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(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

(e) *Transactions requiring either a State certified or licensed appraiser.* All appraisals for federally related transactions not requiring the services of a State certified appraiser shall be prepared by either a State certified appraiser or a State licensed appraiser.

(f) *Effective date.* Regulated institutions are required to use state certified or licensed appraisers as set forth in this section no later than December 31, 1992, unless otherwise required by law.

[55 FR 33888, Aug. 20, 1990, as amended at 57 FR 9050, Mar. 16, 1992; 59 FR 29501, June 7, 1994]

§ 323.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this part; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

[59 FR 29502, June 7, 1994]

§ 323.5 Appraiser independence.

(a) *Staff appraisers.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the

lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the regulated institution, the regulated institution shall take appropriate steps to ensure that the appraisers exercise independent judgment and that the appraisal is adequate. Such steps include, but are not limited to, prohibiting an individual from performing appraisals in connection with federally related transactions in which the appraiser is otherwise involved and prohibiting directors and officers from participating in any vote or approval involving assets on which they performed an appraisal.

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

[55 FR 33888, Aug. 20, 1990, as amended by 59 FR 29502, June 7, 1994]

§ 323.6 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be State certified or licensed, as appropriate. However, a

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State certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

§ 323.7 Enforcement.

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, may be subject to removal and/or prohibition orders, cease and desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, as amended, or other applicable law.

PART 324 [RESERVED]

PART 325—CAPITAL MAINTENANCE

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APPENDIX B TO PART 325—STATEMENT OF POLICY ON CAPITAL ADEQUACY

APPENDIX C TO PART 325—RISK-BASED CAPITAL FOR STATE NON-MEMBER BANKS: MARKET RISK

AUTHORITY: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C.

1828 note); Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

Subpart A—Minimum Capital Requirements

§ 325.1 Scope.

The provisions of this subpart A apply to those circumstances for which the Federal Deposit Insurance Act or this chapter requires an evaluation of the adequacy of an insured depository institution's capital structure. The FDIC is required to evaluate capital before approving various applications by insured depository institutions. The FDIC also must evaluate capital, as an essential component, in determining the safety and soundness of state non-member banks it insures and supervises and in determining whether depository institutions are in an unsafe or unsound condition. This subpart A establishes the criteria and standards the FDIC will use in calculating the minimum leverage capital requirement and in determining capital adequacy. In addition, appendix A to this subpart sets forth the FDIC's risk-based capital policy statement and appendix B to this subpart includes a statement of policy on capital adequacy that provides interpretational guidance as to how this subpart will be administered and enforced. In accordance with subpart B of part 325, the FDIC also must evaluate an institution's capital for purposes of determining whether the institution is subject to the prompt corrective action provisions set forth in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

[58 FR 8219, Feb. 12, 1993]

§ 325.2 Definitions.

(a) *Allowance for loan and lease losses* means those general valuation allowances that have been established through charges against earnings to absorb losses on loans and lease financing receivables. Allowances for loan and lease losses exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and specific reserves created against identified losses.

(b) *Assets classified loss* means:

(1) When measured as of the date of examination of an insured depository