DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Transition Period under Section 716 of the Dodd–Frank Wall Street Reform and Consumer Protection Act.

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

ACTION: Notice of guidance.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is notifying insured Federal depository institutions[1] that are or may become swap dealers that the OCC is prepared to consider favorably requests for a transition period pursuant to section 716(f) of the Dodd–Frank Act, provided that such requests conform to the procedures and conditions established in this notice.

DATES: This guidance is effective immediately. Written requests for transition periods should be submitted to the OCC by January 31, 2013.

FOR FURTHER INFORMATION CONTACT: Roman Goldstein, Senior Attorney, Ted Dowd, Assistant Director, or Ellen Broadman, Director, Securities and Corporate Practices Division, (202) 649-5510, 400 7th St. SW, Washington, DC 20219.

[1] Insured Federal depository institution means an entity that is a Federal depository institution and an insured depository institution under the Federal Deposit Insurance Act. See 12 U.S.C. 1813(c)(2) and (4). National banks, Federal savings associations and insured Federal Branches are insured Federal depository institutions.

SUPPLEMENTARY INFORMATION

A. Background

Section 716 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) prohibits providing Federal assistance to swaps entities, a term that includes Federal depository institutions[2] that are swap dealers.[3] The prohibition does not apply to insured depository institutions that limit their swap activities to those activities specified in section 716(d) (conforming swap activities). The OCC, Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) jointly issued guidance that section 716's effective date is July 16, 2013.[4]

Section 716(f) provides that the appropriate Federal banking agency shall permit a transition period, as appropriate, for insured depository institution swap entities to divest or cease nonconforming swap activities.[5] The prohibition on Federal assistance does not apply during this transition period. The transition period, which begins on the effective date, initially may be up to 24 months, as determined by the insured depository institution's appropriate Federal banking agency[6] in consultation with the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC). The appropriate Federal banking agency, after consulting with the CFTC and SEC, may extend the transition period for up to one additional year.

In establishing the length of a transition period for an insured depository institution, the appropriate Federal banking agency must take into account and make

---

[2] 12 U.S.C. 1813(c)(4).
[3] Except as otherwise specified, this notice refers to both swaps and security-based swaps as swaps, and both swap dealers and security-based swap dealers as swap dealers.
[4] Guidance on the Effective Date of Section 716, 77 FR 27465 (May 10, 2012).
[5] See Dodd–Frank Act § 716(f), 15 U.S.C. 8305(f).
[6] The OCC is the appropriate Federal banking agency of Federal depository institutions. 12 U.S.C. 1813(q)(1).

written findings regarding the potential impact of the divestiture or cessation of nonconforming swap activities on the institution's (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on insured depositors and the FDIC's Deposit Insurance Fund (DIF). The appropriate Federal banking agency may consider such other factors as it deems appropriate.

B. Transition Period

For the following reasons, the OCC has concluded that transition periods should be provided to insured Federal depository institutions to provide sufficient opportunity for institutions to conform their swaps activities in an orderly manner. First, section 716 assumes a regulatory framework that is not yet complete. Further development of the Title VII regulatory framework is necessary for insured Federal depository institutions to make well-informed determinations concerning business restructurings that may be necessary for section 716 conformance.[7] Second, the provision of transition periods while the Title VII regulatory framework continues to develop will provide regulatory certainty for insured Federal depository institutions in the near term and will mitigate potential disruptions to client services.[8] Third, transition periods will mitigate operational and credit risks for insured Federal depository institutions.[9]

[7] Furthermore, mandatory clearing rules are not in place for many standardized credit default swaps (CDS) and the market has not moved to cleared CDS for a variety of products. Section 716(d)(3) provides that an insured depository institution may act as a swaps entity for CDS if they are cleared.

[8] The Commodity Futures Trading Commission recently exempted certain swap dealers from certain requirements imposed by title VII of the Dodd–Frank Act in order to ensure an orderly transition to the new regulatory regime and to provide greater legal certainty to market participants. Final Exemptive Order Regarding Compliance with Certain Swap Regulation, at 58 (Dec. 21, 2012), available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister122112.pdf.

[9] Transition periods will provide appropriate time for institutions to negotiate and document new master swap agreements individually with each of their clients, customers, and counterparties as necessary for section 716 conformance. Additionally, a transition period will provide more time for the transfer of non-

Section 716 anticipates that transition periods will be provided to avoid unwanted adverse consequences from premature implementation of section 716. For the reasons discussed above, the OCC believes that implementation of section 716 without transition periods would cause unwanted adverse consequences and that transition periods therefore are appropriate. Accordingly, an insured Federal depository institution that is or will be a swaps entity and that seeks a transition period for its nonconforming swaps activities should formally request a transition period from the OCC.[10] The OCC is prepared to consider such requests favorably, provided that the requests conform to the guidance provided below.

Each request must be written and specify the transition period appropriate to the institution, up to a two-year transition period commencing from July 16, 2013. The request must also discuss:

1. The institution's plan for conforming its swap activities;

2. How the requested transition period would mitigate adverse effects on mortgage lending, small business lending, job creation, and capital formation;

3. The extent to which the requested transition period could have a negative impact on the institution's insured depositors and the DIF;

4. Operational risks and other safety and soundness concerns that a transition period would mitigate.

5. Other facts that the institution believes the OCC should consider.

---

conforming swaps activities to affiliates, including in some cases the establishment of new affiliates entailing requisite regulatory approvals from the SEC, CFTC, and state authorities, and in all cases the transfer of back-office functions and the making of necessary arrangements for the custody of customer margin collateral.

[10] An insured depository institution whose swap activities are presently limited to conforming swap activities is not eligible for a transition period because it would not be subject to the prohibition on Federal assistance. See Dodd–Frank Act § 716(f), 15 U.S.C. 8305(f).

An insured Federal depository institution that is unsure if or when it will be or become a swaps entity may request a transition period. The request must contain the elements described above and additionally explain why the institution believes it might be or become a swaps entity under the CFTC's definition of swap dealer or the SEC's definition of security-based swap dealer.[11] The OCC may require a requesting insured Federal depository institution to provide additional information before establishing a transition period. The OCC may impose such conditions on a transition period as it deems necessary and appropriate.[12]

(Authority: 15 U.S.C. 8305)

[11] See Further Definition of Swap Dealer, 77 FR 30595 (May 23, 2012).
[12] See Dodd–Frank Act § 716(f), 15 U.S.C. 8305(f).

[THIS SIGNATURE PAGE RELATES TO THE NOTICE TITLED "TRANSITION PERIOD UNDER SECTION 716 OF THE DODD–FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT"]

Dated: ___December 31, 2012______

_________[signed] _____________________

Thomas J. Curry, Comptroller of the Currency