 4-quarter period ("covered banks") rather than an average of $250 billion in total assets in the 2018 guidelines;

2. **Incorporate regular testing:** The Proposal states that covered banks will regularly test recovery plans to ensure that they will be effective tools that can support recovery during times of stress; and

3. **Include non-financial risks:** The Proposal states that covered banks should plan for recovery from non-financial risks such as operational or strategic risk as well as from financial risks.

We support the Proposal, but we also urge the Agency to make some necessary and meaningful changes to strengthen it before finalization. First, it must be noted that the current methodology for determining banks' systemic importance is simply too crude. Asset size alone does not necessarily dictate a bank's systemic importance. Other factors can play significant contributing roles, as indicated in the method used to determine the Systemically Important Financial Institution ("SIFI") surcharge which, though better than asset size alone, remains an imperfect measure but at least acknowledges other possible factors. Therefore, the Agency should reconsider the $100 billion threshold level and incorporate additional measures of systemic risk beyond merely asset size.

Second, while we understand and appreciate the Agency's desire to make the testing framework flexible and not overly prescriptive, more specific directions should be provided so that banks, regulators, and the public better understand the Agency's expectations for compliance.

Third, given that many components of recovery plans overlap with required resolution or contingency planning that banks must already do on a regular basis, a compliance period of 12 months after the effective date for the new guidelines is more than enough time. We disagree with the need to extend the compliance period to 18 months for banks with between $100 billion and $250 billion in average total assets because it comes at the expense of exposing Main Street Americans and the financial system to potential risk for even longer.

---

[5] OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; *supra* note 2 at 55115.

BACKGROUND

At its core, the Dodd-Frank Act's[6] objective was to eliminate too-big-to-fail and by extension the need for taxpayer-funded bank bailouts. The large bank failures that occurred in the spring of 2023 demonstrated, among other things, that planning for potential recovery and ultimately possible resolution by the banks themselves and the Agencies' process for assessing these plans both need improvement. Clearly, too-big-to-fail is still very much alive and well.[7] Large and systemically important banks must improve their resilience during times of stress; this argues for significantly stronger capital requirements[8] and also includes being well prepared to take meaningful actions to facilitate recovery and resolution, should those be needed.

The OCC cites both the financial crisis in 2008 and the regional bank crisis in 2003 as proof of the need for robust and credible recovery planning:

> Large-scale financial crises, including the 2008 crisis, have demonstrated the destabilizing effect that severe stress can have on financial entities, capital markets, the Federal banking system, and the U.S. and global economies. This is particularly true when a crisis places severe stress on large, complex financial institutions due to the systemic and contagion risks that they pose. During the 2008 crisis, the OCC observed that many financial institutions were not prepared to respond effectively to the financial effects of the severe stress. The lack of or inadequate planning threatened the viability of some financial institutions, and many were forced to take significant actions without the benefit of a well-developed plan for recovery. . . .
>
> In March 2023, several insured depository institutions (IDIs) with total consolidated assets of $100 billion or more experienced significant withdrawals of uninsured deposits in response to underlying weaknesses in their financial position and failed. These institutions were not subject to recovery planning, which would likely have bolstered their resilience. For the OCC, these events highlighted the complexity and interconnectedness of some banks not covered by the Guidelines:

---

6 Public Law No. 111-203, 124 Stat. 1376 (July 21, 2010) ("Dodd-Frank Act").

7 *See, e.g.*, Dennis Kelleher & Frank Medina, *Ending Too-Big-to-Fail by Breathing Life into "Living Wills"* (Jan. 2016), https://bettermarkets.org/wp-content/uploads/2021/07/Breathing-Life-Into-Living-Wills_0.pdf; *see also* Better Markets, *The Too Big to Fail Problem Is Alive, Well and Getting Worse: Presentation to a Financial Stability Board* (Sept. 16, 2019), https://bettermarkets.org/sites/default/files/documents/Better_Markets_Too-Big-To-Fail_FSB_Conference-9-16-2019.pdf; Better Markets, *Can Too Big To Fail Be Ended? And, If So, How?* (Sept. 13, 2023), https://bettermarkets.org/analysis/15th-anniversary-lehman-collapse-conference/.

8 *See e.g.*, Dennis Kelleher, *Well-Capitalized Banks Are Good For Everyone, Except Wall Street CEOs*, AM. BANKER (Aug. 9, 2023), https://www.americanbanker.com/opinion/well-capitalized-banks-are-good-for-everyone-except-wall-street-ceos; *see also* Better Markets, *Fact Sheet: Ten False Claims About Bank Capital* (July 25, 2023), https://bettermarkets.org/wp-content/uploads/2023/07/Better_Markets_Capital_Fact_Sheet-7.25.23.pdf; Board of Governors of the Federal Reserve System, *Capital Supports Lending* (Oct. 9, 2023), https://www.federalreserve.gov/newsevents/speech/barr20231009a.htm; Federal Deposit Insurance Corporation, *Remarks by Chairman Martin J. Gruenberg on the Basel III Endgame at the Peterson Institute for International Economics* (June 22, 2023), https://www.fdic.gov/news/speeches/2023/spjun2223.html.

banks with average total consolidated assets between $100 billion and $250 billion.[9]

Recent crisis periods have demonstrated that the larger a failing bank is, the more problematic its failure can be. Not only are there fewer potential acquirers that have the financial capability and size to take on the deposits and other operations of large banks, but large banks can also be more interconnected with the broader financial system than smaller banks. Acting Comptroller of the Currency Michael Hsu highlighted this problem at a speech in 2022 with his comment that, "if a large regional bank were to fail today, the only viable option would be to sell it to one of the [global systemically important banks] GSIBs."[10] This is an unacceptable default option and underscores the need for robust and realistic recovery plans to protect Main Street Americans and the financial system.

Moreover, many large banks have a wide range of complex activities, in addition to traditional banking operations. Technological advancements and new communication channels have complicated and challenged recovery planning. For example, as demonstrated in spring 2023, social media messages can reach millions of users instantaneously and can quickly lead to rapid deposit outflows and loss of franchise value. Simply put, to be successful, a recovery plan requires careful and comprehensive preparation ***before problems arise*** to avoid sparking widespread financial instability.

SUMMARY OF THE PROPOSAL

As detailed earlier, the Proposal updates and strengthens the OCC's current recovery planning guidelines[11] in three critical areas:

1. **Scope of coverage:** Recovery plans would be required for all banks with an average of $100 billion in total assets over a 4-quarter period;

2. **Regular testing:** Recovery plans must be tested at least annually to provide assurance that they can withstand severe stress; and

3. **Non-financial risks:** Recovery plans should include both financial and non-financial risks, namely operational and strategic risks.[12]

---

9 OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; *supra* note 2 at 55115.

10 Acting Comptroller Michael Hsu, Office of the Comptroller of the Currency, *Financial Stability and Large Bank Resolvability* (Apr. 1, 2022), https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-33.pdf.

11 OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments; *supra* note 4.

12 OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; *supra* note 2 at 55115-17.

The Proposal states that compliance with the new guidelines would be required within 12 months after final approval for banks with more than $250 billion in average total assets because these banks are already subject to the current guidelines. Banks with average total assets between $100 billion and $250 billion would have up to 18 months to comply with the new guidelines because these banks have not been subject to the current guidelines.[13]

SUMMARY OF COMMENTS

We applaud the Agency's efforts to strengthen recovery planning with the Proposal, especially the expansion of the scope of the guidelines to a larger group of banks. The 2023 regional bank crisis provided unambiguous evidence of the severe systemic risk that can quickly result from stress at banks with far less than $250 billion in total assets. The American people and our financial system deserve to have this threat recognized by financial regulators and mitigated to the best of regulators' ability. This Proposal takes important steps in that direction.

We also applaud the Agency's incorporation of non-financial risks in its recovery planning expectations. Banks and even some regulatory officials have attempted to downplay the severity of operational risk and dismiss the need for specific recognition of and protection against it. The truth is, however, that operational risks are evolving and increasing from historical periods.[14] For example, the OCC's recent Semiannual Risk Perspective report detailed the broad range of operational risks:

> Banks are exposed to a wide range of potential disruptive events, including technology-based failures, cyber incidents, pandemic outbreaks, and natural disasters. While advances in technology have improved banks' ability to identify and recover from various types of disruptions, cyber threats are increasingly sophisticated and interdependencies with counterparties and service providers are growing. These operational risks highlight the importance for banks to ensure continued maintenance of effective operational resilience.[15]

Moreover, recent reporting shows that half—11 of 22—of the large banks that the OCC supervises have inadequate controls over operational risk.[16] This underscores the dangers that operational risk presents and supports the need to plan for operational failures.

---

[13] *Id*. at 55117.

[14] *See, e.g.*, Filippo Curti & Marco Migueis, *The Information Value of Past Losses in Operational Risk*, Board of Governors of the Federal Reserve System: Finance and Economics Discussion Series 2023-003 (2023), https://doi.org/10.17016/FEDS.2023.003.

[15] OFFICE OF THE COMPTROLLER OF THE CURRENCY, SEMIANNUAL RISK PERSPECTIVE 4 (Spring 2024), https://www.occ.gov/publications-and-resources/publications/semiannual-risk-perspective/files/pub-semiannual-risk-perspective-spring-2024.pdf.

[16] *See, e.g.*, Hannah Levitt & Katanga Johnson, *Secret Bank Ratings Show US Regulator's Concern on Handling Risk*, BLOOMBERG (July 21, 2024), https://www.bloomberg.com/news/articles/2024-07-21/secret-bank-ratings-show-us-regulator-s-concern-on-handling-risk.

Furthermore, several aspects of the Proposal must be improved to fully achieve the desired outcomes, both now and into the future. Our comments on these improvements are summarized as follows:

- Broaden and strengthen the definition of a covered bank to include other factors that lead to systemic risk. While we agree with and support the change from an asset size threshold of $250 billion to $100 billion, an asset size threshold alone is not sufficient to capture banks that present systemic risk to the financial system and should prepare recovery plans. The Agency should add other factors such as concentrations in certain financial products.

- Provide more specifics on the expectations for recovery plan testing. While we appreciate and agree with the benefits of allowing banks to tailor recovery plan testing to a bank's size, risk profile, activities, and complexity, the Agency should provide more clarity on expectations of a strong and successful recovery plan testing framework.

- Require compliance within 12 months of the Proposal's approval for all covered banks. Given that many components of recovery plans overlap with other required contingency planning that covered banks already do on a regular basis, a period of 12 months after the effective date of the new guidelines is more than enough time for compliance.

COMMENTS

I. BROADEN AND STRENGTHEN THE DEFINITION OF COVERED BANK TO INCLUDE OTHER FACTORS THAT LEAD TO SYSTEMIC RISK.

We agree with and applaud the Agency for reducing the minimum asset size threshold for covered banks that would be subject to regular recovery planning. The 2023 regional bank crisis proved that systemic risk is present in banks with far less than $250 billion in total assets.

We urge the Agency to include additional measures and metrics to best capture ***all banks*** that present systemic risk threats. The Proposal is currently structured around a bright-line asset size standard as the only criterion for identifying banks that would need to comply with recovery planning guidelines. However, we believe that asset size alone does not fully account for characteristics that complicate recovery and endanger financial stability. For instance, multiple business lines, asset concentrations, off-balance sheet risks, and non-U.S. activities and subsidiaries could be present in banks of any size. Therefore, we urge the Agency to determine additional meaningful measures and appropriate benchmark levels for these metrics and add them to the criteria for identifying covered banks.

This enhancement is in the best interest of the Agency, the public, and systemwide financial stability because the resulting definition of covered banks will be more comprehensive.

To the extent a numeric size threshold is used, it should be adjusted for inflation at periodic intervals using a widely accepted price index. Not only will such adjustments account for regular growth in bank size, but it could also prevent the need to make future revisions to these guidelines to adjust for asset size alone.

II. PROVIDE MORE SPECIFICS ON THE EXPECTATIONS FOR RECOVERY PLAN TESTING.

We agree with the addition of regular testing of recovery plans and agree with the proposed annual frequency of such testing. While we appreciate the benefits of customizing recovery plan testing to fit a bank's size, risk profile, activities, and complexity, the Agency should provide more clarity on expectations of a strong and successful testing framework. Such clarity will ensure that testing is sufficiently robust, as banks could face the temptation to use simpler or less strenuous testing scenarios if they result in less costly or easier adjustments to bank operations. This would not be in the best interest of Main Street Americans or financial stability.

For example, the Proposal states that in testing banks "may simulate financial and non-financial stress scenarios."[17] At the very least, we recommend changing "may" to "should" or "must."

We also recommend providing more direction and clarity on how to define a "stress scenario." As we have detailed in relation to the Federal Reserve's bank stress tests, which serve a similar purpose as the recovery plans in this Proposal, the severity of scenarios and economic projections must be increased to be useful.[18] The current Federal Reserve stress tests contain scenarios and economic projections that are based on past recessions. During recent recessions, however, banks and other sectors of the economy ***were the beneficiaries of enormous amounts of economic support***. Therefore, recovery plans—like stress tests—should be tested against scenarios with parameters that are worse than recent recessions to appropriately gauge banks' resilience in a situation where banks must stand on their own, ***without any government assistance***.

III. REQUIRE COMPLIANCE WITHIN 12 MONTHS OF THE PROPOSAL'S APPROVAL FOR ALL COVERED BANKS.

As stated earlier, since many components of recovery plans are contained within other required contingency planning products and processes that covered banks already do on a regular basis, a compliance period of 12 months after the effective date of the new guidelines is more than enough time. Furthermore, as the Agency states in the Proposal, recovery planning is closely tied with and complementary to other facets of banks' risk governance framework and board of directors' responsibilities.[19] In other words, no covered bank should be starting from scratch with the development of its recovery plan.

---

[17] OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; *supra* note 2 at 55116.

[18] Better Markets Fact Sheet, *Stressless "Stress" Tests for Wall Street's Banks Endanger Main Street Families, Businesses, and Community Banks* (June 25, 2024), https://bettermarkets.org/wp-content/uploads/2024/06/Better_Markets_Stress_Test_Fact_Sheet-6.25.24.pdf.

[19] OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; *supra* note 2 at 55115.

CONCLUSION

We hope these comments are helpful for finalizing the Proposal.

Sincerely,

Shayna M. Olesiuk
Director of Banking Policy
solesiuk@bettermarkets.org

Tim P. Clark
Distinguished Senior Banking Adviser
tclark@bettermarkets.org

Better Markets, Inc.
2000 Pennsylvania Avenue NW
Suite 4008
Washington, DC 20006
(202) 618-6464
http://www.bettermarkets.org