



This document is scheduled to be published in the Federal Register on 12/31/2012 and available online at <http://federalregister.gov/a/2012-31267>, and on FDsys.gov

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

Docket ID OCC-2012-0007

RIN 1557-AD59

Lending Limits

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its lending limits rule to extend the rule's temporary exception for credit exposures arising from a derivative transaction or securities financing transaction from January 1, 2013 to July 1, 2013.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The effective date of amendatory instruction 3a of the interim final rule published on June 21, 2012, 77 FR 37277, is delayed from January 1, 2013 to July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Jonathan Fink, Assistant Director, Bank Activities and Structure Division, (202) 649-5593; Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 649-5490; or Kurt Wilhelm, Director for Financial Markets, (202) 202-649-6437, Office of the Comptroller of the Currency, Washington, DC, 20219.

SUPPLEMENTARY INFORMATION:

I. Description of Final Rule

Section 5200 of the Revised Statutes, 12 U.S.C. 84, provides that the total loans and extensions of credit by a national bank to a person outstanding at one time shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the bank if the loan or extension of

credit is not fully secured, plus an additional 10 percent of unimpaired capital and unimpaired surplus if the loan is fully secured. Section 5(u)(1) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(u)(1), provides that section 5200 of the Revised Statutes "shall apply to savings associations in the same manner and to the same extent as it applies to national banks." In addition, section 5(u)(2) of HOLA, 12 U.S.C. 1464(u)(2), includes exceptions to the lending limits for certain loans made by savings associations. These HOLA provisions apply to both Federal and state-chartered savings associations.

Section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (Dodd-Frank Act) amended section 5200 of the Revised Statutes to provide that the definition of "loans and extensions of credit" includes any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a national bank and that person. This amendment was effective July 21, 2012. By virtue of section 5(u)(1) of the HOLA, this new definition of "loans and extensions of credit" applies to all savings associations as well as to national banks.

On June 21, 2012, the OCC published in the Federal Register an interim final rule that, among other things, amended the OCC's lending limits regulation, 12 CFR part 32, by implementing section 610 of the Dodd-Frank Act.² Specifically, the interim final rule amended part 32 to provide national banks and savings associations with different options for measuring the appropriate credit exposures of derivatives transactions and securities financing transactions, including an internal model option. The interim final rule was effective on July 21, 2012. Because the OCC recognized that national banks and savings associations would need additional

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 77 FR 37265 (June 21, 2012).

time to comply with these new provisions, the interim final rule provided at 12 CFR 32.1(d) that the requirements of part 32 only apply to a credit exposure arising from a derivative transaction or securities financing transaction on or after January 1, 2013.³

Based on the public comments received on the interim final rule, the OCC concludes that institutions that wish to use an internal model method to determine credit exposure for derivative transactions and securities financing transactions may not have sufficient time to develop a model, receive approval for its use, and implement the model before the January 1, 2013 expiration of the temporary exception. Moreover, for many institutions with large portfolios, the other non-model methods to measure credit exposure provided by the rule often would not be optimal. For the foregoing reasons, the OCC is extending this exception to July 1, 2013,⁴ in advance of finalizing the interim final rule. As indicated in the preamble to the interim final rule, notwithstanding this extension, the OCC retains full authority to address credit exposures that present undue concentrations on a case-by-case basis through our existing safety and soundness authorities.

II. Notice and Comment

This final rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

³ The interim final rule also removed from the lending limits rule the securities reverse repurchase provision, redesignated as §32.2(q)(1)(vii), on January 1, 2013 to correspond to the expiration of the exception for the section 610-related provisions. This final rule changes the date of this removal to July 1, 2013 as a conforming change.

⁴ The OCC issued OCC Bulletin 2012-36 on November 16, 2012, to provide notice prior to finalizing the interim final rule of its intention to extend the exception to April 1, 2013 so that national banks and savings associations could adjust their preparations for compliance accordingly. Since then, the OCC has determined that it is more appropriate to extend the exception to July 1, 2013.

This final rule extends the temporary exception from the lending limits rules for extensions of credit arising from derivative transactions or securities financing transactions from January 1, 2013 to July 1, 2013 in order to provide national banks and savings associations with additional time to comply with these provisions. The rule makes no substantive changes to the lending limits rule. Furthermore, on November 16, 2012, the OCC announced its intention to extend this temporary exception,⁵ thereby giving notice to interested parties that the January 1, 2013 date would likely be extended. For these reasons, the OCC finds that prior notice and comment are unnecessary.

III. Effective Date

This interim final rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]. A final rule may be effective without 30 days advance publication in the Federal Register if an agency finds good cause and publishes such with the final rule.⁶ The purpose of a delayed effective date is to permit regulated entities to adjust their behavior before the final rule takes effect. As described above, national banks and savings associations are currently excepted from the lending limits rules for extensions of credit arising from derivative transactions or securities financing transactions until January 1, 2013. This final rule extends this exception through July 1, 2013 in order to provide national banks and savings associations with additional time to comply with these provisions. The rule makes no substantive changes to the lending limits rule. Because the current exception will expire less than 30 days from the date of this rule's publication, it is necessary to make this rule effective immediately. Not doing so would result in national banks and savings associations having to comply with these provisions

⁵ See OCC Bulletin 2012-36.

⁶ 5 U.S.C. 553(d)(3).

for a limited amount of time before the July 1, 2013 exception is effective. For these reasons, the OCC finds good cause to dispense with a delayed effective date.

IV. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),⁷ 5 U.S.C. 603, an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describe the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have “a significant economic impact on a substantial number of small entities.” However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).⁸ Pursuant to the APA at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” For the reasons discussed above, the OCC did not publish a notice of proposed rulemaking. Therefore, the RFA does not apply to this final rule.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, § 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of

⁷ Pub. L. 96–354, Sept. 19, 1980.

⁸ 5 U.S.C. 603(a), 604(a).

regulatory alternatives before promulgating a rule. The OCC has determined that there is no Federal mandate imposed by this rulemaking that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, final rule is not subject to § 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule amends rules, which contain information collection requirements under the PRA, that have been previously approved by OMB under OMB Control No. 1557-0221. The amendments in this final rule do not introduce any new collections of information into the rules, nor do they amend the rules in a way that modifies the collection of information that OMB has previously approved for part 32. Therefore, no Paperwork Reduction Act submission to OMB is required.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR part 32 is amended as follows:

PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 84, 93a, 1462a, 1463, 1464(u), and 5412(b)(2)(B).

§ 32.1 [Amended]

2. Section 32.1(d) is amended by removing “January 1, 2013” and adding in its place “July 1, 2013”.

DATED: December 21, 2012

Thomas J. Curry,

Comptroller of the Currency

[BILLING CODE 4810-33-P]

[FR Doc. 2012-31267 Filed 12/26/2012 at 11:15 am; Publication Date: 12/31/2012]