

**SUPPLEMENTARY INFORMATION:****Background**

Although the limitations on a national bank lending to one borrower can be traced to the Currency Act of 1863,<sup>1</sup> the Garn-St Germain Depository Institutions Act (Act), Pub. L. 97-320 (1982), represents the most recent major revision of the statutory lending limits. Section 401(a) of that Act amended 12 U.S.C. 84 to raise the amount that a national bank may lend to a single borrower from 10 to 15 percent of the bank's unimpaired capital and unimpaired surplus. It also added new exceptions, defined key terms, and provided express authority for the OCC to issue regulations to implement the statute, including regulations to define or further define terms and to establish limits or requirements other than those contained in the statute for particular classes or categories of loans.

The OCC implemented the amended 12 U.S.C. 84 with a final rule published on April 12, 1983 (48 FR 15844). The final rule created a new part 32 in title 12 of the Code of Federal Regulations which replaced and restructured existing interpretive rulings previously found at 12 CFR part 7. The OCC proposed another major regulatory revision of the lending limits for national banks on October 24, 1989 (54 FR 43398). A final rule in response to this proposal was never adopted, however.

**The Proposal**

On February 11, 1994 the OCC published its proposal to revise the lending limit regulation found at 12 CFR part 32 (proposal), 59 FR 6593, as part of the OCC's Regulation Review Program. The proposal sought to modernize the regulation and incorporate into the rule significant interpretive positions of the OCC. The proposal sought to comprehensively revise, reorganize, update, and simplify the regulation, and to reduce unnecessary regulatory burdens, without compromising the important safety and soundness objectives of the lending limits rule.

**Comments Received and Changes Made**

The final rule implements most of the initiatives contained in the proposal. However, several additional changes are made in response to the comments received. Most of these changes clarify the original intent of the proposal. Other changes alter the proposed regulation in a manner that provides additional

flexibility to banks. The final rule also includes a number of technical changes to the proposal.

The OCC received 28 comment letters on the proposal. The comments received generally were very favorable. Comment letters included 16 from banks and bank holding companies, three from law firms, and eight from trade associations and the representatives of banks, thrifts, home builders, and clearing houses. The commenters welcomed the OCC's effort to reorganize part 32 and several stated that the changes made in the proposal represented a significant improvement over the old rule. Commenters generally praised the new format and the additional clarity provided by the revisions. Some predicted that the simplified regulation would reduce regulatory burden and compliance costs.

**Overview of the Final Rule**

The OCC reviewed the lending limit rule with the goals of reducing unnecessary regulatory burdens and providing banks with increased flexibility in their lending operations, consistent with safe and sound banking practices.

As part of this new approach, the final rule alters the definition of "capital and surplus" upon which lending limits are based. The new lending limit calculation draws upon risk-based capital components that a bank must already calculate for Call Report purposes. By relying on quarterly Call Report information, most national banks generally will be required to calculate their lending limit only once every quarter, rather than every time they propose to make a loan.

The final rule also adds a few new definitions and removes or consolidates old ones to enhance the regulation's clarity. Several modifications provide banks with greater flexibility in certain lending situations, subject to safety and soundness parameters. For example, the rule includes a new exception to the lending limits to allow a bank to advance funds to renew and complete the funding of a qualifying loan commitment under circumstances where the additional advance will protect the position of the bank. The final rule also allows a bank to advance funds to pay for taxes, insurance and other necessary expenses to protect its interest in the collateral securing a loan, and clarifies when a loan is considered "nonconforming," rather than a violation, when it exceeds a bank's lending limit, but was within the bank's lending limit when made.

**Section-by-Section Discussion**

The commenters focused on provisions of the proposal needing modification or further amendment. The OCC carefully considered each of the comment letters and has made a number of changes in response. Those comments and any changes are identified and explained in the section-by-section discussion that follows. A table summarizing the sections of the former part 32 that are amended by the final rule is included at the end of this preamble.

*Authority, Purpose and Scope (§ 32.1)*

The proposal amended the "Purpose" paragraph to expressly incorporate the objectives of safety and soundness, loan diversification, and equitable access to banking services. The final rule adds to the "Scope" paragraph new language cautioning bank management that the lending limit rule is not a "safe harbor" for lending.

The "Scope" paragraph emphasizes that the lending limit rules are only one component of a prudent lending program. National banks must always underwrite loans in accordance with prudent banking practices, in addition to adhering to specific quantitative limitations such as the lending limits. Several commenters remarked that the OCC should amend the lending limits provisions to recognize the existence of limited liability companies as bank subsidiaries, comparable to operating subsidiaries. Treatment of limited liability companies as operating subsidiaries is an issue raised in the OCC's proposed changes to Part 5 of its regulations, and the OCC believes the question is better resolved in that context. (59 FR 61034, November 29, 1994.) In the interim, however, when a bank seeks permission to invest in a limited liability company as a subsidiary, and the bank's voting interest satisfies the operating subsidiary percentage control requirements, the bank may also seek confirmation that loans by the bank to the limited liability company subsidiary will be treated in the same way as loans to an "operating subsidiary" for purposes of lending limits.

*Definitions (§ 32.2)*

The proposal consolidated all the definitions located throughout the existing rule into a single section. Commenters raised questions about some of the revisions and additions made to the definitions. Of particular note are the following revisions.

<sup>1</sup> Act of Feb. 25, 1863, 12 Stat. 665 et seq., R.S. § 5200.