The OCC intends for this proposal to reduce regulatory costs and other burdens on national banks by eliminating regulatory requirements that are neither essential to maintaining the safety and soundness of national banks nor needed to accomplish the OCC's statutory responsibilities. The proposal also seeks comments on whether it would be useful for the OCC to issue additional guidance on the differences between the requirements of part 31 and 12 CFR part 32 (Lending Limits).

Discussion

Current part 31 contains two subparts. Subpart A implements 12 U.S.C. 375a(4) and 375b(3) by setting a limit on the amount that a national bank may lend to any one of its executive officers other than for housing- and education-related loans and by establishing a threshold above which approval of the bank's board of directors is required for any loan to an insider. Subpart B implements 12 U.S.C. 1817(k) and 1972(2)(G)(ii) by requiring a national bank to disclose, upon request, the names of its executive officers and principal shareholders who borrow more than specified amounts from the bank itself or the bank's correspondent banks and to maintain records related to requests for this information. Subpart B also implements 12 U.S.C. 1972(2)(G)(i), which requires a national bank's executive officers and principal shareholders to report on loans they or their related interests receive from the bank's correspondent banks.

This proposal creates three exceptions to the limit on loans that a national bank may make to its executive officers for situations where the lending bank's position is clearly protected by virtue of the type of collateral involved. It also clarifies and simplifies the current rule by removing provisions that are no longer necessary. Finally, it invites comments on whether guidance would be helpful on the differences between the insider lending limits and the loans-to-one-borrower limits and, if so, the areas where clarification may be most needed.

The following discussion identifies and explains material proposed changes to part 31. The OCC invites general comments on the proposed regulation as well as specific comments on the areas identified.

Title of Regulation

The current rule is titled ''Extensions of Credit to National Bank Insiders.''

The proposed rule changes the title to ''Extensions of Credit to Insiders and Transactions with Affiliates.'' This change reflects the proposed relocation to 12 CFR part 31 of several interpretations regarding transactions with affiliates that currently are set out in part 7. (*See* ''Interpretations'' and text that follows for further discussion of the relocation.)

Subpart A—Loans to Insiders

Definitions (Proposed § 31.2)

Current § 31.3 states that the definitions contained in §§ 215.2 and 215.3 of Regulation O (12 CFR part 215) apply to subpart A of part 31.

Proposed § 31.2 also states that the definitions used in §§ 215.2 and 215.3 of Regulation O apply. However, because proposed § 31.3 uses a term (capital and surplus) that is Not defined in Regulation O, proposed § 31.2 states that ''capital and surplus'' will be defined in the same way as that term is defined in part 32 (Lending Limits) (12 CFR 32.2(b)). This clarifies that national banks calculate their loans-to-one-borrower lending limits and their insider lending limits using the same capital base.[1]

Loan Limits (Proposed § 31.3)

Current § 31.2(a) prohibits a national bank from making a loan to an executive officer if the loan, when aggregated with all other loans outstanding from the bank to the officer, would exceed the higher of $25,000 or 2.5 percent of the bank's capital and unimpaired surplus, up to $100,000. However, the current rule exempts home mortgage and educational loans from this limit pursuant to sections 22(g)(2) and 22(g)(3) of the Federal Reserve Act (12 U.S.C. 375a (2) and (3)).[2] Loans that do not comply with sections 22(g)(2) or 22(g)(3) often are referred to as ''other purpose loans,'' because they are for purposes other than those identified in those sections of the Federal Reserve Act.

Pursuant to the rulemaking authority in 12 U.S.C. 375(a)(4), proposed § 31.3(a) exempts a loan from the limits applicable to ''other purpose loans'' if the loan is secured by United States obligations, obligations guaranteed by a Federal agency, or a segregated deposit account.[3] The proposal effects this change by incorporating the exceptions set forth in the OCC's Lending Limits regulation at 12 CFR 32.3(c)(3), (c)(4)(ii), and (c)(6). The proposal also clarifies that the limits prescribed by § 31.3(a) do not apply to executive officers of affiliates of the lending bank.

The OCC believes that the proposed exceptions, which entail situations where the lending bank's position is secure by the nature of the collateral required, are consistent with safe and sound banking practices and would eliminate unnecessary restrictions on lending by national banks. Moreover, in the insider lending context, loans that qualify for the exceptions remain subject to the safeguards found in sections 22(g)(1) and 22(h)(2) of the Federal Reserve Act (12 U.S.C. 375a(1) and 375b(2)), thereby providing additional protection against abuse.[4]

Both the Federal Deposit Insurance Corporation (FDIC) and the Board have amended their insider lending rules to include exemptions similar to those noted above. See 59 FR 66666 (December 28, 1994) (amending the FDIC's rule at 12 CFR 337.3) and 59 FR 8831 (February 24, 1994) (amending the Board's rule at 12 CFR 215.5).[5] The OCC

[1] Regulation O uses the term ''unimpaired capital and unimpaired surplus.'' *See* 12 CFR 215.2(i). The Board of Governors of the Federal Reserve System (Board) recently amended Regulation O to conform the definition of ''unimpaired capital and unimpaired surplus'' to the definition of ''capital and surplus'' as defined in part 32 (60 FR 31053, June 13, 1995). Accordingly, the capital base from which different limits are measured now is the same, despite the different terminology.

[2] Section 22(g)(2) of the Federal Reserve Act permits a member bank (and, therefore, a national bank) to make a loan to one of its executive officers if the loan is secured by a first lien on a dwelling that the officer will own and use as his or her residence after the loan is made. Section 22(g)(3) permits a member bank to make a loan to an executive officer to finance the education of the officer's children.

[3] The OCC currently exempts these loans from the limits on loans to one borrower. *See* 12 CFR 32.3(c)(3), (4), and (6). The only difference between the exceptions in proposed part 31 and the exceptions currently available under part 32 is that the proposal does not include the exemption for loans *to* a Federal agency (12 CFR 32.3(c)(4)(i)), given that this exemption does not apply to loans to executive officers.

[4] Section 22(g)(1) of the Federal Reserve Act requires that any loan by a member bank to one of its executive officers be promptly reported to the bank's board of directors. The bank may make the loan to the executive officer only if it is authorized to make the loan to borrowers other than its officers, the loan is on terms not more favorable than those afforded other borrowers, and the officer has submitted a detailed current financial statement. Section 22(h)(2) authorizes a member bank to make a loan to a bank insider only if the loan is made on substantially the same terms as those prevailing at the time for comparable transactions by the bank with persons who are not insiders, the loan does not involve more than the normal risk of repayment or present other unfavorable features, and the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with non-insiders.

[5] The Office of Thrift Supervision's regulation automatically applies the Board's insider lending rule to thrifts. *See* 12 CFR 563.43. Accordingly, the amendment to 12 CFR 215.5 also applies to thrifts. The OCC also believes that the current restrictions run counter to section 303(a)(1)(A) of the CDRI, which requires the Federal banking agencies to eliminate unwarranted constraints on credit availability. The OCC has observed no significant problems arising from the exemptions in the loans-to-one-borrower context. This experience, coupled with the safeguards provided by sections 22(g) and