

maintains sufficient records to demonstrate that the loan is unenforceable.

(2) The following items do not constitute loans or extensions of credit for purposes of 12 U.S.C. 84 and this part—

(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 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 such amounts 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 new funds are advanced by the bank to the borrower (except as permitted by § 32.3(b)(5)), or a new borrower replaces the original borrower, or unless the OCC 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; and

(vi)(A) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse 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 § 32.6, rather than a violation, if:

(1) 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;

(2) 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; and

(3) The participation was to be funded by close of business of the originating bank's next business day.

(k) *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 thereof; or any similar entity or organization.

(l) *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.

(1) 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 (j)(2)(vi) of this section.

(2) 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 § 32.4.

(m) *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.

(n) *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.

(1) An article comes within this definition if—

(i) The exact price is easy to determine; and

(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.

(2) 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 staples is made.

(o) *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.

(p) *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:

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

(2) To make payment on account of any indebtedness undertaken by the account party; or

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

§ 32.3 Lending limits.

(a) *Combined general limit.* A national bank's total outstanding loans and extensions of credit to one borrower