

Subject: Subordinated Debt
Date: April 3, 2015

**To: Chief Executive Officers of All National Banks and Federal Savings Associations,
 Department and Division Heads, All Examining Personnel, and Other Interested Parties**
Description: Guidelines and Sample Notes

Summary

The Office of the Comptroller of the Currency (OCC) is revising and reorganizing its current guidance for subordinated debt issued by national banks (at appendix A of the "Subordinated Debt" booklet of the *Comptroller's Licensing Manual*) and replacing it with new "Guidelines for Subordinated Debt." The guidelines are consistent with the regulatory capital rules at 12 CFR 3 and the licensing rules for national banks (at 12 CFR 5.47¹) and federal savings associations (at 12 CFR 163.80 and 12 CFR 163.81²). The new guidelines apply to all subordinated debt issued by national banks and federal savings associations (collectively, bank or banks), regardless of whether the subordinated debt is included in regulatory capital.

The OCC also is revising the "Sample Subordinated Note" (at appendix B of the "Subordinated Debt" booklet) and replacing it with two sample notes for national banks. The first note provides sample language for a subordinated debt note included in tier 2 capital, and the second provides sample language for a subordinated debt note that is *not* included in tier 2 capital. The sample notes apply only to subordinated debt issued by a national bank because there is no pre-existing sample note for federal savings associations. The OCC is developing sample notes for federal savings associations and expects to publish the sample notes in the near future. The new guidelines and sample notes are effective for subordinated debt issued on or after April 3, 2015.

The OCC reminds all banks that they are responsible for complying with the applicable licensing rules; the regulatory capital rules, if applicable; and all other applicable laws and regulations.

Note for Community Banks

The guidelines apply to *all* subordinated debt issued by national banks and federal savings associations, regardless of whether the subordinated debt is included in regulatory capital.

Highlights

- Section I of the guidelines provides general introductory information regarding the purpose of the new guidelines and the OCC's view that the new guidelines balance the broad discretion of a bank in structuring the contractual provisions of its subordinated debt with the concern that such provisions could unduly limit a bank's flexibility and authority.
- Section II of the guidelines describes the OCC's supervisory views on representations and warranties, affirmative covenants, negative covenants, events of default, contemporaneous loan agreements, and novel or extraordinary provisions.
- Section III of the guidelines describes additional requirements and OCC policies for subordinated debt included in tier 2 capital. The OCC policies and areas of concern all relate to specific criteria for tier 2 capital in the regulatory capital rules. The OCC anticipates that section III may be revised as the OCC interprets applicable provisions in the regulatory capital rules.
- The OCC also is issuing two sample notes for national banks' subordinated debt: one sample note for a subordinated debt note that will not be included in tier 2 capital, and another sample note for a subordinated debt note to be included in tier 2 capital. The OCC is developing sample notes for federal savings associations and expects to publish the sample notes in the near future.
- The sample notes include (i) required disclosures that must appear all in capital letters on the face of the note; (ii) the amount and date of the note; (iii) a paragraph identifying the parties to the instrument, the amount due, and the rate of interest; (iv) a paragraph specifying the repayment terms; (v) a provision that describes the order and level of subordination; (vi) a

provision that describes the OCC's regulatory authority with respect to national banks; and (vii) lines for the signature of the national bank official authorized to sign the note and the name and title of that official.

Further Information

Please contact Patricia D. Goings, Senior Licensing Analyst, or Patricia Roberts, Senior Licensing Analyst, Licensing Division, at (202) 649-6260; or Jean Campbell, Counsel, Legislative and Regulatory Activities Division, at (202) 649-5490.

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¹ See 79 Fed. Reg. 75417 (December 18, 2014).

² The OCC has proposed moving 12 CFR 163.81 to the new 12 CFR 5.56. See 79 Fed. Reg. 33260 (June 10, 2014). In the future, the OCC will consider integrating the national bank and federal savings association rules.

Related Links

- [Guidelines for Subordinated Debt \(PDF\)](#)
- [Sample Subordinated Note for National Banks: Tier 2 \(PDF\)](#)
- [Sample Subordinated Note for National Banks: Non-Tier 2 \(PDF\)](#)
- ["Subordinated Debt Issued by a National Bank," 79 Fed. Reg. 75417 \(December 18, 2014\)](#)