

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 OCC, upon request by a bank for application of the non-combination rule. The factors that the OCC 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 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 capital and surplus.

### § 32.6 Nonconforming loans.

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

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

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

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

(c) A bank 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 lending limit within 30 calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

## PART 33—[RESERVED]

## PART 34—REAL ESTATE LENDING AND APPRAISALS

### Subpart A—General

Sec.

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## § 34.1

APPENDIX A TO SUBPART D OF PART 34—  
INTERAGENCY GUIDELINES FOR REAL ESTATE  
LENDING

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AUTHORITY: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j-3, 1828(o), and 3331 *et seq.*

### Subpart A—General

SOURCE: 61 FR 11300, Mar. 20, 1996, unless otherwise noted.

#### § 34.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth standards for real estate-related lending and associated activities by national banks.

(b) *Scope.* This part applies to national banks and their operating subsidiaries as provided in 12 CFR 5.34. For the purposes of 12 U.S.C. 371 and subparts A and B of this part, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, land sales contracts, and construction project loans. Construction project loans are not subject to subparts A and B of this part, however, if they have a maturity not exceeding 60 months and are made to finance the construction of either:

(1) A building where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building; or

(2) A residential or farm building.

#### § 34.2 Definitions.

(a) *Due-on-sale clause* means any clause that gives the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person,

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whether by deed, contract, or otherwise.

(b) *State* means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, and Guam.

(c) *State law limitations* means any State statute, regulation, or order of any State agency, or judicial decision interpreting State law.

#### § 34.3 General rule.

A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate, subject to terms, conditions, and limitations prescribed by the Comptroller of the Currency by regulation or order.

#### § 34.4 Applicability of State law.

(a) *Specific preemption.* A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3 without regard to State law limitations concerning:

(1) The amount of a loan in relation to the appraised value of the real estate;

(2) The schedule for the repayment of principal and interest;

(3) The term to maturity of the loan;

(4) The aggregate amount of funds that may be loaned upon the security of real estate; and

(5) The covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) *General standards.* The OCC will apply recognized principles of Federal preemption in considering whether State laws apply to other aspects of real estate lending by national banks.

#### § 34.5 Due-on-sale clauses.

A national bank may make or acquire a loan or interest therein, secured by a lien on real property, that includes a due-on-sale clause. Except as set forth in 12 U.S.C. 1701j-3(d) (which contains a list of transactions in which due-on-sale clauses may not be enforced), due-on-sale clauses in loans, whenever originated, will be valid and enforceable, notwithstanding any State law limitations to the contrary. For the purposes of this section,