

## DERIVATION TABLE—Continued

Revised section	Original section	Comments
34.87 .....	34.86 ..... 34.87 .....	No change. Removed.

**Regulatory Flexibility Act**

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying current regulatory requirements.

**Executive Order 12866**

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

**Unfunded Mandates Act of 1995**

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a Notice of Proposed Rulemaking (NPRM) likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of \$100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating an NPRM. The OCC has determined that the rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the rule will reduce unnecessary burdens on national banks seeking to engage in real estate lending.

**List of Subjects in 12 CFR Part 34**

Mortgages, National banks, Reporting and recordkeeping requirements.

**Authority and Issuance**

For the reasons set out in the preamble, the OCC proposes to amend part 34 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

**PART 34—REAL ESTATE LENDING AND APPRAISALS**

1. The authority citation for part 34 is revised to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j-3, 1828(o), and 3331 *et seq.*

2. Part 34 is amended by revising subparts A, B, and E to read as follows:

**Subpart A—General**

Sec.

34.1 Purpose and scope.

34.2 Definitions.

34.3 General rule.

34.4 Applicability of State law.

34.5 Due-on-sale clauses.

**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**

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**Subpart D—Real Estate Lending Standards**

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**Subpart E—Other Real Estate Owned**

34.81 Definitions.

34.82 Holding period.

34.83 Disposition of real estate.

34.84 Future bank expansion.

34.85 Appraisal requirements.

34.86 Additional expenditures and notification.

34.87 Accounting treatment.

**Subpart A—General****§ 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.* 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, 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, 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, ruling, or order of any State agency, or judicial decision regarding a State statute, regulation, ruling, or order.

**§ 34.3 General rule.**

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, subject to terms, conditions, and limitations prescribed by the Comptroller of the Currency by order, rule, or regulation.

**§ 34.4 Applicability of State law.**

(a) *Specific preemption.* National banks may make real estate loans under 12 U.S.C. 371 and § 34.3 without regard to State law limitations as to:

(1) The amount of a loan in relation to the appraised value of the real estate;  
(2) The schedule for the repayment of principal and interest;  
(3) The term to maturity of the loan;  
(4) The aggregate amount of funds that may be loaned upon the security of real estate; and  
(5) The covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) *General standards.* The OCC will apply recognized principles of Federal preemption in considering whether State laws apply to other real estate lending activities of national banks.

**§ 34.5 Due-on-sale clauses.**

A national bank may make or acquire a loan or interest therein, secured by a