

Comptroller of the Currency, Treasury

§ 34.2

Subpart B—Adjustable-Rate Mortgages

- 34.20 Definitions.
- 34.21 General rule.
- 34.22 Index.
- 34.23 Prepayment fees.
- 34.24 Nonfederally chartered commercial banks.
- 34.25 Transition rule.

Subpart C—Appraisals

- 34.41 Authority, purpose, and scope.
- 34.42 Definitions.
- 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.
- 34.44 Minimum appraisal standards.
- 34.45 Appraiser independence.
- 34.46 Professional association membership; competency.
- 34.47 Enforcement.

Subpart D—Real Estate Lending Standards

- 34.61 Purpose and scope.
- 34.62 Real estate lending standards.

APPENDIX A TO SUBPART D OF PART 34—
INTERAGENCY GUIDELINES FOR REAL ES-
TATE LENDING

Subpart E—Other Real Estate Owned

- 34.81 Definitions.
- 34.82 Holding period.
- 34.83 Disposition of real estate.
- 34.84 [Reserved]
- 34.85 Appraisal requirements.
- 34.86 Additional expenditures and notification.
- 34.87 Accounting treatment.

Subpart F [Reserved]

Subpart G—Appraisals for Higher-Priced Mortgage Loans

- 34.201 Authority, purpose, and scope.
- 34.202 Definitions applicable to higher-priced mortgage loans.
- 34.203 Appraisals for higher-priced mortgage loans.

APPENDIX A TO SUBPART G OF PART 34—HIGH-
ER-PRICED MORTGAGE LOAN APPRAISAL
SAFE HARBOR REVIEW

APPENDIX B TO SUBPART G OF PART 34—IL-
LUSTRATIVE WRITTEN SOURCE DOCUMENTS
FOR HIGHER-PRICED MORTGAGE LOAN AP-
PRaisal RULES

APPENDIX C TO SUBPART G OF PART 34—OCC
INTERPRETATIONS

Subpart H—Appraisal Management Company Minimum Requirements

- 34.210 Authority, purpose, and scope.
- 34.211 Definitions.

34.212 Appraiser panel—annual size calculation.

34.213 Appraisal management company registration.

34.214 Ownership limitations for State-registered appraisal management companies.

34.215 Requirements for Federally regulated appraisal management companies.

34.216 Information to be presented to the Appraisal Subcommittee by participating States.

AUTHORITY: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, and 5412(b)(2)(B) and 15 U.S.C. 1639h.

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,

§ 34.3

12 CFR Ch. I (1–1–16 Edition)

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, employment status, credit history, or other relevant factors.

(c) A national bank shall not engage in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), and regulations promulgated thereunder in connection with loans made under this part.

[68 FR 70131, Dec. 17, 2003, as amended at 69 FR 1917, Jan. 13, 2004]

§ 34.4 Applicability of state law.

(a) A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3, without regard to state law limitations concerning:

(1) Licensing, registration (except for purposes of service of process), filings, or reports by creditors;

(2) The ability of a creditor to require or obtain private mortgage insurance, insurance for other collateral, or other

credit enhancements or risk mitigants, in furtherance of safe and sound banking practices;

(3) Loan-to-value ratios;

(4) The terms of credit, including schedule for repayment of principal and interest, amortization of loans, balance, payments due, minimum payments, or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan;

(5) The aggregate amount of funds that may be loaned upon the security of real estate;

(6) Escrow accounts, impound accounts, and similar accounts;

(7) Security property, including leaseholds;

(8) Access to, and use of, credit reports;

(9) Disclosure and advertising, including laws requiring specific statements, information, or other content to be included in credit application forms, credit solicitations, billing statements, credit contracts, or other credit-related documents;

(10) Processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages;

(11) Disbursements and repayments;

(12) Rates of interest on loans;¹

(13) Due-on-sale clauses except to the extent provided in 12 U.S.C. 1701j-3 and 12 CFR part 591; and

(14) Covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) State laws on the following subjects are not inconsistent with the real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996):

(1) Contracts;

(2) Torts;

¹The limitations on charges that comprise rates of interest on loans by national banks are determined under Federal law. See 12 U.S.C. 85 and 1735f-7a; 12 CFR 7.4001. State laws purporting to regulate national bank fees and charges that do not constitute interest are addressed in 12 CFR 7.4002.