

Comptroller of the Currency, Treasury

§ 34.3

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AUTHORITY: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j-3, 1828(o), 3331 *et seq.*, and 5101 *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, 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) 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 (real estate loans), subject to 12 U.S.C. 1828(o) and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.

(b) A national bank shall not make a consumer loan subject to this subpart based predominantly on the bank's realization of the foreclosure or liquidation value of the borrower's collateral, without regard to the borrower's ability to repay the loan according to its terms. A bank may use any reasonable method to determine a borrower's ability to repay, including, for example, the borrower's current and expected income, current and expected cash flows, net worth, other relevant financial resources, current financial obligations,