



OCC Issues Final Rules on Lending Limits, as Amended by Dodd-Frank

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On Tuesday, June 25, the Office of the Comptroller of the Currency (the "OCC") issued final rules to amend its regulations governing lending limits by national banks and savings associations, in order to clarify and consolidate existing regulation, and to amend its regulations implementing certain changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").

Under Federal statutory law, the total of loans and other extensions of credit by a national bank to a person outstanding at one time may not exceed 15% of the unimpaired capital and unimpaired surplus of the bank, if the loan or extension of credit is not fully secured, plus an additional 10% of the bank's unimpaired capital and unimpaired surplus, if the loan or extension of credit is fully secured. Under other provisions of Federal law, the above statutory restrictions also apply to both Federal- and state-chartered savings associations.

Under the Act, the definition of "loans and other extensions of credit" was amended to include credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

The OCC's final rules amend the regulations implementing the above statutes as follows:

1. *Integration of Rules Applicable to Savings Associations.* The OCC is making the following technical amendments to the lending limit regulations governing savings associations, in order to avoid overlap, provide clarification and "avoid anomalous results":

- Currently, it is unclear whether loans made by a savings association and its GAAP-consolidated subsidiaries to non-consolidated subsidiaries are exempt from the lending limit requirements. The final rule confirms that such loans are exempt.
- The final rule clarifies that only loans from a GAAP-consolidated service corporation need be consolidated with loans of the parent savings institution for lending limits purposes.
- Currently, there are different standards for national banks and savings associations with respect to aggregating loans by a foreign subsidiary with the loans of the parent bank, or savings association, for lending limits purposes, which is contrary to the Federal statutory scheme (see the second paragraph, above). The final rules clarify that loans from all operating subsidiaries and GAAP-consolidated service corporations, whether foreign or domestic, are to be aggregated with loans from the parent bank, or savings institution, for these purposes.

2. *Dodd-Frank Amendments*. The Act amended the definition of “loans and extensions of credit” to include, for lending limits purposes, certain credit exposure arising from a derivative transaction or a securities financing transaction. The OCC is making the following technical corrections to the regulations previously issued to implement this change, in order to clarify certain areas considered to be unclear:

- Banks are given several options for measuring credit exposure applicable to each category of derivative transaction and securities financing transaction. The final rules clarify that a Federal banking agency may, at its discretion, permit a national bank or savings association to use a specific method of calculating credit exposure related to these products, and that a method of doing so may apply to all or specific transactions if the banking agency determines that such method is consistent with the safety and soundness of the bank or savings association.
- Current regulations permit banks and savings associations to calculate credit exposure for derivative transactions and securities financing transactions through the use of an internal model approved by the Federal banking regulators. The final rules explain and clarify the internal model approval process.
- Banks and savings institutions may also use one of two non-model measurement methods for credit exposure arising from derivative transactions and may use one non-model measurement method for credit exposures arising from securities financing transactions, under current regulations. Based on comments to the existing regulations, the OCC made several technical changes to these calculation methods and added a new method, the “Current Exposure Methodology,” as an approved credit exposure calculation method for certain derivative transactions. Technical changes were also made to calculation methods for securities financing transactions.
- The final rules also amend current regulations with respect to credit exposure to central counterparties, to clarify the regulations on this point and to make the regulations consistent with past OCC interpretive positions.
- Several changes were made to the rules governing credit exposure arising from credit derivatives. The definition of “eligible credit derivative” was amended to include a restructuring for obligors not subject to bankruptcy or insolvency as a credit event for a credit default swap. The definition of “effective margining arrangement” has been modified to take into account existing margining arrangements with thresholds above the new regulatory requirement of \$1,000,000. Finally, a new section has been added to the lending limits rules applicable to credit derivatives to exclude from the lending limits rules that part of a loan or extension of credit for which a bank or savings association has purchased credit protection, if certain enumerated conditions are met.
- With respect to securities financing transactions involving more than one type of securities collateral, the final rules clarify the method of calculating the “haircut” on such transactions.

The final rules go into effect on October 1, 2013.

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