

1301:12-3-05 **Lending limits.**

(A) As used in this rule:

- (1) "Borrower" means a person who is named as a borrower or debtor in a loan or extension of credit, or any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the "direct benefit" or the "common enterprise" tests set forth in paragraph (D) of this rule.
- (2) "Capital" shall consist of net worth in rule 1301:12-2-01 of the Administrative Code, plus supplementary or tier two capital as defined in paragraph (A)(17) of this rule.
- (3) "Close of business" means the time at which a savings bank closes its accounting records for the business day.
- (4) "Consumer" means the user of any products, commodities, goods or services, whether leased or purchased, but does not include any person who purchases products or commodities for resale or fabrication into goods for sale.
- (5) "Consumer paper" means paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Consumer paper also includes paper covering the lease, where the savings bank is not the owner or lessor, or purchase of equipment for use in manufacturing, farming, construction, or excavation.
- (6)
 - (a) "Contractual commitment to advance funds" includes a savings bank's obligation to do any of the following:
 - (i) A savings bank's obligation to make payment, directly or indirectly, to a third person contingent upon default by a customer of the savings bank in performing an obligation in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;
 - (ii) A savings bank's obligation to guarantee or act as surety for the benefit of a person;
 - (iii) A savings bank's obligation to advance funds under a qualifying commitment to lend, as defined in paragraph (A)(12) of this rule;

- (iv) A savings bank's obligation to advance funds under a standby letter of credit as defined in paragraph (A)(16) of this rule, a put, or other similar arrangement.
 - (b) "Contractual commitment to advance funds" does not include commercial letters of credit and similar instruments where the issuing savings bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.
- (7) "Control" is presumed to exist when, directly or indirectly or acting through or together with one or more persons, any of the following occurs:
- (a) A person owns, controls, or has the power to vote twenty-five per cent or more of any class of voting securities of another person;
 - (b) A person controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person;
 - (c) A person has the power to exercise a controlling influence over the management or policies of another person.
- (8) "Current market value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.
- (9) "Financial instrument" means stocks, notes, bonds, and debentures traded on a national securities exchange, over-the-counter margin stocks as defined in 12 C.F.R. 221, as in effect on January 16, 1998 (regulation U), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which banks may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to United States dollars. The term "financial instrument" does not include mortgages.
- (10) "Loans and extensions of credit" means a savings bank's direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds or repayable from specific property pledged by or on behalf of the borrower.
- (a) Loans or extensions of credit for purposes of section 1161.38 of the

Revised Code and this rule include any of the following:

- (i) A contractual commitment to advance funds, as defined in paragraph (A)(6) of this rule;
- (ii) A maker's or endorser's obligation arising from a savings bank's discount of commercial paper;
- (iii) A savings bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period, but not including a savings bank's purchase of securities that are both of the following:
 - (a) Securities that are any of the following:
 - (i) Securities a savings bank may invest in pursuant to divisions (A) to (D) of section 1161.54 of the Revised Code;
 - (ii) Other securities the superintendent of financial institutions determines to be eligible;
 - (b) Subject to a repurchase agreement, where the purchasing savings bank has assured control over or has established its rights to the securities as collateral;
- (iv) A savings bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the savings bank's loan is the total unpaid balance of the paper owned by the savings bank less any applicable dealer reserves retained by the savings bank and held by the savings bank as collateral security. Where the seller's obligation to repurchase is limited, the savings bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A savings bank's purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;
- (v) An overdraft, whether or not pre-arranged, but not an intra-day overdraft for which payment is received before the close of business of the savings bank that makes the funds available;

- (vi) Loans or extensions of credit that have been charged off on the books of the savings bank in whole or in part, unless the loan or extension of credit is any of the following:
 - (a) Is unenforceable by reason of discharge in bankruptcy;
 - (b) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision;
 - (c) Is no longer legally enforceable for other reasons, provided that the savings bank maintains sufficient records to demonstrate that the loan is unenforceable.
- (b) The following items do not constitute loans or extensions of credit for purposes of section 1161.38 of the Revised Code and this rule:
 - (i) Additional funds advanced for the benefit of a borrower by a savings bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real or personal property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the savings bank's interest in the collateral, and provided that the amounts advanced 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 savings bank's own assets, including other real estate owned, if the financing does not put the savings bank in a worse position than when the savings 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 savings bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless any of the following apply:

limit;

(ii) The participating lender reconfirmed its participation and the originating savings bank had no knowledge of any information that would permit the participant to withhold its participation;

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

(11) "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 of a sovereign government; or any similar entity or organization.

(12) "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 savings bank's lending limit when entered into, and has not been disqualified.

(a) In determining whether a commitment is within the savings bank's lending limit when made, the savings bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the savings bank's commitment and that would be excluded from the definition of loan or extension of credit under paragraph (A)(10)(b)(vi) of this rule.

(b) If the savings 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 savings bank's applicable lending limit at that time, the savings bank's qualifying commitments to the borrower that exceed the savings 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 savings bank's lending limit at the time of the advance, calculated pursuant to paragraph (C) of this rule.

- (13) "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.
- (14) "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.
- (a) An article comes within this definition if both of the following apply:
- (i) The exact price is easy to determine;
 - (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.
- (b) 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 staple is made.
- (15) "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.
- (16) "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 to do any of the following:
- (a) To repay money borrowed by or advanced to or for the account of the account party;
 - (b) To make payment on account of any indebtedness undertaken by the account party;
 - (c) To make payment on account of any default by the account party in the performance of an obligation.

(17) "Supplementary or tier two capital" is computed, subject to the limitation of paragraph (A)(17)(f) of this rule, as the sum of the following, not including revaluation reserves or hidden reserves that represent unrealized appreciation on assets such as bank premises and equity securities:

(a) Allowances for loan and lease losses, which are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables excluding allocated transfer risk reserves and reserves created against identified losses;

(b)

(i) Subject to the conditions of paragraph (A)(17)(b)(ii) of this rule, paid in capital and related surplus for all of the following kinds of preferred stock:

(a) Perpetual preferred stock that does not have a maturity date, cannot be redeemed at the option of the holder, and has no other provisions that will require future redemption of the issue;

(b) Long-term preferred stock, including limited life preferred stock with an original maturity of twenty years or more, if the stock cannot be redeemed at the option of the holder prior to maturity except with the prior approval of the superintendent;

(c) Noncumulative perpetual preferred stock for which the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, including auction rate, money market, or remarketable preferred stock.

(ii) To be included in tier two capital, preferred stock of the kinds listed in paragraph (A)(17)(f)(i) of this rule, both of the following must apply to the preferred stock:

(a) The preferred stock can absorb losses while the issuer operates as a going concern;

(b) The issuer has the option to defer payment of dividends on preferred stock.

- (c) Hybrid capital instruments, other than mandatory convertible debt securities, that are all of the following:
 - (i) Unsecured, subordinated to the claims of depositors and general creditors, and fully paid-up;
 - (ii) Not redeemable at the option of the holder prior to maturity, except with the prior approval of the superintendent;
 - (iii) Available to participate in losses while the issuer is operating as a going concern by converting to common or perpetual preferred stock if the sum of the issuing bank's undivided profits and surplus accounts results in a negative balance;
 - (iv) Provide the option for the issuing bank to defer principal and interest payments if the issuing bank both does not report a profit in the preceding annual period and eliminates cash dividends on its common and preferred stock.
- (d) Mandatory convertible debt securities, which are subordinated debt instruments that require the issuing bank to convert them to common or perpetual preferred stock by a date at or before their maturity, if their maturity is twelve years or less and they have the characteristics in paragraphs (A)(17)(e)(i), (A)(17)(e)(iii), (A)(17)(e)(iv), (A)(17)(e)(v), and (A)(17)(e)(vi) of this rule for term subordinated debt.
- (e) Term subordinated debt, excluding mandatory convertible debt securities, and intermediate-term preferred stock, including related surplus, having an original average maturity of at least five years and not redeemable at the option of the holder prior to maturity except with the prior approval of the superintendent, in an aggregate amount not exceeding fifty per cent of tier one capital. A term subordinated debt instrument is an obligation other than a deposit obligation that has all of the following characteristics:
 - (i) The instrument bears on its face, in boldface type, the following:
This obligation is not a deposit and is not insured by the federal deposit insurance corporation;
 - (ii) The instrument has a maturity of at least five years or, in the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least five years, although

the superintendent may permit the issuance of an obligation or issuance with a shorter maturity or average maturity if the superintendent determines exigent circumstances require the issuance of the obligation or issue;

(iii) The instrument states expressly that the obligation is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's obligations to its general and secured creditors and is ineligible as collateral for a loan by the issuing bank;

(iv) The instrument is unsecured;

(v) The instrument states expressly that the issuing bank may not retire any part of its obligations without any prior written consent of the superintendent;

(vi) The instrument includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depositor institution.

(f)

(i) The combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of tier two capital is limited to fifty per cent of tier one capital.

(ii) The outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in tier two capital is discounted by reducing the outstanding amount of the capital instrument eligible for inclusion in tier two capital by a fifth of the original amount, less redemptions, each year during the instrument's last five years before maturity, and the capital instruments have no capital value when they have a remaining maturity of less than a year.

(B) Subject to paragraphs (D) and (E) of this rule, the following apply to a savings bank's outstanding loans or extensions of credit to any one borrower:

(1) Generally a savings bank's total outstanding loans and extensions of credit to one borrower may not exceed fifteen per cent of the savings bank's capital, plus an additional ten per cent of the savings bank's capital, if the amount that

exceeds the savings bank's fifteen per cent general limit is fully secured by readily marketable collateral, as defined in paragraph (A)(13) of this rule. This is a savings bank's "combined general limit." To qualify for the additional ten per cent limit, the bank must perfect a security interest in the collateral under applicable law, and the collateral must have a current market value at all times of at least one hundred per cent of the amount of the loan or extension of credit that exceeds the savings bank's fifteen per cent general limit.

(2) The following loans or extensions of credit are subject to the special lending limits indicated, and, in the case of loans and extensions of credit that qualify for more than one special lending limit, the special limits are cumulative:

(a) A savings bank's loans or extensions of credit to one borrower secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples, as defined in paragraph (A)(14) of this rule, may not exceed thirty-five per cent of the savings bank's capital in addition to the amount allowed under the savings bank's combined general limit, and then only if all of the following conditions are met:

(i) The market value of the staples securing the loan must at all times equal at least one hundred fifteen per cent of the amount of the outstanding loan that exceeds the savings bank's combined general limit.

(ii) Staples that qualify for this special limit must be nonperishable or, when appropriate, may be refrigerated or frozen, and must be fully covered by any insurance that is customary. Whether a staple is non-perishable must be determined on a case-by-case basis because of differences in handling and storing commodities.

(iii) The loan or extension of credit arises from a single transaction or is secured by the same staples, provided that the duration of the loan or extension of credit is:

(a) Not more than ten months if secured by nonperishable staples;

(b) Not more than six months if secured by refrigerated or frozen staples.

(iv) The holder of the warehouse receipts, order bills of lading,

documents qualifying as documents of title under the uniform commercial code, or other similar documents, must have control and be able to obtain immediate possession of the staple so that the savings bank is able to sell the underlying staples and promptly transfer title and possession to a purchaser if default should occur on a loan secured by such documents. The existence of a brief notice period, or similar procedural requirements under applicable law, for the disposal of the collateral will not affect the eligibility of the instruments for this special limit.

- (a) Field warehouse receipts are an acceptable form of collateral when issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the staples even though the grain elevator or warehouse is maintained on the premises of the owner of the staples.
 - (b) Warehouse receipts issued by the borrower-owner that is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this provision only when the receipts are registered with an independent registrar whose consent is required before the staples may be withdrawn from the warehouse.
- (b) A savings bank's loans and extensions of credit to one borrower that arise from the discount of negotiable or nonnegotiable installment consumer paper, as defined in paragraph (A)(5) of this rule, that carries a full recourse endorsement or unconditional guarantee by the person selling the paper, may not exceed ten per cent of the savings bank's capital in addition to the amount allowed under the savings bank's combined general limit and only if consistent with all of the following that apply:
 - (i) An unconditional guarantee may be in the form of a repurchase agreement or separate guarantee agreement. A condition reasonably within the power of the savings bank to perform, such as the repossession of collateral, will not make conditional an otherwise unconditional guarantee.
 - (ii) Where the seller of the paper offers only partial recourse to the savings bank, the lending limits of this rule apply to the obligation of the seller to the savings bank, which is measured by the total amount of paper the seller may be obligated to repurchase or has guaranteed.

- (iii) Where the savings bank is relying primarily on the maker of the paper for payment of the loans or extensions of credit and not on any full or partial recourse endorsement or guarantee by the seller of the paper, the lending limits of this rule apply only to the maker. The savings bank must substantiate its reliance on the maker with both of the following:
 - (a) Records supporting the savings bank's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the savings bank or by a third party that is contractually obligated to make those records available for examination purposes;
 - (b) A written certification by an officer of the savings bank authorized by the savings bank's board of directors or any designee of that officer, that the savings bank is relying primarily upon the maker to repay the loan or extension of credit.
- (iv) Where paper is purchased in substantial quantities, the records, evaluation, and certification must be in a form appropriate for the class and quality of paper involved. The savings bank may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.
- (c) A savings bank's loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or give a first lien on livestock may not exceed ten per cent of the savings bank's capital in addition to the amount allowed under the savings bank's combined general limit, and only if all of the following conditions that apply are met:
 - (i) The market value of the livestock securing the loan must at all times equal at least one hundred fifteen per cent of the amount of the outstanding loan that exceeds the savings bank's combined general limit. For purposes of paragraph (B)(2)(c) of this rule, the term livestock includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry and fish, whether or not held for resale.
 - (ii) The savings bank must maintain in its files an inspection and valuation for the livestock pledged that is reasonably current,

taking into account the nature and frequency of turnover of the livestock to which the documents relate, but in any case not more than twelve months old.

- (iii) Under the laws of certain states, persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If a lien that is based on pasturage furnished by the lien or prior to the savings bank's loan or extension of credit is assigned to the savings bank by a recordable instrument and protected against being defeated by some other lien or claim, by payment to a person other than the savings bank, or otherwise, it will qualify under this exception provided the amount of the perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than one hundred fifteen per cent of the portion of the loan or extension of credit that exceeds the savings bank's combined general limit. When the amount due under the grazing contract is dependent upon future performance, the resulting lien does not meet the requirements of the exception.
- (d) A savings bank's loans and extensions of credit to one borrower that arise from the discount by dealers in dairy cattle of paper given in payment for the cattle may not exceed ten per cent of the savings bank's capital in addition to the amount allowed under the savings bank's combined general limit, and only if both of the following conditions are met:
 - (i) The paper carries the full recourse endorsement or unconditional guarantee of the seller.
 - (ii) The paper is secured by the cattle being sold, pursuant to liens that allow the savings bank to maintain a perfected security interest in the cattle under applicable law.
- (e) A savings bank may renew a qualifying commitment to lend, as defined in paragraph (A)(12) of this rule, and complete funding under that commitment if all of the following criteria are met:
 - (i) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the savings bank.
 - (ii) The completion of funding will enable the borrower to complete the project for which the qualifying commitment to lend was made.

- (iii) The amount of the additional funding does not exceed the unfunded portion of the savings bank's qualifying commitment to lend.
- (3) The following loans or extensions of credit are not subject to the lending limits of section 1161.38 of the Revised Code or this rule:
 - (a) Loans or extensions of credit arising from the discount of negotiable commercial or business paper that evidences an obligation to the person negotiating the paper, if both of the following conditions are met:
 - (i) The paper is given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or any other business purpose that may reasonably be expected to provide funds for payment of the paper;
 - (ii) The paper bears the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions, that is transferred without recourse, or with limited recourse, must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper, such as insurance provided by the export-import savings bank.

A failure to pay principal or interest on commercial or business paper when due does not result in a loan or extension of credit to the maker or endorser of the paper; however, the amount of the paper thereafter must be counted in determining whether additional loans or extensions of credit to the same borrower may be made within the limits of section 1161.38 of the Revised Code and this rule.
 - (b) Loans or extensions of credit, or portions of them, to the extent fully secured by United States obligations if both of the following apply:
 - (i) The extent of the security is determined by the current market value of the collateral, which may be either of the following:
 - (a) Bonds, notes, certificates of indebtedness, or treasury bills of the United States or similar obligations fully guaranteed as to principal and interest by the United States;
 - (b) Loans to the extent guaranteed as to repayment of principal by

the full faith and credit of the United States government, as set forth in paragraph (B)(3)(d)(ii) of this rule.

- (ii) The savings bank perfects a security interest in the collateral under applicable law.
- (c) Loans to or guaranteed by a federal agency, which may be either of the following:
- (i) Loans or extensions of credit to any department, agency, bureau, board commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;
 - (ii) Loans or extensions of credit, including portions of them, to the extent secured by unconditional takeout commitments or guarantees of any of the governmental entities listed in paragraph (B)(3)(c)(i) of this rule, subject to both of the following:
 - (a) The commitment or guarantee is payable in cash or its equivalent within sixty days after demand for payment is made.
 - (b) The commitment or guarantee is considered unconditional if the protection afforded the savings bank is not substantially diminished or impaired if loss should result from factors beyond the savings bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the savings bank.
- (d) Loans or extensions of credit to a state or political subdivision that constitute a general obligation of the state or political subdivision, and for which the lending savings bank has obtained the opinion of counsel that the loan or extension of credit is a valid and enforceable general obligation of the borrower, and loans or extensions of credit, including portions of them, to the extent guaranteed or secured by a general obligation of a state or political subdivision and for which the lending savings bank has obtained the opinion of counsel that the guarantee or

collateral is a valid and enforceable general obligation of that public body.

- (e) Loans or extensions of credit, including portions of them, to the extent secured by a segregated deposit account in the lending savings bank, provided a security interest in the deposit has been perfected under applicable law, and subject to both of the following:
 - (i) Where the deposit is eligible for withdrawal before the secured loan matures, the savings bank must establish internal procedures to prevent release of the security without the lending savings bank's prior consent.
 - (ii) A deposit that is denominated and payable in a currency other than that of the loan or extension of credit that it secured may be eligible for this exception if the currency is freely convertible to United States dollars, subject to both of the following conditions:
 - (a) This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit.
 - (b) The lending savings bank must establish procedures periodically to revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.
- (f) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent, or other agent in charge of the business and property of a financial institution when an emergency situation exists and a savings bank is asked to provide assistance to another financial institution, and the loan is approved by the superintendent. For purposes of this paragraph, "financial institution" means a commercial bank, savings bank, trust company, savings and loan association, or credit union.
- (g) Loans or extensions of credit to the student loan marketing association.
- (h) A loan or extension of credit to an industrial development authority or similar public entity created to construct and lease a plant facility, including a health care facility, to an industrial occupant is deemed a loan to the lessee, if all of the following conditions are met:

- (i) The savings bank evaluates the creditworthiness of the industrial occupant before the loan is extended to the authority;
 - (ii) The authority's liability on the loan is limited solely to whatever interest it has in the particular facility;
 - (iii) The authority's interest is assigned to the savings bank as security for the loan or the industrial occupant issues a promissory note to the savings bank that provides a higher order of security than the assignment of a lease;
 - (iv) The industrial occupant's lease rentals are assigned and paid directly to the savings bank.
- (i) A loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease is deemed a loan to the lessee, if all of the following conditions are met:
- (i) The savings bank evaluates the creditworthiness of the lessee before the loan is extended to the leasing corporation;
 - (ii) The loan is without recourse to the leasing corporation;
 - (iii) The savings bank is given a security interest in the equipment and in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;
 - (iv) The leasing corporation assigns all of its rights under the lease to the savings bank;
 - (v) The lessee's lease payments are assigned and paid to the savings bank;
 - (vi) The lease terms are subject to the same limitations that would apply to a savings bank acting as a lessor.

(C)

(1) For purposes of determining compliance with section 1161.38 of the Revised

Code and this rule, a savings bank shall determine its lending limit as of the most recent of the following dates:

- (a) The last day of the preceding calendar quarter;
- (b) The date on which there is a change in the savings bank's capital category for purposes of 12 U.S.C. 1831.

(2)

(a) Savings bank's lending limit calculated in accordance with paragraph (C)(1)(a) of this rule will be effective as of the earlier of the following dates:

- (i) The date on which the savings bank's consolidated report of condition and income (call report) is submitted;
- (ii) The date on which the savings bank's call report is required to be submitted.

(b) A savings bank's lending limit calculated in accordance with paragraph (C)(1)(b) of this rule will be effective on the date that the limit is to be calculated.

(3) If the superintendent determines for safety and soundness reasons that a savings bank should calculate its lending limit more frequently than required by paragraph (C)(1) of this rule, the superintendent may provide written notice to the savings bank directing the savings bank to calculate its lending limit at a more frequent interval, and the savings bank shall thereafter calculate its lending limit at that interval until further notice.

(D)

(1) Loans or extensions of credit to one borrower are attributed to another person and each person is deemed a borrower in either of the following circumstances:

- (a) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used;
- (b) When a common enterprise exists between the persons.

- (2) The proceeds of a loan or extension of credit to a borrower are deemed to be used for the direct benefit of another person and are attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property goods or services.
- (3) A common enterprise exists and loans to separate borrowers are aggregated in each of the following cases:
 - (a) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid. An employee is not treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (C)(3)(b) of this rule are met.
 - (b) When loans or extensions of credit are made to borrowers who are related, directly or indirectly, through common control, including where one borrower is directly or indirectly controlled by another borrower, and substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence exists when fifty per cent or more of one borrower's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues and expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.
 - (c) When separate persons borrow from a savings bank to acquire a business enterprise of which those borrowers will own more than fifty per cent of the voting securities or voting interests, in which case a common enterprise exists between the borrowers for purposes of combining the acquisition loans.
 - (d) When the superintendent determines, based upon an evaluation of the facts and circumstances or particular transactions, that a common enterprise exists.
- (4)
 - (a) Loans or extensions of credit by a savings bank to a corporate group may not exceed fifty per cent of the savings bank's capital. This limitation

applies only to loans subject to the combined general limit and not otherwise excepted by the superintendent. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns, directly or indirectly, more than fifty per cent of the voting securities or voting interests of the corporation or company.

- (b) Except as provided in paragraph (D)(4)(a) of this rule, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.
- (5) In the case of loans to partnerships, joint ventures, and associations, the following requirements apply:
- (a) Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This requirement does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.
 - (b)
 - (i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and the partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.
 - (ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(6)

- (a) Loans and extensions of credit to foreign governments, their agencies, and instrumentalities are aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.
 - (i) The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support, excluding guarantees by a central government of the borrower's debt, exceeds the borrower's annual revenues from other sources, it is presumed that the means test is not satisfied.
 - (ii) The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.
- (b) In order to show that the means and purpose tests have been satisfied, a savings bank shall, at a minimum, retain in its files all of the following items:
 - (i) A statement, accompanied by supporting documentation, describing the legal status and the degree of financial and operational autonomy of the borrowing entity;
 - (ii) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less than three;
 - (iii) Financial statements for each year the loan or extension of credit is outstanding;
 - (iv) The savings bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment, including an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government;
 - (v) A loan agreement or other written statement from the borrower that clearly describes the purpose of the loan or extension of credit.

The written representation ordinarily constitutes sufficient evidence that the purpose test has been satisfied. However, when, the time the funds are disbursed, the savings bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

- (c) Notwithstanding paragraphs (D)(1) to (D)(5) of this rule, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities, public-sector obligors that qualified for a separate lending limit under paragraph (D)(6)(a) of this rule are consolidated under a central obligor in a qualifying restructuring, the loans are not aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. The loans, other than loans originally attributed to the central obligor in their own right, are not considered obligations of the central obligor and continue to be attributed to the original public-sector obligor for purposes of the lending limit.
 - (i) Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (D)(6)(c)(i) of this rule only if they are restructured in a sovereign debt restructuring approved by the superintendent, upon request by a savings bank for application of the noncombination rule. The factors that the superintendent will use in making the determination include, but are not limited to, the following:
 - (a) Whether the restructuring involves a substantial portion of the total commercial savings bank loans outstanding to the foreign government, its agencies, and instrumentalities;
 - (b) Whether the restructuring involves a substantial number of the foreign country's external commercial savings bank creditors;
 - (c) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management;
 - (d) Whether the restructuring includes features of debt or debt-service reduction.

- (ii) With respect to any case in which the non-combination process under paragraph (D)(6)(c)(i) of this rule applies, a savings bank's loans and other extensions of credit to a foreign government, its agencies and instrumentalities, including restructured debt, shall not exceed, in the aggregate, fifty per cent of the savings bank's capital.

(E)

- (1) A loan, within a savings bank's legal lending limit when made, will not be deemed a violation but will be treated as nonconforming if the loan is no longer in conformity with the savings bank's lending limit because of either of the following:
 - (a) The savings bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, the lending limit or capital rules have changed;
 - (b) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value.
- (2) A savings bank shall use reasonable efforts to bring a loan that is nonconforming as a result of paragraph (E)(1)(a) of this rule into conformity with the savings bank's lending limit unless to do so would be inconsistent with safe and sound savings banking practices.
- (3) A savings bank shall bring a loan that is nonconforming as a result of circumstances described in paragraph (E)(1)(b) of this rule into conformity with the savings bank's lending limit within thirty calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the savings bank's control prevent the savings bank from taking action.

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