

percent of the savings association's unimpaired capital and unimpaired surplus, including all loans and extensions of credit subject to paragraph (a) of this section, *provided that*:

(A) The savings association is, and continues to be, in compliance with its capital requirements under 12 CFR part 3, part 167, part 390, subpart Z, or part 324, as applicable.

(B) The appropriate Federal banking agency permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(2)(i). A savings association that meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section and that meets the requirements for "expedited treatment" under 12 CFR 116.5 or 12 CFR 390.101 may use the higher limit set forth under paragraph (d)(2)(i) if the savings association has filed a notice with the appropriate Federal banking agency that it intends to use the higher limit at least 30 days prior to the proposed use. A savings association that meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section and that meets the requirements for "standard treatment" under 12 CFR 116.5 or 12 CFR 390.101 may use the higher limit set forth under this paragraph (d)(2)(i) if the savings association has filed an application with the appropriate Federal banking agency and the agency has approved the use the higher limit;

(C) The loans and extensions of credit made under this paragraph (d)(2)(i) of this section to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus;

(D) The loans and extensions of credit made under paragraph (d)(2)(i) of this section comply with the applicable loan-to-value requirements.

(ii) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(2)(i) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(2)(i) of this section or any condition(s) set forth in an order issued by the appropriate Federal banking agen-

cy under paragraph (d)(2)(i)(B) of this section.

(iii) As used in this section, the term "to develop" includes each of the various phases necessary to produce housing units as an end product, such as acquisition, development and construction; development and construction; construction; rehabilitation; and conversion; and the term "domestic" includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

(3) *Commercial paper and corporate debt securities.* In addition to the amount allowed under the savings association's combined general limit, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by commercial paper or corporate debt securities that are, as of the date of purchase, investment grade.

[60 FR 8532, Feb. 15, 1995, as amended at 63 FR 15746, Apr. 1, 1998; 66 FR 31120, June 11, 2001; 66 FR 35072, Nov. 1, 2001; 77 FR 37277, June 21, 2012; 79 FR 11312, Feb. 28, 2014]

#### § 32.4 Calculation of lending limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 84, and 12 U.S.C. 1464(u), as applicable, and this part, a national bank or savings association shall determine its lending limit as of the most recent of the following dates:

(1) The last day of the preceding calendar quarter; or

(2) The date on which there is a change in the bank's or savings association's capital category for purposes of 12 U.S.C. 1831o and 12 CFR 6.3 or 12 CFR 324.402, as applicable.

(b) *Effective date.* (1) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(1) of this section will be effective as of the earlier of the following dates:

(i) The date on which the bank's or savings association's Call Report is submitted; or

(ii) The date on which the bank's or savings association's Call Report is required to be submitted.

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(2) A national bank's or savings association's lending limit calculated in accordance with paragraph (a)(2) of this section will be effective on the date that the limit is to be calculated.

(c) *More frequent calculations.* If the appropriate Federal banking agency determines for safety and soundness reasons that a national bank or savings association should calculate its lending limit more frequently than required by paragraph (a) of this section, the appropriate Federal banking agency may provide written notice to the national bank or savings association directing it to calculate its lending limit at a more frequent interval, and the national bank or savings association shall thereafter calculate its lending limit at that interval until further notice.

[63 FR 15746, Apr. 1, 1998, as amended at 77 FR 37278, June 21, 2012; 79 FR 11312, Feb. 28, 2014]

### § 32.5 Combination rules.

(a) *General rule.* Loans or extensions of credit to one borrower will be attributed to another person and each person will be deemed a borrower—

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used; or

(2) When a common enterprise is deemed to exist between the persons.

(b) *Direct benefit.* The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) *Common enterprise.* A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph be-

cause of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extensions of credit are made—

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, inter-company loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a national bank or savings association to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the appropriate Federal banking agency determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(d) *Special rule for loans to a corporate group.* (1) Loans or extensions of credit by a national bank or savings association to a corporate group may not exceed 50 percent of the bank's or savings association's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a