

Handbook: Thrift Activities
Subjects: Loan Portfolio Diversification

Section: 211
TB 32-2

December 27, 1989

Further Interim Compliance Provisions Regarding Loans to One Borrower Limitations

RESCINDED

Summary: This Bulletin provides savings association managers with interim guidance regarding the loans to one borrower limitations included in the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). The Bulletin addresses the areas of computing unimpaired capital and unimpaired surplus, and lending under the Special Rules contained in the FIRREA. This Bulletin supplements Thrift Bulletins 32, and 32-1.

For Further Information Contact: Your District Office or the Thrift Programs Division of the Office of Thrift Supervision, Washington, D.C.

Thrift Bulletin 32-2

Background Information

Until the OTS adopts its revised loans to one borrower regulation, the Thrift Bulletin series will be used to provide interim guidance on loans to one borrower limitations under the FIRREA.

Interim Definition of Unimpaired Capital and Unimpaired Surplus

Since the enactment of the FIRREA, the OTS has received numerous inquiries regarding how a savings association should calculate its unimpaired capital and unimpaired surplus. This measure of capital is the base for applying the lending limitations contained in the legislation, referenced at Section 5200 of the Revised Statutes, and is unrelated to the capital measures contained in the capital standards prescribed by the FIRREA.

Savings associations must use the OCC's definition of unimpaired capital and unimpaired surplus, with certain exceptions. Unimpaired capital and unimpaired surplus is equivalent to the term "capital and surplus" as defined at 12 C.F.R. § 3.100.

The OCC permits the inclusion of net worth certificates issued pursuant to 12 U.S.C. § 1823 (The Federal Deposit Insurance Act) in unimpaired capital and unimpaired surplus. The OTS views the inclusion of net worth certificates issued pursuant to 12 U.S.C. § 1729 (The National Housing Act of 1934) in unimpaired capital and unimpaired surplus under 12 U.S.C. § 84 as being consistent with the OCC's treatment of such certificates.

While 12 C.F.R. § 3.100 states that allowances for loan and lease losses are included in unimpaired capital and unimpaired surplus, this section only permits the inclusion of *general* loss allowances for loans and leases, not specific allowances. National banks generally do not establish specific allowances for losses, but rather charge off portions of an asset considered uncollectable. Therefore, § 3.100 does not differentiate between general and specific loss allowances. Savings associations, however, frequently do establish specific loss allowances for uncollectable assets. These specific allowances are not included in unimpaired capital and unimpaired surplus.

The following table identifies the components of unimpaired capital and unimpaired surplus, which is the sum of Groups A, B, and C:

Group A

- Common Stock
- Perpetual Preferred Stock
- Capital Surplus
- Undivided Profits
- Reserves for Contingencies and Other Capital Reserves (Excluding Accrued Dividends on Perpetual and Limited Life Preferred Stock)
- Net Worth Certificates Issued Pursuant to 12 U.S.C. § 1823, or 12 U.S.C. § 1729
- Minority Interest in Consolidated Subsidiaries
- General Allowances for Loan and Lease Losses
- *Minus* Intangible Assets
- *Plus* purchased Mortgage Servicing Rights

Group B

- Mandatory Convertible Debt to the Extent of 20% of Group A

Group C

The Following Components, to the Extent of 50% of the Sum of Groups A and B:

Thrift Bulletin

TB 32-2

- Mandatory Convertible Debt (Not Already Included in Group B)
- Limited Life Preferred Stock
- Subordinated Notes and Debentures

For purposes of determining compliance with the lending limitations, savings associations should compute unimpaired capital and unimpaired surplus as of the most recent month-end periodic report filed with the OTS, adjusted by any significant events. Written documentation of the computation should be included in individual loan files to demonstrate that the loan, when aggregated with all other loans outstanding to such borrower, did not exceed the association's legal lending limit.

Special Rules

Although the FIRREA does not include a provision for waiver of the legal lending limits such as was contained in 12 C.F.R. § 563.9-3, Title III, § 301 (5)(u)(2) contains "Special Rules" that provide for expanded lending authority in specific instances.

Loans For Any Purpose Not to Exceed \$500,000

The Special Rules provide for loans to one borrower for any purpose not to exceed \$500,000. This provision is not in addition to the association's general limitation of 15% of unimpaired capital and unimpaired surplus. An association may lend to one borrower the greater of either its general limitation or \$500,000, provided that an enforcement action or supervisory restriction does not otherwise limit a savings association's lending authority to a lesser amount.

Loans For the Development of Domestic Residential Housing Units

There is a Special Rule that provides for increased lending authority for the development of domestic residential housing units. This exception requires that each single-family dwelling unit's sale price must not exceed \$500,000; the association must be, and continue to be, in compliance with the fully phased-in capital standards prescribed by the FIRREA; all loans made under this clause to all borrowers may not exceed 150% of the association's unimpaired capital and unimpaired surplus; all loans made under this clause must comply with applicable loan-to-value requirements; and, the Director of OTS must permit the association to avail itself of the higher limit. The authority to grant exceptions to associations will be delegated to the District Directors, and exceptions will be granted only to institutions, not to borrowers. Savings associations should apply for the expanded lending authority to their District Offices. A Bulletin is forthcoming that will provide further guidance for granting the increased authority.

Following the application and approval process, associations may lend up to the lesser of \$30,000,000 or 30% of unimpaired capital and unimpaired surplus to develop domestic residential housing units. This 30% amount includes the basic limitation of 15% of unimpaired capital and unimpaired surplus, and is not in addition to that amount. If a savings association has loans outstanding to a borrower for any purpose totaling 15% of unimpaired capital and unimpaired surplus, then only an additional 15% of unimpaired capital and unimpaired surplus may be advanced to develop domestic residential housing units. In the case where an association has made loans to a borrower for any purpose totaling 15%

of capital, and loans secured by readily marketable collateral totaling another 10% of capital, then only an additional 5% of unimpaired capital and unimpaired surplus may be advanced to develop domestic residential housing units. Similarly, if the applicable limitation is \$30,000,000, then the amount of all outstanding loans of any type to the borrower must be deducted to determine the additional lending authority available under the exception.

All loans in aggregate made under the 30% clause to all borrowers may not exceed 150% of unimpaired capital and unimpaired surplus. For purposes of determining compliance with the 150% limit, only loans in excess of the basic 15% of capital lending limitation, or in excess of the additional limit of 10% of capital for loans secured by readily marketable collateral, are to be considered. Furthermore, attribution of loans to the 150% limit is done on a prospective basis, i.e., loans made prior to FIRREA are not "extracted" from the association's balance sheet and applied against this 150% limit.

For example, if a borrower had loans outstanding totaling 15% of capital, for commercial purposes, and additional loans totaling 10% of capital that were secured by readily marketable collateral, an association that has been approved for the expanded lending authority could loan an additional 5% of capital to the borrower for development of domestic residential housing units. In this case, the loans equaling 5% of capital would count towards the association's 150% aggregate limit. The savings association would still have up to 145% of its unimpaired capital and unimpaired surplus to lend to all other borrowers under the 30% clause (150% minus 5%). As another example using the same association, a borrower with no loans currently outstanding could

Thrift Bulletin

TB 32-2

borrow the full 30% of capital permissible for the development of domestic residential housing units. Of this amount, loans totaling 15% of unimpaired capital and unimpaired surplus would be permissible under the basic lending limit. Since real estate is not readily marketable collateral, none of the total would be permissible under the additional limit of 10% of capital for secured loans. Therefore, 15% of the total 30% granted to the borrower would be attributable to the 30% clause and charged towards the 150% aggregate limit. Now the association would have up to 130% of its unimpaired capital and unimpaired surplus to lend to all other borrowers under the 30% clause (150%, minus 5%, minus 15%).

The definition of "residential housing units" is synonymous with the definition of "residential real estate" as contained in 12 C.F.R. § 541.29. The term includes "homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and com-

binations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate." This definition includes apartments.

"Domestic" is defined as the geographic area where OTS-regulated savings associations are chartered. This includes the 50 United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

"To develop" includes the various combinations of phases necessary to produce housing units as an end product. This includes: (1) acquisition, development and construction, (2) development and construction, (3) construction, (4) rehabilitation, or (5) conversion. Domestic residential housing units must be the resultant product; simply acquiring real estate or developing unimproved real estate does not fulfill the purpose of lending under this clause. Permanent financing of either individual units within a development or of a multi-unit complex is permissible provided that the financing is related to any of the aforementioned five combinations of phases. Permanent financing of existing housing units, whether single-family or

multi-family, does not serve the purpose of this clause and therefore does not qualify for the exception.

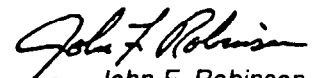
Loans to Finance the Sale of Real Estate Owned (REO)

The Special Rules also prohibit an association from lending in excess of 50% of its unimpaired capital and unimpaired surplus to facilitate the sale of REO. This amount is not in addition to the basic limitation of 15% of unimpaired capital and unimpaired surplus. If a savings association has loans outstanding to a borrower for any purpose totaling 15% of unimpaired capital and unimpaired surplus, then only an additional 35% of unimpaired capital and unimpaired surplus may be advanced to that borrower to facilitate the sale of REO.

The aforementioned provisions represent interim policy, which may be affirmed or amended upon issuance of the OTS' final rule on loans to one borrower.

Section 5200 of the Revised Statutes (12 U.S.C. Sec. 84) and 12 C.F.R. Part 32 are included as attachments.

Attachments



— John F. Robinson
Senior Deputy Director, Supervision Policy (Acting)

Appendix—Section 5200 of the Revised Statutes [12 U.S.C. Sec. 64]

Total loans and extensions of credit.

(a) (1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitations contained in paragraph (1) of this subsection.

Definitions.

(b) For the purposes of this section—

(1) The term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligations of that person to repay the funds or repayable from specific property pledged by or on behalf of the person, and to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) the term "person" shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government, or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

Exceptions.

(c) The limitations contained in subsection (a) of this section shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in section 372 of this title and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit

at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8) (A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9) (A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d) Authority of Comptroller of the Currency.

(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

INTERPRETATIONS

- 32.101 Obligations of accommodation parties.
- 32.102 Sale of Federal funds.
- 32.103 Purchase of securities subject to repurchase agreement.
- 32.104 Purchase of third-party paper.
- 32.105 Overdrafts.
- 32.106 Loans charged off in whole or in part.
- 32.107 Sale of loan participations.
- 32.108 Interest or discount on loans.
- 32.109 Loans to or guaranteed by general obligations of a State or political subdivision.
- 32.110 Loans to industrial development authorities.
- 32.111 Separate limitations for 12 U.S.C. 24 and 12 U.S.C. 84.

AUTHORITY: 12 U.S.C. 84 and 12 U.S.C. 93a.

SOURCE: 48 FR 15852, Apr. 12, 1983, unless otherwise noted.

§ 32.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to authority granted in 12 U.S.C. 1 *et seq.*; 12 U.S.C. 84 and 12 U.S.C. 93a.

(b) *Purpose.* R.S. 5200 (12 U.S.C. 84) is intended to prevent one individual, or a relatively small group, from borrowing an unduly large amount of the bank's funds. It is also intended to safeguard the bank's depositors by spreading the loans among a relatively large number of persons engaged in different lines of business.

(c) *Scope.* This part applies to all loans and extensions of credit made by national banks and their domestic operating subsidiaries. This part does not apply to loans made by a national bank to its affiliates (as that term is defined in subsection (b)(1) of section 23A of the Federal Reserve Act (12 U.S.C. 371c(b)(1))), operating subsidiaries, and Edge Act or Agreement Corporation subsidiaries.

[48 FR 15852, Apr. 12, 1983, as amended at 49 FR 11825, Mar. 28, 1984]

§ 32.2 Definitions.

For purposes of this part:

(a) "Loans and extensions of credit" means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to a

PART 32—LENDING LIMITS

Sec.

- 32.1 Authority, purpose and scope.
- 32.2 Definitions.
- 32.3 General limitation.
- 32.4 Additional general limitation: loans fully secured by readily marketable collateral.
- 32.5 Combining loans to separate borrowers.
- 32.6 Exceptions to the lending limits.
- 32.7 Transitional rules.
- 32.8 Substitute lending limit for banks with agricultural or oil and gas loans.

person made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" also includes a "contractual commitment to advance funds" as that term is defined in this section.

(b) "Person" means an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

(c) "Unimpaired capital and unimpaired surplus" is equivalent to the term "capital and surplus" and has the meaning set forth in 12 CFR 7.1100.

(d) "Contractual commitment to advance funds" means (1) an obligation to make payments (directly or indirectly) to a third party contingent upon default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or (2) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit (as defined in paragraph (e) of this section), guarantees, puts or other similar arrangements. A binding, written commitment to lend is a "contractual commitment to advance funds" under this part if it and all other outstanding loans (including other binding commitments) to the borrower are within the bank's lending limit on the date of the commitment. Thus, if such a commitment and all other outstanding loans to a borrower are within the bank's lending limit on the date of the commitment, the bank may fund the commitment without violating the lending limit even if its capital and, hence, its lending limit should decline prior to the actual advance of funds. On the other hand, if a commitment and all other outstanding loans to a borrower are not within a bank's lending limit on the date of the commitment, then the commitment would not be deemed a loan until funded and its legality would be determined at that time. In

determining whether the issuance of a commitment would cause a bank to exceed its lending limit on the date of the commitment, a bank may deduct from the amount of the commitment the aggregate amount of legally binding written loan participations in that commitment by other financially responsible persons or institutions. The definition also does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default by the account party.

(e) A "standby letter of credit" is any letter of credit, or similar arrangement, however named or described, which represents an obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party, or (2) to make payment on account of any indebtedness undertaken by the account party, or (3) to make payment on account of any default by the account party in the performance of an obligation.

[48 FR 15852, Apr. 12, 1983, as amended at 53 FR 23753, June 24, 1988; 53 FR 40721, Oct. 18, 1988]

§ 32.3 General limitation.

12 U.S.C. 84(a)(1) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

§ 32.4 Additional general limitation: loans fully secured by readily marketable collateral.

(a) *Law.* 12 U.S.C. 84(a)(2) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the

funds outstanding shall not exceed 10 percent of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) *Compliance with Section 84(a)(2)*. Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least 100 percent of the amount of the loan or extension of credit at all times. "Current market value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(c) For purposes of this part, "readily marketable collateral" means financial instruments and bullion which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid and ask price market. "Financial instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type which issue shares in which banks may perfect a security interest.

(d) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times.

(e) Financial instruments may be denominated in foreign currencies which are freely convertible to U.S. dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(f) If collateral values fall below 100 percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general 15 percent limita-

tion, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

§ 32.5 Combining loans to separate borrowers.

(a)(1) *General rule*. Loans or extensions of credit to one person will be attributed to other persons, for purposes of this part, when (i) the proceeds of the loans or extensions of credit are to be used for the direct benefit of the other person or persons or (ii) a "common enterprise" is deemed to exist between the persons.

(2) "Common enterprise."

(i) Whether two or more persons are engaged in a "common enterprise" will depend upon a realistic evaluation of the facts and circumstances of particular transactions.

(ii) Where the expected source of repayment for each loan or extension of credit is the same for each person, a "common enterprise" will be deemed to exist and the loans or extensions of credit must be combined.

(iii) Where loans or extensions of credit are made to persons who are related through common control, including where one person is controlled by another person, a "common enterprise" will be deemed to exist if the persons are engaged in interdependent businesses or there is substantial financial interdependence among them. A "common enterprise" will be deemed to exist when 50 percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (as defined in paragraph (a)(2)(v) of this section). Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(iv) A "common enterprise" will also be deemed to exist when separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than 50 percent of the voting securities.

(v) For the purposes of paragraph (a)(2)(iii) of this section, "control" shall be presumed to exist when:

(A) One or more persons acting in concert directly or indirectly own, control, or have power to vote 25 percent or more of any class of voting securities of another person; or

(B) One or more persons acting in concert control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) Any other circumstances exist which indicate that one or more persons acting in concert directly or indirectly exercise a controlling influence over the management or policies of another person.

(b) *Loans to corporations.* (1) For purposes of this paragraph, a corporation is a "subsidiary" of any person which owns or beneficially owns more than 50 percent of the voting stock of the corporation. Such ownership need not be direct. Thus, if A owns more than 50 percent of the voting stock of Corporation X which, in turn, owns more than 50 percent of the voting stock of Corporation Y, Corporation Y would be considered a subsidiary of both A and of Corporation X.

(2) Loans or extensions of credit to a person and its subsidiary or to subsidiaries of one person need not be combined where the bank has determined that the person and subsidiaries involved are not engaged in a "common enterprise" as that term is defined in paragraph (a) of this section.

(3) Notwithstanding paragraph (b)(2) of this section, loans or extensions of credit by a national bank to a "corporate group" may not exceed 50 percent of the bank's unimpaired capital and unimpaired surplus. This aggregate limitation applies only to loans made pursuant to sections 84 (a)(1) and (a)(2). A "corporate group" includes a person and all of its subsidiaries.

(c) *Loans to partnerships, joint ventures, and associations.* (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of this part, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

(2) Loans or extensions of credit to members of a partnership, joint venture, or association shall, for purpose of this part, be attributed to the partnership, joint venture, or association where one or more of the tests set forth in paragraph (a) of this section is satisfied with respect to one or more such members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association under this paragraph unless one or more of the tests set forth in paragraph (a) of this section is satisfied with respect to such other members. The tests set forth in paragraph (a) of this section shall be deemed to be satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The rule set forth in paragraph (c)(1) of this subsection is not applicable to limited partners in limited partnerships or to members of joint ventures or associations if such partners or members, by the terms of the partnership or membership agreement, are not to be held liable for the debts or actions of the partnership, joint venture, or association. However, the rules set forth in paragraph (a) of this section are applicable to such partners or members.

(d) *Loans to foreign governments, their agencies, and instrumentalities.*

(1) Notwithstanding paragraphs (a), (b), and (c) of this section, loans or extensions of credit to foreign governments, their agencies, and instrumentalities will be combined with one another under section 84 only if they fail to meet either of the following tests at the time the loan or extension of credit is made:

(i) The borrower has resources or revenue of its own sufficient over time to service its debt obligations ("means" test);

(ii) The purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business ("purpose" test).

(2) In order to show that the "means" and "purpose" tests have

been satisfied, a bank shall, at a minimum, assemble and retain in its files the following items:

(i) A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity.

(ii) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year less than three that the borrowing entity has been in existence.

(iii) Financial statements for each year the loan or extension of credit is outstanding.

(iv) The bank's assessments of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government. If the government's support exceeds the borrower's annual revenues from other sources, it will be presumed that the "means" test has not been satisfied. No such presumption will be made, however, because of a guarantee by the central government of the borrower's debt.

(v) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the "purpose" test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(Approved by the Office of Management and Budget under control number 1557-0139)

[48 FR 15852, Apr. 12, 1983, as amended at 48 FR 27225, June 14, 1983; 49 FR 11825, Mar. 28, 1984]

§ 32.6 Exceptions to the lending limits.

(a) *Discount of commercial or business paper.*

(1) *Law.* 12 U.S.C. 84(c)(1) provides:

Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) This exception applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in connection with the fabrication of a product, or to be used for any other business purpose which may reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper of the kind described in this paragraph must bear the full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper. Insurance provided by the Export-Import Bank or the Foreign Credit Insurance Association is considered appropriate for this purpose. Loans or extensions of credit based on this exception are not subject to any limitation.

(3) Since the reason for the unlimited credit under this exception is that the paper arises from the sale of a commodity which may reasonably be expected to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Therefore, although the line of credit to the maker or endorser should not be classified as excessive by reason of such default, the paper on which the default has occurred must thereafter be taken into consideration in determining whether additional loans or extensions of credit may be made within

the limits of 12 U.S.C. 84. The same principles of disqualification from the exception applies to any renewal or extension of either the entire loan or an installment thereof.

(b) *Bankers' acceptances.* (1) *Law.* 12 U.S.C. 84(c)(2) provides:

The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(2) This exception permits the purchase by a national bank without limitation of bankers' acceptances created by other banks, provided that such acceptances are of the kind described in 12 U.S.C. 372 and 373 (eligible acceptances). Acceptances other than those described in sections 372 and 373 must be included within the purchasing bank's lending limit to each acceptor bank.

(3) The limits under which a national bank may itself accept drafts eligible for rediscount are contained in sections 372 and 373. These limits are distinct from the limits under section 84. Acceptances by a national bank of "ineligible" drafts, *i.e.*, time drafts which do not meet the requirements for discount with a Federal Reserve bank, are subject to the limitations of section 84.

(4) During any period within which a national bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered, for purposes of this part, to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to the limitations of section 84.

(c) *Loans secured by bills of lading or warehouse receipts covering readily marketable staples.* (1) *Law.* 12 U.S.C. 84(c)(3) provides:

Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of cap-

ital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(2) This exception allows a national bank to make loans or extensions of credit to one person in an amount equal to 35 per cent of its capital and surplus in addition to the general 15 per cent permitted by section 84(a)(1) and in addition to the 10 per cent permitted by section 84(a)(2), provided the collateral requirements of section 84(a)(2) are met.

(3) A readily marketable staple means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral. Staples eligible for this exception must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable collateral.

(4) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(5) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than 10 months if secured by nonperishable staples; and (ii) not more than six months if secured by refrigerated or frozen staples.

(6) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by such documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(7) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premise.

(8) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with an independent registrar whose consent is required before the commodities can be withdrawn from the warehouse.

(d) *Loans secured by U.S. obligations.* (1) Law. 12 U.S.C. 84(c)(4) provides:

Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by

other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(2) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(3) If the market value of the collateral declines to the extent that the loan is no longer in conformance with this exception and exceeds the general 15 per cent limitation, the loan must be brought into conformance within five business days.

(e) *Loans to or guaranteed by a federal agency.* (1) Law. 12 U.S.C. 84(c)(5) provides:

Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(2) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(3) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(4) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(f) *Loans secured by segregated deposit accounts.* (1) Law. 12 U.S.C. 84(c)(6) provides:

Loans or extensions of credit secured by a segregated deposit account in the lending

bank shall not be subject to any limitation based on capital and surplus.

(2) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(4) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to U.S. dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit. If the U.S. dollar value of the deposit falls to the extent that the loan is in nonconformance with this exception and exceeds the general 15 per cent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for national banks to take deposits denominated in foreign currencies.

(g) *Loans to financial institutions with the approval of the Comptroller.*
(1) *Law. 12 U.S.C. 84(c)(7) provides:*

Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(2) This exception is intended to apply only in emergency situations where a national bank is called upon

to provide assistance to another financial institution.

(3) For purposes of this paragraph (g), "financial institution" means a commercial bank, savings bank, trust company, savings and loan association, or credit union.

(h) *Discount of installment consumer paper.* (1) *Law. 12 U.S.C. 84(c)(8) provides:*

(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2).

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(2) This exception allows a national bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(3) For purposes of this paragraph (h), "consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(4) For purposes of this paragraph (h), "consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(5) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the bank's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(1) *Loans secured by livestock or dairy cattle.*—(1) *Loans secured by livestock.* (1) Law. 12 U.S.C. 84(c)(9)(A) provides:

Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a maximum limitation equal to 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to make loans or extensions of credit to one person in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)), if the loans or extensions of credit are secured by livestock having a market

value at least equal to 115 percent of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank must maintain in its files an inspection and appraisal report on the livestock pledged. The inspection and appraisal report should be performed at least every 12 months, or more frequently as deemed prudent.

(iii) Under the laws of certain states, a persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan (A) is assigned to the bank by a recordable instrument and (B) is protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise, it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(2) *Loans secured by dairy cattle.* (1) Law. 12 U.S.C. 84(c)(9)(B) provides:

Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a limitation of 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to discount paper of one person given in payment for dairy cattle in an amount equal to 10 percent of its capital and surplus (in addition to the 15

percent permitted by section 84(a)(1)). The discounted paper must carry the full recourse endorsement or unconditional guarantee of the seller and the dairy cattle must secure the debt. Liens on the cattle may be in any form which allows the bank to maintain a perfected security interest in the cattle under applicable state law.

(3) The exception for loans and extensions of credit secured by livestock is separate and apart from the exception for loans and extensions of credit created by the discount of paper for the purchase of dairy cattle. Therefore, a national bank may make loans or extensions of credit to one person secured by each type of collateral in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted under section 84(a)(1)).

(j) *Loans to Student Loan Marketing Association.* 12 U.S.C. 84(c)(10) provides:

Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

§ 32.7 Transitional rules.

(a) Loans or extensions of credit which were in violation of 12 U.S.C. 84 prior to the relevant effective dates of this part will be considered to remain in violation of section 84 and subject to actions under 12 U.S.C. 93 and 1818, and other appropriate laws after those dates until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this part. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(b) A national bank which has outstanding loans or extensions of credit to a person in violation of section 84 as of the relevant effective dates of this part may make additional advances to such person after those dates if the additional advances are permitted under this part. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(c) Loans or extensions of credit which were in conformance with sec-

tion 84 prior to the relevant effective dates of this part but are not in conformance with the rules established in this part will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with the rules set forth in this part may be made on or after the effective dates of this part; however, all loans or extensions of credit made under such renewals or extensions must conform with the rules set forth in this part no later than January 1, 1985.

(d) If a national bank, prior to the relevant effective dates of this part, entered into a legally binding commitment to advance funds on or after those dates, and such commitment was in conformance with section 84, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with this part. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation. Advances under renewals or extensions of such commitments must conform to this part if the renewal or extension of the commitment is made on or after the relevant effective dates of this part.

§ 32.8 Substitute lending limit for banks with agricultural or oil and gas loans.

(a) *Definitions.* For purposes of this section:

(1) "Agricultural loans" include loans or extensions of credit secured by farmland, loans to finance agricultural production and other loans to farmers reported in the bank's Report of Condition and Income (Call Report). The following are examples of such types of loans: for growing and storing of crops, breeding and marketing of livestock, financing fisheries, purchases of farm machinery and equipment, maintenance and operations of the farm, and discounted notes of farmers.

(2) "Oil and gas loans" include loans or extensions of credit to oil companies, petroleum refiners, and companies primarily engaged in the oil- and

gas-related business, for example: operating oil and gas field properties, contract drilling, performing exploration services on a contract basis, performing oil and gas field services, manufacturing or leasing of oil field machinery and equipment, pipeline transportation of petroleum, natural gas transmission or distribution, and investing in oil and gas royalties or leases.

(3) "Special category loan charge-offs" mean agricultural or oil and gas loans charged-off during the period from January 1, 1986 through December 31, 1989, which have been or will be reported in a special memorandum item in the bank's Call Report in accordance with the Comptroller of the Currency's capital forbearance policy.

(b) A national bank which has special category loan charge-offs resulting in a reduction in its unimpaired capital and unimpaired surplus since December 31, 1985, may substitute a lending limit calculated under this section for the general limitation provided at 12 U.S.C. 84(a)(1), up to a maximum amount of 20 percent of unimpaired capital and unimpaired surplus, until January 1, 1995.

(c) The substitute lending limit in paragraph (b) of this section is the lesser of the following amounts:

(1) 15 percent of unimpaired capital and unimpaired surplus on December 31, 1985; or

(2) 15 percent of the total of:

(i) The difference between the sum of special category loan charge-offs and the sum of recoveries on those charge-offs; plus

(ii) Unimpaired capital and unimpaired surplus; or

(3) 20 percent of unimpaired capital and unimpaired surplus.

[51 FR 39642, Oct. 30, 1986, as amended at 53 FR 2998, Feb. 3, 1988]

INTERPRETATIONS

§ 32.101 Obligations of accommodation parties.

The liability of a drawer, endorser, or guarantor who does not receive any of the proceeds, or the benefit of the proceeds, of the loan or extension of credit is not a loan or extension of credit to such person for purposes of

this part unless one of the tests set forth in 12 CFR 32.5(a)(1) is satisfied.

§ 32.102 Sale of Federal funds.

(a) *Definition.* "Sale of Federal funds" means, for purposes of this section, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(b) Sales of Federal funds with a maturity of one business day or under a continuing contract are not "loans and extensions of credit" for purposes of this part. However, sales of Federal funds with a maturity of more than one business day are subject to the lending limits.

(c) A "continuing contract" refers to an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

§ 32.103 Purchase of securities subject to repurchase agreement.

(a) The purchase of "Type I securities," as defined in 12 CFR 1.3(c), subject to an agreement that the seller will repurchase at the end of a stated period is not a "loan or extension of credit" for purposes of this part.

(b) The purchase of other types of securities subject to an agreement that the seller will repurchase at the end of a stated period is regarded as a loan from the purchasing bank to the seller and not as an obligation of the underlying obligor of the security.

§ 32.104 Purchase of third-party paper.

Where a bank purchases third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period after default, the seller's obligation to repurchase is subject to 12 U.S.C. 84 and is measured by the total unpaid balance of the paper owned by the bank less any applicable dealer reserves. Where the seller's obligation to repurchase is limited, the seller's total loans or extensions of credit, for the purpose of 12 U.S.C. 84 are measured

by the total amount of paper the seller may ultimately be obligated to repurchase. Where no more than an agreed percentage of the purchase price is retained by the bank and credited to a reserve to be held as a form of collateral security, but the bank has no direct or indirect recourse to the seller, the loans or extensions of credit do not constitute loans or extensions of credit to the seller subject to the limitations of section 84.

§ 32.105 Overdrafts.

Overdrafts, whether or not prearranged, are "loans and extensions of credit" for purposes of this part. This rule does not apply to "intra-day" or "daylight" overdrafts.

§ 32.106 Loans charged off in whole or in part.

The lending limits apply to all existing loans or extensions of credit to a person by the bank, including loans or extensions of credit which have been charged off on the books of the bank in whole or in part. Loans or extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable for other reasons are not "loans and extensions of credit" for purposes of this part.

§ 32.107 Sale of loan participations.

(a) When a bank sells a participation in a loan or extension of credit, including the discount of a bank's own acceptance, that portion of the loan that is sold on a nonrecourse basis will not be applied to the bank's lending limits. In order to remove a loan or extension of credit from a bank's lending limit, a participation must result in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. This is so even where the participation agreement provides that repayment must be applied first to the shares sold. In that case, the pro rata sharing may only be accomplished if the agreement also provides that, in case of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments and collections in proportion to the percentage

of participation at the time of the occurrence of the event.

(b) The provisions of the above paragraph apply to all "loans and extensions of credit," as defined in § 32.2(a) of this part, including "contractual commitment(s) to advance funds," as defined in § 32.2(d) of this part.

§ 32.108 Interest or discount on loans.

The lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest.

§ 32.109 Loans to or guaranteed by general obligations of a State or political subdivision.

(a) A loan or extension of credit to a bank customer which is guaranteed or fully secured by a "general obligation" of any State or political subdivision thereof, within the meaning of 12 CFR 1.3(g), is not considered an obligation of the customer for purposes of 12 U.S.C. 84. The lending bank should obtain the opinion of competent counsel that the guarantee or collateral is a valid and enforceable obligation of the public body.

(b) A loan or extension of credit to a State or political subdivision thereof is not subject to any limitation based on capital or surplus if the loan or extension of credit constitutes a "general obligation" of the State or political subdivision within the meaning of 12 CFR 1.3(g). The lending bank should obtain the opinion of competent counsel that the loan or extension of credit is a valid and enforceable obligation of the borrower.

§ 32.110 Loans to industrial development authorities.

A loan or extension of credit to an industrial development authority or similar public entity created for the purpose of constructing and leasing a plant facility, including a health care facility, to an industrial occupant is not a loan or extension of credit to the authority for the purposes of 12 U.S.C. 84 if: (a) The bank relies on the credit of the industrial occupant in making the loan; (b) the authority's liability with respect to the loan is limited solely to whatever interest it has in

Comptroller of the Currency, Treasury

the particular facility; (c) the authority's interest is assigned to the bank as security for the loan or a promissory note from the lessee to the bank provides a higher order of security than the assignment of a lease; and (d) the industrial occupant's lease rentals are assigned and paid directly to the bank. A loan or extension of credit meeting the above criteria will be deemed a loan or extension of credit to the lessee and will be combined with other obligations of the lessee for purposes of section 84.

§ 32.111 Separate limitations for 12 U.S.C. 24 and 12 U.S.C. 84.

The lending limits prescribed by 12 U.S.C. 84 are separate and distinct from the investment limits prescribed by 12 U.S.C. 24. Accordingly, a national bank may make loans or extensions of credit to one borrower up to the full amount permitted by 12 U.S.C. 84 and also hold eligible investment securities of the same obligor up to the full amount permitted by 12 U.S.C. 24. In order for a security to be an "investment security" it must be eligible for investment by a national bank in accordance with the standards set forth in 12 CFR Part 1.