

Loans to corporate groups. Both Parts 31 and 32 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 31 and 32 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 31, 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 until 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 31, the loan must comply with all of the insider lending restrictions of part 31. 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]

PART 32—LENDING LIMITS

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APPENDIX A TO PART 32—INTERPRETATIONS

AUTHORITY: 12 U.S.C. 1 *et seq.*, 84, 93a, 1462a, 1463, 1464(u), and 5412(b)(2)(B).

SOURCE: 60 FR 8532, Feb. 15, 1995, unless otherwise noted.

§ 32.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), and 5412(b)(2)(B).

(b) *Purpose.* The purpose of this part is to protect the safety and soundness of national banks and savings associations by preventing excessive loans to one person, or to related persons that are financially dependent, and to promote diversification of loans and equitable access to banking services.

(c) *Scope.* (1) Except as provided by paragraphs (c) and (d) of this section, this part applies to all loans and extensions of credit made by national banks and their domestic operating subsidiaries and to all loans and extensions of credit made by savings associations, their operating subsidiaries, and their service corporations that are consolidated under Generally Accepted Accounting Principles (GAAP). For purposes of this part, the term “savings association” includes Federal savings associations and state savings associations, as those terms are defined in 12 U.S.C. 1813(b).

(2) This part does not apply to loans or extensions of credit made to the bank’s or savings association’s:

(i) Affiliates, as that term is defined in 12 U.S.C. 371c(b)(1) and (e), as implemented by 12 CFR 223.2(a) (Regulation W);

(ii) Operating subsidiaries;

(iii) Edge Act or Agreement Corporation subsidiaries; or

(iv) Any other subsidiary consolidated with the bank or savings association under GAAP.

(3) The lending limits in this part are separate and independent from the investment limits prescribed by 12 U.S.C. 24 (Seventh) or 12 U.S.C. 1464(c), as applicable, and 12 CFR Part 1 and 12 CFR 160.30, and a national bank or savings association may make loans or extensions of credit to one borrower up to

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the full amount permitted by this part and also hold eligible securities of the same obligor up to the full amount permitted under 12 U.S.C. 24 (Seventh) or 12 U.S.C. 1464(c), as applicable, and 12 CFR Part 1 and 12 CFR 160.30.

(4) Loans and extensions of credit to executive officers, directors and principal shareholders of national banks, savings associations, and their related interests are subject to limits prescribed by 12 U.S.C. 375a and 375b in addition to the lending limits established by 12 U.S.C. 84 or 12 U.S.C. 1464(u) as applicable, and this part.

(5) In addition to the foregoing, loans and extensions of credit must be consistent with safe and sound banking practices.

(d) *Temporary exception.* The requirements of this part shall not apply to the credit exposure arising from a derivative transaction or securities financing transaction until October 1, 2013.

[60 FR 8532, Feb. 15, 1995, as amended at 73 FR 22251, Apr. 24, 2008; 77 FR 37275, June 21, 2012; 77 FR 76842, Dec. 31, 2012; 78 FR 37943, June 25, 2013]

§ 32.2 Definitions.

(a) *Appropriate Federal banking agency* has the same meaning as in 12 U.S.C. 1813(q).

(b) *Borrower* means a person who is named as a borrower or debtor in a loan or extension of credit; a person to whom a national bank or savings association has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank or savings association; or any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the “direct benefit” or the “common enterprise” tests set forth in § 32.5.

(c) *Capital and surplus* means—

(1) A national bank’s or savings association’s Tier 1 and Tier 2 capital calculated under the risk-based capital standards applicable to the institution as reported in the bank’s or savings association’s Consolidated Reports of Condition and Income (Call Report); plus

(2) The balance of a national bank’s or savings association’s allowance for loan and lease losses not included in

the bank’s or savings association’s Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(1) of this section, as reported in the bank’s or savings association’s Call Report.

(d) *Close of business* means the time at which a national bank or savings association closes its accounting records for the business day.

(e) *Consumer* means the user of any products, commodities, goods, or services, whether leased or purchased, but does not include any person who purchases products or commodities for resale or fabrication into goods for sale.

(f) *Consumer paper* means paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Consumer paper also includes paper covering the lease (where the national bank or savings association is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(g) *Contractual commitment to advance funds.* (1) The term includes a national bank’s or savings association’s obligation to—

(i) Make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank or savings association in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer’s contract with the third person, or to make payments upon some other stated condition;

(ii) Guarantee or act as surety for the benefit of a person;

(iii) Advance funds under a qualifying commitment to lend, as defined in paragraph (t) of this section, and

(iv) Advance funds under a standby letter of credit as defined in paragraph (cc) of this section, a put, or other similar arrangement.

(2) The term does not include commercial letters of credit and similar instruments where the issuing bank or savings association expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.