

credit, or other legally binding lending commitment acquired by a lender by purchase, assignment, or otherwise.

Improved property loan means an extension of credit secured by one of the following types of real property:

- (1) Farmland, ranchland or timberland committed to ongoing management and agricultural production;
- (2) 1- to 4-family residential property that is not owner-occupied;
- (3) Residential property containing five or more individual dwelling units;
- (4) Completed commercial property; or
- (5) Other income-producing property that has been completed and is available for occupancy and use, except income-producing owner-occupied 1- to 4-family residential property.

Land development loan means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

Loan origination means the time of inception of the obligation to extend credit (i.e., when the last event or prerequisite, controllable by the lender, occurs causing the lender to become legally bound to fund an extension of credit).

Loan-to-value or *loan-to-value ratio* means the percentage or ratio that is derived at the time of loan origination by dividing an extension of credit by the total value of the property(ies) securing or being improved by the extension of credit plus the amount of any readily marketable collateral and other acceptable collateral that secures the extension of credit. The total amount of all senior liens on or interests in such property(ies) should be included in determining the loan-to-value ratio. When mortgage insurance or collateral is used in the calculation of the loan-to-value ratio, and such credit enhancement is later released or replaced, the loan-to-value ratio should be recalculated.

Other acceptable collateral means any collateral in which the lender has a perfected security interest, that has a quantifiable value, and is accepted by the lender in accordance with safe and sound lending practices. Other acceptable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral. Other acceptable collateral includes, among other items, unconditional irrevocable standby letters of credit for the benefit of the lender.

Owner-occupied, when used in conjunction with the term *1- to 4-family residential property* means that the owner of the underlying real property occupies at least one unit of

the real property as a principal residence of the owner.

Readily marketable collateral means insured deposits, financial instruments, and bullion in which the lender has a perfected interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral.

Value means an opinion or estimate, set forth in an appraisal or evaluation, whichever may be appropriate, of the market value of real property, prepared in accordance with the agency's appraisal regulations and guidance. For loans to purchase an existing property, the term "value" means the lesser of the actual acquisition cost or the estimate of value.

1- to 4-family residential property means property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under State law).

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Subpart E—Other Real Estate Owned

SOURCE: 61 FR 11301, Mar. 20, 1996, unless otherwise noted.

§ 34.81 Definitions.

(a) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital as calculated under the OCC's risk-based capital standards set out in appendix A to part 3 of this chapter based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 3, based upon the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(b) *Debts previously contracted (DPC) real estate* means real estate (including capitalized and operating leases) acquired by a national bank through any means in full or partial satisfaction of a debt previously contracted.

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(c) *Former banking premises* means real estate (including capitalized and operating leases) for which banking use no longer is contemplated. This includes real estate originally acquired for future expansion that no longer will be used for expansion or other banking purposes.

(d) *Market value* means the value determined in accordance with subpart C of this part.

(e) *Other real estate owned (OREO)* means:

- (1) DPC real estate; and
- (2) Former banking premises.

(f) *Recorded investment amount* means:

- (1) For loans, the recorded loan balance, as determined by generally accepted accounting principles; and
- (2) For former banking premises, the net book value.

§ 34.82 Holding period.

(a) *Holding period for OREO.* A national bank shall dispose of OREO at the earliest time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.

(b) *Commencement of holding period.* The holding period begins on the date that:

- (1) Ownership of the property is originally transferred to a national bank;
- (2) A bank completes relocation from former banking premises to new banking premises or ceases to use the former banking premises without relocating; or
- (3) A bank decides not to use real estate acquired for future bank expansion.

(c) *Effect of statutory redemption period.* For DPC real estate that is subject to a redemption period imposed under State law, the holding period begins at the expiration of that redemption period.

§ 34.83 Disposition of real estate.

(a) *Disposition.* A national bank may comply with its obligation to dispose of real estate under 12 U.S.C. 29 in the following ways:

(1) With respect to OREO in general:

(i) By entering into a transaction that is a sale under generally accepted accounting principles;

(ii) By entering into a transaction that involves a loan guaranteed or insured by the United States government or by an agency of the United States government or a loan eligible for purchase by a Federally-sponsored instrumentality that purchases loans; or

(iii) By selling the property pursuant to a land contract or a contract for deed;

(2) With respect to DPC real estate, by retaining the property for its own use as bank premises or by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate;

(3) With respect to a capitalized or operating lease:

(i) By obtaining an assignment or a coterminous sublease. If a national bank enters into a sublease that is not coterminous, the period during which the master lease must be divested will be suspended for the duration of the sublease, and will begin running again upon termination of the sublease. A national bank holding a lease as OREO may enter into an extension of the lease that would exceed the holding period referred to in §34.82 if the extension meets the following criteria:

(A) The extension is necessary in order to sublease the master lease;

(B) The national bank, prior to entering into the extension, has a firm commitment from a prospective subtenant to sublease the property; and

(C) The term of the extension is reasonable and does not materially exceed the term of the sublease;

(ii) Should the OCC determine that a bank has entered into a lease, extension of a lease, or a sublease for the purpose of real estate speculation in violation of 12 U.S.C. 29 and this part, the OCC will take appropriate measures to address the violation, which may include requiring the bank to take immediate steps to divest the lease or sublease; and

(4) With respect to a transaction that does not qualify as a disposition under paragraphs (a)(1) through (3) of this section, by receiving or accumulating from the purchaser an amount in a down payment, principal and interest payments, and private mortgage insurance totalling at least 10 percent of the sales price, as measured in accordance