
DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 32
[Docket No. OCC-2008-0005]
RIN 1557-AD08
Lending Limits
AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing an interim final rule to add a provision to its part 32 lending limits regulation that will address temporary funding arrangements in emergency situations. The interim final rule will enable the OCC to establish a special lending limit for loans and extensions of credit that the OCC determines are essential to address an emergency situation (such as critical financial markets stability), will be of short duration, will be reduced in amount in a timeframe and manner acceptable to the OCC, and do not present unacceptable risk to the lending national bank. In granting approval for a special temporary lending limit, the OCC would impose supervisory oversight and reporting measures that it determines are appropriate.

DATES: *Effective Date:* This rule is effective on March 20, 2008. *Comment Date:* Comments must be received by April 21, 2008.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title "Lending Limits" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of

the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0005" to submit or view public comments and to view supporting and related materials for this interim final rule. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail:* regs.comments@occ.treas.gov.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219.
- *Fax:* (202) 874-4448.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket Number OCC-2008-0005" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this interim final rule by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0005" to view public comments for this rulemaking action.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security

screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090; or Steven V. Key, Special Counsel, Bank Activities and Structure Division, (202) 874-5300, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:
Background

The percentage of capital and surplus that a national bank may loan to any one borrower is limited by 12 U.S.C. 84. Generally, section 84 and the OCC's implementing regulations, 12 CFR part 32, permit a national bank to make loans in an amount up to 15 percent of its unimpaired capital and surplus to a single borrower. A national bank also may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by specified types of collateral. Part 32 refers to these lending limits as the "combined general limit." The statute and regulation also provide exceptions to the combined general limit for various types of loans and extensions of credit.

12 CFR 32.3(c)(7) of the OCC's current regulations include an exemption from the combined general limit for loans and extensions of credit approved by the OCC to a "financial institution" when an emergency situation exists. For purposes of this exception, a "financial institution" is defined as a commercial bank, savings bank, trust company, savings association, or credit union.

Recent market conditions have highlighted that emergency situations may exist where temporary exemptions from the lending limits may be appropriate for loans and extensions of credit to other types of parties. National banks, in their established role as lenders and financial intermediaries, can be a crucial source of liquidity in such situations, provided the emergency funding is of limited duration, does not present unacceptable risk, and is subject to appropriate safeguards. 12 U.S.C. 84(d)(1) provides the OCC with rulemaking authority "to administer and carry out the purposes" of the lending limit statute, including authority "to

establish limits other than those specified in this section for particular classes or categories of loans or extensions of credit.”¹ Accordingly, the OCC is amending part 32 to add a provision that creates a special lending limit for temporary funding arrangements for loans and extensions of credit that the OCC determines are essential to address emergency situations, which would include critical financial markets stability, subject to certain conditions, described below.

This additional lending limit category is based upon, but more limited than, the OCC’s existing authority under § 32.3(c)(7) to approve and exempt from the general lending limit loans or extensions of credit by a national bank to a “financial institution” when an emergency situation exists.

Description of the Interim Final Rule

The interim final rule adds a new § 32.8 that permits an eligible bank,² with the written approval of the OCC, to make loans and extensions of credit to one borrower subject to a special temporary lending limit established by the OCC, where the OCC determines that such loans and extensions of credit are essential to address an emergency situation (such as critical financial markets stability), will be of short duration, will be reduced in amount in a timeframe and manner acceptable to the OCC, and do not present unacceptable risk. In granting approval for such a special temporary lending limit, the OCC will impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the standards contained in new § 32.8. The § 32.8 special temporary lending limit is in addition to the amount a national bank may lend to one borrower under § 32.3, i.e., the combined general lending limit and applicable exceptions.

Effective Date; Solicitation of Comments

This interim final rule will become effective immediately upon publication in the **Federal Register**. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and an opportunity for public comment are not required prior to the issuance of a final

rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”³ Similarly, a final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the rule. 5 U.S.C. 553(d)(3).

Consistent with section 553(b)(B) of the APA, the OCC finds that good cause exists for a finding that notice and comment is impracticable and contrary to the public interest. As previously described, temporary funding arrangements in emergency situations are critical to maintain the orderly functioning of markets and provide market liquidity. Completion of notice and comment rulemaking procedures prior to issuing this interim final rule would require delaying implementation of the final rule. In the current market environment, such a delay is impracticable and inconsistent with the public interest since it may result in undue constraint on the national banks’ ability to perform critical lending and financial intermediary roles which are critical to the orderly functioning and liquidity of markets. Issuance of this interim final rule furthers the public interest because it will provide the OCC with an additional tool that will help ensure the safety and soundness of national banks and liquidity to the credit markets. For the same reasons, the OCC finds good cause to publish this rule with an immediate effective date. *See* 5 U.S.C. 553(d)(3).

Although notice and comment are not required prior to the effective date of this rule, the OCC invites comments on all aspects of this interim final rule and intends to revise the interim final rule if necessary or appropriate in light of the comments received.

Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the interim final rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and interim rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106–102 requires each Federal agency to use plain language in all proposed and interim final rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rule making actions for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).⁴ Because the OCC has determined for good cause that the Administrative Procedure Act does not require public notice and comment on this interim final rule, we are not publishing a general notice of proposed rulemaking. Thus, the RFA does not apply to this interim final rule.

Executive Order 12866

The OCC has determined that this interim final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995⁵ (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this interim final rule will not result in a Federal mandate that would result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), we have reviewed the interim final rule to assess any information collections. There are no collections of information

¹ This authority is in addition to OCC’s general rulemaking authority found at 12 U.S.C. 93a, upon which the OCC also relies for purposes of issuing the 12 CFR part 32 lending limits regulations.

² For purposes of part 32, “eligible bank” means a national bank that (1) is “well capitalized” as defined in 12 CFR 6.4(b)(1); and (2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with the bank’s most recent examination or subsequent review, with at least a rating of 2 for asset quality and for management. *See* 12 CFR 32.2(i).

³ 5 U.S.C. 553(b)(B).

⁴ 5 U.S.C. 601(2).

⁵ 2 U.S.C. 1532.

as defined by the Paperwork Reduction Act in the interim final rule.

Lists of Subjects in 12 CFR Part 32

Lending limits.

Authority and Issuance

■ For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 32—LENDING LIMITS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

■ 2. Add § 32.8 to read as follows:

§ 32.8 Temporary funding arrangements in emergency situations.

In addition to the amount that a national bank may lend to one borrower under § 32.3 of this part, an eligible bank with the written approval of the OCC may make loans and extensions of credit to one borrower subject to a special temporary lending limit established by the OCC, where the OCC determines that such loans and extensions of credit are essential to address an emergency situation, such as critical financial markets stability, will be of short duration, will be reduced in amount in a timeframe and manner acceptable to the OCC, and do not present unacceptable risk. In granting approval for such a special temporary lending limit, the OCC will impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the foregoing standards as set forth in this paragraph.

Dated: March 17, 2008.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E8-5724 Filed 3-19-08; 8:45 am]

BILLING CODE 4810-33-P
