



BANKING ISSUANCE

Comptroller of the Currency
Administrator of National Banks

Type: Banking Circular

Subject: OCC Staff No-Objection Position

TO: Chief Executive Officers of All National Banks and All Deputy Comptrollers

PURPOSE

This Banking Circular provides general guidance to national banks, bank counsel, and interested members of the public on requests for staff no-objection positions. By providing guidance on procedures to be followed in requesting this form of staff advisory letter, we hope to make more efficient use of our resources and improve compliance with the national banking laws.

BACKGROUND

OCC frequently receives requests for its views concerning the application of laws administered by the Office in its capacity as the regulator of national banks, and the Office's legal staff has traditionally provided informal advisory responses where appropriate. To promote more effective use of the informal advisory process, the Office is adopting a staff no-objection position procedure. The procedure is available to persons, particularly bank counsel, who seek the informal views of the OCC legal staff regarding the applicability of national banking law requirements to contemplated transactions or activities under circumstances where there is no requirement for comptroller approval. A no-objection position represents the informal views of the comptroller's legal staff concerning the application of specific banking law provisions to certain contemplated activities or transactions. A no-objection position will be issued in response to a written request, typically submitted by bank counsel, seeking the views of the staff as to whether it would express any objection if the contemplated activity or transaction were implemented in the manner described in the written request. The OCC staff position will rely on the representations and opinions contained in the written request and on the staff's own assessment of the issues presented.

The Office considers the practice of having the staff express its current views on the application of national banking laws to particular transactions or activities as one means of promoting greater compliance with those laws. It is similar to the practice of the Securities and Exchange Commission staff to issue no-action letters regarding the application of the federal securities laws. This informal advisory procedure has been recognized as an "excellent practice in administrative procedure." See, e.g., Securities Act Release No. 6253 (October 28, 1980). In addition, by requiring bank counsel to include an analysis of specific legal issues, the OCC staff should be able to respond to no-objection position requests on a timely basis.



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It is contemplated that OCC staff no-objection positions would provide a current statement of the staff's views concerning the application of banking law to particular activities and transactions. However, staff no-objection positions are subject to reconsideration and should not be regarded as precedents binding on the Comptroller. In addition, these informal advisory positions of the staff would not constitute official action by the Comptroller. Consequently, staff no-objection positions should not be viewed as a substitute for Comptroller approvals required by law, such as in the case of a merger transaction.

CONDITIONS APPLICABLE TO REQUESTS FOR NO-OBJECTION POSITIONS

Each written request for a staff no-objection position should:

- ① Identify the specific provision(s) of banking law, including rules and regulations, in question. All letters requesting a no-objection position should indicate, in a separate caption on the first page, each provision of law and each regulation or rule to which the request relates.
- ② Identify all relevant persons and banks involved. Requests relating to unnamed banks, companies, or persons, or to hypothetical situations will not be answered.
- ③ Provide a concise description of the contemplated transaction or activity, the legal issues raised and all facts necessary to reach a conclusion in the matter. Requests should not attempt to address every possible situation that may arise in the future.
- ④ Indicate the writer's opinion of how the legal issues should be resolved, and the basis for that opinion, including an analysis of any relevant court decisions.

Requests for no-objection positions that do not conform to the established criteria may be returned by the staff without consideration of the issues presented.



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STAFF RESPONSE

The staff intends to respond to requests for no-objection positions in a separate letter. The response will recite the essential facts and then set forth the position of the staff, taking into consideration the analysis and opinion of the person requesting the no-objection position.

AREAS OF INAPPLICABILITY

In certain situations the staff will not express a position. For example, the staff will not take a no-objection position on whether a particular transaction or activity may constitute an unsafe or unsound banking practice. Resolution of such issues will continue to be addressed through the bank examination process.

The staff will also not address the application of criminal law provisions. This includes the Bank Bribery Statute, 18 U.S.C. 215. In addition, the no-objection procedure is not intended to be used to address areas of banking law that are well settled as to their meaning and application or issues that may be considered routine in nature.

As the Office gains more experience with the no-objection procedure, other situations may arise in which it would be inappropriate for the staff to respond to no-objection requests.

PUBLIC AVAILABILITY OF STAFF NO-OBJECTION POSITIONS

In addition to announcing the adoption of the staff no-objection procedure, the Office is amending 12 C.F.R. 4.15 to include no-objection requests and staff no-objection positions in the class of documents available to the public. Under 12 C.F.R. 4.15(c), the Office reserves the discretion to delete identifying details from no-objection requests or staff responses to the extent necessary to prevent an invasion of personal privacy.

Richard V. Fitzgerald
Chief Counsel