

qualifying commitment to lend in order to complete the financing of a project in process. Under the proposal, the advance had to be to protect the position of the bank, and the amount of additional advances could not exceed the lesser of the unfunded portion of the original commitment or 5 percent of the bank's capital and surplus. Commenters generally supported this position. Several suggested, however, that for the exception to accomplish its intended purpose, the OCC should allow the bank to fund the full amount of the commitment even if it was in excess of the five percent cap.

The OCC believes that this suggestion has merit, but is also concerned that full funding of the original commitment must not compromise a bank's safety and soundness. Accordingly, the final rule modifies the approach contained in the proposal to allow funding up to the amount of the original commitment, provided the renewal and additional funding thereunder is consistent with safe and sound banking practices, is made to protect the bank's position, and will enable the borrower to complete the project for which the original commitment was made.

Section 32.3(b)(6) of the proposal was not included in the final rule. This paragraph set forth a special lending limit that expired on January 1, 1995. Since the section serves no purpose after that date it is not incorporated into the final rule.

Loans Exempt From the Lending Limit (§ 32.3(c))

Section 32.3(c)(3) is revised in the final rule. This paragraph provides that loans collateralized by U.S. government obligations are exempt from the lending limits to the extent of the current market value of the collateral. This exemption includes loans that are secured by bonds, notes, Treasury bills, or similar obligations fully guaranteed as to principal and interest by the full faith and credit of the United States Government. This exemption was the subject of several commenter suggestions that it be expanded to include loans that are secured by instruments with comparable government backing. The OCC agrees with these comments that certain other forms of collateral that carry the full faith and credit of the U.S. government pose no greater risk of loss. Accordingly, the final rule relies on the OCC's authority under 12 U.S.C. 84(d)(1) to establish limits or requirements other than those specified in the statute, for particular classes or categories of loans, to include an additional class of loans in the exempt category—loans

guaranteed as to repayment of principal by the full faith and credit of the U.S. Government. This exemption includes qualifying Small Business Administration, Federal Housing Administration, and Veterans Administration guaranteed loans, but only to the extent of the government guarantee.

Some commenters suggested that the final rule also extend this exemption to loans that are secured by other types of instruments. The OCC has carefully considered these suggestions, but does not agree that, as a general matter, the principal and liquidity risks presented by the suggested types of instruments are sufficiently comparable to the risks of directly holding the U.S. Government securities, or government-backed loans. Accordingly, the OCC declines to add an additional category of collateral that could qualify a loan for an exemption from lending limits.

The final rule also modifies § 32.3(c)(10) of the proposal. As proposed, this paragraph was intended to incorporate OCC interpretive positions on loans to leasing companies. This paragraph allows banks to attribute loans made to leasing companies to the lessees when certain conditions are met. The final rule includes minor changes to ensure that the conditions for this treatment are no more burdensome than if the bank were to act as a lessor itself subject to 12 CFR part 23. These changes better convey the current OCC interpretive position.

Frequency of the Lending Limit Calculation (§ 32.4)

The former rule required a bank to determine its lending limit for each loan on the date that it made a loan. The proposal simplified this requirement by allowing a bank to rely on its quarterly calculation of capital found in its Call Report. Rather than calculate daily, under the proposal the bank generally could calculate the lending limit once for the entire quarter. However, the OCC was concerned that a significant decline in capital between quarterly calculations could result in a bank lending at a level above its actual limit for the duration of the quarter.

To prevent a bank from lending in excess of a shrinking capital base, the proposal required a bank to recalculate its lending limit between quarters if there were a change in its capital category for purposes of prompt corrective action, or if a "material event" occurred that caused its capital to increase or decrease by 10 percent or more. However, it was recognized that what constitutes a "material event" for this trigger may not be readily defined.

Anticipating criticism of the material event component, the proposal suggested an alternative: a simple increase or decrease of 10 percent in a bank's capital between quarters would trigger the recalculation obligation.

Comment was mixed on both approaches to the recalculation trigger. Generally, commenters characterized the "material event" element as too vague to be useful. Many suggested that a simple percentage test would be more reliable and useful. Others questioned whether a percentage test was needed given the OCC's general ability to require more frequent calculations in individual cases. The OCC finds these arguments persuasive. The OCC has concluded that the material event element is too vague to give a reliable indication of the need to recalculate. As a result, the OCC has not included this requirement in the final rule.

Imposing the requirement that a bank recalculate whenever its capital declined by 10 percent between quarters is also problematic. Several commenters observed that the obligation to monitor the changes in capital between quarters would give a bank little comfort that its quarterly lending limit is valid for the entire quarter. In effect the obligation to monitor 10 percent swings in capital could force a bank to make a daily calculation of capital, not quarterly as proposed. This result would be contrary to the purpose of the proposed quarterly calculation.

On the other hand, the OCC also considered whether a quarterly calculation would be inappropriate for any identifiable subset of national banks, such as banks that are undercapitalized. The OCC determined not to include a different lending limit calculation frequency requirement for undercapitalized banks as a class, however, because the OCC anticipates that such banks will be subject to enhanced supervisory oversight and directives that will address the frequency of the bank's lending limit calculations in those cases where lending limit excesses are a potential problem. (For example, a bank could be undercapitalized for reasons unrelated to its lending activities, or could have poor underwriting practices and losses on loans and raise no lending limits issues). The OCC closely monitors undercapitalized banks, however, and will make appropriate adjustments to the frequency of required lending limit calculations for such banks if experience indicates that a general standard for undercapitalized banks is needed.

The final rule, therefore, deletes the 10 percent recalculation requirement