2130.0.1 INTRODUCTION

Effective March 1, 1983, the Board issued an amended bank holding company policy statement entitled ‘‘Futures, Forward and Options on U.S. Government and Agency Securities and Money Market Instruments.’’ Bank holding companies are now required to furnish written notification to their District Federal Reserve Banks within 10 days after financial contract activities are begun by the parent or a nonbank subsidiary. The policy is consistent with the joint policy statement previously issued by the three federal bank regulators with regard to banks participating in financial contracts, and reflects the Board’s judgment that bank holding companies, as sources of strength for their subsidiary banks, should not take speculative positions in such activities.

If a bank holding company or nonbank subsidiary is taking or intends to take positions in financial contracts, that company’s board of directors should approve written policies and establish appropriate limitations to ensure that the activity is conducted in a safe and sound manner. Also, appropriate internal control and audit procedures should be in place to monitor the activity. The following discussion and inspection procedures apply to futures contract activity generally, but are intended to focus specifically on financial futures contracts. For a discussion of currency futures and options and the examination procedures for those instruments, see sections F and G in the Merchant and Investment Bank Examination Manual.

Information, instructions, and inspection procedures have been provided for verifying compliance with the Board’s policy statement. It is intended that the policy statement will ensure that contract activities are conducted in accordance with safe and sound banking practices. The task of evaluating BHC contract activities is the responsibility of System examiners. The following information and inspection procedures are intended to serve as a guide for Federal Reserve Bank staff in that effort.

2130.0.2 DEFINITIONS

Basis—Basis is defined as the difference between the futures contract price and the cash market price of the same underlying security, money market instrument, or commodity.

Call Option—A contract that gives the buyer (holder) the right, but not the obligation to buy (call), a specified quantity of an underlying security, money market instrument or commodity at or before the stated expiration of the contract. At expiration, if the value of the option increases, the holder will exercise the option or close it at a profit. If the value of the option does not increase, the holder would probably let the option expire (or close it out at a profit) and, consequently, will lose the cost (premium paid) of (for) the option. Alternatively, the option may be sold prior to expiration.

Clearing Corporation—A corporation organized to function as the clearing house for an exchange. The clearing house registers, monitors, matches and guarantees trades on a futures market, and carries out financial settlement of futures transactions. The clearing house acts as the central counterparty to all trades executed on the exchange. It substitutes as a seller to all buyers and as a buyer to all sellers. In addition, the clearing corporation serves to insure that all contracts will be honored in the event of a counterparty default.

Clearing Member—A member firm of the clearing house or corporation. Membership in clearing associations or corporations is restricted to members of the respective commodity exchanges, but not all exchange members are clearing house members. All trades of a nonclearing member must be registered with, and eventually settled through, a clearing member.

Commodities Futures Trading Commission—The CFTC is a federal regulatory agency charged with regulation of futures trading in all commodities. It has broad regulatory authority over futures trading. It must approve all future contracts traded on U.S. commodity exchanges, ensure that the exchanges enforce their own rules (which it must review and approve), and direct an exchange to take any action needed to maintain orderly markets whenever it believes that an ‘‘emergency’’ exists.

Contract Activities—This term is used in this manual to refer to banking organization participation in the futures, forward, standby contract, or options markets to purchase and sell U.S. government and agency securities or money market instruments, foreign currencies and other financial instruments.

Convergence—The process by which the futures market price and the cash market price of a financial instrument or commodity converge as the futures contract approaches expiration.

Covered Call Options—This term refers to the issuance or sale of a call option where the option seller owns the underlying deliverable security or financial instrument.

Cross Hedging—The process of hedging a ''cash'' or derivative instrument position with another cash or derivative instrument that has significantly different characteristics. For example, an investor who wants to hedge the sales price of long-term corporate bonds might hedge by establishing a short position in a treasury bond or treasury bond futures contract, but since the corporate bonds cannot be delivered to satisfy the contract, the hedge would be a cross hedge. To be successful, the price movements of the hedged instrument must be highly correlated to that of the position being hedged.

Difference Check—A difference check is sent by the party which recognizes a loss when a forward contract is closed out by the execution of an offsetting forward contract pursuant to a pair-off clause. In essence, the difference check represents a net cash settlement on offsetting transactions between the same two parties and replaces a physical delivery and redelivery of the underlying securities pursuant to offsetting contracts.

Financial Contract—This term is used in the manual to refer to financial futures, forward, standby contracts, and options to purchase and sell U.S. government and agency securities, money market instruments, foreign currency futures and other financial instruments.

Firm Forward Contract—This term is used to describe a forward contract under which delivery of a security is mandatory. See ''Standby Contract'' for a discussion of optional delivery forward contracts.

Forward Contracts—Over-the-counter contracts for forward placement or delayed delivery of securities in which one party agrees to purchase and another to sell a specified security at a specified price for future delivery. Contracts specifying settlement in excess of 30 days following trade date shall be deemed to be forward contracts. Forward contracts are usually nonstandardized and are not traded on organized exchanges, generally have no required margin payments, and can only be terminated by agreement of both parties to the transaction. The term also applies to derivative contracts such as swaps, caps, and collars.

Futures Contracts—Standardized contracts traded on organized commodity exchanges to purchase or sell a specified financial instrument or commodity on a future date at a specified price. While futures contracts traditionally specified a deliverable instrument, newer contracts have been developed that are based on various indexes. Futures contracts based on indexes settle in cash and never result in delivery of an underlying instrument; some traditional contracts that formerly specified delivery of an underlying instrument have been redesigned to specify cash settlement. New financial futures contracts are continually being proposed and adopted for trading on various exchanges.

Futures Commission Merchant (FCM)—An FCM functions like a broker in securities. An FCM must register with the Commodities Futures Trading Commission (CFTC) in order to be eligible to solicit or accept orders to buy or sell futures contracts. The services provided by an FCM include a communications system for transmittal of orders, and may include research services, trading strategy suggestions, trade execution, and recordkeeping services.

Financial Futures Contracts—Standardized contracts traded on organized exchanges to purchase or sell a specified security, money market instrument, or foreign currency on a future date at a specified price on a specified date. Futures contracts on GNMA mortgage-backed securities and Treasury bills were the first interest rate futures contracts. Other financial futures contracts have been developed, including contracts on Eurodollars, currencies, and Euro-Rate differentials. It is anticipated that new and similar financial futures contracts will continue to be proposed and adopted for trading on various exchanges.

Futures Exchange—Under the Commodities Exchange Act (CEA), a ''board of trade'' designated by the Commodity Futures Trading Commission as a contract market. Trading occurs on the floor of the exchange and is conducted by open auction in designated trading areas.

GNMA or GINNIE MAE—Either term is used to refer to the Government National Mortgage Association. Ginnie Mae is a government corporation within the U.S. Department of Housing and Urban Development. In creating GNMA, Congress authorized it to grant a full faith and credit guaranty of the U.S. government to mortgage-backed securities issued by private sector organizations.

Hedge—The process of entering transactions that will protect against loss through compensatory price movement. A hedge transaction is one which reduces the organization's overall level of risk.

Initial Futures Margin—In the futures market, a deposit held by an FCM on behalf of a client against which daily gains and losses on futures positions are added or subtracted. A futures margin represents a good-faith deposit or performance bond to guarantee a participant's performance of contractual obligations.

Interest Rate Cap—A multi-period interest rate option for which the buyer pays the seller a fee to receive, at predetermined future times, the excess, if any, of a specified floating interest rate index above a specified fixed per annum rate (cap or strike rate). Caps can be sold separately or may be packaged with an interest rate swap.

Interest Rate Collar—the combination, in single contract, of a simultaneous sale of a cap and the purchase of a floor, or, a purchase of a cap and sale of a floor. The buyer of the collar is a buyer of a cap and the seller of a floor. By selling the floor, the collar buyer gives up the possibility of benefiting from a decline in interest rates below the strike rate in the floor component. On the other hand, the fee earned in selling the floor lowers the cost of protection against interest rate reversal.

Interest Rate Floor—is the reverse of an interest rate cap. The buyer pays a premium to obtain protection against a decline in interest rates below a specified level.

Long Contract—A financial contract to buy securities or money market instruments at a specified price on a specific future date.

Long Hedge—The long hedge, also called the *anticipatory hedge* is the process by which a market participant protects a cash or risk position by buying a futures or forward contract, i.e. taking a long financial contract position.

Maintenance Margin—Maintenance margin is the minimum level to which an equity position can decline as a result of a price decline before additional margin is required. In other words, it is the minimum margin which a customer must keep on deposit with a member at all times. Each futures contract has specified maintenance margin levels. A margin call is issued when a customer's initial margin balance falls below the maintenance margin level specified by the exchange. Maintenance margin must be satisfied by the deposit of cash or agreed upon cash equivalents. The amount of cash required is that amount which is sufficient to restore the account balance to the initial margin level.

Mandatory Delivery—See "Firm Forward Contract."

Mark-to-market—The process by which the carrying value (market value or fair value) of a financial instrument is revalued, and which is recognized as the generally accepted accounting principle for determining profit or loss on securities positions in proprietary trading and investment accounts. Futures positions are typically marked-to-market at the end of each trading session.

Naked Call Option—Refers to the issuance or sale of a call option where the option seller does not own the underlying deliverable security or instrument.

Open Interest—Refers to the number of futures contracts outstanding for a given delivery month in an individual futures contracts. The mechanics of futures trading require that for every open long futures contract there is an open short futures contract. For example, an open interest of 10,000 futures contracts means that there are 10,000 long contract holders and 10,000 short contract holders.

Options Contracts—Option contracts require that the buyer of the option pay the seller (or writer) of the option a premium for the right, but not the obligation, to exercise an option to buy (call option) or sell (put option) the instrument underlying the option at a stated price (strike or exercise price) on a stated date (European style option) or at any time before or on the stated expiration date (American style option). There are also exchange traded options contracts: (1) put and call options on futures contracts that are traded on commodities exchanges; and (2) put and call options that specify delivery of securities or money market instruments (or that are cash settled) that are traded on securities exchanges. The key economic distinction between options on futures and options on securities, is that the party who exercises an option on a futures contract receives a long or short futures position rather than accepting or making delivery of the underlying security or financial instrument.

Pair-Off Clause—A pair-off clause specifies that if the same two parties to a forward contract trade should subsequently execute an offsetting trade (e.g. a long contract against an outstanding short contract), settlement can be effected by one party sending the other party a difference check rather than having physical delivery and redelivery of securities.

Par Cap—This term refers to a provision in the contract of sale for Ginnie Mae mortgage-backed securities which restricts delivery only to pools which bear an interest rate sufficiently high so that the securities would trade at or below par when computed based on the agreed to yield.

Put Option—An option contract which gives the holder the right, but not the obligation, to sell (put) a specified quantity of a financial instrument (money market) or commodity at a specified price on or before the stated expiration date of the contract. If price of the underlying instrument occurs, the purchaser will exercise or sell the option. If a decline in price of the underlying instrument does not occur, the option purchaser will let it expire and will lose only the cost (premium paid) of (for) the option.

Round Turn—Commissions for executing futures transactions are charged on a round turn basis. A round turn constitutes opening a futures position and closing it out with an offsetting contract, i.e. executing a short contract and closing out the position with a long contract or vice-versa.

Short Contract—A financial contract to sell securities or money market instruments at a specified price on a specified future date.

Short Hedge—The process by which a customer protects a cash or risk position by selling a futures or forward contract, i.e. taking a short financial contract position. The purpose of the short hedge is to lock in a selling price.

Standby Contract—Optional delivery forward contracts on U.S. government and agency securities arranged between securities dealers and customers that do not involve trading on organized exchanges. The buyer of a standby contract (put option) acquires, upon paying a fee, the right to sell securities to the other party at a stated price at a future time. The seller of a standby (the issuer) receives the fee, and must stand ready to buy the securities at the other party's option. See the fuller discussion of Standby Contracts under 2130.0.3.1.2)

TBA (To Be Announced) Trading—TBA is the abbreviation used in trading Ginnie Mae securities for forward delivery when the pool number of securities bought or sold is ''to be announced'' at a later date.

Variation Margin—is when, in very volatile markets, additional funds are required to be deposited to bring the account back to its initial margin level, while trading is in progress. Variation margin requires that the needed funds be deposited within the hour, or when reasonably possible. If the customer does not satisfy the variation or maintenance margin call(s), the futures position is closed. Unlike initial margin, variation margin must be in cash. Also refer to ''Maintenance Margin''.

Weighted Hedge—a hedge that is used to compensate for a greater decline in the dollar value of a cash bond as compared to a price decline of an accessible T-bond futures contract.

Yield Maintenance Contract—This is a forward contract written with terms which maintain the yield at a fixed rate until the delivery date. Such a contract permits the holder of a short forward contract to deliver a different coupon security at a comparable yield.

2130.0.3 FINANCIAL CONTRACT TRANSACTIONS

Futures, forward and options contracts are merely other tools for use in asset–liability management. These contracts are neither inherently a panacea nor a speculative vehicle for use by banks and bank holding companies. Rather, the benefit or harm resulting from engaging in financial contract activities results from the manner in which contracts are used. Proper utilization of financial contracts can reduce the risks of interest or exchange rate fluctuations. On the other hand, financial contracts can serve as leverage vehicles for speculation on rate movements.

2130.0.3.1 Markets and Contract Trading

Forward contract (OTC) trading of Government National Mortgage Association (''GNMA'') or ''Ginnie Mae'' Mortgage-Backed Securities preceded exchange trading of GNMA futures contracts in 1975.

2130.0.3.1.1 Forward Contracts

Forward contracts are executed solely in an over-the-counter market. The party executing a contract to acquire securities on a specified future date is deemed to have a ''long'' forward contract; and the party agreeing to deliver securities on a future date is described as a party holding a ''short'' forward contract. Each contract is unique in that its terms are arrived at after negotiation between the parties.

For purposes of illustrating a forward contract, assume that SMC Corporation is an originator of government guaranteed mortgages and issuer of GNMA securities. SMC Corporation has a proven ability to manage and predict the volume of its loan originations over a time horizon of three to four months. To assure a profit or prevent a loss on current loan originations, SMC Corporation may enter binding over-the-counter commitments to deliver 75% of its mortgage production which will be converted into GNMA securities three months in the future. If SMC agrees to sell $3 million of GNMA securities (11% coupon) to the WP Securities Firm at par in three months, SMC Corporation is considered to have entered a "short" (commitment to sell) forward contract. Conversely, WP has entered a "long" (commitment to buy) forward contract. The two parties to the transaction are both now obligated to honor the terms of the contract in three months, unless the contract is terminated by mutual agreement.

It should be noted that executing a "short" forward contract is not the same as executing the short sale of a security. Generally, a short sale of a security is understood to represent the speculative sale of a security which is not owned by the seller. The short seller either purchases the security prior to settlement date or borrows the security to make delivery; however, a "short" forward contract merely connotes the side of the contract required to make delivery on a future date. Short forward contracts should not be considered inherently speculative, but must be considered in light of the facts surrounding the contract.

Forward trading can be done on a mandatory delivery (sometimes referred to as "firm forward" contracts) basis or on an optional delivery basis ("standby" contract). With respect to a "mandatory" trade, the contract can also be written with a "pair-off" clause. A pair-off clause specifies that if the same two parties to a trade should subsequently execute an off-setting trade (e.g., the banking organization executes a long contract against an outstanding short contract), settlement can be effected by one party sending the other party a "difference check" rather than having a physical delivery and redelivery of securities.

When a forward contract is executed by a dealer, a confirmation letter or contract is sent to the other party to the transaction. The contract will disclose pertinent data about the trade, such as the size of the trade, coupon rate, the date upon which final delivery instructions will be issued, and the yield at which the trade was effected. In addition, the contract letter will specify whether it is permissible for the "short" side of the trade to deliver a different coupon security at a comparable yield ("yield maintenance contract") if the coupon specified in the contract is not available for delivery. Contracts which prohibit the delivery of securities requiring a premium over par are considered to have a "par cap." The initial contract letter generally does not specify which specific securities (e.g., GNMA mortgage-backed securities identified by a pool number) will be delivered. Instead, such contracts generally identify the deliverable securities as having been traded on a "TBA" basis ("to be announced"). Prior to settlement, the dealer holding the short contract will send a final confirmation to the other party specifying the actual securities to be delivered, accrued interest, dollar price, settlement date, coupon rate, and the method of payment.

Forward contracts are not typically marked-to-market. Both parties in a forward contract are exposed to credit risk, since either party can default on its obligation.

2130.0.3.1.2 Standby Contracts

Standby contracts are "put options" that trade over-the-counter, with initial and final confirmation procedures that are quite similar to those on forward transactions. Standby contracts were developed to allow GNMA issuers to hedge their production of securities, especially in instances where mortgage bankers have extended loan commitments in connection with the construction of new subdivisions. When a mortgage banker agrees to finance a subdivision with conventional and government guaranteed mortgages it is difficult to predict the actual number of FHA and VA guaranteed loans which will be originated. Hence, it is risky for a GNMA issuer to enter mandatory forward contracts to deliver the entire estimated amount of loans eligible to be pooled as GNMA securities. By entering an option contract and paying a fee for the option to "put" securities to another party, a GNMA issuer or securities dealer obtains downside market protection, but remains free to obtain the benefits of market appreciation since it can "walk away" from the option contract. In addition to the flexibility of walking away and selling securities at the prevailing market price when GNMA prices are rising, a GNMA issuer avoids the potential risk of purchasing mortgages or GNMA securities to cover short forward contracts in the event that production of GNMA securities falls below anticipated levels.

When a securities dealer sells a standby contract granting a GNMA issuer the right "to put" securities to it, the dealer, in turn, will attempt to purchase a matching standby contract from an investor because the dealer does not want to shoulder all of the downside market risk. There is also potential for securities firms to deal in standby contracts having no relationship to the issuance of GNMA securities.

Some illustrations of standby contracts follow. They are intended to illustrate the mechanics of a standby contract when a banking organization has sold or issued a standby contract granting the contra party the option to ''put'' GNMA securities to the banking organization.

Assumptions

1. Fee paid to banking organization = 1% of contract value
2. Contract delivery price = 98
3. Coupon = 12%

Situation 1

On contract exercise date: Market Price = 100. Therefore, the dealer would sell securities at market rather than put them to the bank.

Dealer		*Banking organization*	
Sale price	100	Purchase price	N/A
Fee paid	(1)	Fee Received	1
	99		1

Result: Dealer sacrificed 1% to insure sale price.

Result: Banking organization earned 1% fee for ''standing by.''

Situation 2

On contract exercise date: Market price = 95. Therefore, dealer would deliver securities pursuant to the standby contract.

Dealer		*Banking organization*	
Sale price	98	Purchase price	98
Market price	95	Market price	95
Contract gain	3	Contract loss	(3)
Fee paid	(1)	Fee received	1
Actual gain	2	Actual loss	(2)

Result: Dealer paid 1% fee to avoid 3 point market loss.

Result: Banking organization received 1% fee to compensate for purchasing securities 3 points above market.

2130.0.3.1.3 Futures Contracts

Futures Contract transactions involve three types of participants: customers—the buyers or sellers of contracts, brokers, and a futures exchange. As in the forward markets, a buyer (party committed to take delivery of securities specified in the futures contract) of a futures contract has a ''long'' contract and the seller (party committed to deliver the underlying securities) has a ''short'' contract. If a customer desires to purchase (sell) a futures contract, the broker—possibly a member of a clearing house of an exchange—will take the order to the exchange floor and purchase (sell) a contract sold (bought) by another customer (through another broker).[1] All futures transactions are made

1. Brokers in commodities are required to register as futures commission merchants (''FCMs'') with the Commodities Futures Trading Commission (''CFTC'') in order to be eligible to solicit or accept orders to buy or sell futures contracts.

through and carried on the books of clearing house member brokers, who are treated by the exchange as their own customers. Hence, there are always an equal number of long and short contracts outstanding, referred to as the ''open interest,'' since the auction process requires a buyer and seller for every contract.

All futures contracts are obligations of an exchange's clearing association or corporation, i.e. the clearing association is on the opposite side of each long and short contract; and all transactions are guaranteed within the resources of the exchange's clearing association (on most futures exchanges a small fee is collected on each transaction and placed into an insurance fund). Should an FCM default on a futures contract, the association pays the costs of completing the contract.

2130.0.4 MARGIN REQUIREMENTS

In order to insure the integrity of futures markets, the clearing house requires that member brokers (clearing house members) deposit initial margin in connection with new futures positions carried for the firm, other brokers or FCMs for whom the clearing house member clears transactions, and public customers. The clearing house members in turn require their customers—whether they are other FCMs or public customers—to deposit margin.[2] The FCMs generally require that public customers meet initial margin requirements by depositing cash, pledging government securities, or obtaining irrevocable standby letters of credit from substantial commercial banking organizations. Daily maintenance margin or variation margin calls (deposits of cash required to keep a certain minimum balance in the margin account) based upon each day's closing futures prices are calculated pursuant to rules of the various futures exchanges, and clearing house members are required to meet daily variation margin calls on positions carried for customers and the firm. In turn, the FCMs require customers to reimburse them for posting additional margin.

Once a customer has executed a futures contract to make or accept delivery of securities in the future it is obligated to fulfill the terms of the contract. A futures contract cannot be resold over-the-counter because futures contracts are not transferable. However, a customer may terminate its obligation under a futures contract either by making or accepting delivery of the securities as specified by the contract, or by executing an offsetting futures contract (long contract to cancel a short contract or vice-versa) with the same broker to cancel the original contract on the same exchange. The overwhelming majority of futures contracts are closed out by the execution of an offsetting contract prior to expiration.

The key to understanding futures transactions is the fact that futures contract prices on U.S. government and agency securities move in the same manner as bond prices; e.g. rising interest rates result in falling futures prices and falling interest rates result in rising futures prices. Hence, the purchase of a futures contract (''long'' futures contract) at a price of 98 will result in a loss if future market participants perceive rising interest rates in the month of contract expiration and act accordingly; then the offsetting of a futures contract (executing a ''short'' futures contract) would have to be at a lower price; e.g. 96. As in the case of any commercial transaction, the participant has a loss if the sale price is lower than the purchase price, or a gain if the sale price is higher than the purchase price.

2130.0.4.1 Variation Margin Calls

Variation margin calls for each contract and expiration month are based upon the closing futures exchange price. If there is a change from the previous day's closing prices, the long contract holders will be required to post additional margin which will be passed through via the clearing house process to short contract holders or vice-versa. Subsequent to the computation of variation margin calls, the clearing house member brokers are required to post variation margin on behalf of the clearing firm and its customer accounts prior to commencement of the next day's trading. Then, the clearing brokers call their FCM and public customers requesting more margin to bring the accounts up to the

2. In general, the futures exchanges set different initial margin requirements based upon the types of activity engaged in by the customer. Margin requirements are higher for customer contracts characterized as ''speculative'' than for those contracts deemed to be ''hedge'' positions. The commodities industry traditionally defines someone with a business need for using the futures market as a hedger; others are defined as speculators. Therefore, in instances where there are different initial hedge and speculative margin requirements, it is assumed that banking organizations will only be required to meet margin required for hedgers.

required maintenance margin level.[3] Of course, if a futures position has a gain at the end of the day, the clearing firm receives a deposit in its margin account. The firm, in turn, increases the margin account balances of customers holding contracts with gains.

For illustrative purposes, we will again assume that a customer purchased a futures contract (long contract, face value $100,000) at a price of 98. If the next closing futures price is 97, the customer will have suffered a one point margin loss (if the customer chose to offset the long contract with a short contract, the transaction would be closed out at a one point loss). Conversely, the party with a short contract executed at 98 would receive a one point margin payment to his account.

Assuming that the initial margin requirement is $1,500 and the variation margin requirement is $1,000, the following summarizes the steps followed in administering a customer's (long position) margin account in connection with the previously described transaction.

Transaction	*Margin Account Balance*
1. Deposit initial margin	$1,500
2. Purchase $100,000 contract @ 98	500
3. Day 1—Closing futures price 97 (Reduction of $1,000 in margin account to reimburse broker for posting margin with clearing corporation).	
4. FCM calls customer to request $1,000 to bring account up to required initial margin level.	
5. Reimbursement to FCM of $1,000	1,500

It is important to note that once the margin account balance falls below the variation margin level, the customer is required to deposit additional funds to replenish the account balance to the initial margin level. If there is a drop in the value of the contract which places the margin account balance below the initial margin level but above the variation margin level, the customer is not required to deposit additional margin monies. Alternatively, if there is a positive flow of margin monies the customer is free to withdraw any amount which exceeds the initial margin requirement.

The entire marking-to-the-market process is repeated at the close of the next business day using a comparison of the previous day's closing price (97) to the current closing price. (The preceding example is simplified because it implies that the customer deposits promptly the required margin. In reality, margin is not always deposited so quickly.)

In summary, futures trading is a ‘‘zero sum game'' because of the equal number of long and short contracts outstanding, and the variation margin payments reflect this fact, i.e. for every long contract holder posting variation margin, there is a short contract holder receiving margin.

2130.0.5 THE DELIVERY PROCESS

Futures contracts are defined as ‘‘standardized contracts traded on organized exchanges to purchase or sell a specified financial instrument or physical commodity on a future date at a specified price.'' Even when a participant keeps a contract open for delivery, the ‘‘specified price'' (which corresponds to a specified yield) is actually obtained through a combination of past futures market gains or losses (incurred through the daily mark to market process) and the current futures market price. For invoicing purposes, the actual delivery price is based upon a closing futures market ‘‘settlement price'' on a date designated by the exchange. In addition, the final calculation of a delivery price on a bond contract will typically involve an adjustment reflecting the fact that the coupon issue to be delivered against the contract grade (8 percent) futures contract is not an 8 percent bond. For example, when current U.S. treasury bond coupons are 12 percent it is highly unlikely that a party with a short futures position would deliver a bond with an 8 percent coupon.

2130.0.6 MECHANICS AND OPERATION OF FUTURES EXCHANGES

Certain technical factors should be noted with

3. It should be noted that public customers generally have more time to meet maintenance margin calls than do FCMs. However, if a customer fails to meet a variation margin call within three days, the FCM must take a charge against its net capital if it fails to close out the customer's contract (17 C.F.R. 1.17(c)5(viii)).

respect to futures markets. First, futures markets are not totally free markets. Rules of the exchanges put artificial constraints—daily price movement limits—upon the amount of daily market movement allowed in given types of futures contracts. For example, government securities prices in the cash market will move as far as the market participants deem necessary to reflect the "market" for those securities, while the futures market specifying delivery of the underlying security will be constrained from having the same potential unlimited market movement. There have been instances where persons desiring to close out a futures contract by executing an offsetting contract have been unable to do so for one or more days until the exchange's daily trading limits allowed futures prices to "ratchet" up or down to the level that reflected the true "market" price as perceived by hedgers, speculators, and arbitragers.

Although the preceding illustrates the basic nature of futures price movements, do not assume that futures and cash market prices always move in the same direction at the same velocity. Futures prices by definition predict future events, e.g., a market participant can buy a futures contract to take delivery of a three month Treasury bill two years in the future.[4] In such an instance, the holder of a long T-bill futures contract agrees to the future purchase of a government security which has not yet been issued. There is no reason to assume that a contract with a distant maturity will move in the same manner as the cash market for a three month Treasury bill. In addition, there is a relationship between the cash market price of an existing security and the price of that security in the futures market which is called the basis. The basis can vary significantly over the life of a given futures contract. In the contract delivery month, the futures market price will converge towards the cash market price (the basis approaches zero), adjusted for technical factors that reflect the costs of processing and delivering securities. If the futures market price did not converge towards the cash market price in the delivery month, the arbitragers would take offsetting futures and cash market positions to arbitrage away any profitable discrepancies between the two markets.

4. All financial futures contracts have a number of contract expiration months extending into the future. As the near term contract expires, a contract with a more distant expiration date is added.

2130.0.7 COMPARISON OF FUTURES, FORWARD, AND STANDBY CONTRACTS

Excluding the fact that futures contracts are traded on organized exchanges, there are many similarities between contracts. Conceptually, the contracts are interchangeable; each type of contract can be utilized for hedging, speculating, or arbitrage strategies, but none of the contracts are transferable to third parties. While engaging in contract activities allows the participants to either assume or shift the risks of interest rate changes associated with the security deliverable under the contract, such contracts fail to provide the other benefits of owning the underlying security. Specifically, financial contracts do not pay interest, do not have a U.S. government guaranty of payment of principal at maturity, and cannot be pledged to secure public deposits or be used as collateral for repurchase agreements. The forward markets are perceived to be delivery markets wherein there is a high percentage of delivery of the underlying security.

As in the case of other futures markets, the financial futures markets were not designed to be delivery markets. Nevertheless, there have been a number of instances when a relatively high percentage of financial futures contracts have resulted in delivery. Some persons suggest tax reasons and the deliverable supply of securities as two factors that have contributed to the much higher delivery of securities than delivery of physical commodities. It is, of course, also easier and cheaper to make delivery of securities rather than railroad carloads of grain.

Trading units on futures exchanges are standardized. The standardized trading unit in a physical commodity which may be a railroad car of grain; the typical trading unit in a government or agency security futures contract may be $100,000 or $1 million par principal at a coupon rate (on coupon issues) fixed by the exchange. On the other hand, forward and standby contracts are not traded in standardized units with given contract maturity months. Instead, forward and standby contracts are custom made to suit the needs of the two parties to the transaction.

While all contract holders are involved with market risks, the holders of forward and standby contracts are especially prone to credit risk. Unlike futures contracts where the mechanics of exchange trading provide for the futures exchange clearing association to guaranty performance of each contract, forward and standby contracts are only as good as the entity on the other side of the contract. Anyone who reads the financial press should be aware that prior to the passage of the Government Securities Act of 1986, there were a number of defaults involving forward and standby contracts. In an effort to bring increased integrity into the unregulated forward contract markets, there has been a trend by some of the major securities dealers to require the posting of margin in connection with forward contract trading. There are no uniform margin requirements governing all aspects of forward contract trading, nor is there a uniform application of margin requirements by dealers requiring "house" margin (or internal margin requirements established and enforced by individual securities dealers). GNMA has established limited margin requirements (24 C.F.R. 390.52), as described below.

2130.0.8 OPTION CONTRACTS

Subsequent to the Board's initial adoption of a policy statement governing futures, forward, and standby contracts, trading of interest rate options began on organized futures and securities exchanges. Proponents of exchange traded options argue that such instruments are attractive to users because they permit the user to obtain down side price risk protection, yet benefit from favorable price movement. In contrast, futures and forward contracts allow the user to lock in a specific price, but the user must forgo future participation if the market should experience an upward price movement. Furthermore, the purchaser of an option pays a one time premium for this protection and is spared the contingent liabilities associated with futures margin calls.

An option is a contract that gives the buyer, or holder, the right, but not the obligation, to buy or sell a specified financial instrument at a fixed price, called the exercise or strike price, before or at a certain future date. Some options, however do not provide for the delivery of the underlying financial instrument and, instead, are cash settled. Moreover, in some cases, the underlying financial instrument is an index. Options that can be exercised before or at the expiration date are referred to as American options; if an option can be exercised only on the expiration date, it is termed a European option.

There are two basic types of options: calls and puts. The *call option* is any option which obligates the writer to deliver to the buyer at a set price (exercise or strike price) within a specified time limit the underlying financial instrument. When the market price of the underlying instrument is above the exercise (strike) price of the call, the call option is "in-the-money." Conversely, when the market price of the underlying financial instrument is below the exercise (strike) price of the call option, the call is "out-of-the-money." When the market price of the underlying instrument is equal to the strike price, the option is "at-the-money." At expiration, the buyer will exercise the option if it is "in-the-money" or let it expire unexercised if it is out-of-the-money. An out-of-the-money call option has no value at expiration, since buyers will not purchase the underlying instrument at a price above the current market price. Prior to expiration, the value of an "in-the-money" call option is at least equal to the market value of the underlying instrument minus the strike price. The ownership of a call provides significant leverage, but raises the breakeven price relative to ownership of the underlying instrument. Holding the call limits the amount of potential loss and offers unlimited potential for gains.

A *put option* gives the buyer the right, but not the obligation, to *sell* the underlying instrument at a specified price (exercise or strike price), before or at expiration. When the market price of the underlying instrument is below the strike price of the put option, the put is "in-the-money," and a put option is out-of-the-money when the market price of the underlying financial instrument is above the strike price of the put option. Ownership of a put option offers leveraged profitability if the market value of the underlying instrument declines.

Some portfolio managers commonly employ "covered" call writing strategies to gain fee income from options written on securities held in the portfolio. If an option position is covered, the seller owns the underlying financial instrument or commodity or has a futures position. For example, an option position would be "covered" if a seller owns cash market U.S. Treasury bonds or holds a long position on a Treasury bond futures contract. Writing "covered calls" has only limited potential for gain. Writing "covered calls" is not a proper strategy for a market that could rise or fall by substantial amounts. It is generally used in a flat market environment.

Referring to the above example, if a seller holds neither the cash market U.S. Treasury Bonds or was not long on the Treasury bond futures contract, the writer would have an uncovered or ‘‘naked’’ position. In such instances, margin would be required (by the exchange, if an exchange traded option—not the case for an OTC option) since the seller would be obligated to satisfy the terms of the option contract if the option buyer exercises the contract. The risk potential for loss in writing ‘‘naked calls’’ (calls against which there are no securities held in portfolio) is great since the party required to deliver must purchase the required securities at current market prices. Naked ‘‘covered call’’ writing is generally viewed to be speculative since the risks are theoretically unlimited, particularly if it is done solely to generate fee income.

Options are purchased and traded either on organized exchanges or in the over-the-counter (OTC) market. Option contracts follow three-month expiration cycles (example: March/June/September/December). The option contracts expire on the Saturday following the third Friday in the expiration month. Thus, options are considered as ‘‘wasting assets’’ because they have a limited life since they expire on a certain day, even though it may be weeks, months, or years from now. The expiration date is the last day the option can be exercised. After that date the option is worthless.

Option premium valuation. The price (value) of an option premium is determined competitively by open outcry auction on the trading floor of the exchange. The premium value is affected by the inflow of buy and sell orders reaching the exchange floor. The buyer of the option pays the premium in cash to the seller of the option which is credited to the seller’s account. Several factors affect the value of an option premium, as discussed below. The option premium consists of two parts, ‘‘intrinsic value’’ and ‘‘time value.’’ *The intrinsic value* is the gross profit that would be realized upon immediate exercise of the option. Stated another way, it is the amount by which the option is in-the-money. It is the higher of: the value of an option if it is exercised today; or zero. For ‘‘in-the-money’’ *call* options, it is the difference between the price of the underlying financial instrument, and the exercise (strike) price of the option. For ‘‘in-the-money’’ *put* options, it is the difference of the exercise (strike) price of the put option and the price of the underlying financial instrument. The intrinsic value is zero for ‘‘at-the-money’’ or ‘‘out-of-the-money’’ options. The *time value* derives from the chance that an option will gain intrinsic value in the future or that its intrinsic value will increase before maturity of the contract. Time value is determined by subtracting intrinsic value from the option premium. For example,

Time value = Option premium – Intrinsic values

Time value = 5–10/64 – 4.00

Time value = 1.15384

The option premium is affected by several other factors. One factor involves the comparison of the underlying futures price versus the strike price of the option. An option’s price is increased the more that it is in-the-money. A second factor is volatility. Volatile prices of the underlying financial instrument can help stimulate demand for the options, thus increasing the premium. A third factor that affects the premium of an option is the time until expiration. Option premiums are subject to greater price fluctuations because the underlying value of the futures contract changes more with a longer time period. Other factors that affect the option premium are the strike rate(s) and the domestic and foreign (if applicable) interest rates.

An exchange-traded option is often referred to as a ‘‘standardized’’ option, reflecting the fact that the terms of the contract are uniform with respect to the underlying instrument, amounts, exercise prices, and expiration dates. OTC options are characterized by terms and conditions which are unique to each transaction. Large financial institutions are often dealers in customized interest rate or foreign exchange options. For example, a banking organization might write a ‘‘cap,’’ or series of put option on pounds sterling to protect the dollar value of a sterling denominated receivable due in one year. In this case, an option can be tailored to fit the exact needs of the buyer.

Like futures contracts, contract performance on exchange-traded options is guaranteed by the clearing corporation which interposes itself as a central counterparty to all transactions. It substitutes itself as a seller to all buyers and as a buyer to all sellers. Standardization combined with the clearing corporation’s guarantee facilitates trading and helps to insure liquidity in the market. The buyer or seller of an exchange-traded option may always close out an open position by entering into an offsetting transaction, with the same strike price and expiration date, and for the same amount. Indeed, most exchange-traded options are liquidated prior to maturity with an offsetting transaction, rather than by exercising the option in order to buy or sell the underlying instrument.

Buyers of exchange-traded options are not required to post funds to a margin account because their risk is limited to the premium paid for the option. However, writers (sellers) of options are required to maintain margin accounts because they face substantial amounts of risk. The amount of the margin varies depending upon the volatility in the price of the option. As the option moves closer and closer to being in-the-money, the writer is required to deposit more and more into his margin account, in order to guarantee his performance should the option eventually be exercised.

Options on futures contracts provide the holder with the right to purchase (call) or sell (put) a specified futures contract at the option's strike price. The difference between the strike price on the option and the quote on the futures contract represents the intrinsic value of the option. Options on futures contracts differ from traditional options in one key way: the party who exercises an option on a futures contract receives a long or short futures position (depending on whether he is exercising a call or put option) rather than accepting or making delivery of the underlying security or financial instrument. When the holder of a call option on a futures contract exercises the option and the futures contract is delivered, the option writer must pay the option holder the difference between the futures contract's current value and the strike price of the exercised call. The buyer takes on a long position, and the writer a short position in the futures contract. When a futures put option is exercised, the holder takes on a short futures position, and the writer a long position. The writer of the put pays the holder the difference between the current price of the futures contract and the strike price of the put option. The resultant futures position, like any other futures position, is subject to a daily marked-to-market valuation. In order to liquidate the futures position, both the buyer and the seller must undertake offsetting futures transactions.

2130.0.8.1 Other Option Contracts

2130.0.8.1.1 Stock Index Options

A stock index option is a call or a put that is based on a stock market index such as the S & P 500. As opposed to a regular call or put option on equity securities where there must be a sale and delivery of shares of stock, there is no delivery of the underlying instrument when an index option is exercised. Rather, settlement is in cash.

2130.0.8.1.2 Foreign Currency Options

The right to buy (call) or sell (put) a quantity of a foreign currency for a specified amount of the domestic currency is a foreign currency option. The size of the contract is standard for each currency. The contracts are quoted in cents per unit of foreign currency. As an example, one call option for the British pound is 12,500 pounds.

2130.0.8.2 Caps, Floors, and Collars

Caps, floors, and collars provide risk protection against floating interest rates. The market for these products is an outgrowth of the OTC market in fixed income (bond) options.

An interest rate cap contract pays the buyer cash if the short term interest index rises above the strike rate in the contract in exchange for a fee. In combination with a floating rate obligation, it effectively sets a maximum level on interest rate payments. If market rates are below the cap rate, no payments are made under the cap agreement. Thus, the buyer of a cap is able to place a ceiling on his floating rate borrowing costs without having to forego potential gains from any decline in market rates.

Cap agreements typically range in maturity from 6 months to as long as 12 years, with reset dates or frequencies that are usually monthly, quarterly, or semiannual. The London Interbank Offered Rate (LIBOR) is the most widely used reference rate for caps, floors, and collars. Other indexes used as reference rates are commercial paper rates, the prime interest rate, Treasury bill rates, and certain tax-exempt rates. Cap fees depend upon the cap level, the maturity of the agreement, the volatility of the index used as the reference rate, and market conditions. The higher the cap rate, the lower the premium. The fee is usually paid up front, but can be amortized.

An interest rate floor agreement is used to protect the overall desired rate of return associated with a floating-rate asset. In accordance with the agreement, the seller receives a fee for the floor agreement from the holder of the underlying asset. When interest rates fall, the holder of the floor contract is protected by the agreement, which specifies the fixed per annum rate (floor rate) that will be retained on those assets, at specified times during the life of the agreement, even though floating interest rates may decline further.

An interest rate collar is a variation of a cap-only agreement. Under this arrangement the seller of the collar, for a fee, agrees to limit the buyer's floating rate of interest within one agreement by a simultaneous sale of a cap and purchase of a floor, or purchase of a cap and sale of a floor. When the reference rate is above the cap rate the seller makes payments to the buyer sufficient to return the buyer's floating rate interest cost to the cap rate. Conversely, the buyer makes payments to the collar provider to bring its rate back to the floor whenever the reference rate falls below the floor rate. In effect, under a collar agreement the buyer is selling a string of call options (the floor) back to the provider of the cap. The premium received from selling the floor reduces the overall cost of the cap to the buyer of the collar. Thus, the premium for a floor/ceiling, or collar, agreement, is lower than for a cap-only agreement with the cap at the same level. This is because the floor sold to the provider of the collar has a certain value, which is passed along to the buyer in the form of a lower premium.

The disadvantage to collars, of course, is that they limit the buyer's ability to profit from declines in market rates below the specified floor. Clearly, one's interest rate expectations play an important role in determining whether or not to use a collar agreement. It should also be noted that collar agreements involve credit risk on both sides of the agreement, similar to the credit risk considerations found in interest rate swap agreements. The buyer of the collar is exposed to the risk that the provider may default on payments due under the cap agreement; and the provider of the collar is exposed to the risk that the buyer may default on payments due under the floor agreement.

2130.0.9 REGULATORY FRAMEWORK

GNMA has adopted limited margin requirements. Specifically, the GNMA margin requirements (12 C.F.R. 390.52) require marking-to-market and the posting of maintenance margin.[5] However, the GNMA margin requirements exclude the majority of GNMA forward contracts and only pertain to contracts involving GNMA issuers with other parties.[6]

The Commodities Futures Trading Commission (''CFTC'') is the agency authorized by Congress to supervise the trading of ''commodities,'' including financial futures. Exchanges which trade commodities must register with the CFTC. In addition, the various futures exchanges must receive CFTC approval before they can begin trading a new futures instrument. Brokers and dealers who execute futures contracts for customers must register as Futures Commission Merchants (''FCM'') with the CFTC. There are also CFTC registration requirements pertaining to firms engaging in commodities activities similar to an investment advisor or mutual fund in the securities markets. Finally, the surveillance activities of the various futures exchange examiners are subject to oversight by the CFTC.

With the exception of reporting requirements concerning persons or entities with large futures positions, the CFTC's jurisdiction generally does not extend to financial institutions. Rather, the federal and state banking agencies, state insurance commissions, and the Office of Thrift Supervision are responsible for supervising regulated entities' future activities, if permitted, under statute or regulation.

2130.0.10 EXAMPLES OF CONTRACT STRATEGIES

For purposes of reporting large positions to the CFTC a market participant defines its future activities as ''speculative'' or as ''hedging.'' Basically, CFTC rules consider a participant to be a hedger if certain facets of such person's business can be hedged in the futures markets; persons who do not have a business need for participating are deemed to be speculators. It is anticipated that bank holding companies characterize their contract activities as ''hedging'', or possibly as arbitrage between various markets.

5. Initial margin requirements necessitate the pledging of something of value prior to initiation of a transaction. Depositing maintenance margin refers to pledging something of value in reaction to market movements; e.g. depositing cash representing the difference between a forward contract price and its current market value.

6. See SR-625 dated July 23, 1980.

Examiners must scrutinize contract positions for purposes of evaluating risk.

The Board policy statement concerning bank holding companies[7] states:

"... the Board believes that any positions that bank holding companies or their nonbank subsidiaries take in financial contracts should reduce risk exposure, that is, not be speculative." It should be noted, however, that a more liberal interpretation of the policy statement has been permitted for dealer subsidiaries. For example, in a government securities dealer subsidiary, it is permissible to use related financial contracts as a substitute trading instrument for cash market instruments. Thus, the use of financial contracts is not limited solely to reducing the risk of dealing activities.

Some examples of contract strategies are provided which reduce risk when viewed in isolation. A definition of a financial hedge is:

"to enter transactions that will protect against loss through a compensatory price movement."

In looking at a hedge transaction in isolation, there should be certain elements present to make a hedge workable:

1. The interest rate futures or forward contract utilized should have a high positive correlation (prices that tend to move in the same direction with similar magnitude) with the cash position being hedged. In other words, the futures or forward position taken should be structured so that an upward price movement in the contract offsets a downward price movement in the cash or risk position being hedged, and vice versa.

2. The type (e.g. T-bill, T-bond, etc.) and size of the contract position[8] taken should have a proportionate relationship to the cash or risk position being hedged, so that futures gains (losses) will approximately offset any losses (gains) on the hedged position.

3. The contract position taken should have a life which is equal to or greater than the end of the period during which the hedge will be outstanding. For example, if interest rate protection was deemed necessary for a six-month time span, it would not ordinarily be wise to enter a contract expiring in three months.

7. The Board's policy statement on engaging in futures, forwards, and option contracts.

8. Futures market participants engage in a practice, sometimes known as "factorweighting" or "overhedging," to determine the appropriate number of futures contracts necessary to have the proper amount of compensatory price movement against a hedged cash or risk position. For example, it would require 10 mortgaged-backed futures contracts (8% coupon, $100,000 face value) to hedge an inventory of $1,000,000 mortgage-backed (8% coupon) securities. Alternatively, 14 mortgage-backed futures contracts would be required to hedge a $1 million inventory of mortgage-backed securities with a 13½% coupon. Overhedging or factor weighting is necessary in hedging securities with higher coupons than those specified in futures contracts (currently 8% on bond futures) because higher coupon securities move more in price for a given change in yield than lower coupons.

2130.0.10.1 The Mortgage Banking Price Hedge

Assume that a mortgage banking subsidiary agrees in June to originate mortgages at a fixed yield in the following October. Unless the loan originator has a forward commitment to sell the loans to a permanent investor(s), it is exposed to a decline in the principal value of mortgages due to a rise in interest rates between the commitment date and ultimate sale of the loans. An example of a traditional "short hedge" would be the sale of futures contracts in an attempt to reduce the risk of price fluctuation and insure a profitable sale of the loans. However, in following this strategy the mortgage originator also chooses to forfeit its ability to reap a profit if interest rates should fall.

If interest rates increased, the loss on the sale of mortgages or a pool of mortgage-backed securities will probably be largely offset by a gain on the futures transaction; see example below. If interest rates fall, the mortgage originator would gain on the resale of mortgages but lose on the futures market transaction. Hence, in a true hedge, the hedger's earnings are relatively unaffected by a change in market interest rates in either direction.

Generally accepted accounting principles applicable to mortgage activity require that mortgages held for resale be periodically revalued to the lower of cost or market (Financial Accounting Standards Board Statement No. 65, "Accounting for Certain Mortgage Banking Activities"). Unrealized gains and losses on outstanding futures contracts are matched against related mortgages or mortgage commitments when the inventory is revalued to the lower of cost or market; i.e. the lower of cost or market valuation is based upon a net figure including unrealized related futures gains and losses.

2130.0.10.2 Basis

Basis is the difference between the cash (spot) price of a security (or commodity) and its futures price. In other words:

Basis = Spot price − Future price

For short-term and intermediate futures contracts, the futures price is the quoted futures price times an appropriate conversion factor. For short-term futures contracts the quoted futures price is 100 less the annualized futures interest rate. The invoice price must be determined using yield-to-price conventions for the financial instrument involved.

Basis may be expressed in terms of prices. Due to the complexities involved in determining the futures price, it is thus better to redefine price basis using actual futures delivery prices rather than quoted futures prices. Thus, the price basis for fixed income securities should be redefined as:

Price Basis = Spot price
− Futures delivery price.

Basis may also be expressed in terms of interest rates. The *rate basis* is defined as:

Rate basis = Spot rate − Futures rate

The spot rate refers to the current rate on the instrument that can be held and delivered on the contract. The futures rate represents the interest rate that corresponds to the futures delivery price of the deliverable instrument.

The rate basis is useful in analyzing hedges of short-term instruments since it nets out all effects resulting from aging. For example, if a one year T-bill has a rate of 9 percent with a price of 85, and a 3-month T-bill has a rate of 9 percent and a price of 94, the price basis would be −9. If a cash security ages, it does not necessarily mean that a change in the rate basis has taken place.

2130.0.10.3 Trading Account Short Hedge

Another example of a short hedge pertains to securities dealers that maintain bond trading accounts. While bonds are held ‘‘long’’ (actually owned by the dealer) in trading accounts, dealers are subject to two risks. First, there is the risk that the cost can change regardless of whether the funds are generated through repurchase agreement financing or the dealer’s other funding sources. When there is an inverted yield curve (short-term interest rates are higher than long-term rates), trading portfolio bonds in inventory yield less than the cost of funds required to carry them. Second, there is the risk that bond market interest rates will rise, thus forcing the dollar price of bonds down.

2130.0.10.3.1 Example 1: A Perfect Short Hedge[1]

Month	*Cash Market*	*Futures Market*
June	Mortgage department makes commitment to a builder to originate $1 million of mortgages (based on current GNMA 8’s cash price) at 98-28⁄32 for $988,750	Sells 10 December mortgage-backed futures at 96-8⁄32 for $962,500 to yield 8.59 percent
October	Mortgage department originates then *sells* $1 million of pooled mortgages to investors at a price of 95-20⁄32, for $956,250	Buys 10 December mortgage-backed futures at 93, for $930,000 to yield 8.95 percent
	Loss: $32,500	Gain: $32,500

1. The effects of margin and brokerage costs on the transaction are not considered. It should be noted that ‘‘perfect hedges’’ generally do not occur.

The following example pertains to a bond trading account. Assume that the dealer purchases Treasury bonds on October 4 and simultaneously sells a similar amount of Treasury bond futures contracts. The illustration ignores commission charges and uses futures contracts maturing in March 19x9 because the dealer’s technical analysis discovered an advantage in using the March 19x9, rather than the previous December contract as a hedge. (At that time the previous December contract was the next available contract still trading.)

	Cash Market		*Futures Market*	
10/04/1998	Purchase $5MM T-bonds maturing Aug. 2005, 8% coupon at 87-$\frac{10}{32}$:		Sell $5MM T-bonds futures contracts expiring Mar. 1999 at 86-$\frac{21}{32}$:	
	Principal =	$4,365,625	Contract value =	$4,332,813
10/23/1998	Sell $5MM T-bonds at 79.0:		Buy $5MM T-bond futures Mar. 1999 at 79-$\frac{1}{32}$	
	Principal =	3,950,000	Contract value =	3,951,563
	Cash loss =	($415,625)	Futures gain =	$381,250

Although the hedge did not prevent the dealer's trading account from losing money, it limited the loss to $34,375 instead of $415,625.

It is worth noting that the preceding example also illustrates some of the dangers of using interest rate futures contracts. Although the futures market proved useful to the trading department, a futures contract could have serious consequences for a dealer using an alleged ‘‘long hedge to lock-in an attractive yield.’’

2130.0.10.4 Long Hedge

In certain areas of the country, financial institutions desiring to hold public deposits are required to bid competitively for deposits. The case discussed below pertains to a situation where the competitive bids must be tendered one calendar quarter in advance of receiving the deposit. In this example, the asset side of the balance sheet is not discussed since it is assumed that a banking organization paying the prevailing one-year C.D. interest rate can utilize the funds at a profitable spread.

In this type of situation the bidding institutions are generally vulnerable to falling interest rates; one can safely assume that an institution selected to hold public deposits would not be dismayed to learn subsequently that interest rates had risen and it had locked-in a funding source at or below market rates. However, the funds will not be received for another 3 months. Thus, there is the possibility that interest rates could drop in the interim, leaving a reduced or possibly negative net interest margin when the funds are deployed.

There are a number of approaches available to attempt to ensure that future time deposits can be obtained without paying higher than market interest rates. One method is forecasting the appropriate interest rate to be paid on a given time deposit three months in the future. However, forecasting has become increasingly difficult to do with accuracy in the recent periods of fluctuating interest rates. An alternative approach would be to quote the current C.D. rate (adjusted slightly for competitive factors) with an intent to hedge in the futures market if the banking organization's interest rate bid is accepted. Upon receiving notification that its deposit bid has been accepted, the institution can then purchase an appropriate number of futures contracts to insure a profitable investment spread three months hence when it actually receives the deposit.

The following example on June 1, 19x0; the facts are as follows:

Size of public deposits offered	$10 million
Date of deposit	September 2, 19x0
Term	1 year
Current C.D. rate	8¼%

For purposes of this illustration, assume that a bid was submitted to pay 8¼% for one year on $10 million. The bids were due June 1 and notification was given June 2 of the intention to provide the funds on September 2; and the banking organization decided to purchase futures contracts on June 2.

A Treasury bill futures contract, expiring in 3 months, is selected as the hedging vehicle because it reflects price movement of an instrument with a comparable maturity to one-year

C.D., and there was no C.D. futures contract trading. For purposes of this illustration, it is assumed that the contract offers sufficient liquidity to enable the banking organization to readily offset its open futures position when necessary. Using the bill contract is an example of "cross hedging" which is defined as the buying or selling of an interest rate futures contract to protect the value of a cash position of a similar, but not identical, instrument. This type of hedging is a measured risk since the outcome of such a transaction is a function of the price correlation of the instruments being hedged. At any given moment it is conceivable that a negative correlation could exist between two unlike instruments despite the presence of a strong correlation over an extended time period.

Date	*C.D. Rate*	*Transactions*	*T-bill*	*Futures* [1]
June 2, 19x0	8.25%	Purchase 40 Contracts	91.84	8.16%
Sept. 2, 19x0	11.00%	Sell 40 Contracts	90.05	9.95%

1. The size of the trading unit is based upon U.S. T-bills having a face value at maturity of $250,000 (40 × 250M = 10MM). Prices are quoted in terms of an index representing the difference between the actual T-bill yield and 100.00. Every one basis point movement on a contract is equal to $25.00 per contract.

2130.0.10.4.1 Evaluation of the Hedge

Total interest (not compounded) to be paid (8¼%)	$ 825,000
Alternative C.D. interest (not compounded) at current rate (11%)	1,100,000
Difference	275,000
Futures trading loss*	(179,000)
Net difference	$ 96,000

*Computation—Purchase price 91.84
Sale price 90.05
1.79 or 179 basis points
(179 × $25.00 × 40 contracts = $179,000)

In retrospect, it would have been better if the banking organization would not have hedged. By agreeing to an interest rate on June 2, it obtained deposits on September 2 and will pay approximately $275,000 less in interest payments to the municipality than is required on an ordinary C.D.(s) issued on September 2. The $179,000 futures trading loss, of course, reduced the windfall interest income due the banking organization. A net interest income spread of approximately $96,000, instead of a $275,000, demonstrates two principles: 1) cross hedging can cause unexpected results; and 2) it is quite difficult to find perfect hedges in the real world. The hedge was structured so that a cash gain was offset by a futures loss—incorporating the offsetting principles of a hedge transaction. If the general level of interest rates had fallen, a futures gain should have occurred to offset the higher (relative to prevailing market rates) cost of funds obtained on September 2.

2130.0.10.5 Using Options to Create an Interest Rate Floor

Assume that on September 28th it is decided to rollover a $1,000,000 investment in 13-week Treasury bills on November 28, which also happens to be the expiration date for call options on the December Treasury bill futures contract. The banking organization, concerned that interest rates will fall between September 28 and the rollover date, wishes to hedge the rollover of its investment. The portfolio manager can set a minimum yield on the rollover investment by either buying a Treasury bill future call option, or by buying a Treasury bill futures contract. Further assume that the December Treasury bill futures contract can be bought for a price of 93.70 which implies a discount yield of 6.30 percent. Treasury bill futures call options with a strike price of 93.75, implying a discount yield of 6.25 percent, sell for a premium of 20 basis points, or $600 (20 basis points × $25/basis point = $500).

If the banking organization could actually buy a Treasury bill futures contract that expired on exactly November 28, then there would be a perfect hedge since the rate of return on the bills would be explicitly fixed by the futures hedging strategy. However, the closest maturing Treasury bill futures contract expires in December, several weeks after the rollover date for the banking organization's investment. Uncertainty over the actual discount yield of the Treasury bills on the rollover date and the yield produced by the hedge is known as "basis risk," the risk that the yield on the hedge may differ from the expected yield on the hedged item. For purposes of this example, assume that the yield on the futures contract equals the actual discount yield on the 13-week Treasury bills at the rollover date. Thus, the futures hedge in this example will provide an effective discount yield of 6.30 percent on the rollover of the 13-week Treasury bill investment.

Assume that rates fall after September 28 and that the discount yield on Treasury bill futures contracts declines from 6.30 percent to 6.00 percent at the November 28 expiration date of the December Treasury bill futures options contract. The option to buy the Treasury bill futures will be exercised since the strike price of 93.75 is below the market price of 94.00 for the underlying futures contract, yielding a profit of 25 basis points or $625 (25 basis points × $25/basis point). The profit must be offset by the 20 basis point cost of the option, which reduces the net profit to 5 basis points. The effective hedged discount yield is 6.05 percent (6.00 percent on the 13-week Treasury bills—assuming no basis risk—plus the 5 basis point profit from the hedge). The option hedge produces a yield that is 5 basis points higher than the unhedged yield, but 25 basis points lower than the 6.30 percent yield that would have resulted from hedging with futures.

Although the option hedge resulted in a lower effective yield than the futures hedge, it set an absolute floor on the investment. This is because any decline in the discount yield of the Treasury bills below 6.05 percent would be offset dollar for dollar by the additional profits from the hedge. The real advantage of the option hedge is that, although it establishes a floor that is lower than the rate fixed by the futures hedge, it allows the hedger to participate in any increase in interest rates above the cost of the call premium. For example, if interest rates increased such that the price on the December Treasury bill futures contract on November 28 falls to 93.00, implying a discount yield of 7.00 percent, the option would expire unexercised since the strike price is above the price of the underlying futures contract. Again, assuming that the spot price for the 13-week Treasury bills is equal to the futures price, the effective discount yield is 6.80 percent (7.00 percent minus the 20 basis point call option premium), 50 basis points higher than the yield that would have been provided by the futures hedge.

2130.0.10.6 Hedging a Borrowing with an Interest Rate Cap

In order to limit a borrower's interest rate risk, sophisticated banking institutions may offer cap agreements as part of a loan package to their clients. While such an arrangement provides some comfort that the borrower's ability to repay will not be jeopardized by a sharp increase in interest rates, it obviously transfers that interest rate risk back to the lender. Nevertheless, many banking institutions feel they are better able to manage that risk than are some of their clients. Cap agreements have also been utilized to cap the rate on issued liabilities. For example, an institution might be able to issue medium-term floating rate notes at 3-month LIBOR plus an eighth of a percent. Alternatively, that institution could issue a capped floating rate note at 3-month LIBOR plus three-eights of a percent. By subsequently selling the cap separately back into the market the institution could, achieve sub-LIBOR funding, depending on the proceeds from the sale of the cap.

A cap agreement is typically specified by following terms: notional principal amount; maturity; underlying index, frequency of reset, strike level. As an illustration, a cap agreement might have the following terms:

Notional Principal Amount	$10,000,000
Maturity	2 Years
Underlying Index	3-month LIBOR
Rate Fixing	quarterly
Payment	quarterly, in arrears, on an actual/360-day basis
Cap Level	9%
Up Front Fee	1.11% of par ($111,000)

Under the terms of this agreement, if at any of the quarterly rate fixing dates 3-month LIBOR exceeds the cap level then the seller of the cap would pay the buyer an amount equal to the difference between the two rates. For example, if at a reset date LIBOR was set at 10 percent, the payment would be:

10%(90/360 × $10,000,000)

–

9%(90/360 × $10,000,000)

=

$25,000

Thus, the writer of the cap would pay the buyer $25,000. If 3-month LIBOR for the quarter were set at or below the cap level of 9 percent, no payment would be made.

2130.0.11 ASSET-LIABILITY MANAGEMENT

Financial contracts can be used as a tool in an overall asset-liability management strategy. In order to use financial contracts in this context, a BHC or nonbank subsidiary must first identify where interest-rate exposure lies as indicated by mismatches between asset and liability structures. In those instances where the BHC or nonbank subsidiary has variable-rate assets and variable-rate liabilities with comparable maturities, there is, in theory, no need to hedge with financial contracts since that portion of the asset-liability structure is already hedged. The same holds true for fixed-rate assets and liabilities (yielding a positive interest-rate margin) of comparable maturities. Once a BHC or nonbank subsidiary has identified the undesired mismatches in assets and liabilities, financial contracts can be used to hedge against the identifiable mismatch—for example, long positions in contracts can be used as a hedge against funding interest-sensitive assets with fixed-rate sources of funds, and short positions in contracts can be used as a hedge against funding fixed-rate assets with interest-sensitive liabilities.

BHCs or nonbank subsidiaries that choose to employ financial contracts as a tool in their general asset-liability management program and properly use financial contracts are striving towards worthwhile goals. The discipline of identifying mismatches between assets and liabilities tends to focus the practitioner's attention on the entire balance sheet. Examiners should be aware that marketing efforts on behalf of the futures exchanges have attempted to focus upon just one side of the balance sheet by ''pairing'' a futures contract with an asset or a liability. In considering financial-contract activities, examiners need to remember that financial-contract activities must be evaluated in light of both sides of a balance sheet.

One final point should be made with respect to ''hedging'' based upon pairing a futures contract against a portfolio security. Since this type of ''hedging'' can be done while considering only the asset side of the balance sheet, it is possible that such a strategy could increase interest-rate risk rather than reduce it. For example, assume (unrealistically) that there is a perfect balance between variable-rate assets and liabilities, and the firm is evaluating fixed-rate assets and liabilities. Management determines that there is a perfect balance between fixed-rate assets and liabilities and then isolates the last fixed-rate asset and liability. Make the further assumption that the organization holds a six-month note yielding 12 percent which is financed by funds maturing in six months which costs the organization 10.5 percent. By executing a short futures contract ''paired'' against the six-month note, the organization would move from an overall ''hedged'' position to an ''unhedged'' position. In other words, the futures contract would move the organization from an overall neutral position and expose the organization to interest-rate risk.

It should be evident why it is more productive to consider the ''big picture'' in inspections rather than focusing upon individual or ''paired'' (futures against each position) transactions. The most meaningful approach is to evaluate hedging strategies and open financial contract positions in light of its business needs, operations, and asset-liability mix.

2130.0.12 INSPECTION OBJECTIVES

1. To determine the purpose of financial-contract positions. Any positions that bank holding companies or their nonbank subsidiaries (except certain authorized dealer subsidiaries) take in financial contracts should reduce risk exposure, that is, not be speculative.
2. To determine whether prudent written policies, appropriate limitations, and internal controls and audit programs have been established and whether management information systems are sufficiently adequate to monitor risks associated with contracts involving futures, forwards, and options (including caps, floors, and collars).
3. To determine whether policy objectives concerning the relationship of subsidiary banking organizations and the parent bank hold-

ing company specify that each banking organization in a holding company system must be treated as a separate entity.
4. To determine reporting compliance in accordance with the Board's bank holding company policy statements. See section 2130.0.17 for the appropriate cites.

2130.0.13 INSPECTION PROCEDURES

The term "banking organization" is used generally to refer to a bank holding company, the parent company, or nonbank subsidiary.

1. Determine if the banking organization's financial-contract activities are related to the basic business of banking.

   Consider whether the financial-contract activities are closely related to the basic business of banking; that is, taking deposits, making and funding loans, providing services to customers, and operating at a profit for shareholders without taking undue risks. Taking financial-contract positions solely to profit upon interest-rate forecasts is considered to be an unsafe and unsound practice. Profitability of contract activities is not the criterion for evaluating such activities. It is quite probable that a bona fide hedge strategy could result in a contract loss which would be offset by increased interest earnings or a higher price for an asset sold, for example, a pool of mortgages. Criticize contracts placed solely to profit upon interest-rate movements. Verify that contract activities are conducted in accordance with the Board's policy statement. Where contract positions are of excessive size and could jeopardize the financial health of the entity under examination, the gains or losses realized because of financial-contract activities should be criticized.
2. Ascertain whether policy objectives highlight the circumstances under which financial contracts should be used.

   Determine whether management and operating personnel have received sufficient guidance. Carefully constructed policy objectives should be formulated with the knowledge that although proper utilization of financial contracts limits loss potential, such utilization also limits potentials for gains. Policy objectives should be formulated to limit required resources (margin monies, commissions, and personnel to execute, monitor, and audit contract activities). A well-constructed policy should be designed to preclude various operating areas of a banking organization from taking offsetting financial contract positions. Finally, there should be established benchmarks for determining whether financial contracts are meeting desired objectives.
3. Determine if policy objectives concerning the relationship of subsidiary banking organizations and the parent bank holding company comply with the Board's directives.

   Each banking organization in a holding company system must be treated as a separate entity. The policy statement accommodates centralized holding companies in that the holding companies are free to provide guidance to subsidiary banking organizations and execute contracts as agent on behalf of the banking organization, provided that each banking organization maintains responsibility for financial contract transactions executed on its behalf. Accordingly, a holding company that has centralized management could, and perhaps should, consider the interest-rate exposure of its subsidiary banks on a consolidated basis in determining whether future contracts can usefully be employed to reduce that exposure, but any future contracts that are executed must be recorded on the books and records of a subsidiary bank that will directly benefit from such contracts.

   The question concerning the relationship of a subsidiary bank to its holding company may also lead one to consider the relationship of a subsidiary bank with its correspondent bank or broker. One might also query to what extent may less sophisticated institutions rely upon brokers and/or correspondent banking organizations for advice in this area?

   Less sophisticated institutions can place only limited reliance on others for advice in this area. The bank holding company policy statement[9] emphasizes that responsibility for financial-contract activities rests solely with management. Additional information on securities transactions and the selections of securities dealers can be found in section 2126.1.
4. Ascertain whether policy objectives and/or position limits require prudence on the part of authorized personnel entering into these new activities. If discretion is left to senior

9. The Board's policy statement on engaging in futures, forwards, and option contracts.

managers, determine whether management has issued instructions to ensure that the level of financial-contract activity is prudent relative to the capabilities of persons authorized to execute and monitor contracts.

A new activity such as financial contracts should, as a general rule, be entered slowly. In developing expertise, management should mandate a low level of activity until persons authorized to execute contracts gain sufficient expertise or until new personnel are employed that have sufficient training and experience to engage in financial-contract activities on a larger scale. Senior management must develop the expertise to understand and evaluate techniques and strategies employed to ensure that an experienced professional does not engage in improper or imprudent activities.

5. If a banking organization uses financial contracts as part of its overall asset-liability management strategy, determine whether the organization developed an adequate system for evaluating its interest-rate risk.

   Without a system for identifying and measuring interest-rate risk, it is impossible to engage in hedging activity in an informed and meaningful manner. Failure to identify the mismatches in the organization's asset-liability mix would make it difficult to select the proper number and types of financial contracts—for example, bond or bill financial contracts—to provide an appropriate amount of interest-rate-risk protection. Evaluate whether the organization's interest-rate-risk measurement techniques appear reasonable to determine whether the financial contracts employed were successful in providing the proper amount of futures gains (losses) to cover the hedged risk position.

6. Determine if the recordkeeping system is sufficiently detailed to permit personnel to document and describe in detail how financial-contract positions taken have contributed to the attainment of the banking organization's stated objectives.

   There is no universal, adequate recordkeeping system for this purpose. Examiners must evaluate each individual system relative to the organization's stated objectives and activities. If the recordkeeping system cannot be used to illustrate how financial contracts contributed to the attainment of the banking organization's stated objectives, the recordkeeping system is inadequate. BHCs with inadequate recordkeeping systems should be instructed to make appropriate modifications.

7. Ascertain whether the banking organization's board of directors has established written limitations with respect to financial-contract positions.

   NOTE: The bank holding company policy statement requires that the board of directors establish written policies and position limitations in connection with financial-contract activities. If a committee has been delegated similar responsibilities within the organization, and a committee makes the decision, its recommendation should be ratified by the board of directors.

8. If there is the potential to exceed the above limitations in certain instances, determine whether there are firm, written procedures in place concerning the authorizations necessary to exceed limits.

9. Determine whether the board of directors, a duly authorized committee thereof, or internal auditors review at least monthly financial-contract positions to ascertain conformance with limitations. (See item (b) of the bank holding company policy statement.)

10. Determine if the banking organization maintains general-ledger memorandum accounts or commitment registers to adequately identify and control all financial-contract commitments to make or take delivery of securities or money market instruments.

11. Determine if the banking organization issues or writes option contracts expiring in excess of 150 days which give the other party to the contract the option to deliver securities to it.

    Examiners should review the facts surrounding standby contracts issued by holding companies. Examiners should also review accounting entries connected with bank holding company standby contracts to determine whether standbys were issued to earn fee income "up front" and exploit the lack of generally accepted accounting principles.

12. Determine whether financial-contract positions are properly disclosed in notes to the statements of financial condition and income and that the contract positions have been properly reported on FR Y-9C, Schedule HC-F, "Off-Balance-Sheet Items."

13. Determine whether the banking organization has implemented a system for monitoring credit-risk exposure associated with

various customers and dealers with whom operating personnel are authorized to transact business.

All financial-contract trading involves market risks. However, forward and OTC options trading, as well as swap activities, also involve credit risk. The key concern is whether the contra party to a transaction will be ready, willing, and able to perform on contract settlement and payment dates. While maintaining control over credit-risk exposure should ensure that a financial organization will not enter excessive (relative to the financial condition of the contra party) forward or standby contracts, monitoring such exposure may not prevent default in all instances.

14. Ascertain whether the banking organization has implemented internal controls and internal audit programs to ensure adherence to written policies and prevent unauthorized trading and other abuses.
15. Determine if the Reserve Bank was notified at the inception of bank holding company futures, forward, and option activities as required by paragraph (f) of the holding company policy statement (*Federal Reserve Regulatory Service* 4–830).
16. Determine if the personnel engaged in financial-contract activities have sufficient knowledge and understanding of the markets to perform those functions.

2130.0.13.1 Evaluating the Risks of Contract Activities

Evaluating the organization's stated objectives and their effects on overall risk is a difficult task involving legitimate cause for concern because of the high degree of leverage involved in contract activities. Although there is an emerging trend towards dealers requiring margin on forward trades, forward contract transactions generally have not required margin deposits, and thus, grant users unlimited leverage. Although the amount of margin required for futures trades is extremely small (for example, $1,500 initial margin to take a $1 million futures position), the rules of the exchanges do require a daily mark to market and a requirement that members of the futures exchanges meet maintenance margin calls on behalf of their customers. Customers, of course, are generally required to promptly reimburse brokers for margin posted on their behalf. Nevertheless, engaging in contract activities requires market participants to assume the market risks of either owning securities or ''shorting'' securities. Issuing (or selling) standby contracts granting the other party to the contract the option to deliver securities is a practice which results in the issuer functioning as an insurer against downside market risk for the other party; in essence, the party receiving the standby fee assumes all of the interest-rate risks of security ownership, but receives none of the benefits.

2130.0.13.2 Reviewing Financial-Contract Positions

The preceding questions were designed to focus the examiner's attention on a bank holding company's stated objectives for engaging in financial contract activities and the manner in which such activities are conducted. It is also vital to review position records with respect to financial contracts or, if necessary, prepare a schedule grouping similar contracts by maturity. Once the various positions have been scheduled it will be possible to evaluate the risk of contract positions relative to the organization under inspection.

2130.0.13.3 Factors to Consider in Evaluating Overall Risk

To determine whether contract positions are reasonable, an examiner must evaluate positions in light of certain key factors: the size of the organization, its capital structure, its business needs, and its capacity to fulfill its obligations. For example, open contracts to purchase $7 million of GNMA securities would be viewed differently in a BHC with $24 million of assets than in a BHC with $1 billion of assets.

There is no guaranty that financial contract prices and cash market prices will move in the same direction at the same velocity; however, contract prices and cash market prices ultimately move towards price convergence in the delivery month. Keeping this fact in mind, the risk evaluating process can be simplified by thinking of the securities underlying the various contracts as a frame of reference. For example, if a BHC holds ''long'' futures contracts on $10 million (par value) of Treasury bonds the examiner should first evaluate the effect (excluding tangible benefits of ownership, e.g., interest income, pledging, etc.) on the organization of holding $10 million of bonds in its portfolio and the resultant appreciation or depreciation if interest rates rise or fall by a given amount. A ''short'' contract of $10 million Treasury bonds would be evaluated as if the banking organization had executed a short sale for $10 million. In addition, the examiner would have to consider the positive or negative flow of funds received or disbursed as margin to reflect daily contract gains and losses. While commissions on futures contracts are not a major factor in hedging transactions, they also should be considered in this evaluation. Typically, commissions are charged on a ''round turn'' basis—meaning that commissions are charged based upon an assumption that each futures contract will be offset prior to maturity. Since each contract will have to be offset, or securities bought or delivered, it should be determined whether funds will be available to offset contracts or fund delivery. In the case of certain short contracts, a determination must be made as to whether deliverable securities are held or committed for purchase by the banking organization.

2130.0.13.4 Contract Liquidity

In addition to looking at the ''big picture,'' examiners should consider a position in a given contract maturity month relative to the volume of contracts outstanding. For example, in futures trading there is generally a greater open interest in the next contract maturity month and perhaps the following one or two contract maturity months. As one moves away from the near term contracts, there is generally less trading and less ''open interest'' in the more distant contracts. ''Open interest'' or the amount of contracts outstanding is reported in financial newspapers and other publications. Generally, the contracts with the largest open interest and daily trading volume are considered to be the most liquid.

To illustrate the concept discussed above, one should consider the following example. A ''red flag'' should be apparent if a contract review discloses that the organization has taken a sizeable position in a contract expiring in two years. When the examiner checks financial newspapers and other publications, he or she may discover that the BHC's position represents 20 percent of the open interest in that contract. Such a situation would clearly be unsafe and unsound because the relatively huge position coupled with the typically less liquid conditions in distant contracts makes it highly unlikely that the BHC could quickly close out its position if necessary. In addition, one should also question why the distant maturity was chosen since there is no immediate reason to expect a close correlation to the cash market for the underlying security.

With respect to forward contracts, there is an active forward market for GNMA securities specifying delivery of the underlying securities up to four or five months in the future. If a banking organization is executing contracts for more distant maturities, management should be queried as to why it is necessary to trade outside the normal trading cycle.

2130.0.13.5 Relationship to Banking Activities

In evaluating contract activities, examiners should verify that contract strategies are carried to fruition in connection with their relationship to overall objectives. Examiners may find it useful to recommend additional recordkeeping in borderline cases when they encounter situations where financial-contract positions are closed out frequently during the hedge period, but not frequently enough to be considered trading rather than hedging activities. Examiners should suggest proper documentation with regard to financial contracts executed and any additional recordkeeping as needed. Specifically, users could be requested to establish written criteria specifying what circumstances will trigger the closing of such contracts. Then users would be judged by how well they adhered to the criteria as well as whether the plan reduced risk. Hopefully, such recordkeeping would give users the latitude to close out a financial-contract position working against them (as determined by some prearranged benchmark), yet still require sufficient discipline to prevent users from selectively executing financial contracts merely to profit upon interest-rate forecasts.

The preceding discussion should reinforce the fact that the actual utilization of financial contracts is not a clear-cut issue in terms of hedging verses speculation. However, certain key concepts should be kept in mind. First, a decision to hedge with futures or forward contracts involves making a decision that one is content to lock in an effective cost of funds, a sale price of a specific asset, etc. However, the decision to hedge which gives downside protection also means forfeiting the benefits which would result from a favorable market movement. Thus, in evaluating hedge strategies, the organization should be judged as to whether it maintained hedge positions long enough to accomplish its objectives.

Caution should be employed in performing the analysis of financial contracts used to obtain targeted effective interest rates. Examiners should not evaluate transactions solely on a ''paired'' basis, that is, looking at paired cash market and financial-contract positions and forgetting about financial-contract positions relative to the organization's entire balance sheet, nor should examiners fail to review the overall nature of financial-contract activities. For example, individual opening and closing of financial contracts could appear reasonable, but the aggregate activities may be indicative of an organization that is in reality operating a futures trading account solely to profit on interest-rate expectations.

2130.0.13.6 Parties Executing or Taking the Contra Side of a Financial Contract

In addition to monitoring contra-party credit risk, serious efforts should be made to ensure that the banking organization carefully scrutinizes the selection of brokers and dealers. In the case of futures contracts, the Commodity Exchange Act requires that an entity functioning as a futures commission merchant be registered with the CFTC. However, not every FCM may be a member of a commodities exchange. Members of an exchange are given additional supervision by the exchange, while nonmembers are subject to audit by the National Futures Association. In selecting any broker or dealer, an organization should give careful consideration to its reputation, financial viability, and length of time in business. If an organization intends to deal with a newly established FCM or broker-dealer, special efforts should be made to verify the reputation and integrity of its principals. (For additional discussion, see *Federal Reserve Regulatory Service* 3–1562). Although such measures cannot ensure that problems will not subsequently develop with an FCM or broker-dealer, some careful forethought can tend to ensure that relationships will not be developed with persons or firms who had serious problems in the past.

2130.0.14 ACCOUNTING FOR FUTURES CONTRACTS

All futures contracts, except for foreign-currency futures contracts, shall be reported in the Consolidated Financial Statements for Bank Holding Companies in accordance with Financial Accounting Standards Board (FASB) Statement No. 80, ''Accounting for Futures Contracts.'' Foreign-currency futures contracts shall be reported in accordance with the guidance in FASB Statement No. 52, ''Foreign Currency Translation.''

2130.0.14.1 Performance Bonds under Futures Contracts

When the reporting banking organization, as either buyer or seller of futures contracts, has posted a performance bond in the form of a margin account deposited with a broker or exchange, the current balance (as of the report date) of that margin account shall be reported in Other Assets. The balance in the margin account includes the following:

1. the original margin deposit, plus (less)
2. any additions (deductions) as a result of daily fluctuations in the market value of the related contracts (i.e., ''variation margin''), plus
3. any additional deposits made to the account to meet margin calls or otherwise (i.e., ''maintenance margin''), less
4. any withdrawals of excess balances from the account

When the performance bond takes the form of a pledge of assets with a broker rather than a margin account, the pledged assets shall be maintained on the books of the pledging banking organization and no other balance-sheet entry is made for the performance bond. In this case, gains and losses resulting from daily fluctuations in the market value of the related contracts are generally settled with the broker in cash. However, if the pledging banking organization also maintains a working balance with the broker against which recognized daily market gains and losses are posted, the working balance should be reported in Other Assets, and treated in the same manner as a margin account.

2130.0.14.2 Valuation of Open Positions

All open positions in futures contracts must be reviewed at least monthly (or more often, if material) and their current market values determined. The market value of a futures contract is to be based on published price quotations. These futures positions must be revalued at their current market values on these valuation dates and any changes in these values reported in accordance with the guidance presented below for hedge or nonhedge contracts, as appropriate.

2130.0.14.3 Criteria for Hedge-Accounting Treatment

A futures contract shall be accounted for as a hedge when the following conditions are met:

1. The banking organization must have determined that the item or group of items to be hedged (that is, the identifiable assets, liabilities, firm commitments, or anticipated transactions) will expose it to price or interest-rate risk.
2. The futures contract must reduce the exposure to risk. This will be demonstrated if, at the inception of the hedge and *throughout the hedge period, high correlation* is expected to exist between the changes in the prices of both the contract and the hedged item or group of items.[10] In other words, the banking organization must monitor the price movements of both the hedge contract and the hedged items to determine that it is probable that changes in the market value of the futures contract will offset the effects of price changes on the hedged items.
3. The futures contract must be designated in writing as a hedge by management at the inception of the hedge.

   In order for a futures contract to qualify as a hedge of an anticipated transaction, the following two additional criteria must be met:

   a. The significant characteristics and expected terms of the anticipated transaction must be identified.
   b. The occurrence of the anticipated transaction must be probable.[11]

2130.0.14.4 Gains and Losses from Monthly Contract Valuations of Futures Contracts That Qualify as Hedges

If the hedge criteria are met, the accounting for the futures contract shall be related to the accounting for the hedged item so that changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. If a banking organization must include unrealized changes in the fair value of a hedged item in income, a change in the market value of the related futures contract shall be recognized in income when the change occurs. Otherwise, a change in the market value of a futures contract that qualifies as a hedge of an existing asset or liability shall be recognized as an adjustment of the carrying amount of the hedged item. A change in the market value of a futures contract that is a hedge of a firm commitment shall be included in the measurement of the transaction that satisfies the commitment. A change in the market value of a futures contract that is a hedge of an anticipated transaction shall be included in the measurement of the subsequent transaction.

Once the carrying amount of an asset or liability has been adjusted for the change in the market value of a futures contract, the adjustment must be recognized in income in the same manner as other components of the carrying amount of that asset or liability (for example, using the interest method). If the item being hedged is an interest-bearing financial instrument otherwise reported at amortized historical cost, then the changes in the market value of the hedge contract that have been reflected as adjustments in the carrying amount of the financial instrument shall be amortized as an adjustment of interest income or expense over the expected remaining life of the hedged item.

If a futures contract that has been accounted for as a hedge of an anticipated transaction is closed before the date of the related transaction, the accumulated change in value of the contract shall be carried forward (assuming high correlation continues to exist) and included in the measurement of the related transaction. When it becomes probable that the quantity of the anticipated transaction will be less than that originally hedged, a pro rata portion of the futures results that would have been included in the measurement of the transaction shall be recognized as a gain or loss.

When futures contracts that are hedges are terminated, the gain or loss on the terminated contracts must be deferred and amortized over the remaining life of the hedged item.

10. Generally, banking practice maintains that correlation in the changes in the market values of the futures contract and the hedged item must be at least 80 percent for the ‘‘high correlation’’ criteria in FASB Statement No. 80 to be met.

11. It will be particularly difficult to meet this criteria when an anticipated transaction is not expected to take place in the near future.

2130.0.14.5 Gains and Losses from Monthly Contract Valuations of Futures Contracts That Do Not Qualify as Hedges

For futures contracts that are not accounted for as hedges, the change that has occurred in the market value of open positions since the last call report date shall be reflected in current income, either as ''other noninterest income'' for net gains or ''other noninterest expense'' for net losses.

If high correlation ceases to exist, the banking organization should discontinue accounting for a futures contract as a hedge. When this occurs, the portion of the change in the market value of the contract that has not offset the market value changes of the hedged item, since the inception of the hedge, must be reflected in the Report of Income as ''other noninterest income'' or ''other noninterest expense,'' as appropriate. The contract should thereafter be accounted for as a nonhedge contract with subsequent changes in the contract's market value reflected in current period income.

When futures contracts that are not hedges are terminated, the gain or loss on the terminated contract must be recognized currently in the Report of Income as ''other noninterest income'' or ''other noninterest expense,'' as appropriate.

There is the potential for holding companies and nonbank subsidiaries to follow the referenced accounting applications and break ''hedges'' with unrealized futures gains to recognize income, and maintain hedges with futures losses and adjust the carrying basis of the paired, that is, ''hedged'' asset. Examiners should look for patterns of taking gains and losses with a view to determining whether the opening and closing of contracts is consistent with the organization's risk-reducing strategies.

2130.0.15 PREPARING INSPECTION REPORTS

Unsatisfactory comments pertaining to a bank holding company's financial-contract activities should be noted on the ''Examiner's Comments,'' ''Policies and Supervision,'' and ''Analysis of Financial Factors'' or other appropriate page depending on the severity of the comments within the bank holding company inspection report.

2130.0.16 INTERNAL CONTROLS AND INTERNAL AUDIT

The following is designed to illustrate desirable internal controls and internal audit procedures applicable to the organization's activities in financial contracts. This illustration is not intended to serve as an absolute standard relating to contract activities, but is designed to supplement examiners' knowledge relating to internal controls and internal audits in this context. In evaluating internal controls and audits, the examiner will need to evaluate the scope of futures, forward, and options activities to determine whether internal controls and audit procedures are adequate in relation to the volume and nature of the activities.

2130.0.16.1 Internal Controls

It is a management's responsibility to minimize the risks inherent in financial-contract activities through the establishment of policies and procedures covering organizational structure, segregation of duties, operating and accounting system controls, and comprehensive management reporting. Formal written procedures should be in place in connection with purchases and sales, processing, accounting, clearance and safekeeping activities relating to these transactions. In general, these procedures should be designed to ensure that all financial contracts are properly recorded and that senior management is aware of the exposure and gains or losses resulting from these activities. Some examples of desirable controls follow:

1. Written documentation indicating what types of contracts are eligible for purchase by the organization, which individual persons are eligible to purchase and sell contracts, which individual persons are eligible to sign contracts or confirmations, and the names of firms or institutions with whom employees are authorized to conduct business.
2. Written position limitations for each type of contract established by the banking organization's board of directors and written procedures for authorizing trades, if any, in excess of those limits.
3. A system to monitor the organization's exposure with customers and those broker-dealers and institutions eligible to do business with it. To implement this, management must determine the amount of credit risk permissible with various parties and then institute surveillance procedures to ensure

that such limits are not exceeded without written authorization from senior management.

4. Separation of duties and supervision to ensure that persons executing transactions are not involved in approving the accounting media and/or making accounting entries. Further, persons executing transactions should not have authority to sign incoming or outgoing confirmations or contracts, reconcile records, clear transactions, or control the disbursement of margin payments.
5. A clearly defined flow of order tickets and confirmations. Confirmations generated should, preferably, be prenumbered. In addition to promptly recording all commitments in a daily written commitment ledger, the related documentation should be filed separately for purposes of audit and examination. The flow of confirmations and order tickets should be designed to verify accuracy and enable reconciliations throughout the system, for example, to ensure that a person could not execute unauthorized transactions and bypass part of the accounting system, and to enable the reconcilement of traders' position reports to those positions maintained by an operating unit.
6. Procedures to route incoming confirmations to an operations unit separate from the trading unit. Confirmations received from brokers, dealers, or others should be compared to confirmations (or other control records) prepared by the banking organization to ensure that it will not accept or make delivery of securities, or remit margin payments, pursuant to contracts unless there is proper authorization and documentation.
7. Procedures for promptly resolving fails to receive or fails to deliver securities on the date securities are due to be received or sent pursuant to contracts.
8. Procedures for resolving customer complaints by someone other than the person who executed the contract.
9. Procedures for verifying brokers' reports of margin deposits and contract positions (use an outside pricing source), and reconciling such reports to the records.
10. Procedures for daily review of outstanding contracts and supervision of traders. In addition, there should be periodic reports to management reflecting the margin deposits and contract positions.
11. Selecting and training competent personnel to follow the written policies and guidelines.

2130.0.16.2 Internal Audit

The scope and frequency of the internal audit program should be designed to review the internal control procedures and verify that the internal controls purported to be in effect are being followed. Further, the internal auditor should verify that there are no material inadequacies in the internal control procedures that would permit a person acting individually to perpetrate errors or irregularities involving the records of the organization or assets that would not be detected by the internal control procedures in time to prevent material loss or misstatement of the banking organization's financial statements or serious violation of applicable banking, bank holding company, or securities rules or regulations. Any weaknesses in internal control procedures should be reported to management, along with recommendations for corrective action. If internal auditors do not report to an audit committee, the person to whom they report should not be in a position to misappropriate assets. In addition, auditors should occasionally spot-check contract prices and mark-to-market adjustments.

2130.0.17 LAWS, REGULATIONS, INTERPRETATIONS, AND ORDERS

Subject	*Laws* [1]	*Regulations* [2]	*Interpretations* [3]	*Orders*
Statement of policy concerning bank holding companies engaging in futures, forward, and options contracts on U.S. government and agency securities and money market instruments		225.142	4–830	
Policy Statement on Financial Contracts			3–1535	
Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities			3–1562	

1. 12 U.S.C., unless specifically stated otherwise.
2. 12 C.F.R., unless specifically stated otherwise.
3. *Federal Reserve Regulatory Service* reference.

Financial institutions, including bank holding company subsidiaries, are lending securities with increasing frequency, and, in some instances, a financial institution may lend its own investment or trading-account securities. Financial institutions lend customers' securities held in custody, safekeeping, trust, or pension accounts. Because the securities available for lending often greatly exceed the demand for them, inexperienced lenders may be tempted to ignore commonly recognized safeguards. Bankruptcies of broker-dealers have heightened regulatory sensitivity to the potential for problems in this area.

2140.0.1 SECURITIES-LENDING MARKET

Securities brokers and commercial banks are the primary borrowers of securities. They borrow securities to cover securities fails (securities sold but not available for delivery), short sales, and option and arbitrage positions. Securities lending, which used to involve principally corporate equities and debt obligations, increasingly involves loans of large blocks of U.S. government and federal-agency securities.

Securities lending is conducted through open-ended ''loan'' agreements, which may be terminated on short notice by the lender or borrower. Repurchase agreements are generally used by owners of securities as financing vehicles and, in certain respects, are closely analogous to securities lending. The objective of securities lending, however, is to receive a safe return in addition to the normal interest or dividends. Securities loans in industry practice are generally collateralized by U.S. government or federal-agency securities, cash, or letters of credit.[1] At the outset, each loan is collateralized at a predetermined margin. If the market value of the collateral falls below an acceptable level during the time a loan is outstanding, a margin call is made by the lender institution. If a loan becomes over-collateralized because of appreciation of collateral or market depreciation of a loaned security, the borrower usually has the opportunity to request the return of any excessive margin.

When a securities loan is terminated, the securities are returned to the lender and the collateral to the borrower. Fees received on securities loans are divided between the lender and the customer account that owns the securities. In situations involving cash collateral, part of the interest earned on the temporary investment of cash is returned to the borrower, and the remainder is divided between the lender and the customer account that owns the securities.

2140.0.2 DEFINITIONS OF CAPACITY

Securities lending may be done in various capacities and with differing associated liabilities. It is important that all parties involved understand in what capacity the lender is acting. For the purposes of these guidelines, the relevant capacities are as follows:

1. *Principal.* A lender offering securities from its own account is acting as principal. A lender institution offering customers' securities on an undisclosed basis is also considered to be acting as principal.
2. *Agent.* A lender offering securities on behalf of a customer-owner is acting as an agent. For the lender to be considered a bona fide or ''fully disclosed'' agent, it must disclose the names of the borrowers to the customer-owners (or give notice that names are available upon request), and must disclose the names of the customer-owner to borrowers (or give notice that names are available upon request). In all cases, the agent's compensation for handling the transaction should be disclosed to the customer-owner. Undisclosed agency transactions, that is, ''blind brokerage'' transactions in which participants cannot determine the identity of the contra party, are treated as if the lender was the principal.
3. *Directed agent.* A lender which lends securities at the direction of the customer-owner is acting as a directed agent. The customer directs the lender in all aspects of the transaction, including to whom the securities are loaned, the terms of the transaction (rebate rate and maturity/call provisions on the loan), acceptable collateral, investment of any cash collateral, and collateral delivery.
4. *Fiduciary.* A lender which exercises *discretion* in offering securities on behalf of and for the benefit of customer-owners is acting as a fiduciary. For purposes of these guidelines,

1. Broker-dealers borrowing securities are subject to the restrictions of the Federal Reserve's Regulation T (12 C.F.R. 220.10), which specifies acceptable borrowing purposes.

the underlying relationship may be as agent, trustee, or custodian.

5. *Finder.* A finder brings together a borrower and a lender of securities for a fee. Finders do not take possession of the securities or collateral. Delivery of securities and collateral is direct between the borrower and the lender, and the finder does not become involved. The finder is simply a fully disclosed intermediary.

2140.0.3 GUIDELINES

All bank holding companies or their subsidiaries that participate in securities lending should establish written policies and procedures governing these activities. Other than commercial banks with trust departments, the bank holding company subsidiaries most likely to be engaged in securities lending are non-deposit-taking trust companies and certain discount brokers which provide custody services and make margin loans. At a minimum, policies and procedures should cover each of the topics in these guidelines.

2140.0.3.1 Recordkeeping

Before establishing a securities-lending program, a financial firm or institution must establish an adequate recordkeeping system. At a minimum, the system should produce daily reports showing which securities are available for lending, and which are currently lent, outstanding loans by borrower, outstanding loans by account, new loans, returns of loaned securities, and transactions by account. These records should be updated as often as necessary to ensure that the lender institution fully accounts for all outstanding loans, that adequate collateral is required and maintained, and that policies and concentration limits are being followed.

2140.0.3.2 Administrative Procedures

All securities lent and all securities standing as collateral must be marked to market daily. Procedures must ensure that any necessary calls for additional margin are made on a timely basis.

In addition, written procedures should outline how to choose the customer account that will be the source of lent securities when they are held in more than one account. Possible methods include loan volume analysis, automated queue, a lottery, or some combination of these. Securities loans should be fairly allocated among all accounts participating in a securities-lending program.

Internal controls should include operating procedures designed to segregate duties and timely management reporting systems. Periodic internal audits should assess the accuracy of accounting records, the timeliness of management reports, and the lender's overall compliance with established policies and the firm's procedures.

2140.0.3.3 Credit Analysis and Approval of Borrowers

In spite of strict standards of collateralization, securities-lending activities involve risk of loss. Such risks may arise from malfeasance or failure of the borrowing firm or institution. Therefore, a duly established management or supervisory committee of the lender should formally approve, in advance, transactions with any borrower.

Credit and limit approvals should be based upon a credit analysis of the borrower. A review should be performed before establishing such a relationship and reviews should be conducted at regular intervals thereafter. Credit reviews should include an analysis of the borrower's financial statement, and should consider capitalization, management, earnings, business reputation, and any other factors that appear relevant. Analyses should be performed in an independent department of the lender, by persons who routinely perform credit analyses. Analyses performed solely by the person(s) managing the securities-lending program are not sufficient.

2140.0.3.4 Credit and Concentration Limits

After the initial credit analysis, management of the lender should establish an individual credit limit for the borrower. That limit should be based on the market value of the securities to be borrowed, and should take into account possible temporary (overnight) exposures resulting from a decline in collateral values or from occasional inadvertent delays in transferring collateral. Credit and concentration limits should take into account other extensions of credit by the lender to the same borrower or related interests.

Procedures should be established to ensure that credit and concentration limits are not exceeded without proper authorization from management.

2140.0.3.5 Collateral Management

Securities borrowers generally pledge and maintain collateral at a level equal to at least 100 percent of the value of the securities borrowed.[2] The minimum amount of excess collateral, or "margin," acceptable to the lender should relate to price volatility of the loaned securities and the collateral (if other than cash).[3] Generally, the minimum initial collateral on securities loans is at least 102 percent of the market value of the lent securities plus, for debt securities, any accrued interest.

Collateral must be maintained at the agreed margin. A daily "mark-to-market" or valuation procedure must be in place to ensure that calls for additional collateral are made on a timely basis. The valuation procedures should take into account the value of accrued interest on debt securities.

Securities should not be lent unless collateral has been received or will be received simultaneously with the loan. As a minimum step toward perfecting the lender's interest, collateral should be delivered directly to the lender or an independent third-party trustee.

2140.0.3.6 Cash as Collateral

When cash is used as collateral, the lender is responsible for making it income productive. Lenders should establish written guidelines for selecting investments for cash collateral. Generally, a lender will invest cash collateral in repurchase agreements, master notes, a short-term investment fund (STIF), U.S. or Eurodollar certificates of deposit, commercial paper, or some other type of money market instrument. If the lender is acting in any capacity other than as principal, the written agreement authorizing the lending relationship should specify how cash collateral is to be invested.

Using cash collateral to pay for liabilities of the lender or its holding company would be an improper *conflict of interest* unless that strategy was specifically authorized in writing by the owner of the lent securities.

2140.0.3.7 Letters of Credit as Collateral

If a lender plans to accept letters of credit as collateral, it should establish guidelines for their use. Those guidelines should require a credit analysis of the banks issuing the letter of credit before securities are lent against that collateral. Analyses must be periodically updated and reevaluated. The lender should also establish concentration limits for the banks issuing letters of credit, and procedures should ensure they are not exceeded. In establishing concentration limits on letters of credit accepted as collateral, the lender's total outstanding credit exposures from the issuing bank should be considered.

2140.0.3.8 Written Agreements

Securities should be lent only pursuant to a written agreement between the lender and the owner of the securities, specifically authorizing the institution to offer the securities for loan. The agreement should outline the lender's authority to reinvest cash collateral (if any) and responsibilities with regard to custody and valuation of collateral. In addition, the agreement should detail the fee or compensation that will go to the owner of the securities in the form of a fee schedule or other specific provision. Other items which should be covered in the agreement have been discussed earlier in these guidelines.

A lender must also have written agreements with the parties who wish to borrow securities. These agreements should specify the duties and responsibilities of each party. A written agreement may detail acceptable types of collateral (including letters of credit); standards for collateral custody and control, collateral valuation and initial margin, accrued interest, marking to market, and margin calls; methods for transmitting coupon or dividend payments received if a security is on loan on a payment date; conditions which will trigger the termination of a loan (including events of default); and acceptable

2. Employee benefit plans subject to the Employee Retirement Income Security Act are specifically required to collateralize securities loans at a minimum of 100 percent of the market value of loaned securities (see section 2140.0.3.10 below).

3. The level of margin should be dictated by level of risk being underwritten by the securities lender. Factors to be considered in determining whether to require margin above the recommended minimum include the type of collateral, the maturity of collateral and lent securities, the term of the securities loan, and the costs which may be incurred when liquidating collateral and replacing loaned securities.

methods of delivery for loaned securities and collateral.

2140.0.3.9 Use of Finders

Some lenders may use a finder to place securities, and some financial institutions may act as finders. A finder brings together a borrower and a lender for a fee. Finders should not take possession of securities or collateral. The delivery of securities loaned and collateral should be direct between the borrower and the lender. A finder should not be involved in the delivery process.

The finder should act only as a fully disclosed intermediary. The lender must always know the name and financial condition of the borrower of any securities it lends. If the lender does not have that information, it and its customers are exposed to unnecessary risks.

Written policies should be in place concerning the use of finders in a securities-lending program. These policies should cover circumstances in which a finder will be used, which party pays the fee (borrower or lender), and which finders the lender institution will use.

2140.0.3.10 Employee Benefit Plans

The Department of Labor has issued two class exemptions which deal with securities-lending programs for employee benefit plans covered by the Employee Retirement Income Security Act (ERISA): Prohibited Transaction Exemption 81-6 (46 FR 7527 (January 23, 1981) and correction (46 FR 10570 (February 3, 1981))), and Prohibited Transaction Exemption 82-63 (47 FR 14804 (April 6, 1982)). The exemptions authorize transactions which might otherwise constitute unintended ‘‘prohibited transactions’’ under ERISA. Any firm engaged in the lending of securities for an employee benefit plan subject to ERISA should take all steps necessary to design and maintain its program to conform with these exemptions.

Prohibited Transaction Exemption 81-6 permits the lending of securities owned by employee benefit plans to persons who could be ‘‘parties in interest’’ with respect to such plans, provided certain conditions specified in the exemption are met. Under those conditions, neither the borrower nor an affiliate of the borrower can have discretionary control over the investment of plan assets, or offer investment advice concerning the assets, and the loan must be made pursuant to a written agreement. The exemption also establishes a minimum acceptable level for collateral based on the market value of the loaned securities.

Prohibited Transaction Exemption 82-63 permits compensation of a fiduciary for services rendered in connection with loans of plan assets that are securities. The exemption details certain conditions which must be met.

2140.0.3.11 Indemnification

Certain lenders offer participating accounts indemnification against losses in connection with securities-lending programs. Such indemnifications may cover a variety of occurences including all financial loss, losses from a borrower default, or losses from collateral default. Lenders that offer such indemnification should obtain a legal opinion from counsel concerning the legality of their specific form of indemnification under federal and/or state law.

A lender which offers an indemnity to its customers may, in light of other related factors, be assuming the benefits and, more importantly, the liabilities of a principal. Therefore, lenders offering indemnification should also obtain written opinions from their accountants concerning the proper financial statement disclosure of their actual or contingent liabilities.

2140.0.4 LAWS, REGULATIONS, INTERPRETATIONS, AND ORDERS

Subject	*Laws* [1]	*Regulations* [2]	*Interpretations* [3]	*Orders*
Securities Lending policy statement of the Federal Financial Institutions Examination Council, adopted by the Federal Reserve Board on May 6, 1985			3–1579.5	

1. 12 U.S.C., unless specifically stated otherwise.
2. 12 C.F.R., unless specifically stated otherwise.
3. Federal Reserve Regulatory Service reference.

Depository institutions and others involved with the purchase of United States Government and Agency obligations under agreements to resell (reverse repurchase agreements),[2] have sometimes incurred significant losses. The most important factors causing these heavy losses have been inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions.[3]

The following minimum guidelines address the need for managing credit risk exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions, and should be followed when entering into repurchase agreements with securities dealers and others.

Depository institutions and nonbank subsidiaries that actively engage in repurchase agreements are encouraged to have more comprehensive policies and controls to suit their particular circumstances. The examining staffs of the Federal Reserve should review written policies and procedures of dealers to determine their adequacy in light of these minimum guidelines and the scope of each subsidiary's operations.

2150.0.1 CREDIT POLICY GUIDELINES

The apparent safety of short-term repurchase agreements which are collateralized by highly liquid, U.S. Government and Federal agency obligations has contributed to an attitude of complacency. Some portfolio managers have underestimated the credit risk associated with the performance of the counterparty to the transactions, and have not taken adequate steps to assure control of the securities covered by the agreement.

All firms that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. At a minimum, those policies and procedures should cover the following:

Written policies should establish ''know your counterparty'' principles. Engaging in repurchase agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is a dealer in the underlying securities. Some firms which deal in the markets for U.S. Government and Federal agency securities are subsidiaries of, or related to, financially stronger and better known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express guarantee, the stronger firm's financial position cannot be relied upon in assessing the creditworthiness of a counterparty.

It is important to know the legal entity that is the actual counterparty to each repurchase agreement transaction. Know about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals. Be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

In certain situations firms may use, or serve as, brokers or finders in order to locate repurchase agreement counterparties or particular securities. When using or acting as this type of agent the names of each counterparty should be fully disclosed. Do not enter into undisclosed agency or ''blind brokerage'' repurchase transactions in which the counterparty's name is not disclosed.

2150.0.1.1 Dealings with Unregulated Securities Dealers

A dealer in U.S. Government and Federal agency obligations is not necessarily a Federally insured bank or thrift, or a broker/dealer registered with the Securities and Exchange Commission. Therefore, the dealer firm may not

1. A repurchase agreement is a transaction involving the *sale* of assets by one party to another, subject to an agreement by the seller to repurchase the assets at a specified date or in specified circumstances.

2. In order to avoid confusion among market participants who sometimes use the same term to describe different sides of the same transaction, the term ''repurchase agreement'' will be used in the balance of this statement to refer to both repurchase and reverse repurchase agreements. A repurchase agreement is one in which a party that owns securities acquires funds by transferring the securities to another party under an agreement to repurchase the securities at an agreed upon future date. A reverse repurchase (resale) agreement is one in which a party provides funds by acquiring securities pursuant to an agreement to resell them at an agreed upon future date.

3. Throughout this document repurchase agreements are generally discussed in terms of secured credit transactions. This usage should not be deemed to be based upon a legal determination.

be subject to any Federal regulatory oversight.

A firm doing business with an unregulated securities dealer should be certain that the dealer voluntarily complies with the Federal Reserve Bank of New York's minimum capital guideline, which currently calls for liquid capital to exceed measured risk by 20 percent (that is, the ratio of a dealer's liquid capital to risk of 1.2:1). This ratio can be calculated by a dealer using either the Securities and Exchange Commission's Net Capital Rule for Brokers and Dealers (Rule 15c31) or the Federal Reserve Bank of New York's Capital Adequacy Guidelines for United States Government Securities Dealers. To ensure that an unregulated dealer complies with either of those capital standards, it should certify its compliance with the capital standard and provide the following three forms of certification:

1. A letter of certification from the dealer that the dealer will adhere on a continuous basis to the capital adequacy standard;
2. Audited financial statements which demonstrate that as of the audit date the dealer was in compliance with the standard and the amount of liquid capital; and
3. A copy of a letter from the firm's certified public accountant stating that it found no material weaknesses in the dealer's internal systems and controls incident to adherence to the standard.[4]

Periodic evaluations of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

Prior to engaging in initial transactions with a new counterparty, obtain audited financial statements and regulatory filings (if any) from counterparties, and insist that similar information be provided on a periodic and timely basis in the future. Recent failures of government securities dealers have typically been foreshadowed by delays in producing these statements. Many firms are registered with the Securities and Exchange Commission as broker/dealers and have to file financial statements and should be willing to provide a copy of these filings.

The counterparty credit analysis should consider the financial statements of the entity that is to be the counterparty as well as those of any related companies that could have an impact on the financial condition of the counterparty. When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of its financial condition. As part of this analysis, the firm should make inquiry about the counterparty's general reputation and whether there have been any formal enforcement actions against the counterparty or its affiliates by State or Federal securities regulators.

Maximum position and temporary exposure limits for each approved counterparty should be established based upon credit analysis performed. Periodic reviews and updates of those limits are necessary.

Individual repurchase agreement counterparty limits should consider overall exposure to the same or related counterparty. Repurchase agreement counterparty limitations should include the overall permissible dollar positions in repurchase agreements, maximum repurchase agreement maturities and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

2150.0.2 GUIDELINES FOR CONTROLLING REPURCHASE AGREEMENT COLLATERAL

Repurchase agreements can be a useful asset and liability management tool, but repurchase agreements can expose a firm to serious risks if they are not managed appropriately. It is possible to reduce repurchase agreement risk by negotiating written agreements with all repurchase agreement counterparties and custodian banks. Compliance with the terms of these written agreements should be monitored on a daily basis. If prudent management control requirements of repurchase agreements are too burdensome, other asset/liability management tools should be used.

The marketplace perceives repurchase agreement transactions as similar to lending transactions collateralized by highly liquid Government securities. However, experience has shown that the collateral securities will probably *not* serve as protection if the counterparty becomes insolvent or fails, and the purchasing firm does not have control over the securities. Ultimate responsibility for establishing adequate control procedures rests with management of the firm. Management should obtain a written legal opin-

4. This letter should be similar to that which must be given to the SEC by registered broker/dealers.

ion as to the adequacy of the procedures utilized to establish and protect the firm's interest in the underlying collateral.

A written agreement specific to a repurchase agreement transaction or master agreement governing all repurchase agreement transactions should be entered into with each counterparty. The written agreement should specify all the terms of the transaction and the duties of both the buyer and seller. Senior managers should consult legal counsel regarding the content of the repurchase and custodial agreements. The repurchase and custodial agreements should specify, but should not be limited to, the following:

- Acceptable types and maturities of collateral securities;
- Initial acceptable margin for collateral securities of various types and maturities
- Margin maintenance, call, default and sellout provisions;
- Rights to interest and principal payments;
- Rights to substitute collateral; and
- The persons authorized to transact business on behalf of the firm and its counterparty.

2150.0.2.1 Confirmations

Some repurchase agreement confirmations may contain terms that attempt to change the firm's rights in the transaction. The firm should obtain and compare written confirmations for each repurchase agreement transaction to be certain that the information on the confirmation is consistent with the terms of the agreement. The confirmation should identify specific collateral securities.

2150.0.2.2 Control of Securities

As a general rule, a firm should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities. The legal steps necessary to protect its interest may vary with applicable facts and law and accordingly should be undertaken with the advice of counsel. Additional prudential management controls may include:

- delivery of either physical securities to, or in the case of book entry securities, making appropriate entries in the books of a third party custodian designated under a written custodial agreement which explicitly recognizes the firm's interest in the securities as superior to that of any other person; or
- appropriate entries on the books of a third party custodian acting pursuant to a tripartite agreement with the firm and the counterparty, ensuring adequate segregation and identification of either physical or book-entry securities.

Where control of the underlying securities is not established, the firm may be regarded only as an unsecured general creditor of the insolvent counterparty. In such instance, *substantial losses are likely to be incurred.* Accordingly, a firm should not enter into a repurchase agreement without obtaining control of the securities unless all of the following minimum procedures are observed: (1) it is completely satisfied as to the creditworthiness of the counterparty; (2) the transaction is within credit limitations that have been pre-approved by the board of directors, or a committee of the board, for unsecured transactions with the counterparty; (3) periodic credit evaluations of the counterparty are conducted; and (4) the firm has ascertained that collateral segregation procedures of the counterparty are adequate. Unless prudential internal procedures of these types are instituted and observed, the firm may be cited for engaging in unsafe or unsound practices.

All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third party deliveries should be confirmed in writing directly by the custodian. It is not acceptable to receive confirmation from the counterparty that the securities are segregated in a firm's name with a custodian; the firm should, however, obtain a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the firm. Where securities are to be delivered, payment for securities should not be made until the securities are actually delivered to the firm or its agent. The custodial contract should provide that the custodian takes delivery of the securities subject to the exclusive direction of the firm.

Substitution of securities should not be allowed without the prior consent of the firm. The firm should give its consent before the delivery of the substitute securities to it or a third party custodian. Any substitution of securities should take into consideration the following discussion of ''margin requirements.''

2150.0.2.3 Margin Requirements

The amount paid under the repurchase agreement should be less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. Factors to be considered in establishing an appropriate margin include the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements on U.S. Government and Federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase agreement policies and procedures should require daily mark-to-market of repurchase agreement securities to the bid side of the market. Repurchase agreements should provide for additional securities or cash to be placed with the firm or its custodian bank to maintain the margin within the predetermined level.

Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest payment and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

Prudent management procedures should be followed in the administration of any repurchase agreement. Longer term repurchase agreements require management's daily attention to the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or principal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the firm has retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase agreement transactions without reviewing collateral values and adjusting collateral margin may be regarded as an unsafe and unsound practice. If additional margin is not deposited when required, the firm's rights to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

2150.0.2.4 Overcollateralization

A firm should use current market values, including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase agreement contract should provide that the counterparty must make additional payment or return securities if the margin exceeds agreed upon levels. When acquiring funds under repurchase agreements it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold may be viewed as an unsecured loan to the counterparty subject to the unsecured lending limitations for the firm and should be treated accordingly for credit policy and control purposes.

2150.0.3 OPERATIONS

A firm's operational functions should be designed to regulate the custody and movement of securities and to adequately account for trading transactions. Because of the dollar volume and speed of trading activities, operational inefficiencies can quickly result in major problems.

In some cases, a firm may not receive or deliver a security by settlement date. When a firm fails to receive a security by the settlement date, a liability exists until the transaction is consummated or cancelled. When the security is not delivered to the contra-party by settlement date, a receivable exists until that ''fail'' is resolved. ''Fails'' to deliver for an extended time, or a substantial number of cancellations, are sometimes characteristic of poor operational control or questionable trading activities.

Fails should be controlled by prompt reporting and follow-up procedures. The use of multicopy confirmation forms enables operational personnel to retain and file a copy by settlement date and should allow for prompt fail reporting and resolution.

2150.0.4 LAWS, REGULATIONS, INTERPRETATIONS, AND ORDERS

Subject	*Laws* [1]	*Regulations* [2]	*Interpretations* [3]	*Orders*
Federal Financial Institutions Examination Council policy statement, adopted by the Federal Reserve Board on November 12, 1985, on repurchase agreements			3–1579	

1. 12 U.S.C., unless specifically stated otherwise.
2. 12 C.F.R., unless specifically stated otherwise.
3. Federal Reserve Regulatory Service reference.

Risk management is an important responsibility of any bank holding company. The objective of this responsibility is to determine and limit the extent of the holding company organization's vulnerability to uncontrollable variables. While all companies perform risk evaluation in some form and exercise some degree of control over its magnitude, the precise processes used differ considerably across organizations in terms of formality, extensiveness, and effectiveness. It should be recognized that many organizations have only an implicit risk evaluation process, and that it may be appropriate to recommend that this process be formalized. Ultimately, the board of directors of the parent company should be held accountable for the consolidated risk evaluation and control.

Risk management at any level involves two basic elements: evaluation and control. Risk evaluation involves three steps: determination of exposures; specification of uncontrollable variables that have an impact on each exposure; and quantification of the expected effect of each variable on exposure. After the extent of existing or potential risk is determined, decisions to limit or control risk are made. This procedure is ever present, since most transactions create exposure, and every exposure has some element of risk. The following two sections discuss the risk evaluation and the risk control processes in very broad terms in an attempt to provide a framework that can be applied to most organizations.

2160.0.1 RISK EVALUATION

The risk identification process begins with a determination of exposures that an institution has to the environment.

Exposure conceptually occurs in every transaction undertaken by a banking organization. Because of the magnitude of the list of potential exposures, institutions generally limit their efforts to extremely large exposures, to areas where losses appear likely, and to activities where the market is changing and new exposures are created. The size of an exposure generally is dependent on the size of a transaction. This is true both for transactions recorded on accounting balance sheets and for those which occur off balance sheet. Exposure is not necessarily determined by the likelihood of loss. For example, many holding company organizations have a large ''exposure'' in Treasury bills, but do not consider these transactions to be risky.

The list of exposures that banks commonly identify has increased dramatically in the past decade. Historically, the primary focus has been on the exposure of the loan portfolio centering on the financial security of each individual loan; recently industry and geographical exposure of loans has increased in importance. The exposure of fixed assets, such as buildings, to fires, floods and other problems also has been recognized. In more recent years, exposure of mismatched maturities of assets and liabilities to interest rate movements has increased in importance as interest-rate movements have sharply fluctuated. While this exposure had always existed, it had not been recognized as particularly dangerous until recently. Another example of an exposure that historically was considered safe is repurchase agreements backed by government securities. When Drysdale Government Securities, Inc. failed, several risks were brought to light—whether the instrument is a loan (that would be tied up in case of bankruptcy) or a sale and potential liability when serving as an agent of a government securities firm that fails. A particularly difficult area to evaluate is exposure to legal action. For example, a suit against a bank over lending terms and representations is difficult to anticipate and the exposure could be significant.

Numerous exposures exist that many holding company organizations may not recognize. For example, the Federal Reserve System encourages evaluation of wire transfer exposure. This exposure is very large and theoretically a breakdown on the framework or compromise of internal systems could result in major failures. Exposure from foreign exchange contracts also can be large, and may not always be recognized. Fraud and exposure of management to kidnapping continue to increase in importance. And finally, some major holding company organizations have found that dependence on short-term market funds creates a risky exposure. When access to a funding market may be suddenly withdrawn, the exposure of the entire funding process is an issue.

The second step of the risk identification process is specification of the variables that could affect an exposure and determination of what the impact would be.

This process is difficult, since any number of variables may influence an exposure. Furthermore, as the environment changes new variables may appear relevant and the effects of variables may change. For example, the recent problems of public sector lending to foreign countries with loans denominated in dollars having floating interest rates during inflationary periods may not have been fully evaluated at the time of the lending process.

Determining influential variables is particularly difficult with new products. A historical examination cannot be made of these new products and questions may go unanswered regarding the stability of the new markets. For example, problems have occurred in hedging operations as underlying instruments did not move as expected, thus negating the hedging contract. Consequently, the hedge created an exposure rather than reducing an exposure.

The final step of the risk identification process is risk quantification.

Conceptually, this involves calculation of an expected loss of value related to variance of a particular environmental factor. This has two parts: (1) estimation of the probability that a given variance will occur; and (2) determination of the cost impact of each potential variance. Probabilities are often drawn up in general terms. In some cases historical records facilitate estimation of probabilities. Measurement of credit risk in an organization that specializes by industry or geography may be an example of this. In the most recent recession, however, many past records have proven not to be accurate predictors. In other situations, the holding company organization may evaluate the effect of a change but be unwilling to estimate probabilities of the change occurring. An example of this is managing asset and liability maturities. The effect of a change in interest rates on profits may be determined; but, in many cases, institutions will not derive probabilities on the direction and/or magnitude of interest rate movements.

The difficulty of quantifying costs and probabilities is exacerbated by emergence of new products and by environmental changes. With a new product, it is particularly difficult to determine the cost of a variance. For example, attention to interest rate risk has induced organizations to resort to hedging to reduce exposure. Innovative instruments are difficult to hedge, however, since the issuer may inaccurately gauge price movements. In this case, the exposure results not from price movements, but from inability to predict the relationship between market and price fluctuations. Furthermore, as the environment changes, the effect of a variable on an exposure changes as does the cost and probability of the occurrence. For example, in the 1970's the impact of inflation on the banking system would have been very different without the concurrent economic downturn and the technological advances.

2160.0.2 RISK CONTROL

After management has identified and evaluated risk, they may decide the risk or cost of an action is sufficiently low (and management is confident all possible variables have been identified) that the holding company can take on the risk as it is; if not there are a number of options that can be used to control the risk. Attempts to control risk can be accomplished through a combination of three general techniques: purchase of insurance, limitation of exposure size, and reduction of the expected cost associated with a variance. The use of insurance to decrease the effect of a loss on the corporation is common for exposure to fire, theft, kidnapping, and internal fraud. Various types of loans are underwritten by third parties. The innovative use of insurance may prove to have various applications to risk control in the banking industry. As with other contracts, the financial strength and reputation of the counterparty (the insurer) are important, and the organization's method of selecting and monitoring underwriters should be evaluated.

Management generally limits the level of exposure in relationship to the size of assets, capital or earnings. In most situations, relating the level of exposure to capital would appear appropriate. Reduction of exposure will automatically reduce risk, assuming other variables remain constant. Constraints should be determined by line management at a seniority level commensurate with the degree of perceived risk. Depending on the degree of risk, there may be a need for the board of directors to approve the constraints.

The third method of reducing the potential loss to the corporation involves decreasing the probability of a variance occurring or decreasing the probable effect when a variance occurs. This is exemplified by the exposure to fire. Installation of fire alarms and other precautions could reduce the expected loss substantially. Similarly, hedging with financial futures is a method used to reduce the effect of interest rate movement on the profits of the holding company organization when the maturities of assets and liabilities are not equal.

The final option management has, after risk has been evaluated, is simply not to participate in the activity if the risk is determined to be too high for the expected return.

The inspection procedures should include a broad-based evaluation of parent level risk management. Management's effectiveness in identifying risk, its willingness to accept risk, and its ability to control risk should be regularly evaluated. In an environment of rapid change and emerging financial instruments, there needs to be sufficient expertise to recognize the existence of ''new'' sources of risk concentration to evaluate the company's command of those sources.

2160.0.3 INSPECTION OBJECTIVES

1. To review the risk evaluation and control process.
2. To determine if management's system of identifying risks is effective, and if the parent company is adequately informed of risks throughout the organization.
3. To determine management's recognition of new risks that may arise from the changing environment.
4. To determine the reasonableness of the holding company's exposure-risk figures.
5. To assess the effect on the holding company's financial condition if the risk figures are realized.
6. To determine what actions are necessary to rebalance transactions of a holding company organization to a prudent level.

2160.0.4 INSPECTION PROCEDURES

1. Review the financial condition and the operations of the holding company organization to detect substantive exposure-risk situations.
2. Review management's policies, procedures, and practices in recognizing exposure-risk factors.
3. Determine awareness that all management levels need to be cognizant of exposures related to transactions of their respective operations.
4. Review the holding company's exposure-risk figures, or constraints placed on types of transactions.
5. Discuss with management the significance of exposure-risks facing the holding company and whether or not those risks are set at seemingly prudent levels.
6. Recommend that the organization address any areas where the holding company is perceived to have assumed an imprudent level of risk.

2170.0.1 INTRODUCTION

On April 10, 1985, the Board approved a supervisory policy, via the Federal Financial Institutions Examination Council, for supervising banking organizations that participate in the purchase and sale of loans guaranteed by the U.S. government. The policy reminds those organizations that premiums received in lieu of servicing fees, with respect to the selling and servicing entity, are to be amortized over the life of the loan; and that, with respect to the purchaser, the premiums paid over the face value of the note are not guaranteed and are not paid by the guaranteeing federal agency when the loans are prepaid or in default. The statement thus cautions against paying inappropriate or excessive premiums.

2170.0.2 RECOMMENDATIONS FOR ORIGINATING AND SELLING INSTITUTIONS

Examiners should review the extent and nature of activities in connection with the sale of government guaranteed loans. Lax or improper management of the selling institution's servicing responsibilities should be criticized. Out-of-trade area lending for the purpose of resale of any portion of U.S. government guaranteed loans should be carefully reviewed to ensure that the practice is conducted in a safe and sound manner.

All income, including servicing fees and premiums charged in lieu of servicing fees, associated with the sale of U.S. government guaranteed loans, should be recognized only as earned and amortized to appropriate income accounts over the life of the loan.

2170.0.3 RECOMMENDATIONS FOR PURCHASING INSTITUTIONS

Purchasers of U.S. government guaranteed loans should be aware that the purchase premiums are not guaranteed and are not paid by the guaranteeing Federal agency when the loans are prepaid. Because payment of premiums which do not reasonably relate to the yield on the loan can distort published financial reports by overstating the value of a banking organization's assets, it will generally be viewed as an unsafe and unsound practice to pay purchase premiums which result in a significant overstatement in the value of bank assets.

Many government guaranteed loans currently being originated and sold are variable rate. These variable rate loans normally should not trade at anything more than a modest premium or discount from par. Examiners will carefully review any loans being sold or purchased at significant premiums and will criticize any involvement with excessive premiums as an unsafe and unsound business practice. Excessive purchase premiums will be classified loss. The loans will be required to be revalued to the market value at the time of the acquisition and the excessive premiums will be charged against current earnings.

In addition, any unamortized loan premium on a government guaranteed loan must be immediately charged against income if the loan is prepaid, regardless of whether payment is received from the borrower or the guaranteeing agency.

2175.0.1 INTRODUCTION

Banking organizations have become increasingly involved in marketing third-party uninsured annuities to their retail customers either directly or through third-party companies. As annuity sales have grown, so have concerns that some methods used to sell these instruments could give purchasers the impression that the annuities are federally insured deposits or that they are obligations of a bank. In the event of default by an annuities underwriter, this impression could cause a loss of public confidence in a depository institution, leading to unexpected withdrawals and liquidity pressures. Moreover, a bank or bank holding company that advertises or markets annuities in a way viewed as misleading could potentially be held liable for losses sustained by annuity holders.

This manual section provides guidelines to examiners for reviewing the sale of uninsured annuities by bank holding companies and banks that have legal authority to act as agent in the sale of annuities. State member banks and bank holding companies should not market, sell, or issue uninsured annuities or allow third parties to market, sell, or issue uninsured annuities on depository-institution premises in a manner that conveys the impression or suggestion that such instruments are either (1) federally insured deposits or (2) obligations of or guaranteed by an insured depository institution. Consequently, state member banks should not sell these instruments at teller windows or other areas where retail deposits are routinely accepted.

2175.0.2 PERMISSIBILITY OF UNINSURED ANNUITY SALES

The legal status of annuities under the Bank Holding Company Act is somewhat uncertain at the present time. The Office of the Comptroller of the Currency has authorized national banks to act as agent in the sale of annuities on the basis that variable-rate annuities are securities and fixed-rate annuities are financial investment instruments.[1] These determinations, however, have been challenged by insurance associations on the basis that annuities are insurance products and, therefore, may be sold by national banks only in a town of less than 5,000.[2]

State member banks generally have been permitted to engage in the brokerage of both variable- and fixed-rate annuities consistent with their general corporate powers. In order to engage in this activity without filing a formal application, staff has advised interested banks that the brokerage of annuities must be expressly authorized under state law (or by the state banking regulatory agency on a case-by-case basis) and constitute an activity incidental to the bank's banking activities.

The authority of state member banks to continue to engage in this activity, in the same manner and subject to the conditions discussed above, does not appear to depend on a resolution of the issues.[3] State member banks have been permitted to engage in general insurance agency activities since 1937,[4] and to engage in brokerage activities under the same limitations applicable to bank holding companies. In addition, the Board has determined that the nonbanking restrictions in the Bank Holding Company Act do not apply to the direct activities of banks owned by a bank holding company.[5]

The authority of bank holding companies to engage directly or through a nonbanking subsidiary in the sale of annuities has not yet been determined. In *Norwest Corporation*,[6] the Board considered a proposal by a nonbanking affiliate to engage in the sale of variable- and fixed-rate annuities. The Board concluded that, under the specific facts of that case, it was unnecessary to reach the question of whether the sale of annuities is an insurance agency activity because Norwest is one of a small number of bank holding companies entitled to act as agent in the

1. Interpretive Letter No. 331, April 4, 1985, *reprinted in* [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶85,501; OCC Interpretive Letter No. 499 (February 12, 1990), *reprinted in* [1989–1990] Fed. Banking L. Rep. (CCH) ¶83,090. National banks are authorized to buy and sell securities for the account of customers and broker financial investment instruments.

2. *The Variable Annuity Life Insurance Company v. Clarke*, No. H-91-1016 (S.D. Tex. filed Apr. 16, 1991) (''NCNB litigation'').

3. NCNB litigation.

4. Prior to 1937, the Board imposed as a condition of membership in the Federal Reserve System that a bank discontinue all insurance activities other than insurance activities in a town of less than 5,000. The purpose of this restriction was to conform insurance activities allowed for state member banks to those allowed for national banks.

5. *Merchants National Corp.*, 75 Federal Reserve Bulletin 388 (1989), *aff'd*, 890 F.2d 1275 (2d Cir. 1989), *cert. denied*, 111 S. Ct. 44 (1990).

6. 76 Federal Reserve Bulletin 873 (1990).

sale of any type of insurance pursuant to Exemption G of the Garn Act.[7]

2175.0.3 CHARACTERISTICS OF ANNUITY INSTRUMENTS

An annuity is an investment from which a person receives periodic payments based on earlier payments made to the obligor. Annuities are commonly underwritten by insurance companies, then marketed and sold either directly or through third parties, such as banks. Insurance companies retain the actuarial and underwriting risks on these annuities.

Annuities may be either variable or fixed-rate. An investor in a variable annuity contract purchases a share in an investment portfolio and then receives payments that vary according to the performance of the portfolio. A purchaser of a fixed-rate annuity contract, in contrast, receives a fixed-rate payment or minimum level of payments. Annuity payments can usually be received monthly, quarterly, semi-annually, or annually.

Variable- and fixed-rate annuities may be purchased in a single lump sum (‘‘single premium’’) or in periodic contributions (‘‘flexible premium’’). Minimum and maximum contributions to annuities vary among vendors. Some single-premium annuities have ‘‘bail-out’’ features which allow holders to withdraw all funds if the rate of return on the annuity contract falls below a specified rate.

The ability to take money out of an annuity prior to maturity varies by product, as does the imposition of a surrender penalty by the insurer when withdrawal occurs prior to maturity. When a penalty is imposed, the insurer generally calculates the penalty as a percentage of the annuity product’s accumulated value. The penalty for withdrawal generally declines with the annuity’s age. Normally, funds may not be withdrawn prior to the first anniversary date of the annuity.[8]

Annuities sold at depository institutions often include rate guarantees over the life of the instrument. They also frequently mature in one, three, or five years, similar to maturity ranges on certificates of deposit.

Insurance companies arrange for the sale of annuities on the premises of depository institutions in different ways. Some insurance companies approach banks directly. At other times, wholesalers (who market the products of a number of different insurance companies) may approach a bank. Depending on state restrictions on insurance activities, sales might be conducted by bank employees, employees of bank subsidiary insurance agencies, or by third-party insurance agents leasing space on the bank’s premises.

Sales commissions on annuities vary by the type of annuity. Commissions earned on single-premium products generally vary from 4 percent to 6 percent, but they decline sharply when the product sold includes a ‘‘bail-out’’ provision. Wholesalers may also give retailers a commission when the annuity is renewed, based on the accumulated value of the annuity. Commissions in some instances are paid on a variable basis, rising as the volume of sales increases.

2175.0.4 IMPROPER MARKETING PRACTICES

Banks have become involved in the sale of uninsured annuities through marketing programs designed to appeal specifically to their retail customers. It is important that these programs not employ marketing practices that could mislead the bank’s customers. For example, the use in annuities advertisements of terms such as ‘‘CD,’’ ‘‘deposit,’’ and ‘‘interest plan’’ to imply that the instruments are insured deposits would be inappropriate. Also, advertisements that prominently display the bank’s name and logo in a way that suggests the product is an obligation of the bank are similarly inappropriate. Disclosure that the annuities are not federally insured and are not obligations of the bank should be displayed prominently in annuity contracts and related documentation, on printed

7. The Garn Act amended section 4(c)(8) of the Bank Holding Company Act to prohibit generally bank holding companies from engaging in insurance activities as a principal, agent, or broker with certain exceptions. Under the express language of the Garn Act, the sale of insurance is not ‘‘closely related to banking’’ and is not permissible for a bank holding company unless it qualifies under one of the seven specified exceptions (Exemptions A–G) in the Garn Act. Exemption G applies to a limited number of bank holding companies that received approval from the Board prior to January 1, 1971, to conduct insurance agency activities. In order to utilize Exemption G or any other Garn Act exemptions that may be applicable, the bank holding company must file an application and would be subject to the proposed restrictions through the application process.

8. If an investor withdraws tax-deferred income from an annuity before the investor is 59½ years old, the IRS levies a tax penalty on the person equal to 10 percent of the amount of tax-deferred income withdrawn. This penalty may be avoided only if the person reinvests annuity proceeds in another tax-deferred investment within 60 days of the withdrawal.

advices, and verbally emphasized in telemarketing contacts. Finally, personnel selling uninsured annuities should be distinguishable from bank employees conducting normal retail deposit-taking operations.

2175.0.5 INSPECTION OBJECTIVES

1. To review the marketing and sale of uninsured annuities sold by the bank holding company and its member banks, or those sold through a third party.
2. To determine whether the bank holding company and its banks have adequate policies and procedures in place and if they are monitored by the parent company.
3. To determine if, prior to agreeing to sell annuities, a comprehensive financial analysis is made of the financial condition of the annuities underwriter and whether products of only financially secure underwriters are sold.
4. To determine whether the contract and advertising and related documents disclose prominently that the annuities do not represent deposits or obligations of an insured depository institution and that they are not insured by the Federal Deposit Insurance Corporation.
5. To ascertain that annuities are not sold at teller windows or other areas where deposits are routinely accepted.

2175.0.6 INSPECTION PROCEDURES

1. Determine whether the bank holding company and its banks have adequate policies and procedures in place:

a. to assess the financial condition of the annuities underwriter;

Banking organizations engaged in the sale of annuities are expected to sell only products of financially secure underwriters. Prior to agreeing to sell annuities, a comprehensive financial analysis of the obligor should be performed and reviewed with the banking organization's directors. The policies should also include a program to evaluate the underwriter's financial condition at least annually and to review the credit ratings assigned to the underwriter by the independent agencies evaluating annuity underwriters.

b. to ensure that the marketing and sale of uninsured annuities is not misleading and is separated and distinguished from routine retail deposit-taking activities.

(1) With regard to the sale of annuities, determine whether the contract, advertising, and all related documents disclose prominently in bold print that the annuities:

(a) are not deposits or obligations of an insured depository institution; and

(b) are not insured by the Federal Deposit Insurance Corporation.

(2) State member banks should not sell annuity instruments at teller windows or other areas where retail deposits are routinely accepted. In assessing the adequacy of disclosures and the separation of the marketing and sale of uninsured annuities from the retail deposit-taking function, examiners should take into account whether:

(a) advertisements *do not* contain words, such as ''deposit'', ''CD'', etc., or a logo that could lead an investor to believe an annuity is an insured deposit instrument;

(b) the obligor of the annuity contract is prominently disclosed, and names or logos of the insured depository institution are not used in a way that might suggest the insured depository institution is the obligor;

(c) adequate verbal disclosures are made during telemarketing contacts and at the time of sale;

(d) retail deposit-taking employees of the insured depository institution *are not engaged* in the promotion or sale of uninsured annuities;

(e) information on uninsured annuities *is not* contained in retail deposit statements of customers or in the immediate retail deposit-taking area;

(f) account information on annuities owned by customers *is not* included on insured deposit statements; and

(g) officer or employee remuneration associated with selling annuities is limited to reasonable levels in relation to the individual's salary.

(3) If a bank allows a third-party entity to market annuities on depository institution premises, examiners should take into account whether:

(a) the depository institution has assured itself that the third-party company is properly registered or licensed to conduct this activity;

(b) depository institution personnel *are not* involved in sales activities conducted by the third party;

(c) desks or offices *are not* used to market or sell annuities, are separate and distinctly identified as being used by an outside party; and

(d) depository institution personnel *do not* normally use desks or offices used by a third party for annuities sales.

2. Determine that advertisements do not prominently display the bank's name and logo that suggests the product is an obligation of a BHC bank.

3. Determine whether the banks obtain a signed statement from the customer indicating that the customer understands that the annuity is not a deposit or any other obligation of the depository institution, that the depository institution is only acting as an agent for the insurance company (underwriter), and that the annuity is not FDIC insured.

On January 5, 2004, the federal banking and thrift agencies[1] (the agencies) issued an interagency policy to alert banking organizations, including their boards of directors and senior management, of the safety-and-soundness implications of and the legal impediments to a bank providing financial support to investment funds[2] advised by the bank, its subsidiaries, or affiliates (that is, affiliated investment funds). A banking organization's investment advisory services can pose material risks to the bank's liquidity, earnings, capital, and reputation and can harm investors, if the associated risks are not effectively controlled. In addition, bank-affiliated investment advisers are encouraged to establish alternative sources of financial support to avoid seeking support from affiliated banks. (See SR-04-1 and SR-94-53.)

Banks are under no statutory requirement to provide financial support to the funds they advise; however, circumstances may motivate banks to do so for reasons of reputation risk and liability mitigation. This type of support by banking organizations to funds they advise includes credit extensions, cash infusions, asset purchases, and the acquisition of fund shares. In very limited circumstances, certain arrangements between banks and the funds they advise have been expressly determined to be legally permissible and safe and sound when properly conducted and managed. However, the agencies are concerned about other occasions when emergency liquidity needs may prompt banks to support their advised funds in ways that raise prudential and legal concerns. Federal laws and regulations place significant restrictions on transactions between banks and their advised funds. In particular, sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W (12 C.F.R. 223) place quantitative limits and collateral and market-terms requirements on many transactions between a bank and certain of its advised funds.

1. The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS).

2. Bank-advised investment funds include mutual funds, alternative strategy funds, collective investment funds, and other funds where the bank, its subsidiaries, or affiliates is the investment adviser and receives a fee for its investment advice.

2178.0.1 POLICY ON BANKS PROVIDING FINANCIAL SUPPORT TO ADVISED FUNDS

To avoid engaging in unsafe and unsound banking practices, banks should adopt appropriate policies and procedures governing routine or emergency transactions with bank-advised investment funds. Such policies and procedures should be designed to ensure that the bank will *not* (1) inappropriately place its resources and reputation at risk for the benefit of the funds' investors and creditors; (2) violate the limits and requirements contained in sections 23A and 23B of the Federal Reserve Act and Regulation W, other applicable legal requirements, or any special supervisory condition imposed by the agencies; or (3) create an expectation that the bank will prop up the advised fund. Further, the agencies expect banking organizations to maintain appropriate controls over investment advisory activities that include:

- Establishing alternative sources of emergency support from the parent holding company, nonbank affiliates, or external third parties prior to seeking support from the bank.
- Instituting effective policies and procedures for identifying potential circumstances triggering the need for financial support and the process for obtaining such support. In the limited instances that the bank provides financial support, the bank's procedures should include an oversight process that requires formal approval from the bank's board of directors, or an appropriate board-designated committee, independent of the investment advisory function. The bank's audit committee also should review the transaction to ensure that appropriate policies and procedures were followed.
- Implementing an effective risk-management system for controlling and monitoring risks posed to the bank by the organization's investment advisory activities. Risk controls should include establishing appropriate risk limits, liquidity planning, performance measurement systems, stress testing, compliance reviews, and management reporting to mitigate the need for significant bank support.
- Implementing policies and procedures that ensure that the bank is in compliance with existing disclosure and advertising require-

ments to clearly differentiate the investments in advised funds from obligations of the bank or insured deposits.

- Ensuring proper regulatory reporting of contingent liabilities arising out of its investment advisory activities in the banking organization's published financial statements in accordance with FAS 5, and fiduciary settlements, surcharges, and other losses arising out of its investment advisory activities in accordance with the instructions for completing call report Schedule RC-T (Fiduciary and Related Services).

2178.0.2 NOTIFICATION AND CONSULTATION WITH THE PRIMARY FEDERAL REGULATOR

Because of the potential risks posed by the provision of financial support to advised funds, bank management should notify and consult with its appropriate federal banking agency prior to (or immediately after, in the event of an emergency) the bank providing material financial support to its advised funds. The appropriate federal banking agency will closely scrutinize the circumstances surrounding the transaction and will address situations that raise supervisory concerns.

2178.0.3 INSPECTION OBJECTIVES

1. To determine if the BHC has adequate oversight and control of its functionally regulated investment adviser subsidiaries.
2. To review and assess the existence, adequacy, maintenance, and monitoring of the BHC's policies, procedures, and practices (includes those involving the parent company's oversight and investment adviser subsidiaries). The BHC's policies, procedures, and practices should be designed to limit the exposures to financial, litigation, or reputational risk arising from its bank and nonbank subsidiaries.
3. To ensure that the BHC's banking subsidiaries that advise investment funds are in compliance with the Interagency Policy on Banks and Thrifts Providing Financial Support to Funds Advised by the Banking Organization or Its Affiliates.

2178.0.4 INSPECTION PROCEDURES

1. Determine if the BHC has adequate oversight policies, procedures, and practices to ensure that its banking and nonbank subsidiaries that advise investment funds do not—
   a. inappropriately place the resources and reputation of the bank at risk for the benefit of affiliated investment funds' investors and creditors;
   b. violate the limits and requirements in Federal Reserve Act sections 23A and 23B and Regulation W, other applicable legal requirements, or any special supervisory condition imposed by the agencies; or
   c. create an expectation that a bank will support the advised fund (or funds).
2. Find out how the BHC ensures through its communications with subsidiaries that bank-affiliated investment advisers are encouraged to establish alternative sources of financial support from an unaffiliated bank or other affiliate.
3. Ascertain whether the BHC's internal or external auditors verified that its oversight policies and procedures for bank-advised funds were adequately communicated to its banking subsidiaries to ensure compliance with the January 5, 2004, Interagency Policy on Banks and Thrifts Providing Financial Support to Funds Advised by the Banking Organization or Its Affiliates. Compliance includes the BHC's or subsidiary's notification of and consultation with its appropriate federal banking agency before (or, in an emergency, immediately after) providing material financial support to an affiliated investment fund.
4. Find out if the BHC's internal audit function monitors any financial support given to bank or nonbank subsidiaries' advised funds and if the internal auditors follow up on compliance with any policies, limits, or internal controls that are intended to restrict the activities.
5. Determine if the BHC is able to assess at all times the extent of its subsidiary banks' risk exposures that may arise from providing support to affiliated investment funds.

Securities Activities in Overseas Markets

Section 2180.0

Existing regulations permit banks and bank holding companies to engage in a wide range of securities activities in overseas markets. For a number of years these activities were not considered to be significant in the context of total bank and bank holding company assets. Indigenous rules and market practice served to constrain to a degree securities activities of U.S. banking organizations overseas.

Changes in local rules now make it possible for members of the London stock exchange to be wholly-owned by non-member companies and by year-end 1986 will allow stockbrokers to act as principals or market makers in securities. These new rules are expected to change significantly the complexion of the London securities market. In this context, U.S. banking organizations are making substantial investments in U.K. securities firms, and are also significantly expanding their securities business in other foreign and international markets.

The Board has expressed its concerns, in connection with an application by a banking organization to expand its securities activities overseas, that proper safeguards, limits, and controls will be exercised to protect the organization from undue risk. Applications generally state the methods through which the banking organization plans to control risk and establish oversight over securities operations. While these safeguards are initially evaluated at the time the application is made, nevertheless, examinations of bank holding companies and Edge corporations should incorporate an assessment of all overseas securities activities in order to determine the degree to which these activities conform to high standards of banking and financial prudence. The affiliation of a securities company, especially one engaged in corporate debt and equities transactions, with a banking organization raises a potential for conflict of interest and in some cases could pose substantial additional risk to the institution.

In those U.S. banking organizations where overseas securities trading and brokering are significant in scope or are prominent in the scale of the local market, examination procedures must incorporate an assessment of the controls, limits, and safeguards implemented by the organization to monitor and contain risk. Securities activities should be subject to the same degree of scrutiny and rigorous assessment of risk as bank lending activities. In addition, examiners should monitor the substance and nature of all transactions.

In particular, the following kinds of activities should be reviewed to determine whether they raise considerations of safety and soundness or otherwise do not conform to standards of prudence required of U.S. banking organizations:

- The degree of lending by a bank holding company to its securities affiliate, especially when loans are extended to support or enhance the obligations underwritten by the securities affiliate;
- The extent to which securities underwritten by an affiliate are purchased by the bank holding company as principal or trustee; and,
- The extent to which the parent is liable to an exchange for any losses incurred by the affiliate due to failure to deliver securities or settle contracts.

Violations of Federal Reserve Margin Regulations Resulting from ‘‘Free-Riding’’ Schemes Section 2187.0

Targeted examinations and investigations by the Federal Reserve and the Enforcement Division of the Securities Exchange Commission (SEC), as well as court actions, have found banks in violation of Regulation U, Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock, (12 C.F.R. 221) when their trust departments, using bank or other fiduciary funds, have extended credit to individuals involved in illegal day trading or free-riding schemes. These activities also involved the aiding and abetting of violations of two other securities credit regulations: Regulation T, Credit by Brokers and Dealers (12 C.F.R. 220), and Regulation X, Borrowers of Securities Credit, (12 C.F.R. 224).

Day trading and free-riding schemes involve the purchase and sale of stock on the same day (or within a very short period of time) and the funding of the purchases with the proceeds of the sale. Banking organizations[1] engaging in such illegal activities may subject themselves to disciplinary proceedings, as well as to substantial credit risk.

Federal Reserve examiners should ensure that banks and bank holding companies (including the broker-dealer and trust activities of banking and nonbanking subsidiaries of state member banks and bank holding companies) are not engaged in such illegal activities. Examiners must make certain that these entities have taken all steps necessary to prevent their customers from involving them in free-riding. Prompt enforcement action may be needed to eliminate free-riding activities. (See SR-93-13.)

2187.0.1 TYPICAL DAY TRADING OR FREE-RIDING ACTIVITIES

The free-riding conduct in question typically involves trading large amounts of securities without depositing the necessary money or appropriate collateral in their customer accounts. The customer seeks to free-ride, that is, purchase and sell the same securities and pay for the purchase with the proceeds of the sale. Often, free-riding schemes involve initial public offerings because broker-dealers are prohibited from financing these new issues. If the money to pay for the securities is not in the account when the securities are delivered in a delivery-versus-payment (DVP) transaction, a bank that permits completion of the transaction creates a temporary overdraft in the customer’s account. This overdraft is an extension of credit that subjects the banks to Regulation U.

The typical free-riding scheme involves a new customer’s opening a custodial agency account into which a number of broker-dealers will deliver securities or funds in DVP transactions. Although a deposit may be made into the custodial agency account, the amount of trading is greatly in excess of the original deposit, causing the financial institution to extend its own credit to meet the payment and delivery obligations of the account. Therefore, although the financial institution may be earning fees as a result of the activity in these accounts, it is subjecting itself to substantial losses if the market prices for the purchased securities fall or the transactions otherwise fail. In addition, other liabilities under federal banking and securities laws may be involved.

2187.0.2 SECURITIES CREDIT REGULATIONS

2187.0.2.1 Regulation U, Credit by Banks or Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stocks

Any extension of credit in the course of settling customer securities transactions, including those occuring in a trust department or trust subsidiary of a bank holding company, must comply with all of the provisions of Regulation U.[2] Regulation U requires all extensions of credit for the purpose of buying or carrying margin

1. The use of the term ‘‘banking organization’’ in this section, with regard to Regulation U, means a bank, trust department of a bank, or trust company of a bank holding company that is subject to Regulation U. Regulation U includes any nondealer nonbank subsidiary of a bank holding company that extends purpose credit by margin stock. With regard to Regulation T, it refers to any nonbank company that conducts broker-dealer activities.

2. For purposes of the regulation, the definition of ‘‘bank’’ specifically includes institutions ‘‘exercising fiduciary powers.’’ (See 12 C.F.R. 221.2, 15 U.S.C. 78(c)(a)(6), and *Federal Reserve Regulatory Service* at 5–795 (1946).) When used in discussing a bank’s trust department or any other type of financial institution exercising fiduciary powers, the term ‘‘extension of credit’’ includes overdrafts in settling customer’s accounts that may be covered by advances from the banking organization, from other fiduciary customers, or from a combination of both.

stock that are secured by margin stock to be within the 50 percent limit. To avoid violations of the Board's securities credit regulations, on settlement date, the customer's account must hold sufficient funds, excluding the proceeds of the sale of the security, to pay for each security purchased. Although Regulation U applies only to transactions in margin stock, free-riding in nonmargin stocks in custodial agency accounts could result in a banking organization's aiding and abetting violations of Regulations T and X and other securities laws, and could raise financial safety-and-soundness issues.

2187.0.2.2 Regulation T, Credit by Brokers and Dealers, and Regulation X, Borrowers of Securities Credit

Because the custodial agency accounts are used to settle transactions effected by the customer at broker-dealers, a banking organization that opens this type of account should have some general understanding of how Regulation T restricts the customer's use of the account at the institution. Regulation T requires the use of a cash account for customer purchases or sales on a DVP basis. Section 220.8(a) of Regulation T specifies that cash-account transactions are predicated on the customer's agreement that the customer will make full cash payment for securities before selling them and does not intend to sell them before making such payment. Therefore, free-riding is prohibited in a cash account. A customer who instructs his or her agent financial institution to pay for a security by relying on the proceeds of the sale of that security in a DVP transaction is causing, or aiding or abetting, the broker-dealer to violate the credit restrictions of Regulation T. Regulation X, which generally prohibits borrowers from willfully causing credit to be extended in violation of Regulations T or U, also applies to the customer in such cases.

As described above, banking organizations[3] involved in customer free-riding schemes may be aiding and abetting violations of Regulation T by the broker-dealers who deliver securities or funds to the banking organization's customers' accounts. As long as a financial institution uses its funds to complete a customer's transactions, broker-dealers may not discover that they are selling securities to the customer in violation of Regulation T. A similar aiding and abetting violation of Regulation X could occur if a customer used the financial institution to induce a broker-dealer to violate Regulation T.

2187.0.3 NEW-CUSTOMER INQUIRIES AND WARNING SIGNALS

Examiners should make certain that all banks and other financial-institution subsidiaries of a bank holding company are administering and following appropriate written policies and procedures concerning the establishment of custodial agency accounts or any new account involving customer securities transactions. Such policies and procedures should address, among other things, ways an institution can protect itself against free-riding schemes. One way is to obtain adequate background and credit information from new clients, including whether the customer intends to obtain credit to use with the account. This type of activity requires more extensive monitoring than the typical DVP account in which no credit is extended. It would be prudent to inquire why a new customer is not using the margin-account services of its broker-dealers. If the account is to be used as a margin account, a financial institution must obtain Form FR U-1 from the customer and must sign and constantly update the form.

The financial institution should obtain from the customer a list of broker-dealers that will be sending securities to or receiving funds from the account in DVP transactions. If a number of broker-dealers may be used, the institution should obtain from the customer a written statement that all transactions with the broker-dealer will conform with Regulations T and X and that the customer is aware that a security purchased in a cash account is not to be sold until it is paid for. Similarly, when obtaining instructions for settling DVP transactions for a customer, the financial institution should clarify that it will not rely upon the proceeds from the sale of those securities to pay for the purchase of the same securities.

2187.0.4 SCOPE OF THE INSPECTION FOR FREE-RIDING ACTIVITIES

Examiners, bank holding companies, state member banks, and financial-institution and trust subsidiaries owned by bank holding companies (also U.S. branches and agencies of foreign

3. For a discussion of Regulation T as it applies to a bank holding company's broker-dealer nonbank subsidiary, see section 3230.0.

banks exercising trust powers) should ensure that their banking organizations monitor accounts closely for an initial period to detect patterns typical of free-riding, including intraday overdrafts, and to ensure that sufficient funds or margin collateral are on deposit at all times. Frequent transactions in securities being offered in an initial public offering may suggest an avoidance of Regulations T and X. If it appears that a customer is attempting to free-ride, the financial institution should immediately alert the broker-dealers involved in transferring securities and take steps to minimize its own credit risk and legal liability.

At a minimum, examiners should also evaluate a trust institution’s ability to ensure that it does not extend to a customer more credit on behalf of a bank or other financial institution than is permitted under Regulation U. If there are any questions in this regard, examiners should consult with their Reserve Bank’s trust examiners. Any overdraft that is related to a purchase or sale of margin stock, and that is secured by margin stock, is an extension of credit subject to the regulation, including overdrafts that are outstanding for less than a day. Board staff have published a number of opinions discussing the application of Regulation U to various transactions relating to free-riding.

Free-riding violations that could endanger the banking organization (for example, fraudulent activities that could subject the organization to losses or lawsuits), as well as significant violations that were previously noted but have not yet been corrected, should be noted in the inspection report. Violations of the Board’s Regulation T, U, or X, as applicable to the inspection, should be reported on the Examiner’s Comments and Violations report pages. The report should discuss what action has or will be taken to correct those violations.

2187.0.5 SEC AND FEDERAL RESERVE SANCTIONS AND ENFORCEMENT ACTIONS

The SEC, in exercising its broad authority to enforce the Board’s securities credit regulations, requires banks to (1) establish credit compliance committees to formulate written policies and procedures concerning the extension of purpose credit in their securities-clearance business, (2) establish training programs for bank personnel responsible for the conduct of their securities-clearance business, and (3) submit to outside audits to verify their compliance with the conditions of injunctions. The Board may also institute enforcement proceedings against the banking organizations it supervises and against any institution-affiliated parties involved in these activities, including cease-and-desist orders, civil money penalty assessments, and removal and permanent-prohibition actions.

2187.0.6 INSPECTION OBJECTIVES

1. To make certain that policies of the bank holding company’s board, and the supervisory operating procedures, internal controls, and audit procedures will ensure, in the course of settling customers’ securities transactions—
   a. that bank extensions of credit within the holding company comply with the provisions of Regulation U (including the requirement that initial extensions of credit that are secured by margin stock are within the initial 50 percent margin limit) and
   b. that customer accounts hold sufficient funds on the settlement date for each security purchased.
2. To determine—
   a. whether the banking organizations of the bank holding company can adequately monitor compliance with Regulation U through systems of internal controls, training, and compliance procedures (i.e., use of credit compliance committees) that address free-riding activities within the ‘‘back-office function’’ [4] and
   b. whether noncompliance is properly reported.
3. To initiate corrective action when policies, practices, procedures, or internal controls are not sufficient to prevent free-riding schemes, and when violations of the Board’s regulations have been noted by bank examiners or self-regulatory organizations.

2187.0.7 INSPECTION PROCEDURES

1. Review the bank holding company’s board of directors’ policies for its banking institution subsidiaries regarding supervisory operational policies, procedures, and internal controls for loans extended for the purpose

4. Refers to the movement of cash and securities relating to trades and to the processing and recording of trades. This process is also called the ‘‘securities-clearance cycle.’’

of buying or carrying margin stock and secured directly or indirectly by margin stock.

a. Determine whether the policies require, for *each* extension of credit not specifically exempted under Regulation U, that a Form FR U-1 be executed and signed by the customer and accepted and signed by a duly authorized officer of the banking organization acting in good faith.

b. Determine whether the policies limit extensions of credit to no more than the maximum allowed loan value of the collateral, as set by section 221.7 of Regulation U, and whether those policies require adherence to margin requirements.

2. Review the bank holding company's board of directors' credit policies and operating policies, internal controls, and internal audit procedures to determine if they provide adequate safeguards against customers' free-riding practices. In so doing—

a. determine if new-customer accounts are required to be approved by appropriate personnel; and

b. establish whether the bank holding company's credit-system policies require—

- controlling securities positions and financial-instrument contracts that serve as collateral for loans;
- monitoring established restrictions and limits placed on the amounts and types of transactions to be executed with each customer and the dollar amounts placed on unsettled trades;
- obtaining appropriate documentation consisting of essential facts pertaining to each customer, and in particular, financial information evidencing the customer's ability to pay for ordered securities, repay extensions of credit, and meet other financial commitments;
- monitoring the location of all collateral;
- ensuring that there are no overdrawn margin accounts; and
- monitoring the status of failed transactions for the purpose of detecting free-riding schemes.

3. Determine if the bank holding company's audit committee or its internal or external auditors are required to review a selected random sample of individual or custodial agency accounts for customer free-riding activities.

2187.0.8 LAWS, REGULATIONS, INTERPRETATIONS, AND ORDERS

Subject	*Laws* [1]	*Regulations* [2]	*Interpretations* [3]	*Orders*
Credit by brokers and dealers		220 (Reg. T)		
Regulation U, Credit by Banks or Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stocks		221 (Reg. U)		
Purpose credit—delivery-versus-payment transactions			5–942.15, 5–942.18, 5–942.2, 5–942.21, 5–942.22	
Borrowers of securities credit		224 (Reg. X)		

1. 12 U.S.C., unless specifically stated otherwise.
2. 12 C.F.R., unless specifically stated otherwise.
3. *Federal Reserve Regulatory Service* reference.

2220.3.1 NOTE ISSUANCE FACILITY (NIF)

One type of off-balance-sheet activity is the note issuance facility (NIF). The first public facility was arranged in 1981. A NIF is a medium-term arrangement under which a borrower can issue short-term paper. The paper is issued on a revolving basis, with maturities ranging from as low as 7 days to up to one year. Underwriters are committed either to purchasing any unsold notes or to providing standby credit. Bank borrowing usually involves commercial paper consisting of short-term certificates of deposit and for nonbank borrowers it would generally be promissory notes (Euronotes). NIF is the most common term used for this type of arrangement. Other terms include the revolving underwriting facility (RUF), and the standby note issuance facility (SNIF). NIFs, RUFs, and SNIFs are essentially the same credit product. The NIF is usually structured for 5 to 7 years.

Euronotes are denominated in US dollars and are issued with high face values (often $500,000 or more), being intended for the more sophisticated investor (professional or institutional investors). Holders of the notes show them as an asset on their balance sheets. The underwriting commitment represents an off-balance sheet item. The NIF allows the various functions performed by a single institution in a syndicated credit to be separated and performed by different institutions.

Instead of lending money, as in a syndicated credit, the NIF arranger provides a mechanism for placing notes with other investors when funds are needed. The underwriting commitment transforms the maturity, assuring the borrower access to short-term funds over the medium term, which remains off-balance sheet, unless drawn upon. The underwriters take the short-term credit risk since they face the risk of lending to a borrower that has difficulty in obtaining full confidence from investors.

NIFs can be arranged with an issuer-set margin whereby the issuer determines the margin over LIBOR (the London Interbank Offered Rate), or some other index at which notes will be offered. The issuer thus benefits from any improvement in market conditions. The notes are placed by the placing agent, but senior underwriters have the option of purchasing a prearranged share of any notes issued. Any notes not taken up at the issuer-set margin are distributed to underwriters at the pre- established maximum (cap) rate.

2220.3.2 REVOLVING UNDERWRITING FACILITY (RUF)

Another type of facility, a revolving underwriting facility (RUF), was introduced in 1982. A revolving underwriting facility is a medium-term revolving commitment to guarantee the overseas sale of short-term negotiable promissory notes (usually a fixed-spread over LIBOR) issued by the borrower at or below a predetermined interest rate. RUFs separate the roles of the medium-term risk-taker and the providers of the funding (the short-term investors). RUFs and NIFs allow access to capital sources at interest rates considerably below conventional financing rates. The savings in interest cost are derived because the borrower obtains the lower interest costs prevailing in the short-term markets, while still retaining the security of longer term financing commitments. The notes issued under RUFs are attractive for institutional investors since they permit greater diversification of risk than the certificates of deposit of only one bank. Underwriters favor them because their commitments do not appear on the statement of financial condition. RUFs are usually structured for periods of four to seven years.

A revolving underwriting facility (RUF) differs from a (NIF) in that it separates the functions of underwriting and distribution. With a RUF, the lead bank (manager or arranger) acts as the only placing agent. The arranger retains total control over the placing of the notes. The lead bank provides assistance to a borrower who forms a lending group of banks. The borrower, assisted by a lead bank (arranger), obtains a medium term revolving commitment that guarantees the sale of short-term negotiable promissory notes at or below a pre-determined interest rate. The participating group of banks arrange the funding, subject to certain lending conditions and rates, for the duration of the facility. In return, the borrower pays a facility fee to the revolving credit banks.

When the borrower desires funds, a placement agent or tender panel[1] places short-term notes with other banks and institutional investors (usually having maturities of 90 days, 180 days or 12 months). The short term notes can be issued to these investors at significantly lower interest rates than would be available from a revolving credit facility that the same banks would have been willing to provide. The note purchasers generally have a rollover option at maturity and new note purchasers are added as needed. The note purchasers bear the risk of loss in the event of default by the borrower. New note purchasers are added as needed. In the event the full line of credit is not placed with the note purchasers on any rollover date, the revolving credit banks must make funding available for the difference at the previously committed revolving credit interest rates, subject to the terms and conditions within the agreement.

With the RUF, and the use of a sole placing agent, the underwriters are not assured of securing any notes that they could place themselves nor can they benefit from any improvement in terms available in the market. The hindrance is removed by the use of NIFs with an issuer-set margin whereby the issuer determines the margin over an index at which notes will be offered.

Another form of a RUF is a transferable revolving underwriting facility (TRUF). With this arrangement the underwriter is able, with the borrower's approval, to transfer all rights and obligations under the underwriting commitment to another institution at any time during the life of the facility.

2220.3.3 RISK

The loan commitments involved in NIF and RUF transactions contain substantially the same terms as other loan commitments extended to similar borrowers. The failure of the borrower to satisfy the revolving standby agreement relieves the banks of any obligation to fund the transaction. The major source of risk is thus the liquidity risk that is derived from the uncertainty of the timing or amount of required funding. If the underlying notes cannot be marketed at or below the interest rate specified in the agreement, the bank would need to discount the notes to whatever rate would be necessary to make the notes attractive to investors, perhaps taking an up-front loss to avoid funding a low margin loan.

NIFs and RUFs involve less credit risk than extensions of credit because of the additional step that is required before funding takes place, a step that is not present with a revolving credit agreement. In other words, no funding is required until: (1) a decision is made by the borrower to issue notes; and (2) the placing agent becomes unable to place the short-term notes with short-term investors. Further, the risk of loss rests with the note investors. The underwriter's risk of nonpayment is not present until the rollover date. If there has been a significant deterioration in the issuer/borrower's financial condition on that date, the issuer/borrower may be prevented from drawing under the facility. This would be dependent on the funding conditions or the cancellation provisions stipulated in the agreement.

2220.3.4 PRICING AND FEES

The forms of compensation involving a NIF and RUF are: the underwriting and commitment fee; the one-time arrangement fee, and the periodic placement fees. An annual fixed underwriting fee is paid by the borrower on the amount of underlying commitment. This fee must be paid regardless of the frequency of usage of the facility or whether or not the underwriters are required to make any purchases of the short-term paper. This compensation is for the commitment to underwrite the issuance of the notes. The arranger receives a one-time arrangement fee based on a percentage of the amount of the facility. The issuer pays the borrowing costs on the notes issued, usually at a spread above or below an index. A portion of this borrowing fee is retained by the placement agent or the tender panel members as compensation for placing the paper.

Competitive pricing on NIFs and RUFS causes them to be very thinly margined. Commitment fees may be as low as 5 basis points for blue chip customers, while "BBB" credit-rated or equivalent borrowers might be charged as much as 20 basis points. Because of the thin spread some banks may only be serving as an

1. The tender panel was introduced in 1983. It is usually made up of several commercial investment banks and other institutional investors. The panel members bid for any notes issued, up to a predetermined maximum spread. The revolving credit banks can bid as part of the tender panel, but they are not required to do so. Any notes not bid for are purchased by the revolving credit banks or they extend credit of an equal amount. The tender panel may be a continuous tender panel whereby the underwriters are entitled to purchase notes from the lead manager up to their pro rata share at any time during the offer period, if available, at the market price.

arranger, preferring to not participate in the market. Typical fees for this service may consist of: an up-front arrangement fee of 20 basis points on the total principal amount of the facility, and an annual placement fee such as 12.5 basis points on the short-term notes sold. Revolving credit banks usually receive facility fees and annual maintenance fees.

If the underwriters have to purchase the notes, the backup rate of interest may be the index plus 10 to 15 basis points for blue chip companies to plus 37.5 basis points over the index for ''BBB'' rated borrowers. The interest rates charged (if funded) are usually lower because of market-pricing conventions (lower spreads) and the intense competition within the market.

2220.3.5 STANDBY RUFS

Some RUFS may provide for a utilization fee or may provide for a higher yield on the notes in the event that more than a nominal amount of paper is allocated to the underwriters. Such a provision would more likely be found in a standby facility. Standby facilities are backup commitments under which notes are not expected to be issued. This provision essentially protects the underwriter from having to book loans that are earning an insufficient yield. The structure of the facility generally determines its pricing depending upon the requirements of the issuer/borrower.

Standby RUFs substitute for committed bank lines which may be used, for example, as backup commitments for issuance of U.S. commercial paper. Commitment fees will be low because of the low probability that funds will need to be advanced. A standby facility will make borrowing from the underwriter very expensive in relation to what the issuer might have to pay. Otherwise, the underlying notes are issued on a regular basis, the maximum yield on the notes is set to approximate the normal market level for the issuer's short term borrowings.This facility would have a higher underwriting fee than a standby facility, because the regular issuances of notes increase the likelihood that the underwriting bank will have to purchase notes that cannot be placed.

2220.3.6 RUF DOCUMENTS

The *revolving credit agreement* is the primary document in a RUF. It includes the principal agreement of the transaction, executed by the revolving credit banks and the borrower. It contains the terms and conditions under which the borrower can draw on the facility. The document includes the financial covenants and events of default.

An *agency agreement* between the borrower and the placement agent designates the placement agent for the notes and sets forth the conditions of the agent's obligations for arranging the sale of the notes. Included are representations and warranties of the borrower regarding the authority to enter into the agreement and to issue the notes.

A description of the terms and conditions of the facility is contained within an *information memorandum*. Detail is provided with regard to the use of the proceeds, current and historical financial information, a description of the company, its finances and operations. It is distributed to prospective credit banks and note purchasers.

The *note* is the last document involving a RUF. Usually the notes will be unsecured obligations of the borrower and will include representations and warranties of the company regarding authorization and the absence of material litigation and bankruptcy proceedings. It will also contain a statement that a revolving credit facility is available to the borrower.

WHAT'S NEW IN THIS REVISED SECTION

Effective January 2007, this section incorporates the June 22, 2006, interagency statement, The 2006 Revisions to Uniform Standards of Professional Appraisal Practice, which was effective on July 1, 2006. Under the appraisal regulations, banking organizations must ensure that their appraisals supporting federally related transactions adhere to Uniform Standards of Professional Appraisal Practice (USPAP). The interagency statement provides an overview of the 2006 USPAP revisions and the ramifications of those revisions to regulated banking organizations. (See SR-06-9.)

The following paragraphs (through section 2231.0.1) provide an overview of the Board's appraisal regulation and also the interagency guidelines for real estate appraisal and evaluation policies and review procedures.

The Board's long-standing policy on real estate appraisals emphasizes the importance of sound appraisal policies and procedures in a banking organization's real estate lending activity. In December 1987, the Board and the other bank regulatory agencies jointly adopted guidelines for real estate appraisal policies and review procedures. With the passage of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the Board and the other federal financial institutions regulatory agencies adopted regulations in August 1990 to implement the statute's title XI (the statute) (12 U.S.C. 3331) provisions (12 U.S.C. 3310, 3331–3351, and 1844(b)) relating to the performance and use of appraisals by federally regulated financial institutions. On June 7, 1994, the Board and the federal financial institutions regulatory agencies adopted several amendments to their appraisal regulations to clarify the agencies' appraisal requirements.[1] Additionally, the Board revised its guidelines for real estate appraisal and evaluation programs in September 1992. The guidelines were reissued on October 27, 1994, followed by an interagency statement on October 27, 2003. (See SR-94-35, SR-94-50, SR-94-55, SR-95-16, SR-95-27, SR-95-31, SR-98-31, and SR-03-18.) The October 27, 1994, Interagency Appraisal and Evaluation Guidelines can be found in appendix A (see section 2231.0.16). The October 27, 2003, interagency statement on Independent Appraisal and Evaluation Functions can be found in appendix B (see section 2231.0.17). The interagency statement further clarifies and should be reviewed in conjunction with the agencies' appraisal and real estate lending regulations and the Interagency Appraisal and Evaluation Guidelines.

The intent of the statute and subpart G of the Board's Regulation Y (12 C.F.R. 225) is to protect federal financial and public policy interests in real estate–related financial transactions that require the services of an appraiser in connection with federally related transactions. The statute requires that real estate appraisals be prepared in writing, in accordance with uniform standards, by individuals who have demonstrated competency and whose professional conduct is subject to effective supervision.

The statute permitted each state to establish a program for certifying and licensing real estate appraisers who are qualified to perform appraisals in connection with *federally related transactions*.[2] Additionally, title XI designated the Appraisal Qualifications Board and the Appraisal Standards Board of the Appraisal Foundation, a nonprofit appraisal industry group, as the authority for establishing qualifications criteria for appraiser certification and standards for the performance of an appraisal. The states were authorized by the statute to establish qualification standards for licensing. the statute established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council to monitor the requirements established

1. The appraisal standards for federally related transactions are found in sections 225.61 to 225.67 of subpart G of Regulation Y. Section 225.63 was amended, effective December 28, 1998, to exclude from the Board's appraisal requirements transactions that involve underwriting or dealing in mortgage-backed securities. The amendment permits bank holding company subsidiaries engaged in underwriting and dealing in securities to underwrite and deal in mortgage-backed securities without demonstrating that the loans underlying the securities are supported by appraisals that meet the Board's appraisal requirements. (See 1999 FRB 50.)

2. A *federally related transaction* refers to any real estate–related financial transaction entered into on or after August 9, 1990, that (1) the Board or any regulated institution engages in or contracts for and (2) requires the services of an appraiser. A *real estate–related financial transaction* is any transaction involving (1) the sale, lease, purchase, investment in, or exchange of real property, including interests in property, or the financing thereof; (2) the refinancing of real property or interests in real property; or (3) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities. (See 12 U.S.C. 3350 (4)–(5).)

to meet the intent of the statute. If the Appraisal Subcommittee issues a finding that the policies, practices, or procedures of a state are inconsistent with title XI, the services of licensed or certified appraisers from that state may not be used in connection with federally related transactions.

The Board's appraisal regulation (Regulation Y, subpart G (12 C.F.R. 225, subpart G)) requires appraisals performed in connection with federally related transactions entered into after August 9, 1990, to comply with the regulation. Real estate–related financial transactions entered into before August 9, 1990, would have had to comply with the Board's supervisory guidelines, issued in 1987, as well as with safe and sound banking practices. Transactions are deemed to have been entered into and a loan is deemed to have been originated if there was a binding commitment to perform before the effective date. The requirement to use a state-certified or -licensed appraiser was effective December 31, 1992.[3]

2231.0.1 APPRAISAL AND EVALUATION POLICY

A banking organization's board of directors is responsible for adopting policies and procedures that establish effective real estate appraisal and evaluation programs. Analyzing real estate collateral at a loan's inception and over its life requires a sufficient understanding of appraisals and evaluations in order to fully assess credit risk. While the appraisal plays an important role in the loan-approval process, undue reliance should not be placed on the value of collateral in lieu of an adequate assessment of the borrower's repayment ability. However, when a credit becomes troubled, the primary source of repayment often shifts from the borrower's capacity to repay to the value of the collateral. For these reasons, it is important to have sound appraisal policies and procedures.

3. States had the flexibility to adopt an earlier implementation date for state requirements that an appraiser be certified or licensed to perform an appraisal within his or her state. Financial institutions doing business in a state that had an earlier effective date for mandatory use of a certified or licensed appraiser than the federally mandated effective date would have had to abide by any state laws.

2231.0.1.1 Appraisal and Evaluation Programs

The appraisal and evaluation programs should be tailored to the lender's size, its location, and the nature of its real estate market and attendant real estate–related activity. These programs should establish prudent standards and procedures to ensure that written appraisals or evaluations are obtained and analyzed for real estate–related financial transactions before a final credit decision is made.

Appraisal and evaluation programs should also establish the manner in which the institution selects, evaluates, and monitors individuals who perform real estate appraisals or evaluations. Key elements of the programs should ensure that individuals are fairly considered for the assignment, possess the requisite expertise to satisfactorily complete the assignment, hold the proper state certification or license if applicable, and are capable of rendering a high-quality appraisal or evaluation in writing.

2231.0.1.2 Real Estate Appraisal Compliance Procedures

To ensure compliance with the Board's real estate appraisal regulation and supervisory guidelines, the banking organization should have established regulatory compliance procedures for all appraisals and evaluations. The compliance review may be part of a loan officer's overall credit analysis and may take the form of a narrative or checklist. The individual who prepared the appraisal or evaluation should take corrective action for noted deficiencies. Unreliable appraisals or evaluations should be replaced before the final credit decision. Formal documentation or evidence of the review should be maintained.

Additionally, a banking organization should have comprehensive analytical procedures that focus on certain types of loans, such as large-dollar credits, loans secured by complex or specialized properties, nonresidential construction loans, or out-of-area real estate loans. The banking organization should establish criteria for identifying which appraisals should be considered for more comprehensive analytical procedures. These comprehensive analytical procedures should be designed to verify the appropriateness of the methods and approaches used in the appraisal and assess the reasonableness of the appraiser's analysis, opinions, and conclusions.

Formal documentation to support the comprehensive analytical procedures should be maintained. An individual performing this analysis, either an employee of the banking organization or an outside consultant, should have real estate–related training or experience and be independent of the transaction. The individual may not change the appraisal's or evaluation's estimate of value as a result of the review—unless that person is appropriately licensed or certified and performs the review according to procedures in Standard 3 of the Uniform Standards of Professional Appraisal Practice.

2231.0.1.3 Reappraisals and Re-evaluations

A program should be developed for obtaining reappraisals or re-evaluations as part of a program of prudent portfolio review and monitoring techniques—even when additional financing is not being contemplated. Examples include obtaining appraisals and revaluations for loans comprising large credit exposures and out-of-area loans. The decision to reappraise or re-evaluate the real estate collateral for a subsequent transaction should be guided by the appraisal exemption for renewals, refinancings, and other subsequent transactions. Loan workouts, debt restructurings, loan assumptions, and similar transactions involving the addition or substitution of borrowers may qualify for the exemption for renewals, refinancings, and other subsequent transactions. Use of this exemption, however, depends on the condition and quality of the loan, the soundness of the underlying collateral, and the validity of the existing appraisal or evaluation.

A loan may be renewed or refinanced on the basis of a valid appraisal or evaluation if the planned future use of the property is consistent with the use identified in the appraisal or evaluation. However, if the property has reportedly appreciated because of a planned change in use, such as a rezoning, an appraisal would be required for a federally related transaction—unless another exemption applied (for example, if the amount financed is below the appraisal threshold).

While the Board's appraisal regulation generally allows appropriate evaluations of real estate collateral in lieu of an appraisal for loan renewals and refinancings, in certain situations an appraisal is required. If new funds in excess of reasonable closing costs are advanced, a new appraisal for the renewal of an existing transaction should be obtained when there is a material change in market conditions that threatens the banking organization's real estate collateral protection.

For loan workouts, a reappraisal or reevaluation may be prudent, even if it is obtained after the modification. If there is an expected delay in obtaining the appraisal or evaluation, the banking organization should first protect its interest to facilitate the orderly collection of the loan or to reduce the risk of loss. In a troubled-loan situation, a reappraisal would not be required when a banking organization advances funds to protect its interest in a property, such as to repair damaged property, because these funds are being used to restore the damaged property to its original condition.

Real estate posted as collateral that has been acquired by a banking organization through foreclosure or deed in lieu of qualifies for the appraisal exemption for subsequent transactions. Therefore, the banking organization is only required to have an evaluation but may first initiate the foreclosure proceedings to protect its collateral interests before obtaining the evaluation. Because the sale or disposal and the financing of the sale of other real estate owned (OREO) do not arise from an existing extension of credit, these OREO transactions do not qualify for the appraisal exemption. Thus, a banking organization is required to have a valid appraisal to support the sale of OREO unless the transaction qualifies for another appraisal exemption. If the banking organization already has a valid appraisal (or an evaluation) of the real estate, it need not obtain a new appraisal.

2231.0.2 TRANSACTIONS NOT REQUIRING THE SERVICES OF A LICENSED OR CERTIFIED APPRAISER

The Board has determined that certain categories of real estate–related financial transactions do not require the services of a certified or licensed appraiser and, as such, are not considered federally related transactions.

Transactions not requiring the services of a certified or licensed appraiser include transactions in which—

1. the transaction value[4] is $250,000 or less;

4. *Transaction value* is defined as the amount of the loan or extension of credit under consideration. For a pool of loans or

2. a lien on real property has been taken as collateral in an abundance of caution;
3. the transaction is not secured by real estate;
4. a lien on real estate has been taken for purposes other than the real estate's value;
5. the transaction is a business loan that has a transaction value of $1 million or less and is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;
6. a lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;
7. the transaction involves an existing extension of credit at the lending institution, provided that there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies, or there is no advancement of new monies, other than funds necessary to cover reasonable closing costs;
8. the transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met the Board's regulatory requirements for appraisals at the time of origination;
9. the transaction is wholly or partially insured or guaranteed by a U.S. government agency or U.S. government–sponsored agency;
10. the transaction either qualifies for sale to a U.S. government agency or U.S. government–sponsored agency, or involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;
11. the regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under any other law;
12. the transaction involves underwriting or dealing in mortgage-backed securities;[5] or
13. the Board determines that the services of an appraiser are not necessary to protect federal financial and public policy interests in real estate–related financial transactions or to protect the safety and soundness of the institution.

a mortgage-backed security, the transaction value is the amount of each individual loan. In determining transaction value, the senior and junior debt are considered separate transactions under the appraisal rule. However, a series of related transactions will be considered one transaction if it appears that an institution is attempting to avoid the appraisal requirement by structuring the transactions below the appraisal threshold.

For transactions below the appraisal threshold, qualifying for the $1 million or less business-loan exemption, or qualifying for the existing extension-of-credit exemption, the Board still requires an appropriate evaluation of the real property collateral that is consistent with safe and sound banking practices.

The Board reserves the right to require an appraisal on an exempt transaction whenever it is necessary to address safety-and-soundness concerns. Whether a banking organization will be required to obtain an appraisal for a particular transaction or an entire group of credits will depend on its condition. For example, if a banking organization is in troubled condition that is attributable to underwriting problems in its real estate loan portfolio, the Board may require the banking organization to obtain an appraisal for all new transactions below the threshold. However, regardless of a banking organization's condition, an examiner may require an appraisal for a particular real estate–related transaction to address safety-and-soundness concerns.

2231.0.3 OBTAINING AN APPRAISAL

The banking organization or its agent is responsible for engaging the appraiser and must have sufficient time to analyze the appraisal as part of its decision process to enter into the transaction. (See the discussion below on the selection of an appraiser.) A banking organization may not accept an appraisal prepared for a potential borrower as the appraisal for a federally related transaction. An appraisal obtained by a financial services institution may be used by a federally regulated institution so long as procedures have been established for reviewing appraisals, the review indicates that the appraisal meets the regulation's requirements, and the review is documented in writing.

For a multiphased development or construction loan, the appraisal of an earlier phase cannot be used for a new phase due to the change in

5. This Regulation Y exemption from the Board's appraisal standards was effective on December 28, 1998.

risk. However, if the original appraisal was prepared for all phases of the project, the project appraisal may be used if the appraisal's value for the new phase is still valid at the time additional credit is extended.

2231.0.4 USEFUL LIFE OF AN APPRAISAL

Since a banking organization may wish to use an existing appraisal or evaluation for a subsequent loan or investment, its appraisal and evaluation program should include criteria to determine the validity of an existing appraisal or evaluation. The useful life of an appraisal will vary, depending on the circumstances surrounding the property and the marketplace. When deciding if an appraisal or evaluation may be used for a subsequent transaction, a banking organization should determine if any material changes to the underlying assumptions have occurred that would affect the original estimate of value.

Examples of factors that could cause material changes to reported values include the passage of time; the volatility of the local market; the availability of financing; the inventory of competing properties; new improvements to, or lack of maintenance of, the subject or competing, surrounding properties; a change in zoning; or environmental contamination. The banking organization should document its information sources and analyses used to determine if an existing appraisal or evaluation remains valid. It should also document whether the banking organization will be using that appraisal or evaluation in a subsequent transaction.

2231.0.5 APPRAISAL REQUIREMENTS

The objective of an appraisal is to communicate the appraiser's reasoning and conclusions logically so that the reader is led to the appraiser's opinion of market value. The contents of appraisals should conform to the standards of the Board's appraisal regulation and to those established in the current USPAP as promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. The actual form, length, and content of appraisal reports may vary, depending on the type of property being appraised and the nature of the assignment. Standard forms completed in compliance with the regulation and USPAP are also acceptable.

A banking organization is responsible for obtaining an appraisal that is appropriate for the particular federally related transaction. The appraisal must consider the risk and complexity of the transaction. The level of detail should be sufficient to understand the appraiser's analysis and opinion of the property's market value. In accordance with USPAP, appraisers are responsible for establishing the scope of work to perform in rendering an opinion of the property's market value and have available three different reporting options. The appraiser's scope of work should be consistent with the valuation methodology employed for similar property types, market conditions, and transactions.

2231.0.5.1 Interagency Statement on the 2006 USPAP

The federal banking and thrift agencies[6] issued an interagency statement, The 2006 Revisions to Uniform Standards of Professional Appraisal Practice, on June 22, 2006. (See SR-06-9.) The statement provides an overview of the USPAP revisions and the ramifications of the revisions to regulated institutions' compliance with the agencies' appraisal regulations.

The ASB revised the USPAP in 2006, effective July 1, 2006, and incorporated certain prominent revisions,[7] including a new Scope of Work Rule. It also deleted the Departure Rule and its associated terminology (such as ''binding'' and ''specific'' requirements and ''complete'' and ''limited'' appraisals). The Scope of Work Rule clarifies the standards for the type and extent of research and analysis performed by the appraiser in an appraisal assignment. The ASB noted that the appraisal process was not changed and that there is a greater emphasis on the appraiser's process of problem identification and the development of an appropriate scope of work.

Under the USPAP's Scope of Work Rule, an appraiser must determine an appropriate scope of work that should be performed to produce ''credible assignment results.'' According to the USPAP Advisory Opinion 29, credible assign-

6. The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

7. The 2006 USPAP and other ASB documents are available on the Appraisal Foundation web site at www.appraisalfoundation.org/s_appraisal/sec.asp?CID=3&DID=3.

ment results depend on the scope of work meeting or exceeding both (1) the expectations of parties who are regularly intended users for similar assignments and (2) what an appraiser's peers' actions would be in performing the same or a similar assignment. Further, the appraisal report must contain sufficient disclosure to allow intended users to understand the scope of work performed. (Appraisers may continue to label appraisal reports as self-contained, summary, or restricted use.)

A banking organization may use an engagement letter in ordering an appraisal to facilitate communications with the appraiser and to document the expectations of each party to the appraisal assignment. To determine an appraisal's acceptability, a banking organization should review the report to assess the adequacy of the appraiser's scope of work given the intended use of the appraisal. In accordance with the Board's appraisal regulation, a banking organization must determine that the appraisal report contains sufficient information and analysis to support the credit decision.

2231.0.5.2 Appraisal Standards

The minimum standards for appraisals performed in connection with federally related transactions are those set forth in USPAP, as well as any other standards that the Board deems necessary. In summary, an appraisal must—

1. conform to the generally accepted appraisal standards as evidenced by USPAP, unless principles of safe and sound banking require compliance with stricter standards;
2. be written and contain sufficient information and analysis to support the banking organization's decision to engage in the transaction;
3. analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, nonmarket lease terms, and tract developments with unsold units;
4. be based on the definition of market value as set forth in the regulation; and
5. be performed by state-licensed or -certified appraisers in accordance with the requirements in the regulation.

From the appraiser's perspective, these regulatory appraisal requirements are ''supplemental standards'' to USPAP. If an appraiser knowingly fails to comply with supplemental standards, the appraiser is in violation of the USPAP Ethics Rule. When ordering appraisals, a banking organization should convey to an appraiser that these supplemental standards remain applicable.

The Board's appraisal regulation permitted banking organizations to use appraisals prepared according to the former USPAP Departure Provision, which permits limited exceptions to ''specific guidelines'' in USPAP. Under the former Departure Provision, the appraisal amendment would be considered a complete or limited appraisal. In a complete appraisal assignment, an appraiser must meet all USPAP standards and guidelines in estimating market value. In a limited appraisal assignment, the appraiser elects to depart from certain specific guidelines by invoking the Departure Provision.

2231.0.5.3 Appraisal Reports

The appraisal report usually includes a disclosure of sales history and an opinion as to the highest value and best use of the property. After preparing a report, appraisers must certify that—

1. statements of fact are true and correct,
2. limiting conditions have been disclosed,
3. they have no interest (present or future) in the transaction or property,
4. compensation is not contingent on rendering a specified value,
5. they have complied with USPAP,
6. an inspection of the property was or was not performed, and
7. assistance was or was not received in the preparation of the appraisal.

Three different report formats can be used to report the results of the appraisal assignment: a self-contained report, a summary report, and a restricted report. Since USPAP requires all appraisal reports to encompass all aspects of the assignment, reports will differ based on the degree of detail presented. The self-contained appraisal report provides the most detail; the summary appraisal report condenses the information; and the restricted appraisal report presents minimal information, with supporting details maintained in the appraiser's work files.

The restricted report is not appropriate for a significant number of federally related transactions because the minimal amount of information limits the usefulness of the document for underwriting, compliance, and other decision-making purposes. However, a restricted report might be used when providing ongoing collateral monitoring of a banking organization's real estate transactions and under other circumstances when a banking organization's program requires an evaluation.

2231.0.5.4 Appraisal Content

The appraisal must reflect a market value of the real estate. The regulation defines market value as the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from the seller to the buyer under conditions whereby—

1. the buyer and seller are typically motivated,
2. both parties are well informed or well advised and acting in what they consider their own best interests,
3. a reasonable time is allowed for exposure in the open market,
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto, and
5. the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

To properly underwrite a construction loan, a banking organization may need to know the prospective value of a property and its market value as of the appraisal date. Prospective value is based on events yet to occur, such as completion of construction or renovation, reaching stabilized occupancy, or some other event yet to be determined. Thus, more than one value may be reported in an appraisal as long as all values are clearly described and reflect the projected dates when future events could occur. Assumptions and projections used to develop prospective value estimates must be fully supported and reasonable in light of current market conditions.

2231.0.6 APPRAISAL VALUATION APPROACHES

The appraiser typically uses three market-value approaches to analyze the value of property:

1. cost approach
2. comparable-sales approach
3. capitalization-of-income approach

All three approaches have particular merits depending on the type of real estate being appraised. For single-family residential property, the cost and comparable-sales approaches are most frequently used since the common use of the property is the personal residence of the owner. However, if a single-family residential property is intended to be used as a rental property, the appraiser would have to consider the income approach as well as the cost and comparable-sales approaches. For special-use commercial properties, the appraiser may have difficulty obtaining sales data on comparable properties and may have to base the value estimate on the cost and capitalization of income approach. If an approach is not used in the appraisal, the appraiser should disclose the reason the approach was not used and whether this had an impact on the value estimate.

2231.0.6.1 Value Correlation

The three value estimates—cost, market, and income—must be evaluated by the appraiser and correlated into a final value estimate based on the appraiser's judgment. Correlation does not imply averaging the value estimates obtained by using the three different approaches. When these value estimates are relatively close together, correlating them and setting the final market-value estimate presents no special problem. However, if widely divergent values are obtained by using the three appraisal approaches, the appraiser must exercise judgment in analyzing the results and determining the estimate of market value.

2231.0.6.1.1 Cost Approach

In the cost approach to value estimation, the appraiser obtains a preliminary indication of value by adding the estimated depreciated reproduction cost of the improvements to the estimated land value. This approach is based on the assumption that the reproduction cost is the upper limit of value and that a newly constructed building would have functional and mechanical advantages over an existing building. The appraiser would evaluate any depreciation, that is, disadvantages or deficiencies, of the existing building in relation to a new structure.

The cost approach consists of four basic steps: (1) estimate the value of the land as though vacant, (2) estimate the current cost of reproducing the existing improvements, (3) estimate depreciation and deduct from the reproduction-cost estimate, and (4) add the estimate of land value and the depreciated reproduction cost of improvements to determine the value estimate.

2231.0.6.1.2 Comparable-Sales Approach

The focus of this approach is to determine the recent sales price of similar properties. Through an appropriate adjustment for differences in the subject property and the selected comparable properties, the appraiser estimates the market value of the subject property based on the sales price of the comparable properties. To determine the extent of comparability of two or more properties, the appraiser must judge their similarity with respect to age, location, condition, construction, layout, and equipment. The sales or list price of those properties that the appraiser determines to be most comparable will tend to set the range for the value of the subject property.

2231.0.6.1.3 Income Approach

The income approach estimates the project's expected income over time converted to an estimate of its present value. The income approach typically is used to determine the market value of income-producing properties such as office buildings, apartment complexes, hotels, and shopping centers. In the income approach, the appraiser can use several different capitalization or discounted-cash-flow techniques to arrive at a market value. These techniques include the band-of-investments method, mortgage-equity method, annuity method, and land-residual technique. The use of a particular technique will depend on whether there is project financing, there are long-term leases with fixed-level payments, and the value is being rendered for a component of the project such as land or buildings.

The accuracy of the income approach depends on the appraiser's skill in estimating the anticipated future net income of the property and in selecting the appropriate capitalization rate and method. The following data are assembled and analyzed to determine potential net income and value:

1. Rent schedules and the percentage of occupancy for the subject property and for comparable properties for the current year and several preceding years. This information provides gross rental data and the trend of rentals and occupancy, which are then analyzed by the appraiser to estimate the gross income the property should produce.
2. Expense data such as taxes, insurance, and operating costs being paid from revenues derived from the subject property and comparable properties. Historical trends in these expense items are also determined.
3. The timeframe for achieving "stabilized" or normal occupancy and rent levels (also referred to as the "holding period").
4. An appropriate capitalization rate and valuation technique, selected and applied to net income to establish a value estimate.

Basically, the income approach converts all expected future net operating income into a value estimate. When market conditions are stable and no unusual patterns of future rents and occupancy rates are expected, the direct-capitalization method is used to value income properties. This method calculates the value of a property by dividing an estimate of its stabilized annual income by a factor called a "cap" rate. Stabilized income generally is defined as the yearly net operating income produced by the property at normal occupancy and rental rates; it may be adjusted upward or downward from today's actual market conditions. The cap rate—usually defined for each property type in a market area—is viewed by some analysts as the required rate of return stated in terms of current income.

The use of this technique assumes that either the stabilized income or the cap rate, used accurately, captures all relevant characteristics of the property relating to its risk and income potential. If the same risk factors, required rate of return, financing arrangements, and income projections are used, explicit discounting and direct capitalization will yield the same results.

For special-use properties, new projects, or troubled properties, the discounted-cash-flow (net present value) method is the more typical approach to analyzing a property's value. In this method, a timeframe for achieving a stabilized or normal occupancy and rent level is projected. Each year's net operating income during that period is discounted to arrive at the present value of expected future cash flows. The property's anticipated sales value at the end of the stabilization period (its terminal or reversion value) is then estimated. The reversion value represents the capitalization of all future income streams of the property after the projected occupancy level is achieved. The terminal or reversion value is then discounted to its present value and added to the discounted income stream to arrive at the total present market value of the property.

Most importantly, the analysis should be based on the ability of the project to generate income over time based on reasonable and supportable assumptions. Additionally, the discount rate should reflect reasonable expectations about the rate of return that investors require under normal, orderly, and sustainable market conditions.

2231.0.7 OTHER DEFINITIONS OF VALUE

The Board's appraisal regulation requires that the appraisal contain a market value of the real estate collateral. Some other definitions of value that are encountered when appraising and evaluating real estate transactions are described below.

1. *Fair value* is an accounting term that is generally defined as the amount in cash or cash-equivalent value or other consideration that a real estate parcel would yield in a current sale between a willing buyer and a willing seller (selling price), other than a forced or liquidation sale.[8] According to accounting literature, fair value is generally used in valuing assets in nonmonetary transactions, troubled-debt restructuring, quasi-reorganizations, and business combinations accounted for by the purchase method. An accountant generally defines fair value as market value; however, depending on the circumstances, these values may not be the same for a particular property.
2. *Investment value* is based on the data and assumptions that meet a particular investor's criteria and objectives for a specific property or project. The investor's criteria and objectives are often substantially different than those of participants in a broader market. Thus, investment value can be significantly higher than market value in certain circumstances and should not be used in credit-analysis decisions.
3. *Liquidation value* assumes that there is little or no current demand for the property and that the property needs to be disposed of quickly. In this situation, the owner may have to sacrifice property appreciation for an immediate sale.
4. *Going-concern value* is based on the value of the business entity, rather than the value of the real estate. The valuation is based on the existing operations of a business that has a proven operating record, with the assumption that the business will continue to operate.
5. *Assessed value* represents the value on which a taxing authority bases its assessment. The assessed value and market value may differ considerably due to tax assessment laws, timing of reassessments, and tax exemptions allowed on properties or portions of a property.
6. *Net realizable value (NRV)* is recognized under generally accepted accounting principles[9] as ''the estimated selling price in the ordinary course of business less estimated costs of completion (to the stage of completion assumed in determining the selling price), holding, and disposal.'' The NRV is generally used to evaluate the carrying amount of assets being held for disposition and properties representing collateral. While the market value or future selling price is generally used as the basis for the NRV calculation, the NRV also reflects the current owner's costs to complete the project and to hold and dispose of the property. For this reason, the NRV will generally be less than the market value.

The appraiser should state the definition of value reported in the appraisal, and, for federally related transactions, the value must meet the definition of market value in the regulation. This is the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, assuming the buyer and seller are both acting prudently and knowledgeably, and the price is not affected by undue stimulus. Other presenta-

8. FASB Statement No. 67, ''Accounting for Costs and Initial Rental Operations of Real Estate Projects,'' appendix A—Glossary.

9. FASB Statement No. 67, ''Accounting for Costs and Initial Rental Operations of Real Estate Projects,'' appendix A—Glossary.

tions of value, in addition to market value, are allowed and may be included in the appraisal at the request of the banking organization.

2231.0.8 EVALUATION REQUIREMENTS

The Board's appraisal regulation requires an evaluation for certain real estate–related financial transactions that are exempt from the title XI appraisal requirement. These transactions include—

1. transactions below the $250,000 threshold;
2. transactions qualifying for the exemption for business loans of $1 million or less, when rental income or sales proceeds from real estate is not the primary source of repayment; and
3. subsequent transactions resulting from an existing extension of credit (for example, renewals and refinancings).

An evaluation should provide a general estimate of the value of the real estate and need not meet the detailed requirements of a title XI appraisal.[10] An evaluation must provide appropriate information to enable the banking organization to make a prudent decision regarding the transaction. Moreover, a banking organization is not precluded from obtaining an appraisal that conforms to the regulation for any exempt transaction. At a minimum, an evaluation should—

1. be written;
2. include the preparer's name, address, and signature, and the effective date of the evaluation;
3. describe the real estate collateral, its condition, and its current and projected use;
4. describe the sources of information used in the analysis;
5. describe the analysis and supporting information; and
6. provide an estimate of the real estate's market value, with any limiting conditions.

10. An appraisal is the kind of specialized opinion on the value of real estate that contains certain formal elements recognized by appraisal industry practices and standards.

2231.0.8.1 Form and Content of Evaluations

The documentation for evaluations should fully support the estimate of value and include sufficient information to understand the evaluator's analysis, assumptions, and conclusions. The evaluator is not required to use a particular form or valuation approach, but the analysis should apply to the type of property and fully explain the value rendered.

An individual who conducts an evaluation should have real estate–related training or experience relevant to the type of property. However, the individual does not have to be a state-licensed or -certified appraiser. Prudent practices require that a more detailed evaluation be performed as the banking organization engages in more complex real estate–related financial transactions or as its overall exposure in a real estate–related financial transaction increases.

An evaluation for a transaction that needs a more detailed analysis should describe the property; give its location; and discuss its use, especially for nonresidential property. An evaluation for a transaction that requires a less detailed analysis may be based on information such as comparable property sales information from sales-data services (for example, the multiple-listing service or current tax-assessed value in appropriate situations).[11] Further, an evaluation may be based on the banking organization's own real estate loan portfolio experience and on value estimates prepared for recent loans on comparable properties, when appraisals meeting the regulatory requirements were obtained. Regardless of the method, the banking organization must document its analysis and findings in the loan file.

2231.0.9 SELECTION AND QUALIFICATIONS CRITERIA FOR APPRAISERS AND EVALUATORS

The accuracy of an appraisal or evaluation depends on the competence and integrity of the individual performing the appraisal or evaluation, as well as on that person's expertise at developing and interpreting pertinent data for the subject property. Appraisers and evaluators should have adequate training, experience, and

11. Assessed values for tax purposes may be a specified fraction of market value, as determined by the tax assessor. Therefore, tax-assessed values should be adjusted to a market-value equivalent. In cases where the assessed value does not have a reliable correlation to current value, the use of assessed value would be inappropriate as the basis for an evaluation.

knowledge of the local real estate market to make sound judgments concerning the value of a particular property. Their level of training, experience, and knowledge should be commensurate with the type and complexity of the property to be valued. Additionally, appraisers and evaluators should be independent of the credit decision, have no interest in the property being appraised, and have no affiliations or associations with the potential borrower. Absent absolute lines of independence, a banking organization must be able to demonstrate that it has prudent safeguards in place to isolate its collateral-evaluation process from influence or interference from the loan-production process.

2231.0.9.1 Appraiser Qualifications

Title XI of FIRREA identified two classifications of appraisers to be used in federally related transactions: state-certified appraisers and state-licensed appraisers. For a state-certified appraiser, the statute anticipated that the states would adopt similar standards for certification based on the qualification criteria of the Appraiser Qualifications Board of the Appraisal Foundation. The Appraisal Foundation standards set forth minimum educational, testing, experience, and continuing-education requirements. For a licensed appraiser, the states have some latitude to establish qualification standards, provided criteria are adequate to protect federal financial and public policy interest.

The Appraisal Subcommittee of the FFIEC is responsible for monitoring state compliance with the statute. The Board also has the authority to impose additional certification and licensing requirements on those adopted by a given state.

2231.0.9.2 Selection of an Appraiser

An independent appraisal is one in which the appraiser is not participating in the administration of the credit or in the approval of the transaction and has no interest, financial or otherwise, in the property. In certain instances involving small banking organizations, officers and directors who perform appraisals must take appropriate steps to ensure that they are independent from the transaction under consideration.

When selecting an appraiser for an appraisal assignment, a banking organization is expected to consider whether the individual holds the proper state certification or license and has the appropriate experience and educational background to complete the assignment. Financial institutions may not exclude a qualified appraiser from consideration for an appraisal assignment solely because the appraiser lacks membership in a particular appraisal organization or does not hold a particular designation from an appraisal association, organization, or society.

In that regard, banking organizations are expected to treat all appraisers fairly and equitably in determining whether to use the services of a particular appraiser. Generally, banking organizations have established procedures for selecting appraisers and maintaining an approved appraiser list. The practice of preapproving appraisers for ongoing appraisal work and maintaining an approved appraiser list is acceptable so long as all appraisers are required to follow the same approval process. However, a banking organization that requires appraisers who are not members of a particular appraisal organization to formally apply, pay an application fee, and submit samples of previous appraisal reports for review—but does not have identical requirements for appraisers who are members of other appraisal organizations—would be viewed as having a discriminatory selection process.

2231.0.9.3 Appraisals Performed by Certified or Licensed Appraisers

In summary, a banking organization is required to use a certified appraiser for (1) all federally related transactions over $1 million, (2) nonresidential federally related transactions of more than $250,000, and (3) complex residential federally related transactions of more than $250,000.[12] A banking organization may use either a state-certified or a state-licensed appraiser for noncomplex residential federally related transactions that are under $1 million.

2231.0.9.4 Other Appraiser Designations

Some states have adopted other appraiser designations that may cause confusion about whether a particular appraiser holds the appropriate des-

12. A complex one- to four-family residential property appraisal is one in which (1) the property to be appraised is atypical, (2) the form of ownership is atypical, or (3) the market conditions are atypical.

ignation for a given appraisal assignment. Additionally, some states use designations such as ''certified residential'' appraiser and ''certified general'' appraiser, which leads to further confusion. Other states have no specified license designation but have used the term ''certified residential'' based on the standards for licensing. For this reason, a banking organization needs to understand the qualification criteria set forth by the state appraiser regulatory body and whether these standards are equivalent to the federal designations accepted by the Appraisal Subcommittee.

The Appraisal Subcommittee has recognized two other appraiser designations: certified residential appraiser and transitional licensed appraiser. For the certified residential appraiser, the minimum qualification standards are those established by the Appraiser Qualifications Board for ''certified residential real estate appraiser.'' Under the Board's regulation, a certified residential appraiser would be permitted to appraise real estate in connection with a federally related transaction designated for a ''certified'' appraiser, provided the individual is competent for the particular appraisal assignment.

The Appraisal Subcommittee and the Board are also willing to recognize a transitional license that would allow a state to issue a license to an appraiser, provided the individual has passed an examination and has satisfied either the education or experience requirement. A transitionally licensed appraiser is permitted to appraise real estate collateral in connection with a federally related transaction as if licensed. The transitionally licensed appraiser is expected to complete his or her education or experience requirement within a set time frame, or the license expires. Recognition of a transitional license was believed to be necessary to ease the initial problems and inefficiencies resulting from a new regulatory program. The Appraisal Subcommittee has advised the states that the use of the transitional licenses should be phased out once the appraiser regulatory program is fully established. As a result, use of the transitional license and the applicable time frame will vary from state to state.

2231.0.9.5 Qualifications of Individuals Who Can Perform Evaluations

Evaluations can be performed by a competent person who has experience in real estate–related activities, including, but not limited to, appraisals, real estate lending, real estate consulting, and real estate sales. A banking organization may also augment in-house expertise by hiring an outside consultant familiar with a certain market or a particular type of real estate. The evaluation procedures should have established standards for selecting qualified individuals to perform evaluations and for confirming their qualifications and independence to evaluate a particular transaction. An individual performing an evaluation need not be licensed or certified. However, if a banking organization desires, it may use state-licensed or -certified appraisers to prepare evaluations.

2231.0.10 EXAMINER REVIEW OF APPRAISAL AND EVALUATION POLICIES

A banking organization's appraisal and evaluation policies and procedures will be reviewed as part of the inspection of the organization's overall activities. This review will include the organization's procedures for selecting an appraiser for a particular appraisal or evaluation assignment and for confirming that the appraiser is qualified, independent, and, if applicable, licensed or certified to undertake the assignment. If an institution maintains a listing of qualified real estate appraisers who are acceptable for the banking organization's use, the examiner should ascertain whether the board of directors or senior management has reviewed and approved the list.

If a banking organization is in troubled condition that is attributable to underwriting problems in its real estate loan portfolio, the Board may require the banking organization to obtain appraisals for all new real estate–related financial transactions below the threshold that are not subject to another exemption. The Reserve Bank will determine if a particular banking organization will have to obtain appraisals below the threshold.

When analyzing individual credits, examiners will analyze appraisals or evaluations to determine that the methods, assumptions, findings, and conclusions are reasonable and comply with the Board's rule, policies, and supervisory guidelines. Examiners should not challenge underlying assumptions, including the discount and capitalization rates used in appraisals, that slightly differ from norms that would generally be associated with the property under review. Furthermore, an examiner is not bound to accept the appraisal or evaluation results, regardless of whether a new appraisal or evaluation was requested during the examination. An examiner who concludes that an appraisal or evaluation is deficient for any reason will take that fact into account when judging the quality of the credit.

When the examiner can establish that the underlying facts or assumptions are inappropriate and can support alternative assumptions, he or she may adjust the estimated value of the property for credit-analysis purposes. It is important to emphasize that an examiner's overall analysis and classification of a credit may be based on other credit or underwriting standards, even if the loan is secured by real property whose value is supported by an appraisal or evaluation.

Significant failures to meet standards and procedures as outlined above will be criticized and corrective action will be required. Furthermore, banking organizations that fail to maintain a sound appraisal or evaluation program or that fail to comply with the agencies' appraisal regulations and policies or the Board's supervisory guidelines will be cited in inspection reports and may be criticized for unsafe and unsound banking practices. Deficiencies will require corrective action.

The appraisal regulation and guidelines require that banking organizations use the services of qualified, independent, and certified or licensed appraisers to perform appraisals. Furthermore, a banking organization that knowingly uses the services of an individual who is not properly certified or licensed to perform an appraisal in connection with a federally related transaction is violating the Board's Regulation Y or applicable law. Any action of a state-certified or -licensed appraiser that is contrary to the Board's appraisal regulation or applicable law should be reported to the Federal Reserve Bank for referral to the appropriate state appraiser regulatory agency for investigation.

2231.0.11 INTERAGENCY RESPONSES TO QUESTIONS ON THE AGENCIES' APPRAISAL REGULATIONS AND ON THE INTERAGENCY STATEMENT ON INDEPENDENT APPRAISAL AND EVALUATION FUNCTIONS

On March 22, 2005, the Federal Reserve and the other federal financial institutions regulatory agencies issued interpretive responses (in a question-and-answer format) to questions raised by federally regulated financial institutions about the agencies' real estate appraisal regulations. The topics include—

1. selecting an appraiser,
2. ordering an appraisal,
3. accepting a transferred appraisal,
4. reviewing appraisals, and
5. evaluation and other appraisal topics.

The interpretive responses address common questions on the requirements of the appraisal regulations and the October 2003 interagency statement Independent Appraisal and Evaluation Functions (the interagency statement).[13] (See SR-05-5 and its attachment.)

On September 8, 2005, the Federal Reserve and the other federal financial institutions regulatory agencies jointly issued additional interpretive responses (also in a question-and-answer format) to assist regulated institutions in complying with the agencies' appraisal regulations and real estate lending requirements when financing residential construction in a tract development.[14] (See SR-05-14 and its attachment.)

The topics include the—

1. definition of residential tract development, including clarification of a residential unit and pre-sold unit;
2. appraisal requirements for residential tract development, raw land, residential lots, and condominium buildings;
3. clarification of loan amount and collateral value for purposes of calculating the loan-to-value ratio for residential-tract-development loans;
4. acceptable use of an appraisal of a model home;
5. underwriting characteristics of a revolving line of credit in which a borrowing base sets the availability of funds to the borrower; and
6. appraisal requirements for transactions financing the construction of single-family homes in a residential tract development.

Refer to these interpretive documents when questions arise about the appraisal regulations, the interagency statement, and appraisals involving residential tract lending.

13. See also the Board's appraisal regulations (12 C.F.R. 208, subpart E, and 12 C.F.R. 225, subpart G) and related guidance, including SR-94-55 and SR-03-18.

14. See the Interagency Appraisal and Evaluation Guidelines (SR-94-55) and the real estate lending standards regulation and guidelines, 12 C.F.R. 208, subpart E and appendix C.

2231.0.12 INSPECTION OBJECTIVES

1. To determine whether policies, practices, procedures, and internal controls regarding real estate appraisals and evaluations for real estate–related financial transactions are adequate.
2. To determine whether the banking organization's officers and employees are conforming with the appraisal policies of the board of directors.
3. To determine whether appraisals performed in connection with federally related transactions comply with the minimum standards of the Board's appraisal regulation and the Uniform Standards of Professional Appraisal Practice.
4. To determine if appraisers used in connection with federally related transactions are certified or licensed as appropriate.
5. To determine whether appraisers are competent to render appraisals in federally related transactions and whether they are independent of the transaction or other lending, investment, or collection functions as appropriate.
6. To initiate corrective action when policies, practices, procedures, or internal controls are deficient, or when violations of laws or regulations or noncompliance with provisions of supervisory guidelines has been noted.

2231.0.13 INSPECTION PROCEDURES

1. Test real estate–related financial transactions for compliance with approved real estate appraisal and evaluation policies and established practices, procedures, and internal controls. Also obtain a listing of any deficiencies noted in the latest review performed by internal or external auditors, and determine if appropriate corrections have been made. On the basis of these results, determine the scope of the inspection for appraisals.
   a. Provide copies of the banking organization's appraisal and evaluation policies and procedures to examiners assigned to functional areas in which real estate–related transactions may require the services of an appraiser or evaluator.
   b. Review appraisals and evaluations of individual real estate–related transactions during the inspection of loans, BHC premises, DPC assets, or OREO transactions. Review the appraisals and evaluations for compliance with the Board's appraisal regulation and appraisal guidelines and for compliance with the banking organization's appraisal and evaluation programs.
   c. When real estate–related transactions are examined on a portfolio basis, review the appraisal and evaluation processes. Determine whether the processes ensure that appraisals and evaluations comply with the Federal Reserve Board's appraisal regulation, the interagency appraisal guidelines, and the banking organization's appraisal and evaluation programs.
2. When performing the above steps, determine whether the following procedures are in place:
   a. The board of directors approves and periodically reviews the appraisal policies and procedures that establish the appraisal and evaluation programs for real estate lending, as required by the Board's real estate lending regulation.
   b. Policies and procedures establish and maintain an effective, independent appraisal and evaluation program for all of the banking organization's lending functions; policies and procedures are sufficiently comprehensive; and policies and procedures are applied uniformly to all units engaged in federally related transactions.
   c. The appraisal and evaluation programs include comprehensive appraisal and evaluation critique procedures and internal loan-review procedures.
   d. The banking organization engages competent individuals who are independent of the transaction to perform appraisals and evaluations, and the banking organization's appraisal and evaluation programs establish how it selects, evaluates, and monitors those individuals.
   e. The appraisal and evaluation programs establish the selective criteria the banking organization uses to select, evaluate, monitor, and ensure the independence of the individuals who perform or critique real estate appraisals and evaluations.
   f. The appraisal program (1) considers the independent appraiser's qualifications, experience, and educational background; (2) ensures that appraisals are not used that were prepared by an individual who is recommended or selected by the borrower (including those individuals listed by the banking organization as approved

appraisers); and (3) conforms to the Board's appraisal regulation.

g. The evaluation program ensures that evaluations conform to the Board's guidance on evaluations (SR-94-55, SR-94-50, and SR-03-18).
h. The appraisal and evaluation programs appropriately reflect the banking organization's size, its location, and the nature and complexity of its real estate lending and other real estate–related lending activities.
i. Policies and procedures require independent appraisals and evaluations to be written.
j. Criteria have been established for determining when to obtain reappraisals or re-evaluations as part of a program of prudent portfolio review and monitoring.
k. The banking organization has appropriate procedures to assess the validity of appraisals and evaluations for certain subsequent transactions exempt from the Board's appraisal requirements, or to determine whether new appraisals or evaluations were obtained.

3. Review and assess the banking organization's compliance procedures to ensure that the appraisal and evaluation programs are effective and in compliance with regulatory requirements and that the appropriateness of appraisals and evaluations is reviewed before final credit decisions. Determine if the following procedures are in place:
   a. The monitoring procedures demonstrate that appraisals and evaluations comply with the Board's appraisal regulation and the Board's appraisal and evaluation guidelines.
   b. The program provides that appraisals and evaluations are obtained before the final credit or other decision. However, for transactions involving loan workouts or restructurings to facilitate the orderly collection of the credit or to reduce the risk of loss, appraisals or evaluations were obtained in a reasonable time after the transaction occurred.
   c. The programs have review procedures to verify that the methods, assumptions, and conclusions in the appraisals or evaluations are reasonable and appropriate for the transaction and the property.
   d. Criteria are established to identify which transactions should have their appraisal or evaluation considered for more comprehensive analytical critique procedures. For example, the banking organization should ensure that appraisals or evaluations for certain types of transactions, such as large-dollar credits, loans secured by complex or specialized properties, nonresidential real estate construction loans, or out-of-area real estate, provide adequate support for the particular transaction.
   e. The banking organization ensures that individuals who perform reviews of appraisals and evaluations have appropriate training and experience and are independent of the transaction.
   f. There is adequate documentation to demonstrate that the review has occurred. While a checklist may serve this purpose for many transactions, a more comprehensive review would require a more detailed written analysis.
   g. Appropriate procedures exist for resolving any deficiencies noted in the review. Procedures should require that (1) the individual who prepared the appraisal or evaluation correct the deficiencies or (2) a new appraisal or evaluation be obtained before making the final credit extension or other decision.
   h. The program ensures that changes of an appraisal's estimate of value were made in accordance with Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP), and the program ensures that the changes were made by an appropriately qualified licensed or certified appraiser.
   i. Appropriate procedures exist for referring potential cases of misconduct by licensed and certified appraisers to the appropriate state appraiser regulatory authority.
4. Assess the procedures for determining whether a real estate–related transaction requires an appraisal or evaluation or is otherwise exempt from the Board's appraisal regulation.
   a. For appraisals required under the appraisal program, determine whether the banking organization has performed the following procedures:
      - The banking organization engaged the appraiser or, if the appraiser was engaged directly by another financial services entity, the banking organization determined that the appraisal complies with its own program and the Board's appraisal regulation. (The

banking organization may *not* accept an appraisal prepared for the borrower.)

- The appraisal was obtained in sufficient time to be analyzed before the final credit or other decision.
- The appraisal conforms to the generally accepted appraisal standards as evidenced by USPAP, for example—
  - — the appraiser uses the three market-value approaches—cost, comparable-sales, and income—and correlates the results into a final value estimate;
  - — if the above-mentioned approaches were not used, the appraiser discloses the reason and whether this affected the value estimate;
  - — the appropriate type of appraisal was obtained (complete or limited), and the appropriate report format (self-contained, summary, or restricted) was used for the particular transaction; and
  - — if a limited appraisal was used (that is, the appraiser invoked the former Departure Provision), the appraisal fully discloses the limiting conditions.
- The appraisal is written and contains sufficient information and analysis to support the banking organization's decision to enter into the transaction.
- If the appraisal is for proposed construction or renovation, partially leased buildings, nonmarket lease terms, or tract developments with unsold units, the appraisal includes an appropriate analysis and disclosure of deductions and discounts for holding costs, marketing costs, leasing commissions, rent losses, tenant improvements, and entrepreneurial profits.
- The appraisal contains an estimate of the current market value of the property in its actual physical condition and current zoning, as defined by the Board's appraisal regulation.
- The appraisal contains an estimate of the property's prospective market value based on the completion of improvements or stabilized occupancy, if the appraisal is for a property where improvements or renovations are to be made.
- The appraisal clearly identifies each value estimate and, for the prospective value, gives the projected dates when future events are expected to occur, when more than one estimate of value is reported.
- The individual who performed the appraisal was independent of the transaction and appropriately licensed and certified for the assignment:
  - — A certified appraiser must perform the appraisal for a transaction of $1 million or more, a nonresidential transaction of $250,000 or more, or a complex residential transaction of $250,000 or more.
  - — A licensed or certified appraiser must perform the appraisal for any other type of federally related transaction.
- The individual who performed the appraisal had appropriate training, experience demonstrating his or her expertise in appraising similar types of properties, and knowledge of the property's market.
- The Reserve Bank documents incidents of possible appraiser misconduct for possible referral to the state appraiser regulatory agency.

b. For exempt transactions requiring an evaluation, such as transactions below the $250,000 threshold, business loans of less than $1 million, and subsequent transactions such as renewals and refinancings, determine whether the following procedures are in place:

- The evaluation, at a minimum—
  - — is written;
  - — includes the preparer's name, address, and signature and the effective date;
  - — describes the real estate collateral, its condition, and its current and projected use;
  - — describes the source of information used in the analysis;
  - — describes the analysis and supporting information; and
  - — gives an estimate of the real estate's value with limiting conditions.
- The evaluation provides sufficient detail to support the estimate of collateral value in more-complex real estate–related transactions or when the overall exposure is high.
- The individual who performed the evaluation had the appropriate real

estate training and sufficient experience and knowledge of the market to prepare the evaluation.
- The individual who performed the evaluation, regardless of whether the banking organization's staff performed the evaluation, was independent of the transaction, credit decision, or function.

5. Assess management's compliance with its policies and procedures and with the Board's appraisal regulation and guidance by reviewing appraisals and evaluations.
6. If the review of appraisals or evaluations on one- to four-family residential loans or multifamily loans indicates that the appraisals or evaluations do not meet the Board's requirements or that the loan-to-value ratio at origination was higher than 80 percent for fixed-rate loans or 75 percent for floating-rate loans, these loans may not be eligible for the 50 percent risk weight permitted under the Board's risk-based capital rule.
7. Evaluate the banking organization's independent appraisal and evaluation programs, and determine the following:
   a. the adequacy of written, independent appraisals and evaluations
   b. the methods the banking organization's officers use to conform with established policy
   c. internal control deficiencies or exceptions
   d. the integrity of the appraisal and evaluation process, including appraisal and evaluation compliance procedures
   e. the integrity of individual appraisals and evaluations—their adequacy and reasonableness, the appropriateness of the methods, assumptions, and techniques used; and their compliance with the Board's appraisal regulation and real estate appraisal and evaluation guidelines
   f. recommended corrective action when policies, practices, or procedures are found to be deficient
   g. the degree of any violations of the Board's appraisal regulation, and the extent of noncompliance with interagency appraisal guidelines, if noted
   h. the existence of other matters of significance, for example—
      - misrepresentation of data, such as the omission of information on favorable financing, seller concessions, sales history, feasibility, zoning, easements, or deed restrictions;
      - inadequate techniques of analysis, that is, failure to use the cost, comparable-sales, or income approach in the appraisal when the approach is appropriate for the type of property;
      - use of dissimilar comparables in the comparable-sales approach to valuation (for example, the age, size, quality, or location of the comparable is significantly different from the subject property, making reconciliation of value difficult);
      - underestimation of factors such as the construction cost, the construction or lease-up period, and rent concessions;
      - use of best-case assumptions for the income approach to valuation without performing a sensitivity analysis on the factors that would identify the lender's downside risk;
      - overly optimistic assumptions, such as a high absorption rate in an overbuilt market; and
      - the nonreconcilement of demographic factors (such as existing housing inventory, projected completions, and expected market share to the value rendered) and the discussion of demographic factors as background information.
8. Report any instances of questionable conduct by appraisers, along with supporting documentation, to the Reserve Bank for possible referral to the appropriate state appraisal authorities.
9. Update workpapers with any information that will facilitate future inspections.

2231.0.14 INTERNAL CONTROL QUESTIONNAIRE

Review the internal controls, policies, practices, and procedures for real estate appraisals and evaluations. The appraisal and evaluation system should be documented completely and concisely and should include, where appropriate, narrative descriptions, flow charts, copies of forms used, and other pertinent information. *The items marked with an asterisk (*) require substantiation by observation or testing.*

2231.0.14.1 Appraisal and Evaluation Policies

1. Has the board of directors, consistent with its duties and responsibilities, adopted written

appraisal and evaluation policies that define—

a. management's responsibility for selecting, evaluating, monitoring, and ensuring the independence of the individual who is performing the appraisal or evaluation?
b. the basis for selecting staff appraisers and engaging fee appraisers for a particular appraisal assignment? (Is the individual independent of the transaction, and does he or she possess the requisite qualifications, expertise, and educational background and hold the proper state certification or license, if applicable?)
c. the procedures as to when appraisals and evaluations should be obtained?
d. the procedures for when to obtain an independent reappraisal or re-evaluation, including its frequency and scope?
e. appraisal and evaluation compliance and review procedures? Do those procedures ensure that the bank holding company's appraisals and evaluations are reviewed by qualified and adequately trained individuals who are not involved in the loan-production process, and ensure that the appraisals are consistent with USPAP and the Board's regulations, policies, and guidelines?
f. internal controls that prevent officers, loan officers, and directors that order a review, appraisal, or an evaluation from having sole authority for approving the requested loans?

2. Does the board of directors periodically review its appraisal, evaluation, and review policies and procedures to ensure that they meet the needs of the bank holding company's real estate lending activity?

2231.0.14.2 Appraisals

*3. Are appraisals in writing, dated, and signed?

*4. Does the appraisal meet the minimum standards of the Board's regulation and USPAP, including the appraisal's purpose, market value, effective date, and marketing period, and the sales history of the subject property? Does the appraisal—

a. reflect a valuation using the cost, income, and comparable-sales approaches?
b. evaluate and correlate the three approaches into a final value estimate based on the appraiser's judgment?
c. explain why an approach is inappropriate and not used in the appraisal?
d. fully support the assumptions and the value rendered through adequate documentation?

*5. Are appraisals received before the bank holding company makes its final credit or other decision? (For example, is the date of the loan commitment letter later than the date of the appraisal—unless the loan commitment letter is conditioned on receipt of the appraisal?)

*6. If the bank holding company is depending on an appraisal obtained for another financial services institution as support for its transaction, does the bank holding company have appraisal review procedures to ensure that the appraisal meets the standards of the appraisal regulation? These types of transactions would include loan participations and mortgage-backed securities.

*7. If an appraisal for one transaction is used for a subsequent transaction, are the determinations that the appraiser is independent, the appraisal complies with the Board's appraisal regulation, and the appraisals are still valid sufficiently documented?

2231.0.14.3 Appraisers

8. Are appraisers fairly considered for assignments regardless of their membership or lack of membership in a particular appraisal organization?
9. Before taking the assignment, do appraisers have the requisite knowledge, education, qualifications, and experience to complete the appraisal?
10. For large, complex, or detached commercial real estate properties—
    a. are written engagement letters used when ordering appraisals, and are copies of the letters retained?
    b. are more in-depth review procedures used for appraisals ordered by agents of the banking organization?
11. Are appraisers independent of the transaction?
    a. Are staff appraisers independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction? Has a determination been made

that they have no direct or indirect inter est, financial or otherwise, in the property?
   b. Are fee appraisers engaged directly by the banking organization or its agents?
   c. Are written assurances obtained that those appraisers have no direct or indirect interest, financial or otherwise, in the property or transaction?
   d. Are any appraisers recommended or selected by the borrower (applicant)?
12. If staff appraisers are used, does the bank holding company periodically have independent appraisers perform test appraisals to check the organization's knowledge of trends, values, and markets?
13. If fee appraisers are used, are investigations performed to determine their knowledge, education, experience, qualifications, and reputation?
14. Is the status of an appraiser's state certification or license verified with the state appraiser regulatory authority to ensure that the appraiser is in good standing?
15. Are fee appraisers paid the same fee whether or not the loan is granted?
16. If the transaction is outside the local geographic market, does the bank holding company engage appraisers or consultants who have knowledge of the market where the real estate collateral is located?

2231.0.14.4 Evaluations

17. Are individuals performing evaluations independent of the transaction?

*18. Are evaluations required to be in writing, dated, and signed?

*19. Does the bank holding company require sufficient information and documentation to support the estimate of value and the evaluator's analysis?

*20. If an evaluation obtained for one transaction is used for a subsequent transaction, is the determination that the evaluation is still valid sufficiently documented?

*21. Are evaluations received before making the final credit decision?

*22. If the bank holding company is depending on an evaluation obtained for another financial services institution as support for its transaction, does the holding company have evaluation review procedures to ensure that the evaluation meets the Board's regulation and guidance?

2231.0.14.5 Evaluators

23. Are individuals who perform evaluations competent to complete the assignment?
24. Are evaluations prepared by individuals who are independent of the transaction?

2231.0.14.6 Reappraisals and Re-evaluations

25. Is a formal reappraisal and re-evaluation program followed?
26. Does the bank holding company sufficiently document and follow its criteria for obtaining reappraisals or re-evaluations?

2231.0.15 LAWS, REGULATIONS, INTERPRETATIONS, AND ORDERS

Subject	*Laws* [1]	*Regulations* [2]	*Interpretations* [3]	*Orders*
Appraisal standards for federally related transactions	3310, 3331, 3351	Subpart G, 225.61–67	4-053–4-054.4	
Interagency Appraisal and Evaluation Guidelines, October 27, 1994 (previously September 1992)			3-1577	
Independent Appraisal and Evaluation Functions, October 27, 2003 (interagency statement)			3-1577.1	
The 2006 Revisions to Uniform Standards of Professional Appraisal Practice, June 22, 2006 (interagency statement, effective on July 1, 2006)				

1. 12 U.S.C., unless specifically stated otherwise.
2. 12 C.F.R., unless specifically stated otherwise.
3. *Federal Reserve Regulatory Service* reference.

2231.0.16 APPENDIX A—INTERAGENCY APPRAISAL AND EVALUATION GUIDELINES, OCTOBER 27, 1994

Purpose

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (the agencies) are jointly issuing these guidelines, which supersede each of the agencies' appraisal and evaluation guidelines issued in 1992.[1] These guidelines address supervisory matters relating to real estate appraisals and evaluations used to support real estate–related financial transactions and provide guidance to examining personnel and federally regulated institutions about prudent appraisal and evaluation policies, procedures, practices, and standards.

Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires the agencies to adopt regulations on the preparation and use of appraisals by federally regulated financial institutions.[2] Such real estate appraisals are to be in writing and performed in accordance with uniform standards by an individual whose competency has been demonstrated and whose professional conduct is subject to effective state supervision.

Common agency regulations[3] issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) also require each regulated institution to adopt and maintain written real estate lending policies that are consistent with safe and sound banking practices and that reflect consideration of the real estate lending guidelines attached to the regulation. The real estate lending guidelines state that a real estate lending program should include an appropriate real estate appraisal and evaluation program.

1. FRB: ''Guidelines for Real Estate Appraisal and Evaluation Programs,'' September 28, 1992; OCC: BC-225, ''Real Estate Appraisal and Evaluation Guidelines,'' September 28, 1992; FDIC: FIL-69-92, ''Guidelines for Real Estate Appraisal and Evaluation Programs,'' September 30, 1992; OTS: Thrift Bulletin 55, ''Real Estate Appraisal and Evaluation Guidelines,'' October 13, 1992.

2. OCC: 12 C.F.R. 34, subpart C; FRB: 12 C.F.R. 208.18 and 12 C.F.R. 225, subpart G; FDIC: 12 C.F.R. 323; and OTS: 12 C.F.R. 564.

3. OCC: 12 C.F.R. 34, subpart D; FRB: 12 C.F.R. 208, subpart C; FDIC: 12 C.F.R. 365; and OTS: 12 C.F.R. 545 and 563.

Supervisory Policy

An institution's real estate appraisal and evaluation policies and procedures will be reviewed as part of the examination of the institution's overall real estate–related activities. An institution's policies and procedures should be incorporated into an effective appraisal and evaluation program. Examiners will consider the institution's size and the nature of its real estate–related activities when assessing the appropriateness of its program.

When analyzing individual transactions, examiners will review an appraisal or evaluation to determine whether the methods, assumptions, and findings are reasonable and in compliance with the agencies' appraisal regulations, policies,[4] supervisory guidelines, and the institution's policies. Examiners also will review the steps taken by an institution to ensure that the individuals who perform its appraisals and evaluations are qualified and are not subject to conflicts of interest. Institutions that fail to maintain a sound appraisal or evaluation program or to comply with the agencies' appraisal regulations, policies, or these supervisory guidelines will be cited in examination reports and may be criticized for unsafe and unsound banking practices. Deficiencies will require corrective action.

Appraisal and Evaluation Program

An institution's board of directors is responsible for reviewing and adopting policies and procedures that establish an effective real estate appraisal and evaluation program. The program should—

- establish selection criteria and procedures to evaluate and monitor the ongoing performance of individuals who perform appraisals or evaluations,
- provide for the independence of the person performing appraisals or evaluations,

4. The appraisal guidance contained in the Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans, November 7, 1991, generally applies to all transactions.

- identify the appropriate appraisal for various lending transactions,
- establish criteria for contents of an evaluation,
- provide for the receipt of the appraisal or evaluation report in a timely manner to facilitate the underwriting decision,
- assess the validity of existing appraisals or evaluations to support subsequent transactions,
- establish criteria for obtaining appraisals or evaluations for transactions that are otherwise exempt from the agencies' appraisal regulations, and
- establish internal controls that promote compliance with these program standards.

Selection of Individuals Who May Perform Appraisals and Evaluations

An institution's program should establish criteria to select, evaluate, and monitor the performance of the individuals who perform a real estate appraisal or evaluation. The criteria should ensure that—

- the institution's selection process is nonpreferential and unbiased;
- the individual selected possesses the requisite education, expertise, and competence to complete the assignment;
- the individual selected is capable of rendering an unbiased opinion; and
- the individual selected is independent and has no direct or indirect interest, financial or otherwise, in the property or the transaction.

Under the agencies' appraisal regulations, the appraiser must be selected and engaged directly by the institution or its agent. The appraiser's client is the institution, not the borrower. An institution may use an appraisal that was prepared by an appraiser engaged directly by another financial services institution, as long as the institution determines that the appraisal conforms to the agencies' appraisal regulations and is otherwise acceptable.

Independence of the Appraisal and Evaluation Function

Because the appraisal and evaluation process is an integral component of the credit-underwriting process, it should be isolated from influence by the institution's loan-production process. An appraiser and an individual providing evaluation services should be independent of the loan and collection functions of the institution and have no interest, financial or otherwise, in the property or the transaction. If absolute lines of independence cannot be achieved, an institution must be able to clearly demonstrate that it has prudent safeguards to isolate its collateral-evaluation process from influence or interference from the loan-production process.

The agencies recognize, however, that it is not always possible or practical to separate the loan and collection functions from the appraisal or evaluation process. In some cases, such as in a small or rural institution or branch, the only individual qualified to analyze the real estate collateral may also be a loan officer, other officer, or director of the institution. To ensure their independence, such lending officials, officers, or directors should abstain from any vote or approval involving loans on which they performed an appraisal or evaluation.

Transactions That Require Appraisals

Although the agencies' appraisal regulations exempt certain categories of real estate–related financial transactions from the appraisal requirements, most real estate transactions over $250,000 are considered federally related transactions and thus require appraisals.[5] A *federally related transaction* means any real estate–related financial transaction in which the agencies engage, contract for, or regulate, and that requires the services of an appraiser. An agency also may impose more stringent appraisal requirements than the appraisal regulations require, such as when an institution's troubled condition is attributable to real estate loan underwriting problems.[6]

Minimum Appraisal Standards

The agencies' appraisal regulations include five minimum standards for the preparation of an appraisal. The appraisal must—

5. To facilitate recovery in designated major disaster areas, subject to safety-and-soundness considerations, section 2 of the Depository Institutions Disaster Relief Act of 1992 authorized the agencies to waive certain appraisal requirements for up to three years after a presidential declaration of a natural disaster.

6. As a matter of policy, OTS requires problem associations and associations in troubled condition to obtain appraisals for all real estate–related transactions over $100,000 (unless the transaction is otherwise exempt).

- conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation unless principles of safe and sound banking require compliance with stricter standards;

  Although allowed by USPAP, the agencies' appraisal regulations do not permit an appraiser to appraise any property in which the appraiser has an interest, direct or indirect, financial or otherwise.

- be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

  As discussed below, appraisers have available various appraisal development and report options; however, not all options may be appropriate for all transactions. A report option is acceptable under the agencies' appraisal regulations only if the appraisal report contains sufficient information and analysis to support an institution's decision to engage in the transaction.

- analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, nonmarket lease terms, and tract developments with unsold units;

  This standard is designed to avoid having appraisals prepared using unrealistic assumptions and inappropriate methods. For federally related transactions, an appraisal is to include the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal. For properties where improvements are to be constructed or rehabilitated, the regulated institution may also request a prospective market value based on stabilized occupancy or a value based on the sum of retail sales. However, the sum of retail sales for a proposed development is not the market value of the development for the purpose of the agencies' appraisal regulations. For proposed developments that involve the sale of individual houses, units, or lots, the appraiser must analyze and report appropriate deductions and discounts for holding costs, marketing costs, and entrepreneurial profit. For proposed and rehabilitated rental developments, the appraiser must make appropriate deductions and discounts for items such as leasing commission, rent losses, and tenant improvements from an estimate based on stabilized occupancy.

- be based upon the definition of market value set forth in the regulation; and

  Each appraisal must contain an estimate of market value, as defined by the agencies' appraisal regulations.

- be performed by state-licensed or -certified appraisers in accordance with requirements set forth in the regulation.

Appraisal Options

An appraiser typically uses three market-value approaches to analyze the value of a property—cost, income, and comparable-sales—and reconciles the results of each to estimate market value. An appraisal will discuss the property's recent sales history and contain an opinion as to the highest and best use of the property. An appraiser must certify that he or she has complied with the current USPAP and is independent. Also, the appraiser must disclose whether the subject property was inspected and whether anyone provided significant assistance to the person signing the appraisal report.

The agencies do not prohibit the use of a Limited Appraisal for a federally related transaction, but the agencies believe that institutions should be cautious in their use of a Limited Appraisal because it will be less thorough than a Complete Appraisal.

Complete and Limited Appraisal assignments may be reported in three different report formats: a Self-Contained Report, a Summary Report, or a Restricted Report. The major difference among these three reports relates to the degree of detail presented in the report by the appraiser. The Self-Contained Appraisal Report provides the most detail, while the Summary Appraisal Report presents the information in a condensed manner. The Restricted Report provides a capsulized report with the supporting details maintained in the appraiser's files.

The agencies believe that the Restricted Report format will not be appropriate to underwrite a significant number of federally related transactions due to the lack of sufficient supporting information and analysis in the appraisal report. However, it might be appropriate to use this type of appraisal report for ongoing collateral monitoring of an institution's real estate transactions and under other circumstances when an institution's program requires an evaluation.

Moreover, since the institution is responsible for selecting the appropriate appraisal report to support its underwriting decisions, its program should identify the type of appraisal report that will be appropriate for various lending transactions. The institution's program should consider the risk, size, and complexity of the individual loan and the supporting collateral when determining the level of appraisal development and the type of report format that will be ordered. When ordering an appraisal report, institutions may want to consider the benefits of a written engagement letter that outlines the institution's expectations and delineates each party's responsibilities, especially for large, complex, or out-of-area properties.

Transactions That Require Evaluations

A formal opinion of market value prepared by a state-licensed or -certified appraiser is not always necessary. Instead, less-formal evaluations of the real estate may suffice for transactions that are exempt from the agencies' appraisal requirements. The agencies' appraisal regulations allow an institution to use an appropriate evaluation of the real estate rather than an appraisal when the transaction—

- has a value of $250,000 or less;
- is a business loan of $1,000,000 or less, and the transaction is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment; or
- involves an existing extension of credit at the lending institution, provided that (i) there has been no obvious and material change in the market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies, or (ii) there is no advancement of new monies other than funds necessary to cover reasonable closing costs.

Institutions should also establish criteria for obtaining appraisals or evaluations for safety-and-soundness reasons for transactions that are otherwise exempt from the agencies' appraisal regulations.

Evaluation Content

An institution should establish prudent standards for the preparation of evaluations. At a minimum, an evaluation should—

- be written;
- include the preparer's name, address, and signature, and the effective date of the evaluation;
- describe the real estate collateral, its condition, its current and projected use;
- describe the source(s) of information used in the analysis;
- describe the analysis and supporting information; and
- provide an estimate of the real estate's market value, with any limiting conditions.

An evaluation report should include calculations, supporting assumptions, and, if utilized, a discussion of comparable sales. Documentation should be sufficient to allow an institution to understand the analysis, assumptions, and conclusions. An institution's own real estate loan portfolio experience and value estimates prepared for recent loans on comparable properties might provide a basis for evaluations.

An evaluation should provide an estimate of value to assist the institution in assessing the soundness of the transaction. Prudent practices also require that as an institution engages in more-complex real estate–related financial transactions, or as its overall exposure increases, a more detailed evaluation should be performed. For example, an evaluation for a home equity loan might be based primarily on information derived from a sales data services organization or current tax assessment information, while an evaluation for an income-producing real estate property should fully describe the current and expected use of the property and include an analysis of the property's rental income and expenses.

Qualifications of Individuals Who Perform Evaluations

Individuals who prepare evaluations should have real estate–related training or experience and knowledge of the market relevant to the subject property. Based upon their experience and training, professionals from several fields may be qualified to prepare evaluations of certain types of real estate collateral. Examples include individuals with appraisal experience, real estate lenders, consultants or salespersons, agricultural extension agents, or foresters. Institutions should document the qualifications and experience level of individuals whom the institution deems acceptable to perform evaluations. An institution might also augment its in-house expertise and hire an outside party familiar with a certain market or a particular type of property. Although not required, an institution may use state-licensed or -certified appraisers to prepare evaluations. As such, Limited Appraisals reported in a Summary or Restricted format may be appropriate for evaluations of real estate–related financial transactions exempt from the agencies' appraisal requirements.

Valid Appraisals and Evaluations

The agencies allow an institution to use an existing appraisal or evaluation to support a subsequent transaction, if the institution documents that the existing estimate of value remains valid. Therefore, a prudent appraisal and evaluation program should include criteria to determine whether an existing appraisal or evaluation remains valid to support a subsequent transaction. Criteria for determining whether an existing appraisal or evaluation remains valid will vary depending upon the condition of the property and the marketplace, and the nature of any subsequent transaction. Factors that could cause changes to originally reported values include the passage of time; the volatility of the local market; the availability of financing; the inventory of competing properties; improvements to, or lack of maintenance of, the subject property or competing surrounding properties; changes in zoning; or environmental contamination. The institution must document the information sources and analyses used to conclude that an existing appraisal or evaluation remains valid for subsequent transactions.

Renewals, Refinancings, and Other Subsequent Transactions

While the agencies' appraisal regulations generally allow appropriate evaluations of real estate collateral in lieu of an appraisal for loan renewals and refinancings, in certain situations an appraisal is required. If new funds are advanced over reasonable closing costs, an institution would be expected to obtain a new appraisal for the renewal of an existing transaction when there is a material change in market conditions or the physical aspects of the property that threatens the institution's real estate collateral protection.

The decision to reappraise or re-evaluate the real estate collateral should be guided by the exemption for renewals, refinancings, and other subsequent transactions. Loan workouts, debt restructurings, loan assumptions, and similar transactions involving the addition or substitution of borrowers may qualify for the exemption for renewals, refinancings, and other subsequent transactions. Use of this exemption depends on the condition and quality of the loan, the soundness of the underlying collateral, and the validity of the existing appraisal or evaluation.

A reappraisal would not be required when an institution advances funds to protect its interest in a property, such as to repair damaged property, because these funds should be used to restore the damaged property to its original condition. If a loan workout involves modification of the terms and conditions of an existing credit, including acceptance of new or additional real estate collateral, which facilitates the orderly collection of the credit or reduces the institution's risk of loss, a reappraisal or re-evaluation may be prudent, even if it is obtained after the modification occurs.

An institution may engage in a subsequent transaction based on documented equity from a valid appraisal or evaluation, if the planned future use of the property is consistent with the use identified in the appraisal or evaluation. If a property, however, has reportedly appreciated because of a planned change in use of the property, such as rezoning, an appraisal would be required for a federally related transaction, unless another exemption applied.

Program Compliance

An institution's appraisal and evaluation program should establish effective internal controls that promote compliance with the program's standards. An individual familiar with the appropriate agency's appraisal regulation should ensure that the institution's appraisals and evaluations comply with the agencies' appraisal regulations, these guidelines, and the institution's program. Loan-administration files should document this compliance review, although a detailed analysis or comprehensive analytical procedures are not required for every appraisal or evaluation. For some loans, the compliance review may be part of the loan officer's overall credit analysis and may take the form of either a narrative or a checklist. Corrective action should be undertaken for noted deficiencies by the individual who prepared the appraisal or evaluation.

An institution's appraisal and evaluation program should also have comprehensive analytical procedures that focus on certain types of loans, such as large-dollar credits, loans secured by complex or specialized properties, nonresidential real estate construction loans, or out-of-area real estate. These comprehensive analytical procedures should be designed to verify that the methods, assumptions, and conclusions are reasonable and appropriate for the transaction and the property. These procedures should provide for a more detailed review of selected appraisals and evaluations prior to the final credit decision. The individual(s) performing these reviews should have the appropriate training or experience, and be independent of the transaction.

Appraisers and persons performing evaluations should be responsible for any deficiencies in their reports. Deficient reports should be returned to them for correction. Unreliable appraisals or evaluations should be replaced prior to the final credit decision. Changes to an appraisal's estimate of value are permitted only as a result of a review conducted by an appropriately qualified state-licensed or -certified appraiser in accordance with Standard III of USPAP.

Portfolio Monitoring

The institution should also develop criteria for obtaining reappraisals or re-evaluations as part of a program of prudent portfolio review and monitoring techniques—even when additional financing is not being contemplated. Examples of such types of situations include large credit exposures and out-of-area loans.

Referrals

Financial institutions are encouraged to make referrals directly to state appraiser regulatory authorities when a state-licensed or -certified appraiser violates USPAP or applicable state law, or engages in other unethical or unprofessional conduct. Examiners finding evidence of unethical or unprofessional conduct by appraisers will forward their findings and recommendations to their supervisory office for appropriate disposition and referral to the state, as necessary.

2231.0.17 APPENDIX B—INTERAGENCY STATEMENT ON INDEPENDENT APPRAISAL AND EVALUATION FUNCTIONS

On October 27, 2003, the federal bank and thrift agencies[1] (the agencies) jointly issued this statement on Independent Appraisal and Evaluation Functions. The statement addresses concerns about the independence of the collateral-valuation process that were identified during examinations. This statement applies to all real estate–related financial transactions originated or purchased by a regulated institution for its own portfolio or as assets held for sale. It clarifies and should be reviewed in conjunction with the agencies' appraisal and real estate lending regulations[2] and the Interagency Appraisal and Evaluation Guidelines (the guidelines).[3]

An institution's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program (the program) for all of its lending functions. The real estate lending functions include commercial real estate mortgage departments, capital-market groups, and asset-securitization and -sales units. Concerns about the independence of real estate appraisals and evaluations include the risk that appraisals prepared by biased or compromised appraisers may undermine the integrity of credit-underwriting processes. More broadly, an institution's lending functions should not have undue influence that might compromise the program's independence.

Selecting Individuals to Perform Appraisals or Evaluations

The guidelines establish minimum standards for an effective program, including standards for selecting individuals who may perform appraisals or evaluations. Among other considerations, the selection criteria must provide for the independence of the individual performing the appraisal or evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. Institutions also need to ensure that the individual selected is competent to perform the assignment. Consideration should be given to the individual's qualifications, experience, and educational background. Selection occurs when, based on an oral or written agreement, the individual accepts the assignment to appraise or evaluate a particular property. Moreover, appraisal or evaluation preparatory work should not commence until the institution finalizes the selection process.

The agencies' appraisal regulations address appraiser independence and require that an institution, or its agent, directly engage the appraiser. The only exception to this requirement is that an institution may use an appraisal prepared for another financial services institution, provided that the institution determines that the appraisal conforms to the agencies' appraisal regulations and is otherwise acceptable. Independence is compromised when an institution uses an appraiser who is recommended by the borrower or allows the borrower to select the appraiser from the institution's list of approved appraisers.

Institutions may not use an appraisal prepared by an individual who was selected or engaged by a borrower. An institution's use of a borrower-ordered appraisal violates the agencies' appraisal regulations. Likewise, institutions may not use "readdressed appraisals"—appraisal reports that are altered by the appraiser to replace any references to the original client with the institution's name. Altering an appraisal report in a manner that conceals the original client or intended users of the appraisal is misleading and violates the agencies' appraisal regulations and the Uniform Standards of Professional Appraisal Practice (USPAP).

It is also important to ensure that the program is safeguarded from internal influence and interference from an institution's loan-production staff. Individuals independent of the loan-production area should oversee the selection of appraisers and individuals providing evaluation services. The agencies recognize that it may not be possible or practical for small institutions to

1. The Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA).

2. FRB: 12 C.F.R. 208, subpart E and appendix C, and 12 C.F.R. 225, subpart G; OCC: 12 C.F.R. 34, subparts C and D; FDIC: 12 C.F.R. 323 and 12 C.F.R. 365; OTS: 12 C.F.R. 564, 12 C.F.R. 560.100, and 12 C.F.R. 560.101; and NCUA: 12 C.F.R. 722.5.

3. The interagency guidelines may be found in SR-letter 94-55 for the FRB; the *Comptroller's Handbook for Commercial Real Estate and Construction Lending* for the OCC; FIL-74-94 for the FDIC; and Thrift Bulletin 55a for the OTS. NCUA was not a party to the guidelines; however, the NCUA applies the content to credit unions, when applicable.

separate the collateral-valuation and loan-production processes. To ensure independence, loan officials, officers, or directors with the responsibility for ordering appraisals and evaluations should not have sole approval authority for granting the loan request.

When selecting and engaging appraisers, an institution needs to identify the assignment and order the appropriate appraisal or evaluation, as discussed in the guidelines. To foster control and accountability, institutions are encouraged to use written engagement letters when ordering appraisals, especially for large, complex, or out-of-area commercial real estate properties. An institution should include a copy of the written engagement letter in the permanent loan file. An appraiser may also incorporate an engagement letter in the appraisal report. The engagement letter confirms that the assignment was made in a manner that complies with the institution's procedures and the agencies' regulations and guidelines.

Appraisal and Evaluation Compliance Reviews

An institution's appraisal and evaluation program must maintain effective internal controls that promote compliance with program standards and the agencies' appraisal regulations and guidelines. Internal controls should, among other criteria, confirm that appraisals and evaluations are reviewed by qualified and adequately trained individuals who are not involved in the loan-production processes. The institution's standards for and the depth of such reviews should reflect the risk of the transaction and the process through which the appraisal or evaluation is obtained. An institution should establish more in-depth review procedures for appraisals of large, complex, or out-of-area commercial real estate credits and for those appraisals and evaluations that are ordered by agents of the institution, such as loan brokers or another financial services institution.

Even in small institutions when absolute lines of independence cannot be achieved, effective internal controls should be implemented to ensure that no single person has sole authority to render credit decisions involving loans on which they ordered or reviewed the appraisal or evaluation. Further, lending officials, officers, or directors should abstain from any vote or approval involving loans for which they performed the appraisal or evaluation.

Supervisory Approach

Examiners will review an institution's standards of independence, taking into consideration the size of the institution and the nature and complexity of its real estate–related activities. Examiners will consider whether policies and procedures are comprehensive and applied uniformly to all units engaging in federally related transactions.

If an institution suspects that a licensed or certified appraiser is violating applicable laws or USPAP, or is otherwise engaging in other unethical or unprofessional conduct, the institution should refer the matter directly to the appropriate state appraiser regulatory authorities. Examiners finding evidence of unethical or unprofessional conduct, including improperly prepared appraisals or evaluations and readdressed appraisals, should forward their findings and their recommendations to their supervisory office for appropriate disposition and referral to the state appraiser regulatory authority, as necessary. Institutions and institution-affiliated parties, including lenders, staff, and fee appraisers, are reminded that they could be subject to enforcement actions, which include removal/prohibition orders, cease-and-desist orders, and civil money penalties, for violations of the agencies' appraisal and real estate lending regulations.

These guidelines are designed to in ensure that troubled real estate loans receive consistent treatment nationwide. The guidelines are not intended to be a substitute for the examiner's judgment or for careful analysis of applicable credit and collateral factors. Use of the word "institution" in these guidelines refers to any lending source within the bank holding company organization, whether the lender is the parent company, a bank, thrift, or nonbanking subsidiary.

2240.0.1 EXAMINER REVIEW OF COMMERCIAL REAL ESTATE LOANS

2240.0.1.1 Loan Policy and Administration Review

As part of the analysis of an institution's commercial real estate loan portfolio, examiners review lending policies, loan administration procedures, and credit risk control procedures. The maintenance of prudent written lending policies, effective internal systems and controls, and thorough loan documentation are essential to the institution's management of the lending function.

The policies governing an institution's real estate lending activities must include prudent underwriting standards that are periodically reviewed by the board of directors and clearly communicated to the institution's management and lending staff. The institution must also have credit risk control procedures that include, for example, prudent internal limits on exposure, an effective credit review and classification process, and a methodology for ensuring that the allowance for loan and lease losses is maintained at an adequate level. The complexity and scope of these policies and procedures should be appropriate to the size of the institution and the nature of the institution's activities, and should be consistent with prudent banking practices and relevant regulatory requirements.

2240.0.1.2 Indicators of Troubled Real Estate Markets and Projects, and Related Indebtedness

In order to evaluate the collectibility of an institution's commercial real estate portfolio, examiners should be alert for indicators of weakness in the real estate markets served by the institution. They should also be alert for indicators of actual or potential problems in the individual commercial real estate projects or transactions financed by the institution.

There are several warning signs that real estate markets or projects are experiencing problems that may result in real estate values decreasing from original appraisals or projections. Adverse economic developments and/or an overbuilt market can affect a project's economic feasibility and may cause a real estate project and the loan to become troubled. Available indicators, such as permits for—and the value of—new construction, absorption rates, employment trends, and vacancy rates, are useful in evaluating the condition of commercial real estate markets. Weaknesses disclosed by these types of statistics may indicate that a real estate market is experiencing difficulties that may result in cash flow problems for individual real estate projects, declining real estate values, and ultimately, in troubled commercial real estate loans.

Indicators of potential or actual difficulties in commercial real estate projects may include:

- An excess of similar projects under construction.
- Construction delays or other unplanned adverse events resulting in cost overruns that may require renegotiation of loan terms.
- Lack of a sound feasibility study or analysis that reflects current and reasonably anticipated market conditions.
- Changes in concept or plan (for example, a condominium project converted to an apartment project because of unfavorable market conditions).
- Rent concessions or sales discounts resulting in cash flow below the level projected in the original feasibility study or appraisal.
- Concessions on finishing tenant space, moving expenses, and lease buyouts.
- Slow leasing or lack of sustained sales activity and increasing sales cancellations that may reduce the project's income potential, resulting in protracted repayment or default on the loan.
- Delinquent lease payments from major tenants.
- Land values that assume future rezoning.
- Tax arrearages.

As the problems associated with a commercial real estate project become more pronounced, problems with the related indebtedness may also arise. Such problems include diminished cash flow to service the debt and delinquent interest and principal payments.

While some commercial real estate loans become troubled because of a general downturn in the market, others become troubled because they were originated on an unsound or a liberal basis. Common examples of these types of problems include:

- Loans with no or minimal borrower equity.
- Loans on speculative undeveloped property where the borrowers' only source of repayment is the sale of the property.
- Loans based on land values that have been driven up by rapid turnover of ownership, but without any corresponding improvements to the property or supportable income projections to justify an increase in value.
- Additional advances to service an existing loan that lacks credible support for full repayment from reliable sources.
- Loans to borrowers with no development plans or noncurrent development plans.
- Renewals, extensions and refinancings that lack credible support for full repayment from reliable sources and that do not have a reasonable repayment schedule.[1]

2240.0.1.3 Examiner Review of Individual Loans, Including the Analysis of Collateral Value

The focus of an examiner's review of a commercial real estate loan, including binding commitments, is the ability of the loan to be repaid. The principal factors that bear on this analysis are the income-producing potential of the underlying collateral and the borrower's willingness and capacity to repay under the existing loan terms from the borrower's other resources if necessary. In evaluating the overall risk associated with a commercial real estate loan, examiners consider a number of factors, including the character, overall financial condition and resources, and payment record of the borrower; the prospects for support from any financially responsible guarantors; and the nature and degree of protection provided by the cash flow and value of the underlying collateral.[2] However, as other sources of repayment for a troubled commercial real estate loan become inadequate over time, the importance of the collateral's value in the analysis of the loan necessarily increases.

The appraisal regulations of the federal bank and thrift regulatory agencies require institutions to obtain appraisals when certain criteria are met.[3] Management is responsible for reviewing each appraisal's assumptions and conclusions for reasonableness. Appraisal assumptions should not be based solely on current conditions that ignore the stabilized income-producing capacity of the property.[4] Management should adjust any assumptions used by an appraiser in determining value that are overly optimistic or pessimistic.

An examiner analyzes the collateral's value as determined by the institution's most recent appraisal (or internal evaluation, as applicable). An examiner reviews the major facts, assumptions, and approaches used by the appraiser (including any comments made by management on the value rendered by the appraiser). Under the circumstances described below, the examiner may make adjustments to this assessment of value. This review and any resulting adjustments to value are solely for purposes of an examiner's analysis and classification of a credit and do not involve actual adjustments to an appraisal.

A discounted cash flow analysis is an appropriate method for estimating the value of income-producing real estate collateral.[5] This analysis should not be based solely on the current performance of the collateral or similar

1. As discussed more fully in Manual section 2240.0.2, the refinancing or renewing of loans to sound borrowers would not result in a supervisory classification or criticism unless well-defined weaknesses exist that jeopardize repayment of the loans. Consistent with sound banking practices, institutions should work in an appropriate and constructive manner with borrowers who may be experiencing temporary difficulties.

2. The treatment of guarantees in the classification process is discussed in subsection 2240.0.3.

3. Department of the Treasury, Office of the Comptroller of the Currency, 12 CFR Part 34 (Docket No. 90–16); Board of Governors of the Federal Reserve System, 12 CFR Parts 208 and 225 (Regulation H and Y; Docket No. R–0685); Federal Deposit Insurance Corporation, 12 CFR 323 (RIN 3064–AB05); Department of the Treasury; Office of Thrift Supervision, 12 CFR Part 564 (Docket No. 90–1495).

4. Stabilized income generally is defined as the yearly net operating income produced by the property at normal occupancy and rental rates; it may be adjusted upward or downward from today's actual market conditions.

5. The real estate appraisal regulations of the federal bank and thrift regulatory agencies include a requirement that an appraisal (a) follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value; (b) reconcile these approaches; and (c) explain the elimination of each approach not used. A discounted cash flow analysis is recognized as a valuation method for the income approach.

properties; rather, it should take into account, on a discounted basis, the ability of the real estate to generate income over time based upon reasonable and supportable assumptions.

When reviewing the reasonableness of the facts and assumptions associated with the value of the collateral, examiners may evaluate:

- Current and projected vacancy and absorption rates;
- Lease renewal trends and anticipated rents;
- Volume and trends in past due leases;
- Effective rental rates or sale prices (taking into account all concessions);
- Net operating income of the property as compared with budget projections; and
- Discount rates and direct capitalization (“cap”) rates.

The capacity of a property to generate cash flow to service a loan is evaluated based upon rents (or sales), expenses, and rates of occupancy that are reasonably estimated to be achieved over time. The determination of the level of stabilized occupancy and rental rates should be based upon an analysis of current and reasonably expected market conditions, taking into consideration historical levels when appropriate. The analysis of collateral values should not be based upon a simple projection of current levels of net operating income if markets are depressed or reflect speculative pressures but can be expected over a reasonable period of time to return to normal (stabilized) conditions. Judgment is involved in determining the time that it will take for a property to achieve stabilized occupancy and rental rates.

Examiners do not make adjustments to appraisal assumptions for credit analysis purposes based on worst case scenarios that are unlikely to occur. For example, an examiner would not necessarily assume that a building will become vacant just because an existing tenant who is renting at a rate above today’s market rate may vacate the property when the current lease expires. On the other hand, an adjustment to value may be appropriate for credit analysis purposes when the valuation assumes renewal at the above-market rate, unless that rate is a reasonable estimate of the expected market rate at the time of renewal.

When estimating the value of income-producing real estate, discount rates and “cap” rates should reflect reasonable expectations about the rate of return that investors require under normal, orderly and sustainable market conditions. Exaggerated, imprudent, or unsustainably high or low discount rates, “cap” rates, and income projections should not be used. Direct capitalization of nonstabilized income flows should also not be used.

Assumptions, when recently made by qualified appraisers (and, as appropriate, by institution management) and when consistent with the discussion above, should be given a reasonable amount of deference. Examiners should not challenge the underlying assumptions, including discount rates and “cap” rates used in appraisals, that differ only in a limited way from norms that would generally be associated with the property under review. The estimated value of the underlying collateral may be adjusted for credit analysis purposes when the examiner can establish that any underlying facts or assumptions are inappropriate and can support alternative assumptions.

2240.0.2 CLASSIFICATION GUIDELINES

As with other types of loans, commercial real estate loans that are adequately protected by the current sound worth and debt service capacity of the borrower, guarantor, or the underlying collateral generally are not classified. Similarly, loans to sound borrowers that are refinanced or renewed in accordance with prudent underwriting standards, including loans to creditworthy commercial or residential real estate developers, should not be classified or criticized unless well-defined weaknesses exist that jeopardize repayment. An institution will not be criticized for continuing to carry loans having weaknesses that result in classification or criticism as long as the institution has a well-conceived and effective workout plan for such borrowers, and effective internal controls to manage the level of these loans.

In evaluating commercial real estate credits for possible classification, examiners apply standard classification definitions. In determining the appropriate classification, consideration should be given to all important information on repayment prospects, including information on the borrower’s creditworthiness, the value of, and cash flow provided by, all collateral supporting the loan, and any support provided by financially responsible guarantors.

The loan’s record of performance to date is important and must be taken into consideration. As a general principle, a performing commercial real estate loan should not automatically be classified or charged-off solely because the value of the underlying collateral has declined to an amount that is less than the loan balance. However, it would be appropriate to classify a performing loan when well-defined weaknesses exist that jeopardize repayment, such as the lack of credible support for full repayment from reliable sources.

These principles hold for individual credits, even if portions or segments of the industry to which the borrower belongs are experiencing financial difficulties. The evaluation of each credit should be based upon the fundamental characteristics affecting the collectibility of the particular credit. The problems broadly associated with some sectors or segments of an industry, such as certain commercial real estate markets, should not lead to overly pessimistic assessments of particular credits that are not affected by the problems of the troubled sectors.

2240.0.2.1 Classification of Troubled Project-Dependent Commercial Real Estate Loans[6]

The following guidelines for classifying a troubled commercial real estate loan apply when the repayment of the debt will be provided solely by the underlying real estate collateral, and there are no other available and reliable sources of repayment. The guidelines are not intended to address loans that must be treated as ‘‘Other Real Estate Owned’’ for bank and BHC reporting purposes.

As a general principle, for a troubled project-dependent commercial real estate loan, any portion of the loan balance that exceeds the amount that is adequately secured by the value of the collateral, and that can clearly be identified as uncollectible, should be classified ‘‘loss.’’[7] The portion of the loan balance that is adequately secured by the value of the collateral should generally be classified no worse than ‘‘substandard.’’ The amount of the loan balance in excess of the value of the collateral, or portions thereof, should be classified ‘‘doubtful’’ when the potential for full loss may be mitigated by the outcomes of certain pending events, or when loss is expected but the amount of the loss cannot be reasonably determined.

If warranted by the underlying circumstances, an examiner may use a ‘‘doubtful’’ classification on the entire loan balance. However, this would occur infrequently.

6. The discussion in this section is not intended to address loans that must be treated as ‘‘other real estate owned’’ for bank regulatory reporting purposes or ‘‘real estate owned’’ for thrift regulatory reporting purposes. Guidance on these assets is presented in supervisory and reporting guidance of the agencies.

7. For purposes of this discussion, the ‘‘value of the collateral’’ is the value used by the examiner for credit analysis purposes, as discussed in a previous section of this policy statement.

2240.0.2.2 Guidelines for Classifying Partially Charged-off Loans

Based upon consideration of all relevant factors, an evaluation may indicate that a credit has well-defined weaknesses that jeopardize collection in full, but that a portion of the loan may be reasonably assured of collection. When an institution has taken a charge-off in an amount sufficient that the remaining recorded balance of the loan (a) is being serviced (based upon reliable sources) and (b) is reasonably assured of collection, classification of the remaining recorded balance may not be appropriate. Classification would be appropriate when well-defined weaknesses continue to be present in the remaining recorded balance. In such cases, the remaining recorded balance would generally be classified no more severely than ‘‘substandard.’’

A more severe classification than ‘‘substandard’’ for the remaining recorded balance would be appropriate if the loss exposure cannot be reasonably determined, e.g., where significant risk exposures are perceived, such as might be the case for bankruptcy situations or for loans collateralized by properties subject to environmental hazards. In addition, classification of the remaining recorded balance would be appropriate when sources of repayment are considered unreliable.

2240.0.2.3 Guidelines for Classifying Formally Restructured Loans

The classification treatment previously discussed for a partially charged off loan would also generally be appropriate for a formally restructured loan when partial charge-offs have been taken. For a formally restructured loan, the focus of the examiner’s analysis is on the ability of the borrower to repay the loan in accordance with its modified terms. Classification of a formally restructured loan would be appropriate, if, after the restructuring, well-defined weaknesses exist that jeopardize the orderly repayment of the loan in accordance with reasonable modified terms.[8] Troubled commercial real estate loans whose terms have been restructured should be identified in the institution's internal credit review system, and closely monitored by management.

2240.0.3 TREATMENT OF GUARANTEES IN THE CLASSIFICATION PROCESS

Initially, the original source of repayment and the borrower's intent and ability to fulfill the obligation without reliance on third party guarantors will be the primary basis for the review and classification of assets.[9] The federal bank and thrift regulatory agencies will, however, consider the support provided by guarantees in the determination of the appropriate classification treatment for troubled loans. The presence of a guarantee from a "financially responsible guarantor," as described below, may be sufficient to preclude classification or reduce the severity of classification.

For purposes of this discussion, a guarantee from a "financially responsible guarantor" has the following attributes:

- The guarantor must have both the financial capacity and willingness to provide support for the credit;
- The nature of the guarantee is such that it can provide support for repayment of the indebtedness, in whole or in part, during the remaining loan term; and[10]
- The guarantee should be legally enforceable.

The above characteristics generally indicate that a guarantee may improve the prospects for repayment of the debt obligation.

2240.0.3.1 Considerations Relating to a Guarantor's Financial Capacity

The lending institution must have sufficient information on the guarantor's financial condition, income, liquidity, cash flow, contingent liabilities, and other relevant factors (including credit ratings, when available) to demonstrate the guarantor's financial capacity to fulfill the obligation. Also, it is important to consider the number and amount of guarantees currently extended by a guarantor, in order to determine that the guarantor has the financial capacity to fulfill the contingent claims that exist.

2240.0.3.2 Considerations Relating to a Guarantor's Willingness to Repay

Examiners normally rely on their analysis of the guarantor's financial strength and assume a willingness to perform unless there is evidence to the contrary. This assumption may be modified based on the "track record" of the guarantor, including payments made to date on the asset under review or other obligations.

Examiners give due consideration to those guarantors that have demonstrated their ability and willingness to fulfill previous obligations in their evaluation of current guarantees on similar assets. An important consideration will be whether previously required performance under guarantees was voluntary or the result of legal or other actions by the lender to enforce the guarantee. However, examiners give limited credence, if any, to guarantees from obligors who have reneged on obligations in the past, unless there is clear evidence that the guarantor has the ability and intent to honor the specific guarantee obligation under review.

Examiners also consider the economic incentives for performance from guarantors:

- Who have already partially performed under the guarantee or who have other significant investments in the project;
- Whose other sound projects are cross-collateralized or otherwise intertwined with the credit; or
- Where the guarantees are collateralized by readily marketable assets that are under the control of a third party.

2240.0.3.3 Other Considerations as to the Treatment of Guarantees in the Classification Process

In general, only guarantees that are legally

8. An example of a restructured commercial real estate loan that does *not* have reasonable modified terms would be a "cash flow" mortgage which requires interest payments *only* when the underlying collateral generates cash flow but provides no substantive benefits to the lending institution.

9. Some loans are originated based primarily upon the financial strength of the guarantor, who is, in substance, the primary source of repayment. In such circumstances, examiners generally assess the collectibility of the loan based upon the guarantor's ability to repay the loan.

10. Some guarantees may only provide for support for certain phases of a real estate project. It would not be appropriate to rely upon these guarantees to support a troubled loan after the completion of these phases.

enforceable will be relied upon. However, all legally enforceable guarantees may not be acceptable. In addition to the guarantor's financial capacity and willingness to perform, it is expected that the guarantee will not be subject to significant delays in collection, or undue complexities or uncertainties about the guarantee.

The nature of the guarantee is also considered by examiners. For example, some guarantees for real estate projects only pertain to the development and construction phases of the project. As such, these limited guarantees would not be relied upon to support a troubled loan after the completion of those phases.

Examiners also consider the institution's intent to enforce the guarantee and whether there are valid reasons to preclude an institution from pursuing the guarantee. A history of timely enforcement and successful collection of the full amount of guarantees will be a positive consideration in the classification process.

During the early 1980s, open-end credit primarily consisted of credit card accounts with small lines of credit to the most creditworthy borrowers. Currently, open-end credit consists of much larger lines of credit that have been extended to diverse borrowers with a variety of risk profiles. In 1980, the Federal Financial Institutions Examination Council (FFIEC) (the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and, in 1987, the Federal Home Loan Bank Board (now the Office of Thrift Supervision)) adopted a uniform policy for the classification of installment credit based on delinquency status. The 1980 policy also provided for different charge-off time frames for open-end and closed-end credit.

Because open-ended borrowing practices had changed and institutional practices for charging off open-end accounts based on their past-due status were inconsistent, the agencies (the FRB, FDIC, OTS, and OCC) undertook a review of the 1980 FFIEC classification policy in concert with a review of all written policies, as mandated by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA). In February 1999, an updated policy was issued, effective for use on FFIEC bank call reports beginning December 31, 2000. This new policy was revised again and reissued in June 2000, with the same effective date. (The June 2000 policy supersedes both the 1980 policy and the updated February 1999 policy.) The June policy provides supervisory guidance for residential and home equity loans; fraudulent loans; loans to deceased persons; loans to borrowers in bankruptcy; treatment of partial payments involving past-due loans; and re-aging, deferrals, renewals, or rewrites of open-end and closed-end credit. The agencies are to use this expanded supervisory guidance when applying the uniform classifications to retail-credit loans extended by depository institutions. See SR-00-8.

While the terms of the revised policy apply only to federally insured depository institutions, the Federal Reserve believes the guidance is broadly applicable to bank holding companies (BHCs) and their nonbank lending subsidiaries. Accordingly, examiners should apply the revised policy, as appropriate, in the inspection of consumer finance subsidiaries of BHCs.

When reviewing consumer finance subsidiaries of banking organizations, examiners should consider the methodology used for aging retail loans. In accordance with the FFIEC bank call report instructions, banks and their consumer finance subsidiaries are required to use the contractual method, which ages loans based on the status of contractual payments. BHCs, in preparing their financial statements, are permitted to use the range of options available under GAAP. This, in effect, allows uninsured, nonbank consumer finance subsidiaries of BHCs to employ the recency method, which ages loans according to the date of the most recent payment, regardless of the contractual terms of the loan.

In general, the contractual method provides a more accurate reflection of loan performance and, therefore, is the *preferred* methodology, especially from the standpoint of financial-statement transparency and public disclosure. Examiners should encourage BHCs and their consumer finance subsidiaries to use the contractual method. However, BHCs should not change their aging methodology from contractual to recency without the prior concurrence of the Federal Reserve. A BHC subsidiary may not change its methodology if the intent or effect of such a change is to mask asset quality or financial weaknesses. Moreover, in the event that consumer receivables are transferred from a bank to its BHC or the BHC's nonbanking subsidiaries, the BHC or the nonbanking subsidiaries should continue to age the receivables according to the contractual method.

When a BHC uses the recency method, it should have adequate controls in place to accurately track the performance of loans within the retail portfolio and to demonstrate sound and compelling business reasons for the use of the recency method. Examiners should see section 3100.0 for further guidance on the review of consumer finance operations.

2241.0.1 UNIFORM RETAIL-CREDIT CLASSIFICATION AND ACCOUNT-MANAGEMENT POLICY

The uniform retail-credit classification and account-management policy issued by the FFIEC (and approved by the Federal Reserve Board) is reproduced below. The Board has clarified certain provisions of this policy. In this text, the Board's revisions are in brackets. Section numbers have also been added to the subtitles of the text.

The Uniform Retail-Credit Classification and Account-Management Policy[1] establishes standards for the classification and treatment of retail credit in financial institutions. Retail credit consists of open- and closed-end credit extended to individuals for household, family, and other personal expenditures, and includes consumer loans and credit cards. For purposes of this policy, retail credit also includes loans to individuals secured by their personal residence, including first mortgage, home equity, and home-improvement loans. Because a retail-credit portfolio generally consists of a large number of relatively small-balance loans, evaluating the quality of the retail-credit portfolio on a loan-by-loan basis is inefficient and burdensome for the institution being examined and for examiners.

Actual credit losses on individual retail credits should be recorded when the institution becomes aware of the loss, but in no case should the charge-off exceed the time frames stated in this policy. This policy does not preclude an institution from adopting a more conservative internal policy. Based on collection experience, when a portfolio's history reflects high losses and low recoveries, more conservative standards are appropriate and necessary.

The quality of retail credit is best indicated by the repayment performance of individual borrowers. Therefore, in general, retail credit should be classified based on the following criteria:

1. Open- and closed-end retail loans past due 90 cumulative days from the contractual due date should be classified substandard.
2. Closed-end retail loans that become past due 120 cumulative days and open-end retail loans that become past due 180 cumulative days from the contractual due date should be classified loss and charged off.[2] In lieu of charging off the entire loan balance, loans with non–real estate collateral may be written down to the value of the collateral, less cost to sell, if repossession of collateral is assured and in process.
3. One- to four-family residential real estate loans and home equity loans that are past due 90 days or more with loan-to-value ratios greater than 60 percent should be classified substandard. Properly secured residential real estate loans with loan-to-value ratios equal to or less than 60 percent are generally not classified based solely on delinquency status. Home equity loans to the same borrower at the same institution as the senior mortgage loan with a combined loan-to-value ratio equal to or less than 60 percent need not be classified. However, home equity loans where the institution does not hold the senior mortgage, that are past due 90 days or more should be classified substandard, even if the loan-to-value ratio is equal to, or less than, 60 percent.

   For open- and closed-end loans secured by residential real estate, a current assessment of value should be made no later than 180 days past due. Any outstanding loan balance in excess of the value of the property, less cost to sell, should be classified loss and charged off.
4. Loans in bankruptcy should be classified loss and charged off within 60 days of receipt of notification of filing from the bankruptcy court or within the time frames specified in this classification policy, whichever is shorter, unless the institution can clearly demonstrate and document that repayment is likely to occur. Loans with collateral may be written down to the value of the collateral, less cost to sell. Any loan balance not charged off should be classified substandard until the borrower re-establishes the ability and willingness to repay for a period of at least six months.
5. Fraudulent loans should be classified loss and charged off no later than 90 days of discovery or within the time frames adopted in this classification policy, whichever is shorter.
6. Loans of deceased persons should be classified loss and charged off when the loss is determined or within the time frames adopted in this classification policy, whichever is shorter.

1. [For the Federal Reserve's depository institution classification guidelines, see section 2060.1, "Classification of Credits," in the *Commercial Bank Examination Manual.]*

2. For operational purposes, whenever a charge-off is necessary under this policy, it should be taken no later than the end of the month in which the applicable time period elapses. Any full payment received after the 120- or 180-day charge-off threshold, but before month-end charge-off, may be considered in determining whether the charge-off remains appropriate.

OTS regulation 12 CFR 560.160(b) allows savings institutions to establish adequate (specific) valuation allowances for assets classified loss in lieu of charge-offs.

Open-end retail accounts that are placed on a fixed repayment schedule should follow the charge-off time frame for closed-end loans.

2241.0.1.1 Other Considerations for Classification

If an institution can clearly document that a past-due loan is well secured and in the process of collection, such that collection will occur regardless of delinquency status, then the loan need not be classified. A well-secured loan is collateralized by a perfected security interest in, or pledges of, real or personal property, including securities with an estimable value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount. ''In the process of collection'' means that either a collection effort or legal action is proceeding and is reasonably expected to result in recovery of the loan balance or its restoration to a current status, generally within the next 90 days.

2241.0.1.2 Partial Payments on Open- and Closed-End Credit

Institutions should use one of two methods to recognize partial payments. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing past-due status. Alternatively, the institution may aggregate payments and give credit for any partial payment received. For example, if a regular installment payment is $300 and the borrower makes payments of only $150 per month for a six-month period, [the institution could aggregate the payments received ($150 × six payments, or $900). It could then give credit for three full months ($300 x three payments) and thus treat the loan as] three full months past due. An institution may use either or both methods in its portfolio, but may not use both methods simultaneously with a single loan.

2241.0.1.3 Re-aging, Extensions, Deferrals, Renewals, and Rewrites

Re-aging of open-end accounts, and extensions, deferrals, renewals, and rewrites of closed-end loans[3] can be used to help borrowers overcome temporary financial difficulties, such as loss of job, medical emergency, or change in family circumstances like loss of a family member. A permissive policy on re-agings, extensions, deferrals, renewals, or rewrites can cloud the true performance and delinquency status of the portfolio. However, prudent use is acceptable when it is based on a renewed willingness and ability to repay the loan, and when it is structured and controlled in accordance with sound internal policies.

Management should ensure that comprehensive and effective risk management and internal controls are established and maintained so that re-ages, extensions, deferrals, renewals, and rewrites can be adequately controlled and monitored by management and verified by examiners. The decision to re-age, extend, defer, renew, or rewrite a loan, like any other modification of contractual terms, should be supported in the institution's management information systems. Adequate management information systems usually identify and document any loan that is re-aged, extended, deferred, renewed, or rewritten, including the number of times such action has been taken. Documentation normally shows that the institution's personnel communicated with the borrower, the borrower agreed to pay the loan in full, and the borrower has the ability to repay the loan. To be effective, management information systems should also monitor and track the volume and performance of loans that have been re-aged, extended, deferred, renewed, or rewritten and/or placed in a workout program.

2241.0.1.4 Open-End Accounts

Institutions that re-age open-end accounts should establish a reasonable written policy and adhere to it. To be considered for re-aging, an account should exhibit the following:

1. The borrower has demonstrated a renewed willingness and ability to repay the loan.

3. These terms are defined as follows. *Re-age:* Returning a delinquent, open-end account to current status without collecting (at the time of aging) the total amount of principal, interest, and fees that are contractually due. *Extension:* Extending monthly payments on a closed-end loan and rolling back the maturity by the number of months extended. The account is shown current upon granting the extension. If extension fees are assessed, they should be collected at the time of the extension and not added to the balance of the loan. *Deferral:* Deferring a contractually due payment on a closed-end loan without affecting the other terms, including maturity, (or the due date for subsequently scheduled payments,) of the loan. The account is shown current upon granting the deferral. *Renewal:* Underwriting a matured, closed-end loan generally at its outstanding principal amount and on similar terms. *Rewrite:* Underwriting an existing loan by significantly changing its terms, including payment amounts, interest rates, amortization schedules, or its final maturity.

2. The account has existed for at least nine months.
3. The borrower has made at least three consecutive minimum monthly payments or the equivalent cumulative amount. Funds may not be advanced by the institution for this purpose.

Open-end accounts should not be re-aged more than once within any twelve-month period and no more than twice within any five-year period. Institutions may adopt a more conservative re-aging standard; for example, some institutions allow only one re-aging in the lifetime of an open-end account. Additionally, an over-limit account may be re-aged at its outstanding balance (including the over-limit balance, interest, and fees), provided that no new credit is extended to the borrower until the balance falls below the predelinquency credit limit.

Institutions may re-age an account after it enters a workout program, including internal and third-party debt-counseling services, but only after receipt of at least three consecutive minimum monthly payments or the equivalent cumulative amount, as agreed upon under the workout or debt-management program. Re-aging for workout purposes is limited to once in a five-year period and is in addition to the once-in-twelve-months/twice-in-five-years limitation described above. To be effective, management information systems should track the principal reductions and charge-off history of loans in workout programs by type of program.

2241.0.1.5 Closed-End Loans

Institutions should adopt and adhere to explicit standards that control the use of extensions, deferrals, renewals, and rewrites of closed-end loans. The standards should exhibit the following:

1. The borrower should show a renewed willingness and ability to repay the loan.
2. The standards should limit the number and frequency of extensions, deferrals, renewals, and rewrites.
3. Additional advances to finance unpaid interest and fees should be prohibited.

Management should ensure that comprehensive and effective risk management, reporting, and internal controls are established and maintained to support the collection process and to ensure timely recognition of losses. To be effective, management information systems should track the subsequent principal reductions and charge-off history of loans that have been granted an extension, deferral, renewal, or rewrite.

2241.0.1.6 Examination Considerations

Examiners should ensure that institutions adhere to this policy. Nevertheless, there may be instances that warrant exceptions to the general classification policy. Loans need not be classified if the institution can document clearly that repayment will occur irrespective of delinquency status. Examples might include loans well secured by marketable collateral and in the process of collection, loans for which claims are filed against solvent estates, and loans supported by valid insurance claims.

The Uniform Retail-Credit Classification and Account-Management Policy does not preclude examiners from classifying individual retail-credit loans that exhibit signs of credit weakness regardless of delinquency status. Similarly, an examiner may also classify retail portfolios, or segments thereof, where underwriting standards are weak and present unreasonable credit risk, and may criticize account-management practices that are deficient.

In addition to reviewing loan classifications, the examiner should ensure that the institution's allowance for loan and lease losses provides adequate coverage for probable losses inherent in the portfolio. Sound risk- and account-management systems, including a prudent retail-credit lending policy, measures to ensure and monitor adherence to stated policy, and detailed operating procedures, should also be implemented. Internal controls should be in place to ensure that the policy is followed. Institutions that lack sound policies or fail to implement or effectively adhere to established policies will be subject to criticism.

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In carrying out its regulatory and supervisory responsibilities, the Board requires the submission of various reports from bank holding companies. These reports are an integral part of the Board's supervision, monitoring, and surveillance functions. Information from these reports is used to evaluate the performance of bank holding companies, appraise their financial condition, and determine their compliance with applicable laws and regulations. The examiner must review the reports (submitted to the Federal Reserve System) for accuracy and timeliness and insist on their being amended if material errors are found. If inaccurate data are submitted, the resulting ratios could conceal deteriorating trends in the company's financial condition and performance. Bank holding companies should maintain sufficient internal systems and procedures to ensure that reporting is accomplished according to appropriate regulatory requirements. Clear, concise, and orderly workpapers should support the data presented and provide a logical tie between report data and the financial records. For detailed current information on who must submit reports and what the reporting requirements are, see the Board's public site on the Internet at the following address: www.federalreserve.gov/boarddocs/reportforms.

2250.0.1 PENALTIES FOR ERRORS IN REPORTS

Section 8 of the Bank Holding Company Act (the act) was amended to provide for the assessment of civil money penalties for the submission of late, false, or misleading reports filed by bank holding companies that are required by the act and Regulation Y and for the failure to file the required regulatory reports. Financial institutions that have adequate procedures to avoid any inadvertent errors but that unintentionally submit incorrect information or are minimally late in publishing or transmitting the reports can be fined up to $2,000 per day. The financial institution has the burden of proving that the error was inadvertent. If the error was not inadvertent, a penalty of up to $20,000 per day can be assessed. If the submission was done in a knowing manner or with reckless disregard for the law, a fine of up to $1 million or 1 percent of the institution's assets can be assessed for each day of the violation. Institution-affiliated parties who participate in any manner in the filing of an institution's false or misleading required regulatory report, or who cause the failure to file or a late filing of a required regulatory report, may be assessed a civil money penalty of up to $25,000 per day.

2250.0.2 APPROVAL OF DIRECTORS AND SENIOR OFFICERS OF DEPOSITORY INSTITUTIONS

The Federal Deposit Insurance Act (12 U.S.C. 1811) was amended to require each insured depository institution and depository institution holding company to give 30 days' prior notification to the federal banking authority of (1) the proposed addition of any individual to its board of directors or (2) the employment of any individual as a senior executive officer. This requirement applies to the following institutions:

1. institutions that have been chartered less than two years
2. institutions that have undergone a change in control within the preceding two years
3. institutions that are in a troubled condition or whose capital is below minimum standards

The agencies have the authority to issue a notice of disapproval to stop the appointment or employment of an individual if they feel that appointing or employing the person would not be in the interests of the public, taking into account that individual's competence, experience, character, and integrity.

2250.0.3 INSPECTION OBJECTIVES

1. To determine that required reports are being filed on time.
2. To determine that the contents of reports are accurate and complete.
3. To recommend corrective and, if needed, formal enforcement action when official reporting practices, policies, or procedures are deficient.

2250.0.4 INSPECTION PROCEDURES

1. A bank holding company's historical record concerning the timely submission of reports should be ascertained by reviewing relevant

Reserve Bank files. The examiner should determine, from documentation in the files, which reports should have been filed because of the passage of time or the occurrence of an event. If a report is delinquent, the bank holding company should be instructed to prepare and submit the report expeditiously.

2. Copies of regulatory reports filed since the prior inspection should be reviewed and compared with company records on a random, line-by-line basis, using a significance test. In some cases, the review will necessarily extend to supporting schedules and workpapers that substantiate the data reflected in the reports. If the initial reports reviewed are found to be substantially correct, then the scope of subsequent reviews may be curtailed. If the reports are found to be incorrect, the overall review procedures should be intensified. When an error or misstatement is considered significant, the matter should be brought to management's attention and the bank holding company should be required to submit adjusted data. Improper methods used in preparing reports should be called to management's attention. The examiner should explain all changes carefully and assist bank holding company personnel in whatever way possible to ensure proper reporting in future reports.
3. At the conclusion of the review process, the examiner should discuss the following with management, when applicable:
   a. inaccuracies found in reports and the need for submission of amended pages or reports
   b. violations of law, rulings, or regulations
   c. recommended corrective action when policies or procedures have contributed to deficiencies noted in the reports or the untimely submission of report(s)
4. Details concerning the late or inaccurate preparation of reports should be listed in the inspection report on the Other Supervisory Issues report page. If the matter is considered significant, it should be noted on the Examiner's Comments and Matters Requiring Special Board Attention report page, as well. When the exceptions are considered minor and have been discussed with management and corrected, it will suffice to state this on the Other Supervisory Issues workpaper supporting page.
5. When it is determined that false, misleading, or inaccurate information is contained in financial statements or reports, consider whether formal enforcement action is needed to ensure that the offending bank holding company, financial institution, or other entity under the holding company structure will correct the statements and reports.

2250.0.5 LAWS, REGULATIONS, INTERPRETATIONS, AND ORDERS

Subject	*Laws* [1]	*Regulations* [2]	*Interpretations* [3]	*Orders*
Submission of reports concerning compliance with the act, or regulations or orders under it	1844(c)			
Annual reports	1844(c)	225.5(b)		
Report on intercompany transactions	1844(c)	225.5(b)		
Reports emanating from inspection report recommendations	1844(c)	225.5(b)		
Reports emanating from cease-and-desist orders	1818(b), (c)			
Civil money penalties for errors on bank call and BHC Reports	324 1847			

1. 12 U.S.C., unless specifically stated otherwise.
2. 12 C.F.R., unless specifically stated otherwise.
3. *Federal Reserve Regulatory Service* reference.

2260.0.1 INTRODUCTION

Venture capital activities are usually conducted through one or more of the following types of entities: Small Business Investment Companies (SBIC); Minority Enterprise Small Business Investment Companies (MESBIC); Non-licensed Venture Capital Companies; and Partnerships or Venture Capital Funds. SBIC's and MESBIC's are licensed and regulated by the Small Business Administration (SBA); the other types are not. Both SBIC's and MESBIC's are limited by regulation to investing in and lending to small businesses; whereas, non-licensed venture capital companies and partnerships have greater latitude. The activities of MESBIC's (section 103d companies) are specifically limited to small firms owned by socially or economically disadvantaged persons. Most banks and bank holding companies engage in venture capital activities through an SBIC because of its broad ability to take equity positions in other companies. SBIC's are permitted to own up to 49.9 percent of the voting shares of a company. By contrast, a non-licensed venture capital company that is a subsidiary of a bank holding company may not own more than 4.9 percent of the voting shares of a business. To escape from this limitation some bank holding companies have formed partnerships or venture capital funds. However, a bank holding company can only participate as a limited partner with an ownership interest not to exceed 24.9 percent. Limited partnerships are preferred by those bank holding companies who do not possess the expertise for this type of activity but seek the potential opportunity for high returns.

Through the use of private capital and, in some cases, borrowed money, venture capital companies invest in and lend to new and growing business enterprises. They prefer to invest in and lend to companies that exhibit strong management talent and clearly defined strategies. Many of the companies are yet unknown to the public. Their products either have been introduced to the market or are due to arrive in the next few years. Venture capital companies do not favor pioneering research. Instead, they are interested in financing innovative products, i.e., those next in generation to existing ones, that have a wide market appeal and the potential for strong growth. Such products are preferred because of their shorter development time and possible faster realization of profits. One of the ways a venture capital company makes money is by purchasing the common stock of an emerging company and selling it when the company has grown and the stock has appreciated in value. It also generates earnings by making convertible preferred stock investments and by lending money in the form of subordinated debentures and term loans. Usually lending agreements contain provisions which enable a venture capital company to acquire shares or increase existing holdings through the exercise of warrants or stock options at a later date. Although in most cases some equity interest is taken, venture capital companies, generally, do not acquire a controlling interest in a business they finance.

Once financing commences, venture capital companies typically take an active role in the management of the companies. They usually receive representation on the company's board of directors, which enables them to review budgets and assist in structuring the company's long-range strategic plan. Guiding a company through its developing stages is considered essential for the achievement of equity appreciation and realization of the high returns sought by venture capital companies.

2260.0.2 LOANS AND INVESTMENTS

Investments and lending philosophy may differ among venture capital companies. Some choose to be equity-oriented; that is, they look for higher returns on investments through capital appreciation, while others favor lending in the form of loans or convertible debt securities which provide cash flow to fund operations and service debt. However, most companies will strive for a diversified portfolio in terms of the type of investment and industry mix. The range of financing possibilities associated with lending and/or investing is as follows:

First Step Financing	Funds needed for seed capital to help develop an idea.
Start-up Financing	Funds needed to cover the cost of preparing a business plan, conducting market studies and opening a business.
First Stage Financing	Funds needed to start manufacturing and selling the product(s).
Second Stage Financing	Funds needed for working capital to expand production and build inventories. Company is operating but not yet profitable.
Third Stage Financing	Funds needed to improve the product, build working capital and expand marketing and production facilities. At this point, the company should be generating a profit.
Fourth Stage Financing	Additional working capital funds needed prior to initial public offering which may be as much as a year later.

In addition to the above, venture capital companies will consider financing leveraged buyouts and turnaround situations.

The degree of risk assumed varies according to the stage of financing, i.e., lower stages contain greater risk because of the requirement for longer-term investment discipline than higher stages. Investments in start-up companies typically take five to seven years or more to mature. Because of the high risk involved, most bank-affiliated venture capital companies will avoid the earlier or lower stages of financing. Newly established venture capital companies and especially those that use leverage tend to focus on the intermediate and latter stages of financing. These stages are represented primarily by debenture financing, preferred stock investments, and straight term loans. In structuring a portfolio, a venture capitalist should consider both liquidity and capital protection. The ideal financing mix might entail a limited amount of money invested in common stock with the remainder distributed between debentures, loans, and preferred stock. These instruments will provide income to cover operating expenses and service debt as well as give some protection should the business start to decline. Limited holdings of common stock give the company the opportunity to enhance earnings through capital gains without adversely effecting cash flow. Regardless of the type of financing offered, the ability to exist from an investment or loan through either the issuance of public stock or a cash buyout by a larger company is the goal of a venture capital company.

2260.0.3 FUNDING

A venture capital company may use private capital, leverage, or a combination of both to fund its portfolio of loans and investments. Venture capital companies obtain private capital from their parent organization, either banks or bank holding companies. Generally, private capital is used to fund high-risk, lower-stage investments, although some companies may diversify their portfolio and deploy a portion of capital in loans, debentures and preferred stock. Leverage may be derived from internal and external borrowings. SBIC's that are banking subsidiaries may receive funding in the form of loans from their parent bank. For those companies that are a subsidiary of a bank holding company, internal funding may be provided by the bank holding company from internal cash flow or its external borrowing sources. A bank holding company might borrow from its available bank lines or other borrowing sources to fund venture capital operations. There is, however, one exception; that is, the use of commercial paper proceeds to fund venture capital investments and loans does not appear to qualify under the exemptive provisions of section 3(a)(3) of the Securities Act of 1933. SBIC's and MESBIC's can obtain external financing from the U.S. government and the private sector, while, non-licensed venture capital companies are limited to only private sources for their external financing. Under current SBA regulations, an SBIC can borrow up to $35 million from the federal financing bank with no limit as to the aggregate amount of private debt. Because of the investment restrictions on MESBIC's, the SBA allows them to incur higher leverage. MESBIC's are permitted to borrow up to four times their capital base and issue preferred stock to the SBA up to two times their capital base. MESBIC's also have no limit on the aggregate amount of private debt. All government borrowings ings are through the federal financing bank and carry the guarantee of the SBA. Such borrowings are classified as senior debt.

2260.0.4 PROFITABILITY

Earnings of venture capital companies can fluctuate widely depending on the nature of their activities. Those companies that blend their portfolios with loans, debentures and preferred stock investments tend to be more predictable and less erratic in earnings performance than companies that are strictly equity-oriented. The difference being that loans, debentures and preferred stock provide income to cover operating expenses and debt service requirements, while common stock investments may not yield positive returns for several years. Portfolio diversification tends to smooth out earnings, although the potential for major fluctuations in earnings exists in the future should capital gains be realized on equity investments. In measuring earnings performance, one should consider the combination of net realized earnings (net investment income plus net realized gains (losses) on sale of investments) and net unrealized appreciation or depreciation on investment holdings found in the capital structure of the balance sheet. It is not uncommon to see aggregate returns on capital reach 50

or more. Typically, returns of this magnitude are influenced by either large gains realized on the sale of investments or a substantial amount of unrealized appreciation on investments held or a combination of both. Appreciation or depreciation in portfolio investments represents potential realized gains or losses and, therefore, should be considered in evaluating the company's earnings performance. Specifically, the change in year-to-year net unrealized appreciation or depreciation is a factor that should be considered in analyzing results. When measuring the company's contribution to consolidated earnings, net unrealized appreciation or depreciation should be ignored.

2260.0.5 CAPITALIZATION

In addition to the usual equity components of capital stock, surplus and retained earnings, the capital structure of a venture capital company includes a separate category for net unrealized appreciation (depreciation) on equity interests. Net unrealized appreciation (depreciation) on equity interests represents the gross amount reported under loans and investments less an appropriate provision for taxes. Since unrealized appreciation (depreciation) on equity interests represents future profits (losses) they are measured separately in the equity account rather than in earnings.

There are no industry norms with which to measure capital adequacy. What is known, however, is that the SBA requires a minimum capital investment of $1,000,000 to establish an SBIC. Moreover, regulations governing SBIC's limit the dollar amount of investments and/or loans to a single customer to 20 percent of an SBIC's capital base. Although banks are limited by statute to a maximum capital investment in an SBIC of 4.9 percent of their primary capital, statistics show that SBIC's have substantially less than this limit. By contrast, there are no restrictions as to the amount of capital that a bank holding company may invest in a nonbank affiliated venture capital company. Dependence on capital to fund portfolio loans and investments seems to be preferred as the cost of leverage, at present, cannot provide meaningful spreads. It can be assumed that the larger the capital position the higher the dollar amount available for investing and/or lending to a single customer.

Sustained profitability and satisfactory asset quality are required to maintain financial soundness and capital adequacy. The SBA will consider an SBIC's capital as impaired if net unrealized depreciation and/or operating losses equal 50 percent or more of its capital base. It would seem appropriate to use this guideline for measuring the adequacy of capital of non-licensed venture capital companies that are affiliated with a bank holding company.

2260.0.6 INSPECTION OBJECTIVES

1. To determine whether the company is operating within the scope of its approved activities and within the provisions of the Act and Regulation Y.
2. To determine whether transactions with affiliates, especially banks, are in accordance with applicable statutes and regulations.
3. To determine the quality of the asset portfolios and whether the allowance for losses is

adequate in relation to portfolio risk and whether the nonaccrual policy is appropriate.

4. To determine the viability of the company as a going concern, and whether its affiliate status represents a potential or actual adverse influence upon the parent holding company and its affiliated bank and nonbank subsidiaries and the condition of the consolidated corporation.

5. To determine whether the company has formal written policies and procedures relating to lending and investing.

6. To determine if such policies and procedures are adequate and that management is operating in conformance with the established policies.

7. To assess management's ability to operate the company in a safe and sound manner.

8. To suggest corrective action when policies, practices or procedures are deficient, or when asset quality is weak, or when violations of laws or regulations have been noted.

2260.0.7 INSPECTION PROCEDURES

2260.0.7.1 Pre-Inspection

All SBIC's and MESBIC's are subject to comprehensive regulations and annual examinations administered by the SBA. Therefore, it is not necessary to conduct a full scope inspection of these subsidiaries. The bank holding company inspection should focus on the quality of assets, as disclosed in the annual director's valuation and financial statements submitted to the SBA on an annual basis, transactions with affiliates and an overall financial evaluation.

The decision whether the operations of a non-licensed venture capital company will be inspected ''on-site'' is based on the availability and adequacy of data from either the parent holding company or that which is obtained upon request from the subsidiary. The following information should be obtained and thoroughly reviewed prior to making a decision to go ''on-site'':

1. Minutes of the board and executive committee meetings since inception of company or the date of the previous inspection;

2. Comparative interim and fiscal financial statements containing value accounting adjustments, including the year-end filing with the SBA;

3. Listing of contingent liabilities, including any pending material litigation;

4. Latest director's valuation of loans and investments and results of latest internal loan or credit review;

5. Copies of the most recent internal and external audit reports;

6. Trial balance of all loans and investments, indicating the percent ownership of a company involving an equity interest;

7. Listing of loans, debentures and preferred stock on which scheduled payments are in arrears 30 days or more or on which payments are otherwise not being made according to original terms;

8. Details of internal and external borrowing arrangements; and

9. Any agreements, guarantees or pledges between the subsidiary and its parent holding company or affiliates.

After reviewing the above information, a decision whether or not to conduct an on-site inspection must be made. Some of the determinants of this decision would include: relative size; current level and trend of earnings; asset quality as indicated in the director's valuation of loans and investments; and the condition of the company when last inspected. From the information provided, it might be determined that the company is operating properly and is in sound condition. In such a case, an on-site inspection may not be warranted. Conversely, a deteriorating condition might be detected which would warrant a visit even though a satisfactory condition had been determined during the previous inspection. All non-licensed venture capital companies should be inspected on-site at least once every three years.

2260.0.7.2 On-Site Inspection

If the decision was made to conduct an ''on-site'' inspection of the subsidiary, the examiner should expand the scope of the review to include these additional procedures:

1. Hold a brief meeting with the chief executive officer of the company to establish contact and present a brief indication of the scope of the inspection;

2. Review the company's policy statements for loans, investments, nonaccruals, and charge-offs;

3. Review the latest internal review by the company's directors or the loan review department of the bank affiliate or bank holding company;

4. Conduct an independent review of the portfolio;

a. Establish the minimum dollar of loans and investments to be reviewed to achieve at least 70 percent coverage of the portfolio;

b. Review loans and investments in sample, giving consideration to the following:

- Latest balance sheet and income data;
- Profitability projections;
- Product(s) being produced by customer and their market acceptance;
- Business plan;
- Extent of relationship with customer;
- Funding sources; and
- Ultimate source of repayment.

c. Discuss the more serious problem loans and investments with management;

d. Classify, if necessary, those loans and investments that exhibit serious weaknesses where collectibility is problematical or worse. Lower classification criteria must accompany these assets, which possess a higher degree of credit risk than found in other types of nonbank lending;

e. Determine the diversification of risk within the portfolio, i.e., the mix of loans and investments and the type of industries financed;

f. Review the adequacy of the allowance for loan losses and determine the reasonableness of the amount of unrealized appreciation or depreciation reported on the balance sheet in conjunction with the asset evaluation; and

g. Determine whether the board of directors or parent holding company has established credit limits for the maximum amount of loans and investments to be extended to a single customer. Verify adherence to the limits.

5. Review equity investments for compliance with the 4.9 percent maximum limitation to any one customer;

6. Verify office locations and activities with system approvals;

7. Compare company's general ledger with statements prepared for the latest FR Y–6;

8. Review the quality and liquidity of other investment holdings;

9. Review and classify, if necessary, assets acquired in liquidation of a customer's business due to default. Determine compliance of divestiture period with section 4(c)(2) of The Bank Holding Company Act;

10. Review the manner and frequency in which subsidiary management reports to the parent holding company;

11. Follow-up on matters criticized in the most recent audit reports and the previous inspection report on the subsidiary; and

12. Assess the expertise of subsidiary management and awareness of subsidiary directors.

2260.0.7.3 Matters Warranting Recommendation in Inspection Report

Deficiencies or concerns that warrant citation in the inspection report for the attention of management are:

1. Lack of policies and/or controls in the lending and investing functions;

2. Improper diversification of risk in the loan and investment portfolio;

3. Adverse tie-in arrangements with the affiliate bank(s):

4. Lack of management expertise;

5. Impairment of capital as a result of operating losses or high unrealized depreciation on equity interests or a combination of both; and

6. Lack of adequate reporting procedures to parent holding company management.

2260.0.8 LAWS, REGULATIONS, INTERPRETATIONS AND ORDERS

Subject	*Laws* [1]	*Regulations* [1]	*Interpretations* [3]	*Orders*
Acquisition of SBIC by a bank holding company	1843(c)(8) 1843(c)(5)	225.111	4–173 4–175 4–174	
Limitations of an SBIC's control over business enterprises		13 C.F.R. 107.901(a)		
Criteria for various types of business investments of an SBIC		13 C.F.R. 121.3–10 13 C.F.R. 121.3–11		
Acquisition of a non-licensed venture capital company by a bank holding company	1843(c)(8)	225.112		
Formation of joint ventures (limited partnerships) for purpose of conducting venture capital activities	1843(c)(6)			
Limitation on equity interests of a non-licensed venture capital company affiliated with a bank holding company	1843(c)(6)			
Loans to affiliates—Section 23A of FR Act	371c			
Restrictions on transactions with affiliates	371c			
Acquisition of shares acquired DPC	1843(c)(2)			
Acquisition of assets acquired DPC	1843(c)(2)	225.132	4–175.1	

1. 12 U.S.C., unless specifically stated otherwise.
2. 12 C.F.R., unless specifically stated otherwise.
3. Federal Reserve Regulatory Service reference.

2260.0.9 APPENDIX 1—VENTURE CAPITAL COMPANY SAMPLE BALANCE SHEET

	December 31, 19XX
ASSETS	
Cash	XXXX
Money Market investments	XXXX
Loans and investments	XXXX
Loans	XXXX
Debt securities	XXXX
Equity interests	XXXX
Total loans and investments	XXXX
Less: Allowance for losses on loans and investments	XXXX
Plus: Unrealized appreciation (depreciation) on equity interests	XXXX
Net loans and investments	XXXX
Interest and dividends receivable	XXXX
Assets acquired in liquidation of loans and investments	XXXX
Other assets	XXXX
Total assets	XXXX
LIABILITIES	
Notes payable—affiliates	XXXX
Notes payable—others	XXXX
Accrued taxes payable	XXXX
Deferred tax credits	XXXX
Other liabilities	XXXX
Total liabilities	XXXX
STOCKHOLDER'S EQUITY	
Common stock (par value XXX)	XXXX
Surplus	XXXX
Retained earnings	XXXX
Net unrealized appreciation (depreciation) of equity interests	XXXX
Total stockholder's equity	XXXX
Total liabilities and stockholder's equity	XXXX

2260.0.10 APPENDIX 2—VENTURE CAPITAL COMPANY—SAMPLE INCOME STATEMENT

	For Fiscal Year Ended December 31, 19XX
INTEREST INCOME	
Interest on loans and debt securities	XXX
Dividends on equity interests	XXX
Interest on money market investments	XXX
Total interest income	XXX
INTEREST EXPENSE	
Interest on notes payable to affiliates	XXX
Interest on notes payable to others	XXX
Total interest expense	XXX
NET INTEREST INCOME	XXX
PROVISION FOR LOAN LOSSES	XXX
Net interest after provision for loan losses	XXX
OTHER REVENUE	
Income from assets acquired in liquidation of loans and investments	XXX
Management Fees	XXX
Total other revenue	XXX
Net interest and other revenue	XXX
NONINTEREST EXPENSE	
Salaries and benefits	XXX
Management and service fees	XXX
Other expenses	XXX
Total noninterest expense	XXX
Income before taxes	XXX
Applicable taxes	XXX
Net investment income	XXX
Realized gain (loss) on sale of securities, net of tax	XXX
Net income	XXX