Banking and Finance Law Daily Wrap Up, TOP STORY—Enforceable guidelines for large bank recovery planning adopted, (Sept. 28, 2016)

Banking and Finance Law Daily Wrap Up

Click to open document in a browser

By Richard A. Roth, J.D.

The Office of the Comptroller of the Currency has adopted guidelines on the recovery planning processes that are required of larger national banks, federal thrifts, and federal branches of foreign banks. The guidelines require each covered institution to have an appropriate plan for how to recover its financial strength and viability after a stress event or "trigger." Institutions with average total consolidated assets of more than $50 billion are covered, although smaller institutions that present a heightened risk also can be required to comply with the guidelines.

The OCC chose to create the recovery planning standards as guidelines rather than regulations because the agency has more flexibility when enforcing guidelines. However, guidelines are enforceable under Federal Deposit Insurance Act Section 39 (12 U.S.C. §1831p-1).

The guidelines were proposed by the OCC in December 2015 (see *Banking and Finance Law Daily*, Dec. 16, 2015). The final guidelines modified the proposal to specify tiered mandatory compliance dates; clarify that the focus is the financial effects of a stress event, rather than the operational effects; and ensure that each institution will develop a recovery plan that is appropriate to its unique characteristics.

Triggers. Recovery plans should start with the identification of triggers—qualitative or quantitative indicators of risk or severe stress that always should be brought to the attention of management or the board of directors for action. The breach of a trigger should result in notice to the proper individuals, and that notice should include the information they need to respond appropriately. The identified triggers must reflect the specific bank's vulnerabilities.

Plan elements. Each financial institution's recovery plan must include "a wide range of credible options" that can be implemented depending on the trigger and the institution's situation. The plan must be specific to the institution's size and complexity, activities, and risk profile. The recovery options may not include liquidation or resolution, and the plan may not assume that there will be any government bail-out.

A recovery plan must describe the financial institution's structure and relationships with third parties. Each plan must specify how the occurrence of a trigger would be escalated and consider how each of the recovery options would affect the bank. The plan also must be integrated with the institution's other corporate governance and risk management functions.

Plans must be specific, identifying the decision-making process for each option, the way each option will be implemented, and the persons who will be critical to that process. Recovery options suggested when the guidelines were proposed, but not explicitly adopted in the final guidelines, include:

- conserving or restoring liquidity or capital;
- selling assets or lines of business;
- reducing the institution's risk profile;
- restructuring liabilities; and
- implementing emergency protocols.

Required compliance deadlines. The guidelines will take effect on Jan. 1, 2017. However, there are delayed mandatory compliance dates that vary based on the average total consolidated assets of the covered institution on the effective date:

© 2025 CCH Incorporated and its affiliates and licensors. All rights reserved.

- A bank with $750 billion or more must comply within six months.
- A bank with $100 billion or more but less than $750 billion must comply within one year.
- A bank with $50 billion or more but less than $100 billion must comply within 18 months.
- A bank with less than $50 billion that later crosses the coverage threshold most comply within 18 months of becoming a covered bank.

MainStory: TopStory BankingOperations FinancialStability PrudentialRegulation

© 2025 CCH Incorporated and its affiliates and licensors. All rights reserved.