

§ 23.2

§ 23.2 Definitions.

(a) *Affiliate* means an affiliate as described in § 23.6.

(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 forth in appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income 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 described in paragraph (b)(1) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

(c) *CEBA Lease* means a personal property lease authorized under 12 U.S.C. 24(Tenth).

(d) *Conforming lease* means:

(1) A CEBA Lease that conforms with the requirements of subparts A and B of this part; or

(2) A Section 24(Seventh) Lease that conforms with the requirements of subparts A and C of this part.

(e) *Full-payout lease* means a lease in which the national bank reasonably expects to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the lease term.

(f) *Net lease* means a lease under which the national bank will not, directly or indirectly, provide or be obligated to provide for:

(1) Servicing, repair, or maintenance of the leased property during the lease term;

(2) Parts or accessories for the leased property;

(3) Loan of replacement or substitute property while the leased property is being serviced;

(4) Payment of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain required insurance; or

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(5) Renewal of any license or registration for the property unless renewal by the bank is necessary to protect its interest as owner or financier of the property.

(g) *Off-lease property* means property that reverts to a national bank's possession or control upon the expiration of a lease or upon the default of the lessee.

(h) *Section 24(Seventh) Lease* means a personal property lease authorized under 12 U.S.C. 24(Seventh).

§ 23.3 Lease requirements.

(a) *General requirements.* A national bank may acquire personal property for the purpose of, or in connection with leasing that property, and may engage in activities incidental thereto, if the lease qualifies as a full-payout lease and a net lease.

(b) *Exceptions—(1) Change in condition.* If, in good faith, a national bank believes that there has been a change in condition that threatens its financial position by increasing its exposure to loss, then the bank may:

(i) Take reasonable and appropriate action, including the actions specified in § 23.2(f), to salvage or protect the value of the leased property or its interests arising under the lease; and

(ii) Acquire or perfect title to the leased property pursuant to any existing rights.

(2) *Provisions to protect the bank's interests.* A national bank may include any provision in a lease, or make any 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