

*** DRAFT - NOT YET FILED ***

1301:1-3-01

Lending limits.

(A) As used in this rule:

- (1) "Borrower" means a person who is named as a borrower or debtor in a loan or extension of credit, 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 paragraph (D) of this rule.
- (2) "Capital" has the same meaning as in rule 1301:1-2-01 of the Administrative Code.
- (3) "Close of business" means the time at which a bank closes its accounting records for the business day.
- (4) "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.
- (5) "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 bank is not the owner or lessor, or purchase of equipment for use in manufacturing, farming, construction, or excavation.
- (6)
 - (a) "Contractual commitment to advance funds" includes a bank's obligation to do any of the following:
 - (i) A bank's obligation to make payment, directly or indirectly, to a third person contingent upon default by a customer of the bank in performing an obligation 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) A bank's obligation to guarantee or act as surety for the benefit of a person;

- (iii) A bank's obligation to advance funds under a qualifying commitment to lend, as defined in paragraph (A)(12) of this rule;
 - (iv) A bank's obligation to advance funds under a standby letter of credit as defined in paragraph (A)(16) of this rule, a put, or other similar arrangement.
- (b) "Contractual commitment to advance funds" does not include commercial letters of credit and similar instruments where the issuing bank 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.
- (7) "Control" is presumed to exist when, directly or indirectly or acting through or together with one or more persons, any of the following occurs:
- (a) A person owns, controls, or has the power to vote twenty-five per cent or more of any class of voting securities of another person;
 - (b) A person controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person;
 - (c) A person has the power to exercise a controlling influence over the management or policies of another person.
- (8) "Current market value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.
- (9) "Financial instrument" means stocks, notes, bonds, and debentures traded on a national securities exchange, over-the-counter margin stocks as defined in 12 C.F.R. 221 (regulation U), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which banks may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to United States dollars. The term "financial instrument" does not include mortgages.
- (10) "Loans and extensions of credit" means a bank's direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds or repayable from specific property pledged by or on behalf

of the borrower.

(a) Loans or extensions of credit for purposes of section 1109.22 of the Revised Code and this rule include any of the following:

(i) A contractual commitment to advance funds, as defined in paragraph (A)(6) of this rule;

(ii) A maker's or endorser's obligation arising from a bank's discount of commercial paper;

(iii) A bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period, but not including a bank's purchase of securities that are both of the following:

(a) Securities that are any of the following:

(i) Securities a bank may invest in pursuant to divisions (A)(1) to (A)(4) of section 1109.32 of the Revised Code;

(ii) Securities a bank may underwrite and deal in pursuant to section 1109.36 of the Revised Code;

(iii) Other securities the superintendent of financial institutions determines to be eligible;

(b) Subject to a repurchase agreement, where the purchasing bank has assured control over or has established its rights to the securities as collateral;

(iv) A bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the bank's loan is the total unpaid balance of the paper owned by the bank less any applicable dealer reserves retained by the bank and held by the bank as collateral security. Where the seller's obligation to repurchase is limited, the bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A bank's purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;

- (v) An overdraft, whether or not pre-arranged, but not an intra-day overdraft for which payment is received before the close of business of the bank that makes the funds available;
 - (vi) The sale of federal funds with a maturity of more than one business day, but not federal funds with a maturity of one day or less or federal funds sold under a continuing contract;
 - (vii) Loans or extensions of credit that have been charged off on the books of the bank in whole or in part, unless the loan or extension of credit is any of the following:
 - (a) Is unenforceable by reason of discharge in bankruptcy;
 - (b) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision;
 - (c) Is no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable.
- (b) The following items do not constitute loans or extensions of credit for purposes of section 1109.22 of the Revised Code and this rule:
- (i) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real or personal property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that the amounts advanced must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;
 - (ii) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;
 - (iii) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position

than when the bank held title to the assets;

(iv) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless any of the following apply:

(a) New funds are advanced by the bank to the borrower, except as permitted by paragraph (B)(2)(e) of this rule;

(b) A new borrower replaced the original borrower;

(c) The superintendent determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(v) Amounts paid against uncollected funds in the normal process of collection;

(vi)

(a) That portion of a loan or extension of credit sold as a participation by a bank on a non-recourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(b) When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the

loan may be treated as nonconforming subject to paragraph (E) of this rule, rather than a violation, if all of the following apply:

- (i) The originating bank had a valid and unconditional participation agreement with a participating bank or banks that was sufficient to reduce the loan to within the originating bank's lending limit;
 - (ii) The participating bank reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation;
 - (iii) The participation was to be funded by close of business of the originating bank's next business day.
- (11) "Person" means an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; limited liability company; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision of a sovereign government; or any similar entity or organization.
- (12) "Qualifying commitment to lend" means a legally binding written commitment to lend that, when combined with all other outstanding loans and qualifying commitments to a borrower, was within the bank's lending limit when entered into, and has not been disqualified.
 - (a) In determining whether a commitment is within the bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's commitment and that would be excluded from the definition of loan or extension of credit under paragraph (A)(10)(b)(vi) of this rule.
 - (b) If the bank subsequently chooses to make an additional loan and that subsequent loan, together with all outstanding loans and qualifying commitments to a borrower, exceeds the bank's applicable lending limit at that time, the bank's qualifying commitments to the borrower that exceed the bank's lending limit at that time are deemed to be permanently disqualified, beginning with the most recent qualifying commitment and proceeding in reverse chronological order. When a commitment is disqualified, the entire commitment is disqualified and

the disqualified commitment is no longer considered a loan or extension of credit. Advances of funds under a disqualified or non-qualifying commitment may only be made to the extent that the advance, together with all other outstanding loans to the borrower, do not exceed the bank's lending limit at the time of the advance, calculated pursuant to paragraph (C) of this rule.

(13) "Readily marketable collateral" means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

(14) "Readily marketable staple" means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations.

(a) An article comes within this definition if both of the following apply:

(i) The exact price is easy to determine;

(ii) The staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral.

(b) Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions existing at the time the loan or extension of credit that is secured by the staple is made.

(15) "Sale of federal funds" means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at federal reserve banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

(16) "Standby letter of credit" means any letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer to do any of the following:

(a) To repay money borrowed by or advanced to or for the account of the account party;

(b) To make payment on account of any indebtedness undertaken by the

account party;

(c) To make payment on account of any default by the account party in the performance of an obligation.

(B) Subject to paragraphs (D) and (E) of this rule, the following apply to a bank's outstanding loans or extensions of credit to any one borrower:

(1) Generally a bank's total outstanding loans and extensions of credit to one borrower may not exceed fifteen per cent of the bank's capital, plus an additional ten per cent of the bank's capital, if the amount that exceeds the bank's fifteen per cent general limit is fully secured by readily marketable collateral, as defined in paragraph (A)(13) of this rule. This is a bank's "combined general limit." To qualify for the additional ten per cent limit, the bank must perfect a security interest in the collateral under applicable law, and the collateral must have a current market value at all times of at least one hundred per cent of the amount of the loan or extension of credit that exceeds the bank's fifteen per cent general limit.

(2) The following loans or extensions of credit are subject to the special lending limits indicated, and, in the case of loans and extensions of credit that qualify for more than one special lending limit, the special limits are cumulative:

(a) A bank's loans or extensions of credit to one borrower secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples, as defined in paragraph (A)(14) of this rule, may not exceed thirty-five per cent of the bank's capital in addition to the amount allowed under the bank's combined general limit, and then only if all of the following conditions are met:

(i) The market value of the staples securing the loan must at all times equal at least one hundred fifteen per cent of the amount of the outstanding loan that exceeds the bank's combined general limit.

(ii) Staples that qualify for this special limit must be nonperishable or, when appropriate, may be refrigerated or frozen, and must be fully covered by any insurance that is customary. Whether a staple is non-perishable must be determined on a case-by-case basis because of differences in handling and storing commodities.

(iii) The loan or extension of credit arises from a single transaction or is secured by the same staples, provided that the duration of the loan

repossession of collateral, will not make conditional an otherwise unconditional guarantee.

- (ii) Where the seller of the paper offers only partial recourse to the bank, the lending limits of this rule apply to the obligation of the seller to the bank, which is measured by the total amount of paper the seller may be obligated to repurchase or has guaranteed.
 - (iii) Where the bank is relying primarily on the maker of the paper for payment of the loans or extensions of credit and not on any full or partial recourse endorsement or guarantee by the seller of the paper, the lending limits of this rule apply only to the maker. The bank must substantiate its reliance on the maker with both of the following:
 - (a) Records supporting the bank's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the bank or by a third party that is contractually obligated to make those records available for examination purposes;
 - (b) A written certification by an officer of the bank authorized by the bank's board of directors or any designee of that officer, that the bank is relying primarily upon the maker to repay the loan or extension of credit.
 - (iv) Where paper is purchased in substantial quantities, the records, evaluation, and certification must be in a form appropriate for the class and quality of paper involved. The bank may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.
- (c) A bank's loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or give a first lien on livestock may not exceed ten per cent of the bank's capital in addition to the amount allowed under the bank's combined general limit, and only if all of the following conditions that apply are met:
- (i) The market value of the livestock securing the loan must at all times equal at least one hundred fifteen per cent of the amount of the outstanding loan that exceeds the bank's combined general limit. For purposes of paragraph (B)(2)(c) of this rule, the term livestock includes dairy and beef cattle, hogs, sheep, goats,

horses, mules, poultry and fish, whether or not held for resale.

- (ii) The bank must maintain in its files an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate, but in any case not more than twelve months old.
 - (iii) Under the laws of certain states, persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If a lien that is based on pasturage furnished by the lien or prior to the bank's loan or extension of credit is assigned to the bank by a recordable instrument and protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise, it will qualify under this exception provided the amount of the perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than one hundred fifteen per cent of the portion of the loan or extension of credit that exceeds the bank's combined general limit. When the amount due under the grazing contract is dependent upon future performance, the resulting lien does not meet the requirements of the exception.
- (d) A bank's loans and extensions of credit to one borrower that arise from the discount by dealers in dairy cattle of paper given in payment for the cattle may not exceed ten per cent of the bank's capital in addition to the amount allowed under the bank's combined general limit, and only if both of the following conditions are met:
- (i) The paper carries the full recourse endorsement or unconditional guarantee of the seller.
 - (ii) The paper is secured by the cattle being sold, pursuant to liens that allow the bank to maintain a perfected security interest in the cattle under applicable law.
- (e) A bank may renew a qualifying commitment to lend, as defined in paragraph (A)(12) of this rule, and complete funding under that commitment if all of the following criteria are met:
- (i) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank.

- (ii) The completion of funding will enable the borrower to complete the project for which the qualifying commitment to lend was made.
 - (iii) The amount of the additional funding does not exceed the unfunded portion of the bank's qualifying commitment to lend.
- (3) The following loans or extensions of credit are not subject to the lending limits of section 1109.22 of the Revised Code or this rule:
 - (a) Loans or extensions of credit arising from the discount of negotiable commercial or business paper that evidences an obligation to the person negotiating the paper, if both of the following conditions are met:
 - (i) The paper is given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or any other business purpose that may reasonably be expected to provide funds for payment of the paper;
 - (ii) The paper bears the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions, that is transferred without recourse, or with limited recourse, must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper, such as insurance provided by the export-import bank.

A failure to pay principal or interest on commercial or business paper when due does not result in a loan or extension of credit to the maker or endorser of the paper; however, the amount of the paper thereafter must be counted in determining whether additional loans or extensions of credit to the same borrower may be made within the limits of section 1109.22 of the Revised Code and this rule.

 - (b) A bank's acceptance of drafts eligible for rediscount under divisions (B) and (C) of section 1109.17 of the Revised Code, or a bank's purchase of acceptances created by other banks that are eligible for rediscount under those sections; other than all of the following:
 - (i) A bank's acceptance of drafts ineligible for rediscount, which constitutes a loan by the bank to the customer for whom the acceptance was made, in the amount of the draft;

- (ii) A bank's purchase of ineligible acceptances created by other bank's, which constitutes a loan from the purchasing bank to the accepting bank, in the amount of the purchase price;
 - (iii) A bank's purchase of its own acceptances, which constitutes a loan to the bank's customer for whom the acceptance was made, in the amount of the purchase price.
- (c) Loans or extensions of credit, or portions of them, to the extent fully secured by United States obligations if both of the following apply:
 - (i) The extent of the security is determined by the current market value of the collateral, which may be either of the following:
 - (a) Bonds, notes, certificates of indebtedness, or treasury bills of the United States or similar obligations fully guaranteed as to principal and interest by the United States;
 - (b) Loans to the extent guaranteed as to repayment of principal by the full faith and credit of the United States government, as set forth in paragraph (B)(3)(d)(ii) of this rule.
 - (ii) The bank perfects a security interest in the collateral under applicable law.
- (d) Loans to or guaranteed by a federal agency, which may be either of the following:
 - (i) Loans or extensions of credit to any department, agency, bureau, board commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;
 - (ii) Loans or extensions of credit, including portions of them, to the extent secured by unconditional takeout commitments or guarantees of any of the governmental entities listed in paragraph (B)(3)(d)(i) of this rule, subject to both of the following:
 - (a) The commitment or guarantee is payable in cash or its equivalent within sixty days after demand for payment is made.

- (b) The commitment or guarantee is considered unconditional if the protection afforded the bank is not substantially diminished or impaired if loss should result from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

- (e) Loans or extensions of credit to a state or political subdivision that constitute a general obligation of the state or political subdivision, and for which the lending bank has obtained the opinion of counsel that the loan or extension of credit is a valid and enforceable general obligation of the borrower, and loans or extensions of credit, including portions of them, to the extent guaranteed or secured by a general obligation of a state or political subdivision and for which the lending bank has obtained the opinion of counsel that the guarantee or collateral is a valid and enforceable general obligation of that public body.

- (f) Loans or extensions of credit, including portions of them, to the extent secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law, and subject to both of the following:

 - (i) Where the deposit is eligible for withdrawal before the secured loan matures, the bank must establish internal procedures to prevent release of the security without the lending bank's prior consent.

 - (ii) A deposit that is denominated and payable in a currency other than that of the loan or extension of credit that it secured may be eligible for this exception if the currency is freely convertible to United States dollars, subject to both of the following conditions:

 - (a) This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit.

 - (b) The lending bank must establish procedures periodically to revalue foreign currency deposits to ensure that the loan or

extension of credit remains fully secured at all times.

- (g) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of ~~banks~~financial institutions, or other agent in charge of the business and property of a financial institution when an emergency situation exists and a bank is asked to provide assistance to another financial institution, and the loan is approved by the superintendent. For purposes of this paragraph, "financial institution" means a commercial bank, savings bank, trust company, savings association, or credit union.
- (h) Loans or extensions of credit to the student loan marketing association.
- (i) A loan or extension of credit to an industrial development authority or similar public entity created to construct and lease a plant facility, including a health care facility, to an industrial occupant is deemed a loan to the lessee, if all of the following conditions are met:
 - (i) The bank evaluates the creditworthiness of the industrial occupant before the loan is extended to the authority;
 - (ii) The authority's liability on the loan is limited solely to whatever interest it has in the particular facility;
 - (iii) The authority's interest is assigned to the bank as security for the loan or the industrial occupant issues a promissory note to the bank that provides a higher order of security than the assignment of a lease;
 - (iv) The industrial occupant's lease rentals are assigned and paid directly to the bank.
- (j) A loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease is deemed a loan to the lessee, if all of the following conditions are met:
 - (i) The bank evaluates the creditworthiness of the lessee before the loan is extended to the leasing corporation;
 - (ii) The loan is without recourse to the leasing corporation;

- (iii) The bank is given a security interest in the equipment and in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;
- (iv) The leasing corporation assigns all of its rights under the lease to the bank;
- (v) The lessee's lease payments are assigned and paid to the bank;
- (vi) The lease terms are subject to the same limitations that would apply to a bank acting as a lessor.

(C)

- (1) For purposes of determining compliance with section 1109.22 of the Revised Code and this rule, a bank shall determine its lending limit as of the most recent of the following dates:
 - (a) The last day of the preceding calendar quarter;
 - (b) The date on which there is a change in the bank's capital category for purposes of 12 U.S.C. 1831.
- (2)
 - (a) Bank's lending limit calculated in accordance with paragraph (C)(1)(a) of this rule will be effective as of the earlier of the following dates:
 - (i) The date on which the bank's consolidated report of condition and income (call report) is submitted;
 - (ii) The date on which the bank's call report is required to be submitted.
 - (b) A bank's lending limit calculated in accordance with paragraph (C)(1)(b) of this rule will be effective on the date that the limit is to be calculated.
- (3) If the superintendent determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by paragraph (C)(1) of this rule, the superintendent may provide written notice to the bank

directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

(D)

- (1) Loans or extensions of credit to one borrower are attributed to another person and each person is deemed a borrower in either of the following circumstances:
 - (a) 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;
 - (b) When a common enterprise exists between the persons.
- (2) The proceeds of a loan or extension of credit to a borrower are deemed to be used for the direct benefit of another person and are 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.
- (3) A common enterprise exists and loans to separate borrowers are aggregated in each of the following cases:
 - (a) 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 employee is not treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (C)(3)(b) of this rule are met.
 - (b) When loans or extensions of credit are made to borrowers who are related, directly or indirectly, through common control, including where one borrower is directly or indirectly controlled by another borrower, and substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence exists when fifty per cent 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 and expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

- (c) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than fifty per cent of the voting securities or voting interests, in which case a common enterprise exists between the borrowers for purposes of combining the acquisition loans.
 - (d) When the superintendent determines, based upon an evaluation of the facts and circumstances or particular transactions, that a common enterprise exists.
- (4)
 - (a) Loans or extensions of credit by a bank to a corporate group may not exceed fifty per cent of the bank's capital. This limitation applies only to loans subject to the combined general limit and not otherwise excepted by the superintendent. 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 fifty per cent of the voting securities or voting interests of the corporation or company.
 - (b) Except as provided in paragraph (D)(4)(a) of this rule, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.
- (5) In the case of loans to partnerships, joint ventures, and associations, the following requirements apply:
 - (a) Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This requirement does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.
 - (b)
 - (i) Loans or extensions of credit to members of a partnership, joint

venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and the partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

- (ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(6)

- (a) Loans and extensions of credit to foreign governments, their agencies, and instrumentalities are aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

- (i) The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support, excluding guarantees by a central government of the borrower's debt, exceeds the borrower's annual revenues from other sources, it is presumed that the means test is not satisfied.

- (ii) The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.

- (b) In order to show that the means and purpose tests have been satisfied, a bank shall, at a minimum, retain in its files all of the following items:

- (i) A statement, accompanied by supporting documentation, describing the legal status and the degree of financial and operational autonomy of the borrowing entity;

- (ii) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in

existence, if less than three;

- (iii) Financial statements for each year the loan or extension of credit is outstanding;
 - (iv) The bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment, including an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government;
 - (v) A loan agreement or other written statement from the borrower that clearly describes the purpose of the loan or extension of credit. The written representation ordinarily constitutes sufficient evidence that the purpose test has been satisfied. However, when, the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.
- (c) Notwithstanding paragraphs (D)(1) to (D)(5) of this rule, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities, public-sector obligors that qualified for a separate lending limit under paragraph (D)(6)(a) of this rule are consolidated under a central obligor in a qualifying restructuring, the loans are not aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. The loans, other than loans originally attributed to the central obligor in their own right, are not considered obligations of the central obligor and continue to be attributed to the original public-sector obligor for purposes of the lending limit.
- (i) Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (D)(6)(c)(i) of this rule only if they are restructured in a sovereign debt restructuring approved by the superintendent, upon request by a bank for application of the noncombination rule. The factors that the superintendent will use in making the determination include, but are not limited to, the following:

- (a) Whether the restructuring involves a substantial portion of the total commercial bank loans outstanding to the foreign government, its agencies, and instrumentalities;
 - (b) Whether the restructuring involves a substantial number of the foreign country's external commercial bank creditors;
 - (c) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management;
 - (d) Whether the restructuring includes features of debt or debt-service reduction.
- (ii) With respect to any case in which the non-combination process under paragraph (D)(6)(c)(i) of this rule applies, a bank's loans and other extensions of credit to a foreign government, its agencies and instrumentalities, including restructured debt, shall not exceed, in the aggregate, fifty per cent of the bank's capital.

(E)

- (1) A loan, within a bank's legal lending limit when made, will not be deemed a violation but will be treated as nonconforming if the loan is no longer in conformity with the bank's lending limit because of either of the following:
- (a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, the lending limit or capital rules have changed;
 - (b) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value.
- (2) A bank shall use reasonable efforts to bring a loan that is nonconforming as a result of paragraph (E)(1)(a) of this rule into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.
- (3) A bank shall bring a loan that is nonconforming as a result of circumstances described in paragraph (E)(1)(b) of this rule into conformity with the bank's lending limit within thirty calendar days, except when judicial proceedings,

regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

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