

valid and enforceable, notwithstanding any State law limitations to the contrary. For the purposes of this section, the term real property includes residential dwellings such as condominium units, cooperative housing units, and residential manufactured homes.

### Subpart B—Adjustable-Rate Mortgages

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

#### § 34.20 Definitions.

*Adjustable-rate mortgage (ARM) loan* means an extension of credit made to finance or refinance the purchase of, and secured by a lien on, a one-to-four family dwelling, including a condominium unit, cooperative housing unit, or residential manufactured home, where the lender, pursuant to an agreement with the borrower, may adjust the rate of interest from time to time. An ARM loan does not include fixed-rate extensions of credit that are payable at the end of a term that, when added to any terms for which the bank has promised to renew the loan, is shorter than the term of the amortization schedule.

#### § 34.21 General rule.

(a) *Authorization.* A national bank and its subsidiaries may make, sell, purchase, participate in, or otherwise deal in ARM loans and interests therein without regard to any State law limitations on those activities.

(b) *Purchase of loans not in compliance.* Except as provided in paragraph (c) of this section, a national bank may purchase or participate in ARM loans that were not made in accordance with this part, provided such purchases are consistent with safe and sound banking practices as described in published OCC guidance, including appropriate diligence regarding the quality and characteristics of the loans, and other applicable regulations.

(c) *Purchase of loans from a subsidiary or affiliate.* ARM loans purchased, in whole or in part, from a subsidiary or affiliate must comply with this part and with other applicable regulations, and be consistent with safe and sound banking practices as described in pub-

lished OCC guidance, including appropriate diligence regarding the quality and characteristics of the loans. For purposes of this paragraph, the terms affiliate and subsidiary have the same meaning as in 12 U.S.C. 371c.

[61 FR 11300, Mar. 20, 1996, as amended at 73 FR 22251, Apr. 24, 2008]

#### § 34.22 Index.

(a) *In general.* If a national bank makes an ARM loan to which 12 CFR 226.19(b) applies (*i.e.*, the annual percentage rate of a loan may increase after consummation, the term exceeds one year, and the consumer's principal dwelling secures the indebtedness), the loan documents must specify an index or combination of indices to which changes in the interest rate will be linked. This index must be readily available to, and verifiable by, the borrower and beyond the control of the bank. A national bank may use as an index any measure of rates of interest that meets these requirements. The index may be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period. A national bank also may increase the interest rate in accordance with applicable loan documents specifying the amount of the increase and the times at which, or circumstances under which, it may be made. A national bank may decrease the interest rate at any time.

(b) *Exception.* Thirty days after filing a notice with the OCC, a national bank may use an index other than one described in paragraph (a) of this section unless, within that 30-day period, the OCC has notified the bank that the notice presents supervisory concerns or raises significant issues of law or policy. If the OCC provides such notice to the bank, the bank may not use that index unless it applies for and receives the OCC's prior written approval.

[61 FR 11300, Mar. 20, 1996, as amended at 73 FR 22251, Apr. 24, 2008]

#### § 34.23 Prepayment fees.

A national bank offering or purchasing ARM loans may impose fees for prepayments notwithstanding any State law limitations to the contrary.