

COMBINATION/ ATTRIBUTION RULES

General rule Under part 215, a loan will be attributed to an insider if the loan proceeds are “transferred to,” or used for the “tangible economic benefit of,” the insider or if the loan is made to a “related interest” of the insider. Under part 32, a loan will be attributed to another person when either (i) the proceeds of the loan are to be used for the direct benefit of the other person or (ii) a common enterprise exists between the borrower and the other person. The “transfer” test and “tangible economic benefit” test of part 215 are substantially the same as the “direct benefit” test of part 32. Under each of these tests, a loan will be attributed to another person where the proceeds are transferred to the other person, unless the proceeds are used in a *bona fide* arm’s length transaction to acquire property, goods, or services. However, the “related interest” test of part 215 and the “common enterprise” test under part 32 will lead to different results in many instances. Under part 215, a “related interest” is a company or a political or campaign committee that is “controlled” by an insider. Part 215 defines “control” as meaning, generally speaking, that someone owns or controls at least 25 percent of a class of voting securities of a company, controls the election of a majority of the company’s directors, or can “exercise a controlling influence” over the company. Part 32 uses the same definition of “control” in the “common enterprise” test, but a mere finding of “control” is not, by itself, a sufficient basis to find that a common enterprise exists. Part 32 will attribute a loan under the “common enterprise” test if the borrowers are under common control (including where one of the persons in question controls the other) *and* there is “substantial financial interdependence” between the borrowers (*i.e.*, where at least 50 percent of the gross receipts or expenditures of one borrower comes from transactions with the other). If there is not both common control and substantial financial interdependence, the OCC will not attribute a loan under the “common enterprise” test unless (i) the expected source of repayment for a loan is the same for each borrower and neither borrower has another source of income from which the loan may be repaid, (ii) two people borrow to acquire a business of which they will own a majority of the voting securities, or (iii) OCC determines that a common enterprise exists based on facts and circumstances of a particular transaction.

Loans to corporate groups. Both parts 32 and 215 will consider a loan that was made to a corporation to have been made to a third person if the tests identified in the previous discussion of the “General Rule” are satisfied. If these tests are not met, parts 32 and 215 still may require attribution, but the circumstances when this will occur and the consequences of attribution under these circumstances differ under the two rules. Under part 215, a loan to a corporation will be deemed to have been made to an insider if the corporation is a “related interest” of the insider (*i.e.*, the insider owns at least 25% percent of a class of voting shares of the company, controls the election of a majority of the company’s directors, or has the power to exercise a controlling influence over the company). Under part 32, a loan to an individual or company will not be considered to have been made to a corporate group unless a “person” (which includes individuals and companies) owns more than 50% of the voting shares of a company. If a loan is found to have been made to a related interest of an insider under part 215, the loan must comply with all of the insider lending restrictions of part 215. If a loan is found to have been made to a corporate group under part 32, the loan, when aggregated with all other loans to that corporate group, generally may not exceed 50% of the bank’s capital and surplus.

[61 FR 54536, Oct. 21, 1996, as amended at 73 FR 22251, Apr. 24, 2008; 82 FR 8109, Jan. 23, 2017]

PART 32—LENDING LIMITS

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APPENDIX A TO PART 32—INTERPRETATIONS

AUTHORITY: 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

SOURCE: 60 FR 8532, Feb. 15, 1995, unless otherwise noted.

§ 32.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), and 5412(b)(2)(B).

(b) *Purpose.* The purpose of this part is to protect the safety and soundness of national banks and savings associations by preventing excessive loans to one person, or to related persons that are financially dependent, and to promote diversification of loans and equitable access to banking services.

(c) *Scope.* (1) Except as provided by paragraphs (c) and (d) of this section, this part applies to all loans and extensions of credit made by national banks and their domestic operating subsidiaries and to all loans and extensions of credit made by savings associations, their operating subsidiaries, and their service corporations that are consolidated under Generally Accepted Accounting Principles (GAAP). For purposes of this part, the term “savings association” includes Federal savings associations and state savings associations, as those terms are defined in 12 U.S.C. 1813(b).

(2) This part does not apply to loans or extensions of credit made to the bank’s or savings association’s:

- (i) Affiliates, as that term is defined in 12 U.S.C. 371c(b)(1) and (e), as implemented by 12 CFR 223.2(a) (Regulation W);
- (ii) Operating subsidiaries;
- (iii) Edge Act or Agreement Corporation subsidiaries; or
- (iv) Any other subsidiary consolidated with the bank or savings association under GAAP.

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(3) The lending limits in this part are separate and independent from the investment limits prescribed by 12 U.S.C. 24 (Seventh) or 12 U.S.C. 1464(c), as applicable, and 12 CFR Part 1 and 12 CFR 160.30, and a national bank or savings association may make loans or extensions of credit to one borrower up to the full amount permitted by this part and also hold eligible securities of the same obligor up to the full amount permitted under 12 U.S.C. 24 (Seventh) or 12 U.S.C. 1464(c), as applicable, and 12 CFR part 1 and 12 CFR 160.30.

(4) Loans and extensions of credit to executive officers, directors and principal shareholders of national banks, savings associations, and their related interests are subject to limits prescribed by 12 U.S.C. 375a and 375b in addition to the lending limits established by 12 U.S.C. 84 or 12 U.S.C. 1464(u) as applicable, and this part.

(5) In addition to the foregoing, loans and extensions of credit must be consistent with safe and sound banking practices.

(d) *Temporary exception.* The requirements of this part shall not apply to the credit exposure arising from a derivative transaction or securities financing transaction until October 1, 2013.

[60 FR 8532, Feb. 15, 1995, as amended at 73 FR 22251, Apr. 24, 2008; 77 FR 37275, June 21, 2012; 77 FR 76842, Dec. 31, 2012; 78 FR 37943, June 25, 2013]

§ 32.2 Definitions.

(a) *Appropriate Federal banking agency* has the same meaning as in 12 U.S.C. 1813(q).

(b) *Borrower* means a person who is named as a borrower or debtor in a loan or extension of credit; a person to whom a national bank or savings association has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank or savings association; or any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the “direct benefit” or the “common enterprise” tests set forth in § 32.5.

(c) *Capital and surplus* means—

(1) A national bank’s or savings association’s Tier 1 and Tier 2 capital calculated under the risk-based capital

standards applicable to the institution as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Report); plus

(2) The balance of a national bank's or savings association's allowance for loan and lease losses not included in the bank's or savings association's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(1) of this section, as reported in the bank's or savings association's Call Report.

(d) *Close of business* means the time at which a national bank or savings association closes its accounting records for the business day.

(e) *Consumer* means the user of any products, commodities, goods, or services, whether leased or purchased, but does not include any person who purchases products or commodities for resale or fabrication into goods for sale.

(f) *Consumer paper* means paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Consumer paper also includes paper covering the lease (where the national bank or savings association is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(g) *Contractual commitment to advance funds.* (1) The term includes a national bank's or savings association's obligation to—

(i) Make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank or savings association in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

(ii) Guarantee or act as surety for the benefit of a person;

(iii) Advance funds under a qualifying commitment to lend, as defined in paragraph (t) of this section, and

(iv) Advance funds under a standby letter of credit as defined in paragraph (ee) of this section, a put, or other similar arrangement.

(2) The term does not include commercial letters of credit and similar in-

struments where the issuing bank or savings association expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.

(h) *Control* is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons—

(1) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person;

(2) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(3) Has the power to exercise a controlling influence over the management or policies of another person.

(i) *Credit derivative* has the same meaning as this term has in 12 CFR 3.2.

(j) *Current market value* means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(k) *Derivative transaction* includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(1) *Effective margining arrangement* means a master legal agreement governing derivative transactions between a bank or savings association and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's or savings association's net credit exposure to the counterparty that exceeds \$25 million created by the derivative transactions covered by the agreement.

(m) *Eligible credit derivative* means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:

(1) The derivative contract meets the requirements of an eligible guarantee, as defined in 12 CFR 3.2, and has been confirmed by the protection purchaser and the protection provider;

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(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency), or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(n) *Eligible national bank or eligible savings association* means a national bank or saving association that:

(1) Is well capitalized as defined in the prompt corrective action rules applicable to the institution; and

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with the national bank's or savings association's most recent examination or subsequent review, with at least a rating of 2 for asset quality and for management.

(o) *Eligible protection provider* means:

(1) A sovereign entity (a central government, including the U.S. government; an agency; department; ministry; or central bank);

(2) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(3) A Federal Home Loan Bank;

(4) The Federal Agricultural Mortgage Corporation;

(5) A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(6) A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;

(7) A savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a;

(8) A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq;

(9) An insurance company that is subject to the supervision of a State insurance regulator;

(10) A foreign banking organization;

(11) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

(12) A qualifying central counterparty;

(p) *Financial instrument* means stocks, notes, bonds, and debentures traded on a national securities exchange, OTC margin stocks as defined in Regulation U, 12 CFR part 221, commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which national banks or savings associations

may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to U.S. dollars. The term “financial instrument” does not include mortgages.

(q) *Loans and extensions of credit* means a national bank’s or savings association’s direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds or repayable from specific property pledged by or on behalf of the borrower; and any credit exposure, as determined pursuant to § 32.9, arising from a derivative transaction or a securities financing transaction.

(1) Loans or extensions of credit for purposes of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part include—

(i) A contractual commitment to advance funds, as defined in paragraph (g) of this section;

(ii) A maker or endorser’s obligation arising from a national bank’s or savings association’s discount of commercial paper;

(iii) A national bank’s or savings association’s purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the bank’s or savings association’s loan is the total unpaid balance of the paper owned by the bank or savings association less any applicable dealer reserves retained by the bank or savings association and held by the bank or savings association as collateral security. Where the seller’s obligation to repurchase is limited, the bank’s or savings association’s loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A national bank’s or savings association’s purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;

(iv) An overdraft, whether or not pre-arranged, but not an intra-day overdraft for which payment is received before the close of business of the national bank or savings association that makes the funds available;

(v) The sale of Federal funds with a maturity of more than one business day, but not Federal funds with a maturity of one day or less or Federal funds sold under a continuing contract; and

(vi) Loans or extensions of credit that have been charged off on the books of the national bank or savings association in whole or in part, unless the loan or extension of credit—

(A) Is unenforceable by reason of discharge in bankruptcy;

(B) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision;

(C) Is no longer legally enforceable for other reasons, provided that the bank or savings association maintains sufficient records to demonstrate that the loan is unenforceable.

(2) The following items do not constitute loans or extensions of credit for purposes of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part—

(i) Additional funds advanced for the benefit of a borrower by a national bank or savings association for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank’s or savings association’s interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(ii) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(iii) Financed sales of a national bank’s or savings association’s own assets, including Other Real Estate Owned, if the financing does not put the bank or savings association in a worse position than when the bank or savings association held title to the assets;

(iv) A renewal or restructuring of a loan as a new “loan or extension of credit,” following the exercise by a national bank or savings association of reasonable efforts, consistent with safe

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and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the national bank or savings association to the borrower (except as permitted by § 32.3(b)(5)), or a new borrower replaces the original borrower, or unless the appropriate Federal banking agency determines that a renewal or restructuring was undertaken as a means to evade the bank's or savings association's lending limit;

(v) Amounts paid against uncollected funds in the normal process of collection;

(vi)(A) That portion of a loan or extension of credit sold as a participation by a national bank or savings association on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(B) When an originating national bank or savings association funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank or savings association to the borrower. If the portions so attributed to the borrower exceed the originating bank's or savings association's lending limit, the loan may be treated as nonconforming subject to § 32.6, rather than a violation, if:

(1) The originating national bank or savings association had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's or savings association's lending limit;

(2) The participant reconfirmed its participation and the originating na-

tional bank or savings association had no knowledge of any information that would permit the participant to withhold its participation; and

(3) The participation was to be funded by close of business of the originating national bank's or savings association's next business day; and

(vii) That portion of one or more loans or extensions of credit, not to exceed 10 percent of capital and surplus, with respect to which the national bank or savings association has purchased protection in the form of a single-name credit derivative that meets the requirements of § 32.2(m)(1) through (7) from an eligible protection provider if the reference obligor is the same legal entity as the borrower in the loan or extension of credit and the maturity of the protection purchased equals or exceeds the maturity of the loan or extension of credit.

(r) *Person* means an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; limited liability company; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization; and

(s) *Qualifying central counterparty* has the same meaning as this term has in 12 CFR 3.2.

(t) *Qualifying commitment to lend* means a legally binding written commitment to lend that, when combined with all other outstanding loans and qualifying commitments to a borrower, was within the national bank's or savings association's lending limit when entered into, and has not been disqualified.

(1) In determining whether a commitment is within the national bank's or savings association's lending limit when made, the bank or savings association may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's or savings association's commitment and that would be excluded from the definition of "loan or extension of credit" under paragraph (q)(2)(vi) of this section.

(2) If the national bank or savings association subsequently chooses to

make an additional loan and that subsequent loan, together with all outstanding loans and qualifying commitments to a borrower, exceeds the bank's or savings association's applicable lending limit at that time, the bank's or savings association's qualifying commitments to the borrower that exceed the bank's or savings association's lending limit at that time are deemed to be permanently disqualified, beginning with the most recent qualifying commitment and proceeding in reverse chronological order. When a commitment is disqualified, the entire commitment is disqualified and the disqualified commitment is no longer considered a "loan or extension of credit." Advances of funds under a disqualified or non-qualifying commitment may only be made to the extent that the advance, together with all other outstanding loans to the borrower, do not exceed the bank's or savings association's lending limit at the time of the advance, calculated pursuant to § 32.4.

(u) *Qualifying master netting agreement* has the same meaning as this term has in 12 CFR 3.2.

(v) *Readily marketable collateral* means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

(w) *Readily marketable staple* means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations.

(1) An article comes within this definition if—

(i) The exact price is easy to determine; and

(ii) The staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral.

(2) Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions

existing at the time the loan or extension of credit that is secured by the staples is made.

(x) *Residential housing units* mean:

(1) Homes (including a dwelling unit in a multi-family residential property such as a condominium or a cooperative);

(2) Combinations of homes and business property (*i.e.*, a home used in part for business);

(3) Other real estate used for primarily residential purposes other than a home (but which may include homes);

(4) Combinations of such real estate and business property involving only minor business use (*i.e.*, where no more than 20 percent of the total appraised value of the real estate is attributable to the business use);

(5) Farm residences and combinations of farm residences and commercial farm real estate;

(6) Property to be improved by the construction of such structures; or

(7) Leasehold interests in the above real estate.

(y) *Residential real estate loan* means a loan or extension of credit that is secured by 1-4 family residential real estate.

(z) *Sale of Federal funds* means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve Banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

(aa) *Securities financing transaction* means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(bb) *Security* has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(cc) *Small business loan* means a loan or extension of credit "secured by non-farm nonresidential properties" or "a commercial or industrial loan" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(dd) *Small farm loans or extensions of credit* means "loans to small farms," as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

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(ee) *Standby letter of credit* means any letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or advanced to or for the account of the account party;

(2) To make payment on account of any indebtedness undertaken by the account party; or

(3) To make payment on account of any default by the account party in the performance of an obligation.

[60 FR 8532, Feb. 15, 1995, as amended at 63 FR 15746, Apr. 1, 1998; 66 FR 31120, June 11, 2001; 66 FR 55072, Nov. 1, 2001; 69 FR 51357, Aug. 19, 2004; 77 FR 37275, June 21, 2012; 77 FR 37277, June 21, 2012; 78 FR 37944, June 25, 2013; 79 FR 11312, Feb. 28, 2014; 80 FR 28479, May 18, 2015]

§ 32.3 Lending limits.

(a) *Combined general limit.* A national bank's or savings association's total outstanding loans and extensions of credit to one borrower may not exceed 15 percent of the bank's or savings association's capital and surplus, plus an additional 10 percent of the bank's or savings association's capital and surplus, if the amount that exceeds the bank's or savings association's 15 percent general limit is fully secured by readily marketable collateral, as defined in § 32.2(v). To qualify for the additional 10 percent limit, the bank or savings association must perfect a security interest in the collateral under applicable law and the collateral must have a current market value at all times of at least 100 percent of the amount of the loan or extension of credit that exceeds the bank's or savings association's 15 percent general limit.

(b) *Loans subject to special lending limits.* The following loans or extensions of credit are subject to the lending limits set forth below. When loans and extensions of credit qualify for more than one special lending limit, the special limits are cumulative.

(1) *Loans secured by bills of lading or warehouse receipts covering readily marketable staples.* (i) A national bank's or savings association's loans or extensions of credit to one borrower secured by bills of lading, warehouse receipts,

or similar documents transferring or securing title to readily marketable staples, as defined in § 32.2(w), may not exceed 35 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. The market value of the staples securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's or savings association's combined general limit.

(ii) Staples that qualify for this special limit must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance if such insurance is customary. Whether a staple is non-perishable must be determined on a case-by-case basis because of differences in handling and storing commodities.

(iii) This special limit applies to a loan or extension of credit arising from a single transaction or secured by the same staples, provided that the duration of the loan or extension of credit is:

(A) Not more than ten months if secured by nonperishable staples; or

(B) Not more than six months if secured by refrigerated or frozen staples.

(iv) The holder of the warehouse receipts, order bills of lading, documents qualifying as documents of title under the Uniform Commercial Code, or other similar documents, must have control and be able to obtain immediate possession of the staple so that the bank or savings association is able to sell the underlying staples and promptly transfer title and possession to a purchaser if default should occur on a loan secured by such documents. The existence of a brief notice period, or similar procedural requirements under applicable law, for the disposal of the collateral will not affect the eligibility of the instruments for this special limit.

(A) Field warehouse receipts are an acceptable form of collateral when issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the staples even though the grain elevator or warehouse is maintained on the premises of the owner of the staples.

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

(2) *Discount of installment consumer paper.* (i) A national bank's or savings association's loans and extensions of credit to one borrower that arise from the discount of negotiable or nonnegotiable installment consumer paper, as defined at §32.2(f), that carries a full recourse endorsement or unconditional guarantee by the person selling the paper, may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. An unconditional guarantee may be in the form of a repurchase agreement or separate guarantee agreement. A condition reasonably within the power of the bank or savings association to perform, such as the repossession of collateral, will not make conditional an otherwise unconditional guarantee.

(ii) Where the seller of the paper offers only partial recourse to the bank or savings association, the lending limits of this section apply to the obligation of the seller to the bank or savings association, which is measured by the total amount of paper the seller may be obligated to repurchase or has guaranteed.

(iii) Where the bank or savings association is relying primarily upon the maker of the paper for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the seller of the paper, the lending limits of this section apply only to the maker. The bank or savings association must substantiate its reliance on the maker with—

(A) Records supporting the bank's or savings association's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the bank or savings association or by a third party that is

contractually obligated to make those records available for examination purposes; and

(B) A written certification by an officer of the bank or savings association authorized by the bank's or savings association's board of directors or any designee of that officer, that the bank or savings association is relying primarily upon the maker to repay the loan or extension of credit.

(iv) Where paper is purchased in substantial quantities, the records, evaluation, and certification must be in a form appropriate for the class and quantity of paper involved. The bank or savings association may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.

(3) *Loans secured by documents covering livestock.* (i) A national bank's or savings association's loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or give a first lien on livestock may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. The market value of the livestock securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's or savings association's combined general limit. For purposes of this subsection, the term "livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry and fish, whether or not held for resale.

(ii) The bank or savings association must maintain in its files an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate, but in any case not more than 12 months old.

(iii) Under the laws of certain states, persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If a lien that is based on pasturage furnished by the lienor prior to the bank's or savings association's loan or extension of credit is assigned

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to the bank or savings association by a recordable instrument and protected against being defeated by some other lien or claim, by payment to a person other than the bank or savings association, or otherwise, it will qualify under this exception provided the amount of the perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the portion of the loan or extension of credit that exceeds the bank's or savings association's combined general limit. When the amount due under the grazing contract is dependent upon future performance, the resulting lien does not meet the requirements of the exception.

(4) *Loans secured by dairy cattle.* A national bank's or savings association's loans and extensions of credit to one borrower that arise from the discount by dealers in dairy cattle of paper given in payment for the cattle may not exceed 10 percent of the bank's or savings association's capital and surplus in addition to the amount allowed under the bank's or savings association's combined general limit. To qualify, the paper—

(i) Must carry the full recourse endorsement or unconditional guarantee of the seller; and

(ii) Must be secured by the cattle being sold, pursuant to liens that allow the bank or savings association to maintain a perfected security interest in the cattle under applicable law.

(5) *Additional advances to complete project financing pursuant to renewal of a qualifying commitment to lend.* A national bank or savings association may renew a qualifying commitment to lend, as defined by § 32.2(t), and complete funding under that commitment if all of the following criteria are met—

(i) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank or savings association;

(ii) The completion of funding will enable the borrower to complete the project for which the qualifying commitment to lend was made; and

(iii) The amount of the additional funding does not exceed the unfunded portion of the bank's or savings asso-

ciation's qualifying commitment to lend.

(c) *Loans not subject to the lending limits.* The following loans or extensions of credit are not subject to the lending limits of 12 U.S.C. 84, or 12 U.S.C. 1464(u), as applicable, of this part.

(1) *Loans arising from the discount of commercial or business paper.* (i) Loans or extensions of credit arising from the discount of negotiable commercial or business paper that evidences an obligation to the person negotiating the paper. The paper—

(A) Must be given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or any other business purpose that may reasonably be expected to provide funds for payment of the paper; and

(B) Must bear the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions, that is transferred without recourse, or with limited recourse, must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper, such as insurance provided by the Export-Import Bank.

(ii) A failure to pay principal or interest on commercial or business paper when due does not result in a loan or extension of credit to the maker or endorser of the paper; however, the amount of such paper thereafter must be counted in determining whether additional loans or extensions of credit to the same borrower may be made within the limits of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part.

(2) *Bankers' acceptances.* A national bank's or savings association's acceptance of drafts eligible for rediscount under 12 U.S.C. 372 and 373 or 12 U.S.C. 1464(c)(1)(M), as applicable, or a national bank's or savings association's purchase of acceptances created by other banks or savings associations that are eligible for rediscount under those sections; but not including—

(i) A national bank's or savings association's acceptance of drafts ineligible for rediscount (which constitutes a loan by the bank or savings association to the customer for whom the acceptance was made, in the amount of the draft);

(ii) A national bank's or savings association's purchase of ineligible acceptances created by other banks or savings associations (which constitutes a loan from the purchasing bank or savings association to the accepting bank or savings association, in the amount of the purchase price); and

(iii) A national bank's or savings association's purchase of its own acceptances (which constitutes a loan to the bank's or savings association's customer for whom the acceptance was made, in the amount of the purchase price).

(3)(i) *Loans secured by U.S. obligations.* Loans or extensions of credit, or portions thereof, to the extent fully secured by the current market value of:

(A) Bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by similar obligations fully guaranteed as to principal and interest by the United States;

(B) Loans to the extent guaranteed as to repayment of principal by the full faith and credit of the U.S. government, as set forth in paragraph (c)(4)(ii) of this section.

(ii) To qualify a loan or extension of credit under paragraph (c)(3)(i) of this section, the national bank or savings association must perfect a security interest in the collateral under applicable law.

(4) *Loans to or guaranteed by a Federal agency.* (i) Loans or extensions of credit to any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States.

(ii) Loans or extensions of credit, including portions thereof, to the extent secured by unconditional takeout commitments or guarantees of any of the foregoing governmental entities. The commitment or guarantee—

(A) Must be payable in cash or its equivalent within 60 days after demand for payment is made;

(B) Is considered unconditional if the protection afforded the national bank or savings association is not substantially diminished or impaired if loss should result from factors beyond the bank's or savings association's control. Protection against loss is not materially diminished or impaired by proce-

dural requirements, such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank or savings association.

(5) *Loans to or guaranteed by general obligations of a State or political subdivision.* (i) A loan or extension of credit to a State or political subdivision that constitutes a general obligation of the State or political subdivision, as defined in part 1 of this chapter, and for

which the lending national bank or savings association has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the obligation in question, that the loan or extension of credit is a valid and enforceable general obligation of the borrower; and

(ii) A loan or extension of credit, including portions thereof, to the extent guaranteed or secured by a general obligation of a State or political subdivision and for which the lending bank or savings association has an opinion of counsel or the opinion of that State Attorney General, or other State legal official with authority to opine on the guarantee or collateral in question, that the guarantee or collateral is a valid and enforceable general obligation of that public body.

(6) *Loans secured by segregated deposit accounts.* Loans or extensions of credit, including portions thereof, to the extent secured by a segregated deposit account in the lending national bank or savings association, provided a security interest in the deposit has been perfected under applicable law.

(i) Where the deposit is eligible for withdrawal before the secured loan matures, the bank or savings association must establish internal procedures to prevent release of the security without the lending bank's or savings association's prior consent.

(ii) A deposit that is denominated and payable in a currency other than that of the loan or extension of credit that it secures may be eligible for this exception if the currency is freely convertible to U.S. dollars.

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(A) This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit.

(B) The lending bank or savings association must establish procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

(7) *Loans to financial institutions with the approval of the appropriate Federal banking agency.* Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of a financial institution when an emergency situation exists and a national bank or savings association is asked to provide assistance to another financial institution, and the loan is approved by the appropriate Federal banking agency. For purposes of this paragraph, financial institution means a commercial bank, savings bank, trust company, savings association, or credit union.

(8) *Loans to the Student Loan Marketing Association.* Loans or extensions of credit to the Student Loan Marketing Association.

(9) *Loans to industrial development authorities.* A loan or extension of credit to an industrial development authority or similar public entity created to construct and lease a plant facility, including a health care facility, to an industrial occupant will be deemed a loan to the lessee, provided that—

(i) The national bank or savings association evaluates the creditworthiness of the industrial occupant before the loan is extended to the authority;

(ii) The authority's liability on the loan is limited solely to whatever interest it has in the particular facility;

(iii) The authority's interest is assigned to the bank or savings association as security for the loan or the industrial occupant issues a promissory note to the bank or savings association that provides a higher order of security than the assignment of a lease; and

(iv) The industrial occupant's lease rentals are assigned and paid directly to the bank or savings association.

(10) *Loans to leasing companies.* A loan or extension of credit to a leasing com-

pany for the purpose of purchasing equipment for lease will be deemed a loan to the lessee, provided that—

(i) The national bank or savings association evaluates the creditworthiness of the lessee before the loan is extended to the leasing corporation;

(ii) The loan is without recourse to the leasing corporation;

(iii) The bank or savings association is given a security interest in the equipment and in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;

(iv) The leasing corporation assigns all of its rights under the lease to the bank or savings association;

(v) The lessee's lease payments are assigned and paid to the bank or savings association; and

(vi) The lease terms are subject to the same limitations that would apply to a national bank or savings association acting as a lessor.

(11) *Credit Exposures arising from transactions financing certain government securities.* Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, as defined in 12 CFR 1.2(j), in the case of national banks, or securities listed in section 5(c)(1)(C), (D), (E), and (F) of HOLA and general obligations of a state or subdivision as listed in section 5(c)(1)(H) of HOLA, 12 U.S.C. 1464(c)(1)(C), (D), (E), (F), and (H), in the case of savings associations.

(12) *Intraday credit exposures.* Intraday credit exposures arising from a derivative transaction or securities financing transaction.

(d) *Special lending limits for savings associations—(1) \$500,000 exception for savings associations.* If a savings association's aggregate lending limitation calculated under paragraph (a) of this section is less than \$500,000, notwithstanding this limitation in paragraph (a) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed \$500,000.

(2) *Loans by savings associations to develop domestic residential housing units.*

(i) Subject to paragraph (d)(2)(ii) of this section, a savings association may

make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of \$30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all loans and extensions of credit subject to paragraph (a) of this section, *provided that*:

(A) The savings association is, and continues to be, in compliance with 12 CFR part 3, part 390, subpart Z, or part 324, as applicable;

(B) Upon application by a savings association under paragraph (d)(2)(iv) of this section, the appropriate Federal banking agency permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(2)(i);

(C) The loans and extensions of credit made under this paragraph (d)(2)(i) to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(D) The loans and extensions of credit made under this paragraph (d)(2)(i) comply with the applicable loan-to-value requirements.

(i) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(2)(i) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(2)(i) of this section or any condition(s) set forth in an order issued by the appropriate Federal banking agency under paragraphs (d)(2)(i)(B) and (d)(2)(iv) of this section.

(iii) As used in this section, the term "*to develop*" includes each of the various phases necessary to produce housing units as an end product, such as acquisition, development and construction; development and construction; construction; rehabilitation; and conversion; and the term "*domestic*" includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands;

(iv) *Procedures—(A) Federal savings associations—(1) Application.* A Federal savings association must submit an application to, and receive approval from, the appropriate OCC supervisory office before using the higher limit set forth

under paragraph (d)(2)(i) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

(i) If applicable, certification that the savings association is an "eligible savings association";

(ii) A demonstration that the savings association meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section;

(iii) A copy of a written resolution by a majority of the savings association's board of directors approving the use of the limits provided in paragraphs (d)(2)(i) of this section, and confirming the terms and conditions for use of this lending authority; and

(iv) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

(2) *Expedited review.* An application by an eligible savings association is deemed approved as of the 30th day after the application is received by the OCC, unless before that date the OCC informs the savings association it must obtain prior written approval from the OCC.

(B) *State savings associations.* A state savings association shall seek approval to use the higher limit set forth under paragraph (d)(2)(i) of this section from its appropriate Federal banking agency, under the rules and procedures established by the appropriate Federal banking agency.

(3) *Commercial paper and corporate debt securities.* In addition to the amount allowed under the savings association's combined general limit, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by commercial paper or corporate debt securities that are, as of the date of purchase, investment grade.

[60 FR 8532, Feb. 15, 1995, as amended at 63 FR 15746, Apr. 1, 1998; 66 FR 31120, June 11, 2001; 66 FR 35072, Nov. 1, 2001; 77 FR 37277, June 21, 2012; 79 FR 11312, Feb. 28, 2014; 80 FR 28479, May 18, 2015]

§ 32.4 Calculation of lending limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 84, and 12 U.S.C. 1464(u), as applicable, and this part, a national bank or savings association shall determine its lending limit as of the most recent of the following dates:

(1) The last day of the preceding calendar quarter; or

(2) The date on which there is a change in the bank's or savings association's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3 or 12 CFR 324.402, as applicable.

(b) *Effective date.* (1) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(1) of this section will be effective as of the earlier of the following dates:

(i) The date on which the bank's or savings association's Call Report is submitted; or

(ii) The date on which the bank's or savings association's Call Report is required to be submitted.

(2) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(2) of this section will be effective on the date that the limit is to be calculated.

(c) *More frequent calculations.* If the appropriate Federal banking agency determines for safety and soundness reasons that a national bank or savings association should calculate its lending limit more frequently than required by paragraph (a) of this section, the appropriate Federal banking agency may provide written notice to the national bank or savings association directing it to calculate its lending limit at a more frequent interval, and the national bank or savings association shall thereafter calculate its lending limit at that interval until further notice.

[63 FR 15746, Apr. 1, 1998, as amended at 77 FR 37278, June 21, 2012; 79 FR 11312, Feb. 28, 2014]

§ 32.5 Combination rules.

(a) *General rule.* Loans or extensions of credit to one borrower will be attributed to another person and each person will be deemed a borrower—

(1) When proceeds of a loan or extension of credit are to be used for the di-

rect benefit of the other person, to the extent of the proceeds so used; or

(2) When a common enterprise is deemed to exist between the persons.

(b) *Direct benefit.* The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) *Common enterprise.* A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extensions of credit are made—

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a national bank or savings association to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests, in which case a common enterprise is deemed to

exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the appropriate Federal banking agency determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(d) *Special rule for loans to a corporate group.* (1) Loans or extensions of credit by a national bank or savings association to a corporate group may not exceed 50 percent of the bank's or savings association's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(e) *Special rules for loans to partnerships, joint ventures, and associations—*(1) *Partnership loans.* Loans or extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2) *Loans to partners.* (i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or associa-

tion and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

(ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(f) *Loans to foreign governments, their agencies, and instrumentalities—*(1) *Aggregation.* Loans and extensions of credit to foreign governments, their agencies, and instrumentalities will be aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

(i) The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support (excluding guarantees by a central government of the borrower's debt) exceeds the borrower's annual revenues from other sources, it will be presumed that the means test has not been satisfied.

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

(2) *Documentation.* In order to show that the means and purpose tests have been satisfied, a national bank or savings association must, at a minimum, retain in its files the following items:

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

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

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

(iv) The national bank's or savings association's assessment of the borrower's means of servicing the loan or

extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

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

(3) *Restructured loans*—(i) *Non-combination rule*. Notwithstanding paragraphs (a) through (e) of this section, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities (i.e., public-sector obligors) that qualified for a separate lending limit under paragraph (f)(1) of this section are consolidated under a central obligor in a qualifying restructuring, such loans will not be aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. Such loans (other than loans originally attributed to the central obligor in their own right) will not be considered obligations of the central obligor and will continue to be attributed to the original public-sector obligor for purposes of the lending limit.

(ii) *Qualifying restructuring*. Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (f)(3)(i) of this section only if they are restructured in a sovereign debt restructuring approved by the appropriate Federal banking agency, upon request by a national bank or savings association for application of

the non combination rule. The factors that the appropriate Federal banking agency will use in making this determination include, but are not limited to, the following:

(A) Whether the restructuring involves a substantial portion of the total commercial bank loans outstanding to the foreign government, its agencies, and instrumentalities;

(B) Whether the restructuring involves a substantial number of the foreign country's external commercial bank creditors;

(C) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management; and

(D) Whether the restructuring includes features of debt or debt-service reduction.

(iii) *50 percent aggregate limit*. With respect to any case in which the non-combination process under paragraph (f)(3)(i) of this section applies, a national bank's or savings association's loans and other extensions of credit to a foreign government, its agencies and instrumentalities, (including restructured debt) shall not exceed, in the aggregate, 50 percent of the bank's or savings association's capital and surplus.

[60 FR 8532, Feb. 15, 1995, as amended at 77 FR 37279, June 21, 2012]

§ 32.6 Nonconforming loans and extensions of credit.

(a) A loan or extension of credit, within a national bank's or savings association's legal lending limit when made, will not be deemed a violation but will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's or savings association's lending limit because—

(1) The bank's or savings association's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules have changed;

(2) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value; or

(3) In the case of a credit exposure arising from a transaction identified in

§ 32.9(a) and measured by the Model Method specified in § 32.9(b)(1)(i) or § 32.9 (c)(1)(i), the Current Exposure Method specified in § 32.9(b)(1)(iii), or the Basel Collateral Haircut Method specified in § 32.9(c)(1)(iii), the credit exposure subject to the lending limits of 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, or this part increases after execution of the transaction.

(b) A national bank or savings association must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of paragraph (a)(1) or (a)(3) of this section into conformity with the bank's or savings association's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(c) A national bank or savings association must bring a loan that is nonconforming as a result of circumstances described in paragraph (a)(2) of this section into conformity with the bank's or savings association's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's or savings association's control prevent it from taking action.

[77 FR 37279, June 21, 2012, as amended at 78 FR 37944, June 25, 2013]

§ 32.7 Residential real estate loans, small business loans, and small farm loans ("Supplemental Lending Limits Program").

(a) *Residential real estate, small business, and small farm loans.* (1) In addition to the amount that a national bank or savings association may lend to one borrower under § 32.3, an eligible national bank or eligible savings association may make residential real estate loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for residential real estate loans or unsecured loans in the State where the main office of the national bank or savings association is located. Any such loan or extension of credit must be secured by a perfected first-lien security

interest in 1-4 family real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan or extension of credit is made.

(2) In addition to the amount that a national bank or savings association may lend to one borrower under § 32.3, an eligible national bank or eligible savings association may make small business loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a state bank is permitted to lend under the state lending limit that is available for small business loans or unsecured loans in the state where the main office of the national bank or home office of the savings association is located.

(3) In addition to the amount that a national bank or savings association may lend to one borrower under § 32.3, an eligible national bank or eligible savings association may make small farm loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for small farm loans or unsecured loans in the State where the main office of the national bank or savings association is located.

(4) The total outstanding amount of a national bank's or savings association's loans and extensions of credit to one borrower made under § 32.3(a) and (b), together with loans and extensions of credit to the borrower made pursuant to paragraphs (a)(1), (2), and (3) of this section, shall not exceed 25 percent of the bank's or savings association's capital and surplus.

(5) The total outstanding amount of a national bank's or savings association's loans and extensions of credit to all of its borrowers made pursuant to the supplemental lending limits provided in paragraphs (a)(1), (2), and (3) of this section may not exceed 100 percent of the bank's or savings association's capital and surplus.

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(b) *Application process.* An eligible national bank or eligible savings association must submit an application to, and receive approval from, its supervisory office before using the supplemental lending limits in paragraphs (a)(1), (2), and (3) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

(1) Certification that the bank or savings association is an “eligible bank” or “eligible savings association”;

(2) Citations to relevant State laws or regulations;

(3) A copy of a written resolution by a majority of the bank’s or savings association’s board of directors approving the use of the limits provided in paragraphs (a)(1), (2), and (3) of this section, and confirming the terms and conditions for use of this lending authority; and

(4) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

(c) *Duration of approval.* Except as provided in paragraph (d) of this section, a bank or savings association that has received appropriate Federal banking agency approval may continue to make loans and extensions of credit under the supplemental lending limits in paragraphs (a)(1), (2), and (3) of this section, provided the bank or savings association remains an “eligible bank” or “eligible savings association.”

(d) *Discretionary termination of authority.* The appropriate Federal banking agency may rescind a bank’s or savings association’s authority to use the supplemental lending limits in paragraphs (a)(1), (2), and (3) of this section based upon concerns about credit quality, undue concentrations in the bank’s or savings association’s portfolio of residential real estate, small business, or small farm loans, or concerns about the bank’s or savings association’s overall credit risk management systems and controls. The bank or savings association must cease making new loans or extensions of credit in reliance on the supplemental lending limits upon receipt of written notice from the

appropriate Federal banking agency that its authority has been rescinded.

(e) *Existing loans.* Any loans or extensions of credit made by a bank or savings association under the supplemental lending limits in paragraphs (a)(1), (2), and (3) of this section, that were in compliance with this section when made, will not be deemed a lending limit violation and will not be treated as nonconforming under § 32.6.

[66 FR 31120, June 11, 2001, as amended at 69 FR 32436, June 10, 2004; 69 FR 51357, Aug. 19, 2004; 72 FR 31444, June 7, 2007; 77 FR 37279, June 21, 2012; 80 FR 28479, May 18, 2015]

§ 32.8 Temporary funding arrangements in emergency situations.

In addition to the amount that a national bank or savings association may lend to one borrower under § 32.3 of this part, an eligible bank or eligible savings association with the written approval of the appropriate Federal banking agency may make loans and extensions of credit to one borrower subject to a special temporary lending limit established by the appropriate Federal banking agency, where the appropriate Federal banking agency 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 appropriate Federal banking agency, and do not present unacceptable risk. In granting approval for such a special temporary lending limit, the appropriate Federal banking agency 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.

[73 FR 14924, Mar. 20, 2008, as amended at 77 FR 37280, June 21, 2012]

§ 32.9 Credit exposure arising from derivative and securities financing transactions.

(a) *Scope.* This section sets forth the rules for calculating the credit exposure arising from a derivative transaction or a securities financing transaction entered into by a national bank or savings association for purposes of

determining the bank's or savings association's lending limit pursuant to 12 U.S.C. 84 or 12 U.S.C. 1464(u), as applicable, and this part.

(b) *Derivative transactions*—(1) *Non-credit derivatives*. Subject to paragraphs (b)(2), (b)(3) and (b)(4) of this section, a national bank or savings association shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. Subject to paragraph (b)(4) of this section, a national bank or savings association shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(i) *Model Method*—(A) *Credit exposure*. The credit exposure of a derivative transaction under the Internal Model Method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(B) *Calculation of current credit exposure*. A bank or savings association shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark to market value is zero or negative, then the current credit exposure is zero.

(C) *Calculation of potential future credit exposure*. (1) A bank or savings association shall calculate its potential future credit exposure by using either:

(i) An internal model the use of which has been approved in writing for purposes of 12 CFR 3.132(d) or 324.132(d),

as appropriate, provided that the bank or savings association provides prior written notice to the appropriate Federal banking agency of its use for purposes of this section; or

(ii) Any other appropriate model the use of which has been approved in writing for purposes of this section by the appropriate Federal banking agency.

(2) Any substantive revisions to a model made after the bank or savings association has provided notice of the use of the model to the appropriate Federal banking agency pursuant to paragraph (b)(1)(i)(C)(I)(i) of this section or after the appropriate Federal banking agency has approved the use of the model pursuant to paragraph (b)(1)(i)(C)(I)(ii) of this section must be approved by the agency before a bank or savings association may use the revised model for purposes of this part.

(D) *Net credit exposure*. A bank or savings association that calculates its credit exposure by using the Internal Model Method pursuant to this paragraph (b)(1)(i) may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(ii) *Conversion Factor Matrix Method*. The credit exposure arising from a derivative transaction under the Conversion Factor Matrix Method shall equal and remain fixed at the potential future credit exposure of the derivative transaction which shall equal the product of the notional amount of the derivative transaction and a fixed multiplicative factor determined by reference to Table 1 of this section.

TABLE 1—CONVERSION FACTOR MATRIX FOR CALCULATING POTENTIAL FUTURE CREDIT EXPOSURE ¹

Original maturity ²	Interest rate	Foreign exchange rate and gold	Equity	Other ³ (includes commodities and precious metals except gold)
1 year or less .....	.015	.015	.20	.06
Over 1 to 3 years .....	.03	.03	.20	.18
Over 3 to 5 years .....	.06	.06	.20	.30
Over 5 to 10 years .....	.12	.12	.20	.60
Over ten years .....	.30	.30	.20	1.0

¹ For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

² For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

³ Transactions not explicitly covered by any other column in the Table are to be treated as "Other."

(iii) *Current Exposure Method.* The credit exposure arising from a derivative transaction (other than a credit derivative transaction) under the Current Exposure Method shall be calculated pursuant to 12 CFR 3.132(c)(5), (6), and (7) or 324.132(c)(5), (6), and (7), as appropriate.

(2) *Credit Derivatives—(i) Counterparty exposure—(A) In general.* Notwithstanding paragraph (b)(1) of this section and subject to paragraph (b)(2)(i)(B) of this section, a national bank or savings association that uses the Conversion Factor Matrix Method or the Current Exposure Method, or that uses the Model Method without entering an effective margining arrangement as defined in § 32.2(l), shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank or savings association by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(B) *Special rule for certain effective margining arrangements.* A bank or savings association must add the EMA threshold amount to the counterparty credit exposure arising from credit derivatives calculated under the Model Method. The *EMA threshold* is the amount under an effective margining arrangement with respect to which the counterparty is not required to post variation margin to fully collateralize the amount of the bank's or savings association's net credit exposure to the counterparty.

(ii) *Reference entity exposure.* A national bank or savings association shall calculate the credit exposure to a reference entity arising from credit derivatives entered into by the bank or savings association by adding the net notional value of all protection sold on the reference entity. A bank or savings association may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

(3) *Special rule for central counterparties.* (i) In addition to amounts calculated under § 32.9(b)(1) and (2), the measure of counterparty exposure to a central counterparty shall also include the sum of the initial margin posted by the bank or savings association, plus

any contributions made by it to a guaranty fund at the time such contribution is made.

(ii) Paragraph (b)(3)(i) of this section does not apply to a national bank or saving association that uses an internal model pursuant to paragraph (b)(1)(i) of this section if such model reflects the initial margin and any contributions to a guaranty fund.

(4) *Mandatory or alternative method.* The appropriate Federal banking agency may in its discretion require or permit a national bank or savings association to use a specific method or methods set forth in paragraph (b)(1) of this section to calculate the credit exposure arising from all derivative transactions or any specific, or category of, derivative transactions if it finds, in its discretion, that such method is consistent with the safety and soundness of the bank or savings association.

(c) *Securities financing transactions—(1) In general.* Except as provided by paragraph (c)(2) of this section, a national bank or savings association shall calculate the credit exposure arising from a securities financing transaction by one of the following methods. A national bank or savings association shall use the same method for calculating credit exposure arising from all of its securities financing transactions.

(i) *Model Method.* (A) A national bank or savings association may calculate the credit exposure of a securities financing transaction by using either:

(1) An internal model the use of which has been approved in writing by the appropriate Federal banking agency for purposes of 12 CFR 3.132(b) or 324.132(b), as appropriate, provided the bank or savings association provides prior written notice to the appropriate Federal banking agency of its use for purposes of this section; or

(2) Any other appropriate model the use of which has been approved in writing for purposes of this section by the appropriate Federal banking agency.

(B) Any substantive revisions to a model made after the bank or savings association has provided notice of the use of the model to the appropriate Federal banking agency pursuant to paragraph (c)(1)(i)(A)(1) of this section

or after the appropriate Federal banking agency has approved the use of the model pursuant to paragraph (c)(1)(i)(A)(2) of this section must be approved by the agency before a bank or savings association may use the revised model for purposes of part 32.

(ii) *Basic Method.* A national bank or savings association may calculate the credit exposure of a securities financing transaction as follows:

(A) *Repurchase agreement.* The credit exposure arising from a repurchase agreement shall equal and remain fixed at the market value at execution of the transaction of the securities transferred to the other party less cash received.

(B) *Securities lending—(1) Cash collateral transactions.* The credit exposure arising from a securities lending transaction where the collateral is cash shall equal and remain fixed at the market value at execution of the transaction of securities transferred less cash received.

(2) *Non-cash collateral transactions.* The credit exposure arising from a securities lending transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in Table 2 of this section, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the hair-

cut associated with the security lent and the notional-weighted average of the haircuts associated with the securities provided as collateral.

(C) *Reverse repurchase agreements.* The credit exposure arising from a reverse repurchase agreement shall equal and remain fixed as the product of the haircut associated with the collateral received, as determined in Table 2 of this section, and the amount of cash transferred.

(D) *Securities borrowing—(1) Cash collateral transactions.* The credit exposure arising from a securities borrowed transaction where the collateral is cash shall equal and remain fixed as the product of the haircut on the collateral received, as determined in Table 2 of this section, and the amount of cash transferred to the other party.

(2) *Non-cash collateral transactions.* The credit exposure arising from a securities borrowed transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in Table 2 of this section, and the higher of the two par values of the securities. Where more than one security is provided as collateral, the applicable haircut is the higher of the haircut associated with the security borrowed and the notional-weighted average of the haircuts associated with the securities provided as collateral.

TABLE 2—COLLATERAL HAIRCUTS

SOVEREIGN ENTITIES		
	Residual maturity	Haircut without currency mismatch ¹
OECD Country Risk Classification ² 0–1	≤1 year	0.005.
	>1 year, ≤5 years	0.02.
	>5 years	0.04.
OECD Country Risk Classification 2–3	≤1 year	0.01.
	>1 year, ≤5 years	0.03.
	>5 years	0.06.
CORPORATE AND MUNICIPAL BONDS THAT ARE BANK-ELIGIBLE INVESTMENTS		
	Residual maturity for debt securities	Haircut without currency mismatch
All	≤1 year	0.02.
All	>1 year, ≤5 years	0.06.

TABLE 2—COLLATERAL HAIRCUTS—Continued

All	>5 years	0.12.
OTHER ELIGIBLE COLLATERAL		
Main index ³ equities (including convertible bonds)		0.15.
Other publicly-traded equities (including convertible bonds)		0.25.
Mutual funds		Highest haircut applicable to any security in which the fund can invest.
Cash collateral held		0.

¹ In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an additional 8 percent haircut will apply.
² OECD Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credits Arrangement.
³ Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the covered company can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

(iii) *Basel Collateral Haircut Method.* A national bank or savings association may calculate the credit exposure of a securities financing transaction pursuant to 12 CFR 3.132(b)(2)(i) and (ii) or 324.132(b)(2)(i) and (ii), as appropriate.

(2) *Mandatory or alternative method.* The appropriate Federal banking agency may in its discretion require or permit a national bank or savings association to use a specific method or methods set forth in paragraph (c)(1) of this section to calculate the credit exposure arising from all securities financing transactions or any specific, or category of, securities financing transactions if the appropriate Federal banking agency finds, in its discretion, that such method is consistent with the safety and soundness of the bank or savings association.

[77 FR 37280, June 21, 2012, as amended at 78 FR 37944, June 25, 2013; 79 FR 11312, Feb. 28, 2014]

APPENDIX A TO PART 32—
INTERPRETATIONS

Section 1. Interrelation of General Limitation With Exception for Loans To Develop Domestic Residential Housing Units

1. The §32.3(d)(2) exception for loans to one borrower to develop domestic residential housing units is characterized in the regulation as an “alternative” limit. This exceptional \$30,000,000 or 30 percent limitation does not operate in addition to the 15 percent General Limitation or the 10 percent additional amount a savings association may loan to one borrower secured by readily mar-

ketable collateral, but serves as the uppermost limitation on a savings association's lending to any one person once a savings association employs this exception.

Example: Savings Association A's lending limitation as calculated under the 15 percent General Limitation is \$800,000. If Savings Association A lends Y \$800,000 for commercial purposes, Savings Association A cannot lend Y an additional \$1,600,000, or 30 percent of capital and surplus, to develop residential housing units under the paragraph §32.3(d)(2) exception. The §32.3(d)(2) exception operates as the uppermost limitation on all lending to one borrower (for savings associations that may employ this exception) and includes any amounts loaned to the same borrower under the General Limitation. Savings Association A, therefore, may lend only an additional \$800,000 to Y, provided §32.3(d)(2) prerequisites have been met. The amount loaned under the authority of the General Limitation (\$800,000), when added to the amount loaned under the exception (\$800,000), yields a sum that does not exceed the 30 percent uppermost limitation (\$1,600,000).

2. a. This result does not change even if the facts are altered to assume that some or all of the \$800,000 amount of lending permissible under the General Limitation's 15 percent basket is not used, or is devoted to the development of domestic residential housing units.

b. In other words, using the above example, if Savings Association A lends Y \$400,000 for

commercial purposes and \$300,000 for residential purposes—both of which would be permitted under its \$800,000 General Limitation—Savings Association A's remaining permissible lending to Y would be: first, an additional \$100,000 under the General Limitation, and then another \$800,000 to develop domestic residential housing units if the savings association meets the paragraph §32.3(d)(2) prerequisites. (The latter is \$800,000 because in no event may the total lending to Y exceed 30 percent of unimpaired capital and unimpaired surplus). If Savings Association A did not lend Y the remaining \$100,000 permissible under the General Limitation, its permissible loans to develop domestic residential housing units under §32.3(d)(2) would be \$900,000 instead of \$800,000 (the total loans to Y would still equal \$1,600,000).

3. In short, under the §32.3(d)(2) exception, the 30 percent or \$30,000,000 limit will always operate as the uppermost limitation, unless the savings association does not avail itself of the exception and merely relies upon its General Limitation.

Section 2. Interrelationship Between the General Limitation and the 150 Percent Aggregate Limit on Loans to All Borrowers To Develop Domestic Residential Housing Units

Numerous questions have been received regarding the allocation of loans between the different lending limit "baskets," *i.e.*, the 15 percent General Limitation basket and the 30 percent Residential Development basket. In general, the inquiries concern the manner in which a savings association may "move" a loan from the General Limitation basket to the Residential Development basket. The following example is intended to provide guidance:

Example: Savings Association A's General Limitation under §32.3(a) is \$15 million. In January, Savings Association A makes a \$10 million loan to Borrower to develop domestic residential housing units. At the time the loan was made, Savings Association A had not received approval under an order issued by the appropriate Federal banking agency to avail itself of the residential development exception to lending limits. Therefore, the \$10 million loan is made under Savings Association A's General Limitation.

2. In June, Savings Association A receives authorization to lend under the Residential Development exception. In July, Savings Association A lends \$3 million to Borrower to develop domestic residential housing units. In August, Borrower seeks an additional \$12 million commercial loan from Savings Association A. Savings Association A cannot make the loan to Borrower, however, because it already has an outstanding \$10 million loan to Borrower that counts against Savings Association A's General Limitation

of \$15 million. Thus, Savings Association A may lend only up to an additional \$5 million to Borrower under the General Limitation.

3. However, Savings Association A may be able to reallocate the \$10 million loan it made to Borrower in January to its Residential Development basket provided that: (1) Savings Association A has obtained authority under an order issued by the appropriate Federal banking agency to avail itself of the additional lending authority for residential development and maintains compliance with all prerequisites to such lending authority; (2) the original \$10 million loan made in January constitutes a loan to develop domestic residential housing units as defined; and (3) the housing unit(s) constructed with the funds from the January loan remain in a stage of "development" at the time Savings Association A reallocates the loan to the domestic residential housing basket. The project must be in a stage of acquisition, development, construction, rehabilitation, or conversion in order for the loan to be reallocated.

4. If Savings Association A is able to reallocate the \$10 million loan made to Borrower in January to its Residential Development basket, it may make the \$12 million commercial loan requested by Borrower in August. Once the January loan is reallocated to the Residential Development basket, however, the \$10 million loan counts towards Savings Association A's 150 percent aggregate limitation on loans to all borrowers under the residential development basket (§32.3(d)(2)).

5. If Savings Association A reallocates the January loan to its domestic residential housing basket and makes an additional \$12 million commercial loan to Borrower, Savings Association A's totals under the respective limitations would be: \$12 million under the General Limitation; and \$13 million under the Residential Development limitation. The full \$13 million residential development loan counts toward Savings Association A's aggregate 150 percent limitation.

[77 FR 37282, June 21, 2012]

PART 33 [RESERVED]

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

Sec.

- 34.1 Purpose and scope.
- 34.2 Definitions.
- 34.3 General rule.
- 34.4 Applicability of state law.
- 34.5 Due-on-sale clauses.