b. The effect on the covered bank's material entities, critical operations, and core business lines, including reputational impact; and

c. Any legal or market impediment or regulatory requirement that must be addressed or satisfied in order to implement the option.

5. *Escalation procedures*. A recovery plan should clearly outline the process for escalating decision-making to senior management or the board of directors (or an appropriate committee of the board of directors), as appropriate, in response to the breach of any trigger. The recovery plan should also identify the departments and persons responsible for executing the decisions of senior management or the board of directors (or an appropriate committee of the board of directors).

6. *Management reports*. A recovery plan should require reports that provide senior management or the board of directors (or an appropriate committee of the board of directors) with sufficient data and information to make timely decisions regarding the appropriate actions necessary to respond to the breach of a trigger.

7. *Communication procedures*. A recovery plan should provide that the covered bank notify the OCC of any significant breach of a trigger and any action taken or to be taken in response to such breach and should explain the process for deciding when a breach of a trigger is significant. A recovery plan also should address when and how the covered bank will notify persons within the organization and other external parties of its action under the recovery plan. The recovery plan should specifically identify how the covered bank will obtain required regulatory or legal approvals.

8. *Other information*. A recovery plan should include any other information that the OCC communicates in writing directly to the covered bank regarding the covered bank's recovery plan.

C. *Relationship to other processes; coordination with other plans*. The covered bank should integrate its recovery plan into its risk governance functions. The covered bank also should align its recovery plan with its other plans, such as its strategic; operational (including business continuity); contingency; capital (including stress testing); liquidity; and resolution planning. The covered bank's recovery plan should be specific to that covered bank. The covered bank also should coordinate its recovery plan with any recovery and resolution planning efforts by the covered bank's holding company, so that the plans are consistent with and do not contradict each other.

III. MANAGEMENT'S AND BOARD OF DIRECTORS' RESPONSIBILITIES

The recovery plan should address the following management and board responsibilities:

A. *Management*. Management should review the recovery plan at least annually and in response to a material event. It should revise the plan as necessary to reflect material changes in the covered bank's size, risk profile, activities, and complexity, as well as changes in external threats. This review should evaluate the organizational structure and its effectiveness in facilitating a recovery.

B. *Board of directors*. The board is responsible for overseeing the covered bank's recovery planning process. The board of directors (or an appropriate committee of the board of directors) of a covered bank should review and approve the recovery plan at least annually, and as needed to address significant changes made by management.

[81 FR 66800, Sept. 29, 2016, as amended at 83 FR 66607, Dec. 27, 2018]

PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES

Sec.

31.1 Authority.
31.2 Insider lending restrictions and reporting requirements.
31.3 Affiliate transactions requirements.
APPENDIX A TO PART 31—INTERPRETATIONS: DEPOSITS BETWEEN AFFILIATED BANKS
APPENDIX B TO PART 31—COMPARISON OF SELECTED PROVISIONS OF PARTS 32 AND 215

AUTHORITY: 12 U.S.C. 93a, 375a(4), 375b(3), 1463, 1467a(d), 1468, 1817(k), and 5412(b)(2)(B).

SOURCE: 61 FR 54536, Oct. 21, 1996, unless otherwise noted.

§ 31.1 Authority.

This part is issued pursuant to 12 U.S.C. 93a, 375a(4), 375b(3), 1463, 1467a(d), 1468, 1817(k), and 5412(b)(2)(B), as amended.

[82 FR 8109, Jan. 23, 2017]

§ 31.2 Insider lending restrictions and reporting requirements.

(a) *General rule*. National banks, Federal savings associations, and their insiders shall comply with the provisions contained in 12 CFR part 215 (Regulation O).

(b) *Enforcement*. The Comptroller of the Currency administers and enforces

insider lending standards and reporting requirements as they apply to national banks, Federal savings associations, and their insiders.

[61 FR 54536, Oct. 21, 1996, as amended at 82 FR 8109, Jan. 23, 2017]

§ 31.3 Affiliate transactions requirements.

(a) *General rule.* National banks and Federal savings associations shall comply with the provisions contained in 12 CFR part 223 (Regulation W).

(b) *Enforcement.* The Comptroller of the Currency administers and enforces affiliate transactions requirements as they apply to national banks and Federal savings associations.

(c) *Standard for exemptions.* The OCC may, by order, exempt transactions or relationships of a national bank or Federal savings association from the requirements of section 23A and section 11 of the Home Owners' Loan Act (HOLA), as applicable, and 12 CFR part 223 if:

(1) The OCC, jointly with the Federal Reserve Board, finds the exemption to be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(2) The FDIC, within 60 days of receiving notice of such joint finding, does not object in writing to the finding based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(d) *Procedures for exemptions.* A national bank or Federal savings association may request an exemption from the requirements of section 23A or section 11 of the HOLA, as applicable, and 12 CFR part 223 for a national bank or Federal savings association by submitting a written request to the Deputy Comptroller for Licensing with a copy to the appropriate Federal Reserve Bank. Such a request must:

(1) Describe in detail the transaction or relationship for which the national bank or Federal savings association seeks exemption;

(2) Explain why the OCC should exempt the transaction or relationship;

(3) Explain how the exemption would be in the public interest and consistent with the purposes of section 23A or section 11 of the HOLA, as applicable; and

(4) Explain why the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

[82 FR 8109, Jan. 23, 2017]

Appendix A to Part 31—Interpretations: Deposits Between Affiliated Banks

a. *General rule.* A deposit made by a bank in an affiliated bank is treated as a loan or extension of credit to the affiliate bank under 12 U.S.C. 371c, as this statute is implemented by the Federal Reserve Board's Regulation W, 12 CFR part 223. Thus, unless an exemption from Regulation W is available, these deposits must be secured in accordance with 12 CFR 223.14. However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (*see, e.g.*, 12 U.S.C. 90 (permitting collateralization of deposits of public funds); 12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 CFR part 223 noted in paragraph b. of this interpretation applies, unless another exception applies that enables a bank to meet the collateral requirements of §223.14, or unless a party other than the bank in which the deposit is made can legally offer and does post the required collateral, a national bank may not:

1. Make a deposit in an affiliated national bank;

2. Make a deposit in an affiliated State-chartered bank unless the affiliated State-chartered bank can legally offer collateral for the deposit in conformance with applicable State law and 12 CFR 223.14; or

3. Receive deposits from an affiliated bank.

b. *Exceptions.* The restrictions of 12 CFR part 223 (other than 12 CFR 223.13, which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

1. Made in an affiliated depository institution or affiliated foreign bank provided that the deposit represents an ongoing, working balance maintained in the ordinary course of correspondent business. *See* 12 CFR 223.42(a); or

2. Made in an affiliated, insured depository institution that meets the requirements of the ''sister bank'' exemption under 12 CFR 223.41(a) or (b).

[73 FR 22251, Apr. 24, 2008]

APPENDIX B TO PART 31—COMPARISON OF SELECTED PROVISIONS OF PARTS 32 AND 215

NOTE: This appendix compares certain provisions of 12 CFR part 32 with those of 12 CFR part 215. As used in this appendix, the term ''bank'' refers to both national banks and Federal savings associations.

DEFINITION OF ''LOAN OR EXTENSION OF CREDIT''

Renewals	In most cases, the two definitions of ''loan or extension of credit'' are equivalent. A difference exists, however, in the treatment of renewals. Under part 215, a renewal of a loan to an ''insider'' (which, unless noted otherwise, includes a bank's executive officers, directors, principal shareholders, and ''related interests'' of such persons) is considered to be an extension of credit. Under part 32, renewals generally are not considered to be an extension of credit if the bank exercises reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit. Renewals would be considered an extension of credit under part 32, however, if new funds are advanced to the borrower, a new borrower replaces the original borrower, or the OCC determines that the renewal was undertaken to evade the lending limits.
Commitments to extend credit	A binding commitment to make a loan is treated as an extension of credit under part 215. Under part 32, a commitment to make a loan will not be treated as an extension of credit if the amount of the commitment exceeds the lending limit. Rather, the commitment will be deemed a ''nonqualifying commitment'' under part 32 and advances may be made thereunder only if the advance, together with all other outstanding loans to the borrower, will not exceed the bank's lending limit.
Overdrafts	An advance by means of an overdraft (except for an intraday overdraft) generally is considered to be an extension of credit under both parts 32 and 215. However, indebtedness in amounts up to $5,000 is excluded from the definition of ''extension of credit'' under part 215 if the indebtedness arises pursuant to a written, preauthorized, interest-bearing plan or written, preauthorized transfer of funds from another account. Under part 215, if an overdraft is not made pursuant to this type of plan or transfer, a bank is prohibited from paying an overdraft of an insider (which, in this case, includes only an executive officer or director of the insider's bank) unless the overdraft is inadvertent, in amounts not exceeding $1,000, outstanding for not more than 5 business days, and subject to the bank's standard overdraft fee. Part 32 does not contain these exceptions for overdrafts, and simply treats overdrafts (except for intraday overdrafts) as extensions of credit subject to lending limits.
Guarantees	Generally speaking, guarantees are included in the part 215 definition of ''extension of credit'' but are not included in the definition of ''extension of credit'' in part 32 unless other criteria are satisfied. Part 215 applies to any transaction as a result of which an insider becomes obligated to pay money to a bank, whether the obligation arises (i) directly or indirectly, (ii) because of an endorsement on an obligation or otherwise, or (iii) by any means whatsoever. Accordingly, a loan guaranteed by an insider will be deemed to have been made to that insider. In contrast, part 32 does not consider a loan on which someone signs as guarantor as having been made to the guarantor unless that person is deemed to be a borrower under the ''direct benefit'' or ''common enterprise'' tests (*see* discussion of these tests in the discussion of the ''General Rule'' under ''Combination/Attribution Rules,'' below).

EXCLUSIONS TO DEFINITION

Funds advanced for taxes, etc., necessary to preserve collateral or that are incidental to indebtedness.	Both rules exclude funds advanced for items such as taxes, insurance, or other expenses related to existing indebtedness. However, part 32 includes these advances for the purpose of determining whether subsequent loans meet the lending limit, whereas part 215 excludes these advances for all purposes. Part 215 contains no such requirement.

Loan participations.	Both rules exclude loan participations if the participation is without recourse. However, part 32 elaborates on this exclusion by requiring that the participation result in a *pro rata* sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Part 32 also requires the originating bank, if funding the entire loan, to receive funding from the participants before the close of the next business day. Otherwise, the portion funded will be treated as a loan by the originating bank to the underlying borrower, and may be treated as a ''nonconforming'' loan rather than a violation if (i) the originating bank had an agreement with the participating bank that reduced the loan to an amount within the originating bank's lending limit, (ii) the participating bank reconfirmed its participation and the originating bank had no knowledge of information that would permit the participating bank to withhold its participation, and (iii) the participation was to be funded by close of business of the originating bank's next business day.
Acquisition of debt through merger or foreclosure.	Under part 215, a note or other evidence of indebtedness acquired through a merger is excluded from the definition of ''extension of credit.'' Under part 32, the indebtedness is deemed to be a loan or extension of credit. However, if a loan that conformed with part 32 when originally made exceeds the lending limits following a merger after the loan is aggregated with other extensions of credit to the same borrower, the loan will not be deemed to be a lending limits violation. Rather, the loan will be treated as ''nonconforming,'' and the bank will have to exercise reasonable efforts to bring the loan into compliance unless to do so would be inconsistent with safe and sound banking practices.
Credit card indebtedness.	An insider may incur up to $15,000 in debt on a credit card or similar open-end credit plan offered by the insider's bank without the debt counting as an extension of credit under part 215. The terms of the credit card or other credit plan must be no more favorable than those offered by the bank to the general public. Part 32 does not exclude credit card debt from the lending limits.

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

Sec.

32.1 Authority, purpose and scope.
32.2 Definitions.
32.3 Lending limits.
32.4 Calculation of lending limits.
32.5 Combination rules.