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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 04–21]

RIN 1557–AC83

Lending Limits Pilot Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is extending for three years the lending limits pilot program (pilot program or program) that currently authorizes special lending limits for 1–4 family residential real estate loans and small business loans. Under the pilot program, which originated in 2001, eligible national banks with main offices located in states that prescribe a lending limit for residential real estate loans or small business loans that is higher than the current Federal limit may apply to take part in the program and use the higher limits. While the program has operated in a safe and sound manner thus far, we believe that additional experience with the program is needed before we can make a long-term determination whether to retain, modify, or rescind these special lending limits. Accordingly, the final rule extends the pilot program, as revised by this rule, for an additional three years, until June 11, 2007. The final rule also expands the program to include certain agricultural loans.

DATES: *Effective Date:* August 19, 2004.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Jonathan Fink, Senior Attorney, Bank Activities and Structure, (202) 874–5300; or Thomas O'Dea, National Bank Examiner, Credit Risk, (202) 874–5170. Mailing address: Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Federal statutes and regulations provide that a national bank may make loans to a single borrower in an amount up to 15 percent of its unimpaired capital and surplus.[1] A national bank also may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by ''readily marketable collateral.'' Twelve CFR part 32 refers to these lending limits as the ''combined general limit.'' The statute and regulation also provide exceptions to the combined general limit for various types of loans and extensions of credit.

Twelve U.S.C. 84 authorizes the OCC to establish lending limits ''for particular classes or categories of loans'' that are different from those expressly provided by the statute's terms. In 2001, relying on this authority, the OCC published a final rule establishing a pilot program with special lending limits for residential real estate loans and small business loans. 66 FR 31114 (June 11, 2001) (2001 Final Rule). The purpose of the program is to enable community banks to remain competitive in states that provide their state-chartered institutions with a higher lending limit for these types of loans, while continuing to ensure that banks conduct their lending operations in a safe and sound manner. As of the end of June 2004, 178 national banks headquartered in 23 states had received approval to participate in the program.

On April 24, 2004, the OCC proposed to extend the pilot program for three years beyond its current expiration date of June 11, 2004. 69 FR 21978 (April 23, 2004). We proposed this extension to gain additional information and experience about the program and to reach a determination of whether, and under what circumstances, to terminate, modify, or extend the program. On June 10, 2004, the OCC issued an interim rule extending the pilot program through September 11, 2004.[2] 69 FR 32435 (June 10, 2004). We issued the interim rule to allow the pilot program to continue, uninterrupted, while we reviewed public comments on the proposed rule.

II. Overview of Comments Received

The OCC received 13 comments on the proposed rule. Eight comments were from national banks, most operating in small communities. Two comments were submitted by national-level bank trade associations; one comment was submitted by a state banking trade association. One comment was from a major trade association for homebuilders; and one comment was submitted by a Federal thrift.

All of the commenters supported the pilot program and favored extending it for three years, although many would prefer that the OCC make it permanent. One commenter, a national bank, stated that the lending program helped the bank retain customers who want one institution to provide all of their financing. A second commenter, also a national bank, stated that the pilot program has enabled the bank to remain competitive with state-chartered institutions with higher lending limits. A third commenter, a trade association for banks, endorsed the pilot program, noting that the higher lending limits have allowed community banks to retain customers they may have otherwise lost to other institutions.[3]

III. Description of the Final Rule

1. Continuation of the Pilot Program

The preamble to the 2001 Final Rule stated that, prior to conclusion of the pilot program, we would evaluate our experiences under the program and determine whether, and under what circumstances, to extend its duration. The proposal to this final rule noted that banks in the program have not had the additional lending authority for a sufficient period of time to allow the

[1] 12 U.S.C. 84; 12 CFR part 32 (implementing section 84).

[2] Under the 2001 Final Rule, national banks with approval to participate in the pilot program could make loans under the program until September 11, 2004.

[3] In the proposed rule, we solicited comment on whether to expand part 32 beyond its current scope (loans made by banks and their domestic operating subsidiaries) to statutory subsidiaries (*e.g.,* agricultural credit corporations). We received no comment on this question. Nor do we have any indication that this change is required by safety and soundness concerns. Therefore, the final rule does not change the scope of 12 CFR part 32.

OCC to assess fully the effects of the program. We also observed that the limited number of banks in the pilot program, and the relatively small number of quarters of data available for review, made reaching a final conclusion about the program premature. For these reasons, we proposed extending the pilot program for an additional three years.

As described earlier, all of the commenters supported extending the program. Several commenters also indicated that the pilot program has allowed them to remain competitive or retain customers. We continue to believe, however, that more data are needed before we can adequately evaluate whether to make the program permanent. Therefore, the final rule extends the program for an additional three years until June 11, 2007, with one substantive change to include an additional special lending limit for farm lending. Banks already approved under the pilot program need not reapply to continue lending under the program.

2. Scope of the Pilot Program

The pilot program authorizes an eligible national bank to apply for approval to make residential real estate loans and small business loans to a single borrower in addition to amounts that they may already lend to a single borrower under the existing combined general limit and special limits in 12 CFR 32.3(a) and (b). Under the pilot program, an eligible national bank may make residential loans in an additional amount up to the lesser of 10 percent of its capital and surplus, or the percent of its capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available for residential real estate loans or unsecured loans in the state where the main office of the national bank is located. Similarly, an eligible national bank may make small business loans in an additional amount up to the lesser of 10 percent of capital and surplus, or the percent of its capital and surplus in excess of 15 percent that a state bank is permitted to lend under the state lending limit that is available for small business loans or unsecured loans in the state where the main office of the national bank is located. In each case, the bank may lend no more than $10 million to a single borrower under the special authority. The 2001 Final Rule provides specific definitions for residential real estate loans and small business loans. 66 FR 31120 (June 11, 2001); *see also* 12 CFR 32.2(p) and (r).

Several commenters requested that the OCC add agricultural loans as another category of loans eligible for the special lending limits. One commenter observed that consolidation has resulted in fewer, but larger, farms with expanded credit needs. This situation makes the higher lending limit more important and useful to serving the bank's customers. Another commenter stated that rural banks have significant expertise in agricultural lending, thereby reducing the risk of loss of the agricultural loans they make. Another commenter stated that loans to small farms present no more risk, and perhaps less risk, than small business loans.

We agree with the commenters that the addition of agricultural loans to the pilot program likely will help both the community national banks that serve rural agricultural communities in those states with higher lending limits and their customers. Moreover, the incremental risk posed by the expansion of the pilot program to include agricultural loans does not raise significant safety and soundness concerns. It is our supervisory observation that agricultural loans have rates of loss that are similar to, and sometimes lower than, other types of loans. Therefore, the final rule provides that, in addition to the amount that a bank may lend to one borrower under §§ 32.3 (a) and (b), an eligible national bank may make small farm loans to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a state bank is permitted to lend under the state lending limit that is available for small farm loans or unsecured loans in the state where the main office of the national bank is located. In no event may a bank lend more than $10 million to one borrower under this authority. The OCC will use the data we accumulate over the three-year extension of the program to evaluate the effects of this additional authority on participating banks.

This final rule defines the term ''small farm loans'' by referring to the instructions for preparation of the Consolidated Report of Condition and Income (Call Report Instructions).[4] The Call Report Instructions include loans or extensions of credit ''secured by farmland (including farm residential and other improvements)'' or loans or extensions of credit ''to finance agricultural production and other loans to farmers.'' We adopted this definition because banks are familiar with the Call Report Instructions.

One commenter, a major trade association for homebuilders, suggested that we add loans for property construction and land development (construction and development) purposes to the program. The commenter asserted that lending limits are problematic for community banks. We did not receive comment from any banks suggesting that banks have been disadvantaged due to higher state lending limits for construction and development lending. Nor did the homebuilders association provide such evidence. Moreover, it is our supervisory experience that construction and development loans present more significant risks than do loans currently in the pilot program. Therefore, we decline to extend the program to construction and development loans.

3. Safeguards

At the outset of the pilot program, in 2001, we adopted a number of safeguards that apply to banks using the authority under the pilot program. For example, the amount that a bank may lend under the pilot program's special limits is subject to an individual borrower cap and an aggregate borrower cap. Under the individual borrower cap, the total outstanding amount of a bank's loans to one borrower under 12 CFR 32.3(a) and (b), together with loans made under the program, may not exceed 25 percent of the bank's capital and surplus. The aggregate cap provides that the total outstanding amount of any loan or parts of loans made by a bank to all of its borrowers under the special limits of the pilot program may not exceed 100 percent of the bank's capital and surplus. And, as noted earlier, the amount a bank may lend to one borrower under the special lending limit may not exceed $10 million. These caps, which apply to residential real estate loans and small business loans banks, will now include small farm loans made by a bank under the expanded pilot program.

One commenter suggested that the OCC increase the $10 million individual cap to $20 million to broaden the appeal of the program and further level the playing field between state and national banks. The same commenter also recommended expanding the program's aggregate lending cap on all small business and real estate loans from 100 percent to 200 percent of a bank's capital and surplus.

We believe that the 100 percent aggregate lending cap provides

[4] The Call Report Instructions are available at *http://www.ffiec.gov*. The addition of agricultural loans to the pilot program is not intended to expand the program to loans for farm property construction and land development. Such loans are currently excluded from the definition of ''loans to small farms.'' *See* Call Report Instructions, item 1.b, at RC–C–4.

significant opportunity for lending under the pilot program and is a provision that comports with safety and soundness. As we stated in the proposed rule, while the pilot program has operated in a safe and sound manner, the data available to the OCC is not of sufficient volume or maturity to make a long-term decision about whether to modify these safeguards. Therefore, at this time we decline to increase the amounts that banks may lend under the pilot program. During the course of the next few years, we will consider the effect of the cap on lending under the revised pilot program, *e.g.,* whether agricultural lenders typically make loans under other parts of the pilot program and, if so, whether the caps have resulted in a competitive disadvantage for participating banks.

4. Application Process

A bank is eligible for the pilot program only if it is well capitalized, as defined in 12 CFR 6.4(b)(1), and has a rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS), with at least a rating of 2 for asset quality and for management. These criteria ensure that only banks with sufficient capital and good managerial oversight are permitted to use the increased limits.

A bank also must apply and obtain the OCC's approval before it may use the special lending limits. The application includes a certification that the bank is well capitalized and has the requisite ratings, citation to state law on lending limits, a copy of a written resolution by a majority of the bank's board of directors approving the use of the new lending authority, and a description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

One commenter suggested that the OCC allow a national bank to self-certify that it is an eligible bank rather than go through an application process. We believe that the application process is an important tool that allows the OCC to monitor carefully the banks that wish to participate in the program. Therefore, we are maintaining the application requirement.

IV. Regulatory Analysis

1. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. Participation in the pilot program is voluntary; the program does not impose new requirements on banks; the program confers a benefit; and banks that participate in the program will not experience a significant economic impact, regardless of size. Also, to date, only a small fraction of national banks have taken part in the program.

2. Administrative Procedure Act

Under section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C 553(d), the OCC must generally provide a 30-day delayed effective date for final rules. The OCC may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), requires a banking agency to make a rule effective on the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form, unless the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

The OCC finds that there is good cause to dispense with the two effective date requirements because a failure to extend the September 11, 2004, sunset date would cause unnecessary disruption in the operation of the pilot program. In addition, the purpose of the APA and CDRI delayed effective date provisions is to afford affected persons a reasonable time to comply with rule changes. While the final rule expands the scope of loans a bank may make under the program, the rule makes no substantive changes to the existing lending limits pilot program. Therefore, there is no additional regulatory or compliance burden associated with the final rule for banks that apply to enter the program or banks already in the pilot program.

3. Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

4. Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

5. Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under control number 1557–0221, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 32—LENDING LIMITS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, and 12 U.S.C. 93a.

■ 2. In § 32.2, paragraph (s) is redesignated as paragraph (t), and a new paragraph (s) is added to read as follows:

§ 32.2 Definitions.

* * * * *

(s) *Small farm loans or extensions of credit* means ''loans to small farms,'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

* * * * *

■ 3. Section 32.7 is amended by removing the phrase ''(a)(1) and (2)'' each place it appears and adding the phrase ''(a)(1), (2), and (3)'' in its place; revising the heading of paragraph (a); redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5); adding a new

paragraph (a)(3); in paragraph (c), removing the phrase ''the date three years after September 10, 2001,'' and adding in its place ''September 10, 2007,''; in the first sentence of paragraph (d), removing the phrase ''residential or small business'' and adding in its place ''residential real estate, small business, or small farm''; and in paragraph (e), removing the phrase ''2004'' and adding in its place the phrase ''2007'' to read as follows:

§ 32.7 Pilot program for residential real estate, small business, and small farm loans.

(a) *Residential real estate, small business, and small farm loans.*

* * * * *

(3) In addition to the amount that a national bank may lend to one borrower under § 32.3, an eligible national bank may make small farm loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for small farm loans or unsecured loans in the State where the main office of the national bank is located. In no event may a bank lend more than $10 million to one borrower under this authority.

* * * * *

Dated: August 6, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 04–18888 Filed 8–18–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18850; Directorate Identifier 2004–SW–19–AD; Amendment 39–13771; AD 2004–16–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N and N1, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) helicopters. This action requires inspecting the main gearbox (MGB) baseplate for a crack and replacing the MGB if a crack is found in the MGB base plate. This amendment is prompted by the discovery of a crack in a MGB base plate. The actions specified in this AD are intended to detect a crack in a MGB base plate and prevent failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter.

DATES: Effective September 3, 2004.

Comments for inclusion in the Rules Docket must be received on or before October 18, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: (202) 493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the Dockets

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Eurocopter Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N and N1, and SA–366G1 helicopters. This action requires visually inspecting the MGB for a crack in the MGB base plate, part number (P/N) 366A32–1062–03 or P/N 366A32–1062–06, close to the attachment hole using a 10x or higher magnifying glass. Stripping paint from the inspection area is also required, but only before the initial inspection. This amendment is prompted by the discovery of a crack in the MGB base plate of a MGB installed in a Model AS–365 N2 helicopter. The cause of the crack is under investigation, therefore, this AD is an interim action until the cause of the crack can be determined. The crack was located very close to the attachment points of one of the laminated pads, and it propagated to the inside of the MGB base plate and then continued into the MGB casing. This condition, if not detected, could result in failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model SA 365 N, N1, SA 366 G1, AS 365 N2, N3, and EC 155 B and B1 helicopters. The DGAC advises of the discovery of a crack on the MGB base plate of a Model AS 365 N2 helicopter.

Eurocopter has issued Alert Telexes:

- No. 05.00.45, applicable to Model 365 N, N1, N2, and N3 helicopters;
- No. 05.29, applicable to Model 366 G1 helicopters; and
- No. 05A005, applicable to Model EC 155 B and B1 helicopters, all dated February 5, 2004. These alert telexes specify visually inspecting the MGB base plate for absence of cracks. In addition, the alert telexes state that a 10x magnifying glass can be used to facilitate the crack inspection. Also, if in doubt about the existence of a crack, the alert telexes specify inspecting for a crack using a dye-penetrant crack detection inspection. The DGAC classified these alert telexes as mandatory and issued AD No. UF–2004–023(A), dated February 6, 2004, and AD No. F–2004–023, dated March 3, 2004, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that