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additional agreement, to protect its financial position or investment in the event of a change in conditions that would increase its exposure to loss.

(3) *Arranging for services by a third party.* A national bank may arrange for a third party to provide any of the services enumerated in § 23.2(f) to the lessee at the expense of the lessee.

§ 23.4 Investment in personal property.

(a) *General rule.* A national bank may acquire specific property to be leased only after the bank has entered into:

(1) A conforming lease;

(2) A legally binding written agreement that indemnifies the bank against loss in connection with its acquisition of the property; or

(3) A legally binding written commitment to enter into a conforming lease.

(b) *Exception.* A national bank may acquire property to be leased without complying with the requirements of paragraph (a) of this section, if:

(1) The acquisition of the property is consistent with the leasing business then conducted by the bank or is consistent with a business plan for expansion of the bank's existing leasing business or for entry into the leasing business; and

(2) The bank's aggregate investment in property held pursuant to this paragraph (b) does not exceed 15 percent of the bank's capital and surplus.

(c) *Holding period.* At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a national bank shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. Liquidation or re-lease must occur not later than five years from the date that the bank acquires the legal right to possession or control of the property, except the OCC may extend the period for up to an additional five years, if the bank provides a clearly convincing demonstration why any additional holding period is necessary. The bank must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

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(d) *Bridge or interim leases.* During the holding period allowed by paragraph (c) of this section, a national bank may enter into a short-term bridge or interim lease pending the liquidation of off-lease property or the re-lease of the property under a conforming lease. A short-term bridge or interim lease must be a net lease, but need not comply with any requirement of subpart B or C of this part.

§ 23.5 Requirement for separate records.

If a national bank enters into both CEBA Leases and Section 24(Seventh) Leases, the bank's records must distinguish the CEBA Leases from the Section 24(Seventh) Leases.

§ 23.6 Application of lending limits; restrictions on transactions with affiliates.

A lease entered into pursuant to this part is subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c-1. The OCC may also determine that other limits or restrictions apply. The term affiliate means an affiliate as defined in 12 U.S.C. 371c or 371c-1, as applicable. For the purpose of measuring compliance with the lending limits prescribed by 12 U.S.C. 84, a national bank records the investment in a lease net of any nonrecourse debt the bank has incurred to finance the acquisition of the leased asset.

Subpart B—CEBA Leases

§ 23.10 General rule.

Pursuant to 12 U.S.C. 24(Tenth) a national bank may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of, or in connection with leasing that property, if the aggregate book value of the property does not exceed 10 percent of the bank's consolidated assets and the related lease is a conforming lease. For the purpose of measuring compliance with the 10 percent limit prescribed by this section, a national bank records the investment in a lease entered into pursuant to this

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subpart net of any nonrecourse debt the bank has incurred to finance the acquisition of the leased asset.

§ 23.11 Lease term.

A CEBA Lease must have an initial term of not less than 90 days. A national bank may acquire property subject to an existing lease with a remaining maturity of less than 90 days if, at its inception, the lease was a conforming lease.

§ 23.12 Transition rule.

(a) *General rule.* A CEBA Lease entered into prior to July 22, 1991, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after July 22, 1991, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a CEBA Lease that was entered into prior to July 22, 1991, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the CEBA Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

Subpart C—Section 24(Seventh) Leases

§ 23.20 General rule.

Pursuant to 12 U.S.C. 24(Seventh) a national bank may invest in tangible or intangible personal property, including vehicles, manufactured homes, machinery, equipment, furniture, patents, copyrights, and other intellectual property, for the purpose of, or in connec-

tion with leasing that property, if the related lease is a conforming lease representing a noncancelable obligation of the lessee (notwithstanding the possible early termination of that lease).

§ 23.21 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimate of the residual value of the property that the bank relies upon to satisfy the requirements of a full-payout lease, for purposes of this subpart:

(1) Must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction; and

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or other third party may exceed 25 percent of the original cost of the property if the bank determines, and demonstrates by appropriate documentation, that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank.

(c) *Leases to government entities.* A bank's calculations of estimated residual value in connection with leases of personal property to Federal, State, or local governmental entities may be based on future transactions or renewals that the bank reasonably anticipates will occur.

§ 23.22 Transition rule.

(a) *Exclusion.* A Section 24(Seventh) Lease entered into prior to June 12, 1979, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after June 12, 1979, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is