November 5, 2018

Via Electronic Mail

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219
Docket ID OCC–2018–0028

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

Ladies and Gentlemen:

The Bank Policy Institute (**BPI**) and the Securities Industry and Financial Markets Association (**SIFMA** and, together, the **Associations**)[1] appreciate the opportunity to comment on the Office of the Comptroller of the Currency's (the **OCC**) proposed amendment (the **Amendment Proposal**)[2] to its guidelines relating to recovery planning standards for insured national banks, insured federal savings associations and insured federal branches (the **Guidelines**).

1 A description of each Association is provided in Appendix A of this letter.

2 OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments, 83 Fed. Reg. 47313 (Sept. 19, 2018).

The Associations believe that:

- it is appropriate that all insured national banks, insured federal savings associations and insured federal branches (**banks**) with less than $250 billion in average total consolidated assets[3] (**total assets**) are released from formal recovery planning under the Guidelines;

- the OCC should consider a tailored approach to the application of the Guidelines to banks with more than $250 billion in total assets, similar to the approach being considered for large U.S. banking organizations by the OCC in conjunction with the Board of Governors of the Federal Reserve System (the **Federal Reserve**) and the Federal Deposit Insurance Corporation (**FDIC**);[4]

- the OCC should consider moving from an annual to a biennial recovery plan cycle with targeted updates for material changes or events;

- recovery planning standards and feedback should be more transparent in the future and, given the nature of the banks subject to the Guidelines, a supervisory horizontal review of recovery plans may not be appropriate; and

- the OCC should immediately clarify that no recovery plans are expected of banks on or after January 1, 2019 if they do not meet the $250 billion total assets threshold.

These recommendations are designed so that formal recovery planning is more aligned with the differing risk profiles of the banking organizations that are subject to the Guidelines.

I. Banks With a Less Than $250 Billion in Total Assets Should Be Released From Formal Recovery Planning Under the Guidelines

The Associations strongly support the OCC's proposal to raise the threshold for the Guidelines from $50 billion to $250 billion in total assets. It will provide necessary and appropriate burden relief to the affected banks,[5] allow the OCC to allocate regulatory resources among a smaller group of banks and align the recovery planning and resolution planning threshold with the statutory mandate that applicable prudential standards "differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the activities of their subsidiaries), size and any other risk-related factors…".[6]

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3 Average total consolidated assets means the average total consolidated assets of the bank, as reported on the bank's Consolidated Reports of Condition and Income (Call Reports) for the four most recent consecutive quarters. 12 C.F.R. pt. 30, Appendix E, paragraph E.1. Call Reports are *available at* https://cdr.ffiec.gov/public/.

4 *See* OCC, FDIC and Federal Reserve, Notice of Proposed Rulemaking Regarding Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements (Oct. 31, 2018); Federal Reserve, Proposed Rule Regarding Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies (Oct. 31, 2018).

5 *See* 83 Fed. Reg. 47313, 47314.

6 *See* Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, 132 Stat. 1296 (May 24, 2018) (raising the section 165 resolution planning threshold from $50 billion to $250 billion and requiring further tailoring as prudential standards are applied).

II. The OCC Should Consider a Tailored Approach to the Application of the Guidelines to Banks with $250 Billion or More in Total Assets

Raising the threshold from $50 billion to $250 billion in total assets will limit the applicability of the Guidelines to four globally systemically important banks (**G-SIBs**) and four regional banks[7] that vary in size, capital structure, business model, riskiness and complexity. Therefore, a bright-line threshold of $250 billion in total assets, above which all banks are subject to the same formal recovery guidelines, would be suboptimal. In October 2018 testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, Federal Reserve Vice Chairman for Supervision Randal K. Quarles stated that the Federal Reserve is considering how banks with more than $250 billion in total assets that are not G-SIBs could be more efficiently regulated by applying more tailored standards.[8] More recently, on October 31, 2018, the OCC released in conjunction with the Federal Reserve and the FDIC a notice of proposed rulemaking, regarding the application of certain prudential standards to large U.S. banking organizations based on their risk profile and other key characteristics.[9] The OCC should similarly consider whether the Guidelines should be applicable to all banks with more than $250 billion in total assets given the varying degree of riskiness and complexity of these banks. At a minimum, the OCC should tailor the application of the Guidelines to such banks with more than $250 billion in total assets in order to focus recovery planning on the issues that are most relevant to a given bank, based on its risk profile, business model and other key characteristics such as funding and liquidity.

III. The OCC Should Consider Moving From an Annual to a Biennial Recovery Plan Cycle With Targeted Updates for Material Changes or Events

A. Biennial Recovery Plan Cycle

The one-year cycle for completion and approval of recovery plans is unnecessarily burdensome for the banks, without corresponding benefit. Additional time between updates would provide more time for feedback and improvements to the quality of a recovery plan. In the context of resolution planning, former FDIC Chairman Martin J. Gruenberg remarked that moving from a one-year to a two-year cycle "would give the agencies time to review the plans, provide meaningful feedback, and still enable firms to make structural and operational changes necessary to address their issues. This additional time also enabled more extensive dialogue between firms and agency staff, which proved valuable to both."[10] The OCC should similarly consider moving to a two-year cycle for recovery plans.

Furthermore, the OCC should allow each bank to elect the timing of its two-year recovery plan cycle, permitting each bank to make an individualized determination of whether or not to align the preparation of its

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7 As of March 31, 2018, the following eight national banks have $250 billion or more in total consolidated assets: JPMorgan Chase Bank, N.A., Bank of America, N.A., Wells Fargo Bank, N.A., Citibank, N.A., US Bank National Association, PNC Bank, National Association, TD Bank, N.A. and Capital One, N.A., *available at* https://www.federalreserve.gov/releases/lbr/current/.

8 Testimony of Randal K. Quarles, Vice Chairman for Supervision, Federal Reserve, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate (Oct. 2, 2018), *available at* https://www.federalreserve.gov/newsevents/testimony/files/quarles20181002a.pdf.

9 *See supra* n.4.

10 Remarks by Martin J. Gruenberg, Chairman, FDIC, "Resolving a Systemically Important Financial Institution: A Progress Report," The Wharton School University of Pennsylvania; Philadelphia, PA (Feb. 16, 2018), *available at* https://www.fdic.gov/news/news/speeches/spfeb1618.html.

recovery plan under the Guidelines with the preparation of the resolution plan for the bank[11] or its holding company.[12] For some banks, complying with the recovery and resolution planning requirements through the production of various plans involves the same underlying work. For these banks, aligning the recovery planning compliance dates under the Guidelines with a resolution plan compliance date would allow for the most efficient use of resources. For other banks, producing a recovery plan and a resolution plan in the same year places a meaningful burden on internal resources. For these banks, having the recovery and resolution plan due-by dates alternate each year would be preferable.

B. Targeted Updates to Recovery Plans Based on Material Changes or Events

The Guidelines currently require management to (1) review the recovery plan at least annually[13] and in response to a material event and (2) revise the plan as necessary to reflect material changes in the bank's size, risk profile, activities, and complexity, as well as changes in external threats.[14] The Guidelines also require the board of directors to review and approve the recovery plan at least annually[15] and as needed to address significant changes made by management.[16] Both on-cycle and off-cycle updates to recovery plans should be limited to the portions of the plan directly affected by material changes or events. For these purposes, a material change or event[17] should be evaluated in the context of whether it would have (or had in the context of a material event) a fundamental and major impact on the operational feasibility of the bank's recovery plan. If no material change or event has occurred since a previous board-approved recovery plan, re-approval by the board of directors should not be required.

IV. Recovery Planning Standards and Feedback Should Be More Transparent in the Future and a Supervisory Horizontal Review of Recovery Plans May Be Inappropriate

The fact that, in the future, the Guidelines would apply to a small pool of four G-SIBs and four regional banks[18] makes it important that standards and feedback become more transparent since the business models, risk profiles and other key characteristics differ among these banks.

Due to differences in risk profiles and business models among the banks subject to the Guidelines, a supervisory horizontal review is likely to become difficult and less meaningful. As a result, the OCC and its supervisory staff will need to think carefully about whether and how horizontal reviews might take place once the Guidelines are in place.

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11 Resolution plan of a covered insured depository institution, as defined in 12 C.F.R. 360.10(b)(4), required to be submitted to the FDIC.

12 Resolution plan of a covered company, as defined in Resolution Plans Required, 76 Fed. Reg. 67323 (Nov. 1, 2011), required to be submitted to the Federal Reserve and the FDIC pursuant to § 165(d) of the Dodd-Frank Act.

13 *See supra* Section III.A (recommending a biennial recovery planning cycle).

14 OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments, 81 Fed. Reg. 66791, 66801 (Sept. 29, 2016).

15 *See supra* Section III.A (recommending a biennial recovery planning cycle).

16 81 Fed. Reg. at 66801.

17 The concept of materiality in the securities laws is inapposite to this situation.

18 *See supra* n.7.

V. The OCC Should Immediately Clarify That No Recovery Plans are Expected of Banks On or After January 1, 2019 if They Do Not Meet the $250 Billion Total Assets Threshold

The timing of clarifications of or adjustments to recovery planning standards is important, as these may have a significant impact on a bank's recovery planning processes.[19] The timing of the effective date of the Amendment Proposal, 30 days from the date of publication of the final guidelines in the Federal Register,[20] places an undue burden on those banks that would no longer be subject to the Guidelines. Banks with less than $250 billion in total assets are in a state of uncertainty regarding the need to have recovery plans complete on or after January 1, 2019 and are unsure of how to proceed. Given the long lead time in creating these plans and the need for board and senior management review, a recovery plan due on January 1, 2019, would have to be substantially complete by early to mid-November. The OCC should immediately clarify that no recovery plans are expected from these banks in order to avoid the significant and, ultimately, needless resource burden that would result from the production of unnecessary recovery plans.

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19 For example, the OCC issued the Recovery Planning booklet of the Comptroller's Handbook without clear instruction on how the booklet would affect the evaluation of recovery plans for banks that either submitted plans before or shortly after the booklet's publication. *See* OCC Bulletin 2018-9: New Comptroller's Handbook Booklet (Apr. 26, 2018) (providing examiner guidance and examination procedures for examiner), *available at* https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/recovery-planning/pub-ch-recovery-planning.pdf.

20 *See* OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments; Correction, 83 Fed. Reg. 50046 (Oct. 4, 2018) (changing the effective date from "October 19, 2018" to "30 days from the date of publication of the final guidelines in the Federal Register").

The Associations appreciate the opportunity to comment on the proposal. If you have any questions, please contact John Court by phone at +1(202)589-2409 or by email at *john.court@bpi.com* or Carter McDowell by phone at +1(202)962-7327 or by email at *cmcdowell@sifma.org*.

Respectfully submitted,

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Appendix A to
BPI/SIFMA Amendment to Recovery Planning Guidelines Comment Letter

<u>A Description of Each Association</u>

<u>The Bank Policy Institute</u>. The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

<u>The Securities Industry and Financial Markets Association</u>. SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (**GFMA**). For more information, visit http://www.sifma.org.