
**Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Conference of State Bank Supervisors**

**Interagency Statement on Section 612 of the Dodd-Frank Act
Restrictions on Conversions of Troubled Banks**

November 26, 2012

The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies), in conjunction with the Conference of State Bank Supervisors, are issuing this statement to provide guidance on the implementation of section 612 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), entitled “Restrictions on Conversions of Troubled Banks.” Section 612 imposes restrictions on conversions of certain national banks or federal savings associations to state-chartered institutions and on conversions of certain state-chartered banks or savings associations to national banks or federal savings associations (referred to collectively as “insured depository institutions” in this statement). Since financial institutions may choose to operate under a state or federal charter that best accommodates their business and strategic needs, the agencies are issuing this policy statement to explain the requirements of section 612 in their application processes.¹

Insured depository institutions should consider this policy statement in connection with the 2009 Federal Financial Institutions Examination Council (FFIEC) *Statement on Regulatory Conversions* (2009 FFIEC Statement) that addresses proposed conversions by institutions with less than satisfactory ratings or that have a material corrective action program in place or being contemplated, as well as those subject to serious or material enforcement actions. The 2009 FFIEC Statement covers a broader range of circumstances than section 612, and the 2009 FFIEC Statement remains in effect. However, transactions within the statutory coverage of section 612 must comply with the provisions and requirements of section 612.

Dodd-Frank Act: Prohibition of Certain Conversions

Section 612 of the Dodd-Frank Act generally prohibits charter conversions by a national bank or federal savings association to a state bank or state savings association, or by a state bank or state savings association to a national bank or federal savings association, while the institution is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, its current federal banking agency² or state

¹ The various state banking supervisors may implement this policy statement through their individual application processes.

² The federal banking agencies are set forth in 12 U.S.C. 1813(q), namely (as relevant for conversions and section 612 of the Dodd-Frank Act), the OCC in the case of a national bank and a federal savings association, the FDIC in the case of a state nonmember insured bank and a state savings association, and the Board in the case of a state member bank.

bank supervisor with respect to a significant supervisory matter.³ The agencies interpret section 612 to cover all formal enforcement actions - orders, agreements, directives, or other documents - that are enforceable under 12 U.S.C. 1818 (or the equivalent in the case of actions by a state bank supervisor), since by their nature they involve a significant supervisory matter.⁴ Section 612 also covers a memorandum of understanding that involves a significant supervisory matter, as determined by the agency with which the memorandum was entered.

Section 612(d) of the Dodd-Frank Act contains an exception to the conversion prohibition. The prohibition does not apply if:

1. The federal banking agency that would become the appropriate federal banking agency after the proposed conversion gives the federal banking agency or state bank supervisor that issued the enforcement action a written notice of the proposed conversion with a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution;
2. The federal banking agency or state bank supervisor that issued the enforcement action does not object to the conversion or the plan;
3. The post conversion federal banking agency agrees to implement the plan; and
4. In the case of a final enforcement action by a state attorney general, approval of the conversion is conditioned on the insured depository institution's compliance with the terms of such final enforcement action.

The agencies expect that such exceptions would be rare, and generally would occur only when an insured depository institution has already substantially addressed the matters in the enforcement action or there are substantial changes in circumstances (*e.g.*, new ownership, new management). Prior to submitting a charter conversion application, an institution subject to the section 612 prohibition is encouraged to contact the current chartering authority, the prospective chartering authority, the current federal banking agency, and the prospective federal banking agency to discuss the proposal. This would facilitate immediate information sharing among regulatory agencies and allow for an initial assessment of the feasibility of the proposal. When a conversion does proceed, the prospective federal banking agency will keep in place the pre-conversion ratings that were assigned in accordance with the agencies' uniform rating systems and outstanding corrective programs.

Dodd-Frank Act: Notification and Information Sharing

Section 612(e)(1) of the Dodd-Frank Act provides that, at the time an insured depository institution files a conversion application with the prospective chartering authority, the insured depository institution must send a copy of the conversion application to its current federal banking agency and to its prospective federal banking agency.

³ For state banks and state savings associations that propose to convert to a national bank or federal savings association, the conversion is also prohibited if the state bank or state savings association is subject to a final enforcement action by a state attorney general.

⁴ Other matters that are enforceable under 12 U.S.C. 1818, such as conditions imposed in writing in connection with an application, notice or other request, are not formal enforcement actions, and so are not covered by section 612.

In cases when a proposed conversion would be subject to the prohibition in section 612, the prospective federal banking agency should promptly determine whether to consider an exception and inform the institution, the current federal banking agency and, if applicable, the state bank supervisor. For proposed conversions that would be subject to the section 612 prohibition and that would rely on the exception in section 612(d), application and supervisory staffs at the prospective and current federal banking agencies will promptly initiate and maintain an ongoing dialogue to facilitate the review process. The prospective federal banking agency may request additional information from the current federal banking agency and, if applicable, state bank supervisor.

Once the prospective federal banking agency determines the conversion is acceptable from its perspective, it should develop and submit a proposed plan to the current federal banking agency and, if applicable, state bank supervisor that addresses the significant supervisory matter in the enforcement action in a manner that is consistent with the safe and sound operation of the institution (as part of the written notice of the proposed conversion). In developing its plan, the prospective federal banking agency should fully discuss the proposed plan with the current federal banking agency prior to formal submission of the written plan to the current federal banking agency. The plan should include:

- An assessment of the institution's compliance with the existing enforcement action and supervisory plan;
- A discussion of the requirements in the existing enforcement action and supervisory plan that the prospective federal banking agency intends to carry forward;
- An explanation of the reasons for any requirements not being carried forward;
- An examination and remediation schedule for matters not yet corrected by the insured depository institution; and
- The means by which the prospective federal banking agency would address the supervisory matters with the insured depository institution.

The current federal banking agency or state bank supervisor that issued the action will have 30 days after receipt of the plan to object to the conversion or the plan. If the current federal banking agency or state bank supervisor objects to the conversion or the plan, the conversion remains prohibited under section 612. If the current federal banking agency or state bank supervisor does not object to the conversion or the plan, the conversion is not prohibited, provided the other requirements in section 612(d)(3) and (4) are satisfied.

In addition to the provisions addressing conversions covered by the prohibitions in sections 612(a), (b) and (c), section 612(e)(2) also requires the current federal banking agency to notify the prospective federal banking agency of any ongoing supervisory or investigative proceedings that the current federal banking agency believes are likely to result, in the near term and absent the proposed conversion, in a cease and desist order (or other formal enforcement actions) or a memorandum of understanding with respect to a significant supervisory matter. Further, in accordance with section 612(e)(2)(B), the current federal banking agency is required to provide the prospective federal banking agency with access to all investigative and supervisory information relating to the proceedings.

In addition to the information required to be shared under section 612, the agencies expect to share other supervisory information relevant to proposed conversions that are subject to the prohibitions in section 612, and to share supervisory information as appropriate in conversions that are not covered by the prohibitions in section 612.⁵

Conversions Not Subject to the Prohibitions in the Dodd-Frank Act

Most conversion proposals are not subject to the prohibitions in section 612. However, the agencies will be informed of such other proposed conversions by insured depository institutions by the requirement in section 612(e)(1) that the institution send a copy of the conversion application to the current and prospective federal banking agencies. The federal banking agencies acknowledge that there may be other instances when a proposed conversion warrants additional supervisory review and the sharing of supervisory information. In such instances, the agencies intend to consult and share information as appropriate.

⁵ Section 612 does not apply to proposals in which state-chartered banks seek or relinquish Federal Reserve membership. The Board, the FDIC and the state banking supervisors have a long-standing practice of sharing information in connection with such proposals and will continue to do so.