

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 32

[Docket No. 96-14]

RIN 1557-AB55

#### Lending Limits

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing revisions to its lending limits regulation in order to provide additional flexibility for a national bank to preserve personal property securing a loan, consistent with safe and sound banking practices. The proposal also makes several technical changes designed to clarify certain provisions in the current rule.

**DATES:** Comments must be received by September 16, 1996.

**ADDRESSES:** Comments should be directed to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 96-14. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874-5274 or by internet mail to REGS.COMMENTS@OCC.TREAS.GOV.

**FOR FURTHER INFORMATION CONTACT:** William C. Kerr, National Bank Examiner, or Frank R. Carbone, National Bank Examiner, Credit and Management Policy, (202) 874-5170; Laura Goldman, Attorney, or Aline J. Henderson, Senior Attorney, Bank Activities and Structure Division, (202) 874-5300; or Mark J. Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1995, as part of its Regulation Review Program (Program), the OCC comprehensively revised its lending limits regulation. See 60 FR 8537 (February 15, 1995). These amendments to part 32 changed, among other things, the definition of "loans and extensions of credit" to exempt under certain circumstances additional funds advanced for the payment of maintenance and operating expenses necessary to preserve the value of real property securing a loan. See 12 CFR 32.2(j)(2)(i). Also, the amendments changed the definition of "capital and surplus" to allow a national bank, in most instances, to calculate its lending limit based on information contained in the bank's most recent quarterly Consolidated Report of Condition and Income (Call Report). See *id.* § 32.4.

As is explained in greater detail in the discussion that follows, these changes prompted requests for the OCC: (a) to extend the exemption for funds advanced to preserve and maintain collateral to loans secured by *personal* property as well as to loans secured by *real* property; and (b) to clarify the date on which a national bank must recalculate its capital and surplus. This proposal addresses both issues, and makes several technical changes designed to improve part 32 without changing its substance. Moreover, the proposal reflects the OCC's continuing commitment to assess the effectiveness of the rules it has revised under the Program and to make further changes where necessary to improve a regulation.

The OCC invites comments of a general nature on all aspects of the proposal in addition to comments on specific issues identified in the text that follows.

##### The Proposal

##### *Definition of "Loans and Extensions of Credit" (§ 32.2(j))*

Current § 32.2(j)(2)(i) states that additional funds advanced for the benefit of a borrower by a bank for payment of maintenance and operating expenses necessary to preserve the value of real property securing a loan are not "loans or extensions of credit" for purposes of 12 U.S.C. 84 and part 32 under certain circumstances. This

exemption for funds advanced to protect collateral does not address advances for the purpose of protecting personal property collateral.

The proposal amends the current exemption by treating an advance to protect personal property collateral the same as an advance to protect real property collateral. The reasoning underlying both types of advances is identical, namely, to protect the position of the lending bank by preserving collateral prior to foreclosure in order to avoid greater expenses later. For example, advancing funds for the purpose of preserving the condition of equipment or getting perishable crops to market may protect the bank's condition more effectively than waiting until after foreclosure to take the steps necessary to protect the bank's interest.

Under the proposal, an advance to protect personal property collateral is subject to the same safeguards that currently apply to an advance to protect real property. Thus, the advance must be for maintenance and operating expenses only to the extent necessary to preserve the collateral, and must be consistent with safe and sound banking practices. These advances are permitted only for the purpose of protecting a bank's interest in the collateral. Moreover, a bank must treat any amount so advanced as an extension of credit if the bank makes a new loan to the borrower.

In proposing this expansion of the exemption, the OCC expects that a bank will reasonably anticipate a borrower's need to fund various expenses in determining the appropriate size of the loan that the bank will make. Moreover, the OCC intends for the exemption not to create incentives for borrowers to divert or reclassify spending in order to qualify larger portions of their credit needs for the exemption. A bank that wishes to advance funds pursuant to the proposed exemption should be able to document what collateral is being protected, how the additional advance will preserve the collateral, why the amount of the advance is the necessary amount, the basis for the bank's belief that the additional advance is likely to be repaid, and how the bank's position would be protected by preserving the collateral as compared to attempting a sale of the property.

The proposal also clarifies that the exemption, whether it applies to

advances to protect real or personal property, is to protect and maintain identified collateral for a particular loan. The exemption is not intended to allow a bank to speculate on the value of collateral by advancing additional funds in the hope that increasing collateral values will enable the borrower to repay all funds advanced. Nor is the exemption intended to permit a bank to continue funding the operations of a borrower until the borrower's business fortunes improve. To further clarify the scope of the exemption with respect to advances to protect *either* real or personal property collateral, and to emphasize that the exception is not available for speculative purposes, the proposal deletes the words "value of" used in conjunction with the reference to the relevant real or personal property.

The OCC requests comment on whether the restrictions it proposes to place on the advance of funds pursuant to the expanded exemption are workable and adequate to insure safety and soundness. Commenters are invited to suggest additional or alternative conditions.

#### *Calculation of Lending Limits (§ 32.4)*

Current § 32.4(a) requires a bank to calculate its lending limit as of the later of the date when the bank's Call Report "is required to be filed" or when the bank's capital category changes for purposes of the prompt corrective action provisions of 12 U.S.C. 1831o and 12 CFR part 6. Pursuant to current § 32.4(b), the OCC may require a national bank to calculate its lending limit more frequently if the OCC determines that the bank should do so for safety and soundness reasons.

Because the General Instructions to the Call Report refer to two separate "filing" dates, questions have arisen under the current rule concerning the date on which a recalculated lending limit is to become effective. The first potential filing date identified in the General Instructions, termed the "report date," is defined as the last calendar day of each calendar quarter. The second potential filing date, termed the "submission date," is the date by which the appropriate Federal banking agency must receive the Call Report. For most banks, the submission date is 30 days after the report date. Thus, the reference in the current rule to the date when the Call Report "is required to be filed" could produce some confusion as to when a recalculated limit becomes effective, depending on which "filing" date is used.

The proposal resolves this ambiguity by distinguishing the "calculation date"

of a lending limit from its "effective date." Assuming that a national bank's capital category has not changed, the bank is to calculate its lending limit using numbers reported in the bank's most recent Call Report, and, therefore, base its lending limit on the bank's capital and surplus as of the end of the most recent calendar quarter (the calculation date). However, this new limit will not be effective until the earlier of the date on which the bank submits its Call Report or is required to submit the Call Report (the effective date). The proposal amends § 32.4(a)(1), redesignates current § 32.4(b) as § 32.4(c), and adds a new § 32.4(b) that sets forth the effective date for using the updated numbers to accomplish this result.

If a bank's capital category for prompt corrective action purposes changes, then the bank must determine its lending limit as of the date on which the capital category changes. The new limit in this instance will be effective on the date that the limit is to be recalculated. The OCC also will continue its practice of permitting a recalculation of lending limits at a point during a quarter when there is a material change in a bank's capital arising from corporate activities such as a merger or stock issuance.

#### *Technical Amendments (§§ 32.2(b) and 32.3(c))*

The proposal makes several clarifying technical amendments to part 32. None of these amendments affects the substance of the current rule. The technical amendments are summarized below.

Current § 32.2(b) states that capital and surplus includes, among other things, a bank's Tier 1 and Tier 2 capital "included in the bank's risk-based capital under" the OCC's minimum capital ratios as set forth in Appendix A to 12 CFR Part 3. The proposal clarifies this definition by changing that language to refer to a bank's Tier 1 and Tier 2 capital "calculated under the OCC's risk-based capital standards set out in Appendix A to part 3 of this chapter as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161."

Current § 32.3(c)(4)(ii) exempts a loan from the lending limits to the extent that the loan is secured by an unconditional takeout commitment or guarantee of a Federal agency. In explaining when a commitment or guarantee is unconditional, § 32.3(c)(4)(ii)(B) notes that protection against loss is not materially diminished or impaired by a procedural requirement, such as "an agreement to take over only in the event of default \* \* \*." The proposal clarifies

that the phrase "an agreement to take over" means an agreement to pay on an obligation.

Finally, current § 32.3(c)(6)(ii)(B) states that a bank must establish procedures to revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times. The proposal clarifies that the revaluation must be periodic.

The OCC invites comments on these proposed technical amendments and suggestions for other technical changes that would clarify or improve the rule.

#### *Regulatory Flexibility Act*

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. As is explained in greater detail in the preamble to this proposal, the only substantive change that is proposed would enhance a national bank's ability to protect its interest in real property that serves as collateral for a loan already made by the bank. By relaxing a restriction that currently impedes this ability, the proposal will reduce the regulatory burden on national banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

#### *Executive Order 12866*

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

#### *Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a notice of proposed rulemaking (NPRM) likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of \$100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating an NPRM. The OCC has determined that the proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the proposal would clarify certain provisions of the current rule and provide additional flexibility to a

national bank to extend credit for the purpose of protecting personal property that secures a loan from the bank.

#### List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

#### Authority and Issuance

For the reasons set out in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

### PART 32—LENDING LIMITS

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

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

2. In § 32.2, paragraphs (b) and (j)(2)(i) are revised to read as follows:

#### § 32.2 Definitions.

\* \* \* \* \*

(b) *Capital and surplus* means—

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

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

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(i) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses to the extent necessary to preserve real or personal property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank'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;

\* \* \* \* \*

#### § 32.3 [Amended]

3. Paragraph (c)(4)(ii)(B) of § 32.3 is amended in the last sentence by removing the term "take over" and adding in lieu thereof "pay on the obligation".

4. Paragraph (c)(6)(ii)(B) of § 32.3 is amended by adding the word "periodically" before the word "revalue".

5. Section 32.4 is revised to read as follows:

#### § 32.4 Calculation of lending limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 84 and this part, a bank 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 capital category for purposes of 12 U.S.C. 1831o and § 6.3 of this chapter.

(b) *Effective date.* (1) A bank'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 Consolidated Report of Condition and Income (Call Report) is submitted; or

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

(2) A bank'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 OCC determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by paragraph (a) of this section, the OCC may provide written notice to the bank directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

Dated: June 24, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96-18021 Filed 7-16-96; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 205

[Regulation E; Docket No. R-0919]

#### Electronic Fund Transfers

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule; Extension of comment period.

**SUMMARY:** On May 2, 1996, the Board requested comment on a proposal to amend Regulation E, which implements the Electronic Fund Transfer Act, to address the use of electronic communication in home-banking services for providing disclosures and other documentation; error resolution procedures for new accounts; and the treatment of stored-value cards (imposing modified Regulation E

requirements on stored-value products in systems that track individual transactions, cards, or consumers; providing an exemption for cards on which a maximum value of \$100 can be stored; and providing that other stored-value cards are not covered by Regulation E). In response to requests for an extension of the comment period, the Secretary of the Board, acting pursuant to delegated authority, has extended the comment period from August 1, 1996, to September 6, 1996, to give the public additional time to provide comments.

**DATES:** Comments must be received on or before September 6, 1996.

**ADDRESSES:** Comments should refer to Docket No. R-0919 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Regarding the proposed amendments on electronic communications, Michael Hentrel, Staff Attorney, and regarding the other proposed amendments, Jane Jensen Gell, Natalie Taylor, or Obrea Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:** The Board is extending the comment period on the proposed amendments to Regulation E (Electronic Fund Transfers) published on May 2, 1996 at 61 FR 19696 to give the public additional time to comment on the proposal.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, July 10, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-18011 Filed 7-16-96; 8:45 am]

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