

**Supporting Statement
Subordinated Debt
OMB Control No. 1557-0320**

1. Circumstances that make the collection necessary:

Request for Emergency Approval

The OCC is requesting emergency approval under the PRA for this collection.

The OCC has determined that (1) the collection of information within the scope of this request is needed prior to the expiration of time periods established under 5 C.F.R. § 1320.12; (2) this collection of information is essential to the mission of the OCC; and (3) the OCC cannot reasonably comply with the normal clearance procedures because an unanticipated event has occurred and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information.

Subordinated debt plays a critical role in the capital and liquidity management of national banks. On February 28, 2014, the OCC issued an interim final rule that, among other things, revised and clarified the OCC's rules governing subordinated debt issued by national banks to make those rules consistent with the 2013 revised capital rules.¹ This interim final rule makes crucial clarifications to those subordinated debt rules by moving certain provisions from the current Guidelines to the rules and making other clarifying and technical amendments.

The underlying need for an interim final rule is driven by the fact that the 2013 revised capital rules will become applicable to non-advanced approaches national banks beginning January 1, 2015. Thus, it is imperative that the OCC issue this interim final rule with an effective date of January 1, 2015, in order to clarify for banks which requirements are applicable with respect to subordinated debt. Absent having these clarifying amendments in place and in effect by January 1, 2015, national banks may undergo great difficulty and expense ensuring that their subordinated debt satisfies all applicable rules and policies. This is particularly true for community banks.

Existing Requirements previously cleared under OMB Control No. 1557-0320

Through the February 28, 2014 interim final rule, the OCC issued an interim final rule that revised the requirements of 12 CFR 5.47. Specifically, all national banks must receive prior OCC approval in order to prepay subordinated debt that is included in tier 2 capital, and certain banks must receive prior approval to prepay subordinated debt that is not included in tier 2 capital. If the prepayment is in the form of a call option and the subordinated debt is included in tier 2 capital, a national bank must submit the information required for general prepayment

¹ 79 Fed. Reg. 11300 (February 28, 2014).

requests under paragraph (n)(1)(ii)(A) and also comply with paragraph (n)(1)(ii)(B)(2), which requires a national bank to submit either: (1) a statement explaining why the bank believes that following the proposed prepayment the bank would continue to hold an amount of capital commensurate with its risk; or (2) a description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument and the time frame for issuance.

The OCC also revised the requirements of § 163.81 in the interim rule. Specifically, the prepayment of subordinated debt securities or mandatorily redeemable preferred stock (“covered securities”) included in tier 2 capital now requires prior OCC approval. In addition, if the prepayment is in the form of a call option, a Federal savings association must submit the information required for general prepayment requests under paragraph (j)(2)(i) and also comply with paragraph (j)(2)(ii)(A), which requires a Federal savings association to submit either: (1) a statement explaining why the Federal savings association believes that following the proposed prepayment the savings association would continue to hold an amount of capital commensurate with its risk; or (2) a description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument and the time frame for issuance.

2. Use of the information:

Request for Emergency Approval

The interim final rule revises 12 CFR 5.47 to add a disclosure requirement in paragraph (d)(3)(ii)(C). A description must appear on the face of the subordinated debt note of the OCC’s authority under 12 CFR 3.11 to limit distributions, including interest payments on any tier 2 capital instrument if the national bank has full discretion to permanently or temporarily suspend such payments without triggering an event of default. This disclosure requirement is being added to OMB Control No. 1557-0320, which currently covers the burden imposed by 12 CFR 5.47(g)(1)(ii)(A), adopted in connection with the interim final rule issued on February 28, 2014. The remainder of the information collection requirements found in 12 CFR 5.47 were previously approved under OMB Control No. 1557-0014.

Existing Requirements previously approved under OMB Control No. 1557-0320

Federal law and OCC regulations require that, under certain circumstances, a national bank or Federal savings association (collectively, “institution”) must receive OCC approval to issue or prepay subordinated debt and include subordinated debt in tier 2 capital. The OCC uses information submitted by institutions to decide whether to grant approval for requests to issue or prepay subordinated debt and/or include subordinated debt in tier 2 capital.

The OCC uses the request for approval to issue or prepay subordinated debt or include subordinated debt in tier 2 capital, outlined in 12 CFR 5.47 and 163.81, to determine whether to grant or deny an institution’s request. In addition, when the prepayment is in the form of a call

option and the subordinated debt is included in tier 2 capital, the OCC uses the additional information provided to determine whether to require the institution to replace the instrument with an instrument that meets the criteria for tier 1 or tier 2 capital, and, if so, whether the replacement instrument would qualify as tier 1 or tier 2 capital. The information collected is used to ensure compliance with legal and regulatory requirements. In the case of a prepayment in the form of a call option, the OCC uses the additional information collected to implement a requirement in the OCC's capital regulations.

3. Consideration of the use of improved information technology:

Any improved technology that allows respondents to meet the requirements of the regulation may be used.

4. Efforts to identify duplication:

Each submission is unique to the individual bank and situation.

5. Minimizing burden on small entities:

Only the information necessary for the OCC to fulfill its statutory responsibilities for any bank, regardless of size, is requested.

6. Consequences of less frequent collection:

The information is collected infrequently—only as the situation arises. Statutory or regulatory requirements govern these information collections. Less frequent collection is inconsistent with the underlying statutes and would not promote a safe and sound banking system.

7. Special circumstances necessitating collection inconsistent with 5 CFR part 1320:

The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

8. Consultation with persons outside the agency:

The OCC issued an interim final rule in the *Federal Register* seeking comment on the collection.

9. Payment or gift to respondents:

None.

10. Any assurance of confidentiality:

The information is kept private to the extent permitted by law.

11. Information of a sensitive nature:

Not applicable. No personally identifiable information is collected.

12. Burden estimate:

Existing Requirements

Information Collection	No. of Respondents	No. of Responses	Hours per Response	Estimated Total Burden
Prepayment of Subordinated Debt in Form of Call Option – Reporting Requirement	184	184	1.30	239

New Requirements

Information Collection	No. of Respondents	No. of Responses	Hours per Response	Estimated Total Burden
Authority to Limit Distributions – Disclosure Requirement	42	1	0.5	21

The cost of the hour burden is as follows:

Information Collection	Wage Category	Total Burden Hours	Burden Hours by Wage Category	Wage Rate	Total Cost of Hour Burden
	30% clerical	260	78	\$20	\$1,560
	30% middle mgmt	260	78	\$40	\$3,120
	20% sr mgmt	260	52	\$80	\$4,160
	20% counsel	260	52	\$100	\$5,200
	Total				\$14,040

13. Estimate of annualized costs to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Changes in burden:

Previous Burden: 239 hours.

New Burden: 260 hours.

Difference: + 21 hours.

The increase in burden is due to the addition of a disclosure requirement to the collection.

16. Information regarding collections whose results are planned to be published for statistical use:

Not applicable.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS:

Not applicable.