

# RESCINDED

Transmittal – See OCC 2020-11

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## Subordinated Debt: Interim Final Rule

### Summary

The Office of the Comptroller of the Currency (OCC) issued an interim final rule with a request for comments on December 18, 2014, that amends the OCC's subordinated debt rules for national banks at 12 CFR 5.47 by moving certain provisions from the current guidelines at appendix A of the "Subordinated Debt" booklet of the *Comptroller's Licensing Manual* to 12 CFR 5.47 and making other clarifying and technical changes. This interim final rule amends the OCC's interim final rule published February 28, 2014,<sup>1</sup> that made amendments to the OCC's rules to be consistent with the 2013 revised regulatory capital rules, including revising and clarifying the OCC's rules governing subordinated debt issued by national banks (12 CFR 5.47) and federal savings associations (12 CFR 163.80 and 12 CFR 163.81). The effective date of this interim final rule is January 1, 2015. This interim final rule does not change the rules governing subordinated debt issued by federal savings associations (12 CFR 163.80 and 12 CFR 163.81<sup>2</sup>) at this time because of differences in the respective rules and guidance applicable to national banks and federal savings associations.

### To

Chief Executive Officers of All National Banks and Federal Savings Associations, Federal Branches and Agencies, Department and Division Heads, All Examining Personnel, and Other Interested Parties

### Note for Community Banks

The changes made by this interim final rule apply to all national banks, including community banks, that issue subordinated debt after January 1, 2015. The interim final rule does not apply to federal savings associations.

### Highlights

The interim final rule makes the following amendments to 12 CFR 5.47:

- deletes paragraphs (b) through (i) that are no longer necessary because they provide criteria and procedures for issuance and prepayment of subordinated debt that are not consistent with the OCC's regulatory capital rules.
- removes all references to timing differences between national banks that use advanced approaches under the OCC's regulatory capital rules and national banks that do not use them.
- clarifies the meaning of the term "unsecured" in renumbered paragraph (d)(1)(iv) by providing that a subordinated debt note must not include the establishment of any legally enforceable fund for payment of the subordinated debt note through a sinking fund or through a compensating balance or other funds or assets subject to a legal right of offset, as defined by applicable state law. The interim final rule moves these concepts from the current guidelines to renumbered paragraph (d)(1)(iv).

- adds new paragraph (d)(2), “Corporate authority,” that prohibits the inclusion of any provision or covenant in a subordinated debt note that unduly restricts or otherwise acts to limit the authority of a national bank or interferes with the OCC’s supervision of a national bank. The interim final rule moves five examples of provisions or covenants from the current guidelines to new paragraph (d)(2).
- adds new paragraph (d)(3), “Disclosure requirements.” The interim final rule moves all of these disclosures, with one exception, from the current guidelines to new paragraph (d)(3).
- deletes the cross-reference in 12 CFR 5.47 to the applicable OCC guidance for subordinated debt. This cross-reference is no longer necessary because the interim final rule moves those practices and disclosures deemed to be most important from the guidance into 12 CFR 5.47 to locate applicable requirements in one place.

## Further Information

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<sup>1</sup>See 79 Fed. Reg. 11300 (February 28, 2014).

<sup>2</sup>The OCC recently proposed to move 12 CFR 163.81 to new 12 CFR 5.56. See 79 Fed. Reg. 33260 (June 10, 2014).

## Related Link

- ["Subordinated Debt Issued by a National Bank" \(PDF\)](#)