TO: The Chief Executive Officer of each member bank and others concerned in the Eleventh Federal Reserve District

SUBJECT
Comments on Proposed Uniform Real Estate Lending Standards

DETAILS
The Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision have requested public comment on proposed uniform real estate lending standards to implement Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). In establishing these standards, the agencies are to consider the risk posed to the deposit insurance funds by such extensions of credit, the need for safe and sound operation of insured depository institutions, and the availability of credit.

In implementing Section 304, the agencies are proposing to establish loan-to-value (LTV) ratio limitations on real estate lending by insured depository institutions and by bank holding companies and their nonbank subsidiaries. Consideration is also being given to exempting loans involving organizations or projects designed primarily to promote the economic rehabilitation and development of low-income areas. The proposal also includes provisions allowing lending institutions to make a limited amount of real estate loans that do not conform with the proposed LTV ratio limitations.

The Board must receive comments by August 31, 1992. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0765.

ATTACHMENT
Attached is a copy of the Board's Notice as it appears on pages 31594-611, Vol. 57, No. 137, of the Federal Register dated July 16, 1992.
MORE INFORMATION

For more information, please contact Daniel Kirkland, Supervisory Examiner at (214) 744-7433. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

[Signature]

Robert O. McTear, Jr.
the Federal Reserve System also proposes to establish loan-to-value ratio limitations on real estate lending by bank holding companies and their nonbank subsidiaries. Certain transactions would be excluded from the LTV ratio limitations. Specifically, it is proposed that these limits would not apply to: Loans guaranteed or insured by the U.S. government or an agency thereof, or backed by the full faith and credit of a state government; loans facilitating the sale of real estate acquired by the lending institution in the ordinary course of collecting a debt previously contracted; loans where real estate is taken as additional collateral solely through an abundance of caution by the lender; loans renewed, refinanced, or restructured by the original lender(s) to the same borrower(s), without the advancement of new funds; or loans originated prior to the effective date of the proposed regulation. In addition, the agencies are considering exempting loans involving organizations or projects designed primarily to promote the economic rehabilitation and development of low-income areas. The proposal also includes provisions allowing lending institutions to make a limited amount of real estate loans that do not conform with the proposed LTV ratio limitations.

DATES: Comments must be submitted on or before August 31, 1992.

ADDRESSES: Office of the Comptroller of the Currency, Communications Division, 250 E St. SW., Washington, DC 20229, attention: Docket No. R-0765. Comments may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Federal Deposit Insurance Corporation (FDIC): Comments should be directed to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F-400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. [Fax Number: (202) 988-3838]. Comments will be available for inspection at the same address on business days between 9 a.m. and 4:30 p.m.

Office of Thrift Supervision (OTS): Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, attention: Docket No. 92–284. These submissions may be hand delivered to 1700 G Street NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7753 or (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1775 G Street, NW., Office of the Comptroller of the Currency (OCC): Office of the Comptroller of the Currency, Communications Division, 250 E St. SW., Washington, DC 20229, attention: Docket No. R-0765. Comments may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Real Estate Lending Standards

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), enacted December 19, 1991, requires the federal banking agencies, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, to adopt uniform regulations prescribing standards for real estate lending. FDICIA defines real estate lending as extensions of credit secured by liens on interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: The risk posed to the deposit insurance funds by such extensions of credit; the need for safe and sound operation of insured depository institutions; and the availability of credit.

In order to implement section 304, the agencies are proposing to establish loan-to-value (LTV) ratio limitations on real estate lending by insured depository institutions. The Board of Governors of

SUPPLEMENTARY INFORMATION:

A. Background

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 1 (FDICIA), enacted December 19, 1991, requires each federal banking agency to adopt uniform regulations prescribing standards for extensions of credit secured by liens on interests in real estate or made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: (a) The risk posed to the deposit insurance funds by such extensions of credit; (b) the need for safe and sound operation of insured depository institutions; and (c) the availability of credit. The agencies are to adopt uniform regulations within 9 months of the date of enactment of FDICIA. These regulations are to become effective within 15 months following enactment of FDICIA.

The legislative history of section 304 indicates that Congress desired to curtail abusive real estate lending practices to reduce risk to the deposit insurance funds and to enhance the safety and soundness of financial institutions. Congress considered placing explicit real estate lending restrictions in the form of loan-to-value (LTV) ratio limitations directly into the statute. In the end, however, Congress mandated that the federal banking agencies establish uniform real estate lending standards without specifying what these standards should entail.

To implement the requirements of section 304, the agencies propose to adopt uniform regulations prescribing certain real estate lending standards.

Specifically, the agencies propose to establish an LTV ratio framework for real estate lending. Moreover, in accordance with longstanding safe and sound banking practices and other regulatory requirements, the agencies would expect each real estate extension of credit to be based on proper loan documentation and a recent appraisal or evaluation of the real estate property financed by the credit, in conformance with the agencies' respective appraisal regulations and guidance.

B. Loan-To-Value Ratio Framework

LTV ratios have long been a primary factor used by lending institutions in determining the extent to which an institution is willing to lend on a given real estate parcel or project. The agencies seek comment on whether LTV ratios represent a suitable standard for addressing the risks at which section 304 is aimed or whether some other standard would be more appropriate.

For the purposes of the standards mandated by Section 304, the agencies propose to define the LTV ratio by taking the total amount of credit to be extended and dividing by the appraised value of the property, as appropriate, at the time the credit is originated. In situations where the lender does not hold a first lien position, the total amount of credit being extended would be combined with the amount of all senior liens when calculating this ratio. The agencies request comment on this "loan-to-value ratio" definition, including:

(a) The appropriateness of using the appraised value or evaluation of a property, as defined in the proposed regulations, when calculating the ratio;

(b) Whether the definition should take into consideration credit enhancements or other assets pledged as additional collateral in calculating the LTV ratio, and, if so, the types of credit enhancements or other assets that should be deemed acceptable and the way in which the LTV ratio should then be calculated; and

(c) Whether the definition should be applicable to the renewal, refinancing, or restructuring of existing credits, and, if so, how the terms renewal, refinancing, and restructuring should be defined.

The agencies also request comment on two alternative methods of establishing an LTV ratio framework for real estate lending: One in which lenders would individually establish LTV ratio limits, within or below a range of supervisory limits prescribed in uniform regulations and subject to supervisory review; and one in which the agencies would prescribe maximum LTV ratio standards for all insured depository institutions in uniform regulations. Comment on all aspects of the proposal is sought. 2 The agencies also ask for comment on whether other real estate lending standards should be adopted including, for example, loan documentation and credit review standards.

Alternative 1

Individual Lender Loan-To-Value Ratio Standards

With this approach, the agencies propose to require management of lending institutions to establish prudent lending standards for specific categories of real estate loans, including internal LTV ratio lending limits, that are consistent with safe and sound banking practices under varying conditions. The LTV ratio lending limits would be set by lending institutions within or below ranges of maximum LTV ratios that the agencies propose to establish as follows:

<table>
<thead>
<tr>
<th>Category of real estate loan</th>
<th>Range of maximum permissible LTV ratios (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw land</td>
<td>50 to 65</td>
</tr>
<tr>
<td>Pre-construction development</td>
<td>55 to 70</td>
</tr>
<tr>
<td>Construction and land developement</td>
<td>65 to 80</td>
</tr>
<tr>
<td>Improved Property 1</td>
<td>65 to 80</td>
</tr>
<tr>
<td>1-to-4 family residential property (owner-occupied)</td>
<td>80 to 95 2</td>
</tr>
<tr>
<td>Home equity</td>
<td>80 to 95 2</td>
</tr>
</tbody>
</table>

1 Improved property loans include extensions of credit secured by one of the following types of real property: (a) Farmland committed to ongoing agricultural production; (b) non-owner-occupied 1-to-4 family residential property; (c) completed commercial property; or (d) other income-producing property that has been completed and is available for occupancy and use. Any portion of a loan exceeding 85 percent LTV should be covered by private mortgage insurance.

Each lending institution would be required to establish maximum LTV ratios for each category of loans within or below the specified range. The agencies would view the low end of each supervisory range as a benchmark.

The OTS currently has in place regulations that establish loan-to-value ratios for certain types of real estate loans. See e.g., 12 CFR 545.32(d), 545.33(d), 545.35(c), 563.97. The OTS intends to review its current regulations to ensure that they conform to the real estate lending requirements ultimately promulgated pursuant to this rulemaking and anticipates removal of duplicative or conflicting material. The OTS welcomes comments on the interaction between this rulemaking and its current regulations.
LTV ratio for that category of loan. However, each institution would be permitted to establish a higher maximum LTV ratio, within the supervisory range, for each category of loan based on the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, the institution's capital position, its asset quality, and other appropriate considerations.

After establishing maximum LTV ratios for each category of real estate lending, each lender would be expected to specify criteria that would be used to qualify loans at LTV ratio levels up to the institution's established maximums. In specifying these criteria, the lender should take into consideration individual lending factors, such as the financial strength of the borrower and any guarantor, the debt coverage ratio of the project, credit enhancements, "take out" commitments, and the like. Any portion of 1-to-4 family residential property loans and home equity lines of credit exceeding an 85 percent LTV ratio should, in any case, be covered with private mortgage insurance.

A lending institution should only make a loan at the upper end of the supervisory range of LTV ratios (for that lending category) when significant positive features that would mitigate the higher level of risk are present. For example, for a construction loan, the higher end of the range could potentially be used when the loan meets specified criteria such as a certain level of pre-sales or pre-leases, or if the borrower has obtained a binding "take out" commitment for permanent financing.

Consistent with safe and sound banking practices, each lending institution would be expected to fully document its real estate lending standards, including applicable LTV ratio limits and other underwriting requirements, in its written policies. Such documentation would also be expected to include adequate justification of the LTV ratio limits set by the institution. The agencies also propose that these internal lending standards be approved by the lending institution's directors and be subject to examiner review to determine the institution's conformance with supervisory standards to be established by the agencies.

With regard to this approach, public comments are sought on:

(a) The appropriateness of the proposed real estate lending categories;
(b) What ranges of maximum LTV ratios should be established;
(c) What guidelines should be provided to lenders to implement a prudent internal LTV ratio framework;

The agencies also seek comment on whether the maximum LTV ratio applicable to real estate lending should be uniform across all lending categories or should be tailored to specific types of loans, such as 1-to-4 family residential property loans and home equity lines of credit.

Consistent with safe and sound mortgage lending, the agencies propose to establish uniform maximum LTV ratios for specific categories of real estate loans as follows:

<table>
<thead>
<tr>
<th>Category of real estate loan</th>
<th>Maximum LTV ratio (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw land</td>
<td>60</td>
</tr>
<tr>
<td>Pre-construction development</td>
<td>65</td>
</tr>
<tr>
<td>Construction and land</td>
<td>75 (if certain conditions are met; otherwise, 65%)</td>
</tr>
<tr>
<td>Improved property</td>
<td>75 (if the credit amortizes; otherwise, 65%)</td>
</tr>
</tbody>
</table>
| 1-to-4 family residential   | 95 (With private mortgage insurance "PMI"
| property (owner-occupied)   | 95 (With PMI; otherwise, 80%) |
| Home equity                 | 95 (With PMI; otherwise, 80%) |

These standards would be prescribed for all lending institutions regulated by the agencies.

With regard to establishing a maximum LTV ratio for each category of real estate loan as defined in the proposed regulation, the agencies request comment on:

(a) The appropriateness of the proposed real estate lending categories;

(b) The level at which the LTV ratio limit should be set for each loan category.

The agencies also seek public comment on several particular items. For the "construction and land development loan" category, comment is sought on:

(a) The appropriateness of allowing a higher LTV ratio limit when substantial third-party commitments exist that place the lender in a more secure position;
(b) The criteria for determining that substantial third-party commitments exist; and
(c) The percentage of space in a real estate project that should be owner-occupied, pre-sold, or pre-leased to qualify the borrower for preferential LTV ratio treatment.

The agencies also seek comment on whether the maximum LTV ratio applicable to construction and land development loans should differentiate between residential and commercial properties and, if so, how.

For the "improved property loan" category, comment is sought on the appropriateness of implementing a stricter LTV ratio for nonamortizing credits and a level of amortization, if any, that should be required in order to receive preferential LTV ratio treatment.

C. Other Considerations Applicable to Both Alternatives

The agencies do not intend to apply this rule to loans to builders and developers that are used for general business purposes (such as payroll and similar expenses) and that are not related to any one project and are not secured by real estate.

Public comment is sought on the following issues not specifically raised in the discussion of the above approaches:

(a) Whether additional quantitative real estate lending standards, such as lending concentration limits and loan maturity limits, should be specified by the agencies in a regulation or policy guidance;
(b) Whether other lending standards should be implemented to enhance financial support provided by the developer in a commercial real estate transaction, such as requiring the developer to provide a legally enforceable guarantee and/or recourse to the developer's other assets; and
(c) Whether real estate developers should be required to inject a specific level of equity upfront into a real estate project (for example, cash, cash equivalents, or a substantial equity position in the underlying real property) relative to the appraised value or evaluation, as appropriate, and, if so, the appropriate level and form of equity that should be required.

With specific regard to owner-occupied, 1-to-4 family residential property loans and home equity loans, comment is requested on:

(a) Whether LTV ratio ranges or limits should be established for each of these lending categories;
(b) Whether individual loans below a given threshold amount should be excluded from LTV ratio requirements, and, if so, the level at which this threshold should be set; and
(c) Whether, in addition to private mortgage insurance, other legally-binding guarantees or insurance from financially-responsible third parties should be given credit for supporting the
portion of loans exceeding the specified
LTV ratio, and, if so, what types should
be permitted.

The agencies desire to accommodate
credit needs within the context of safe
and sound banking practices. In
particular, the agencies recognize that
situations may exist where it is
considered prudent to extend credit
beyond specified LTV ratio limits.

Hence, under the text of the proposed
regulation, the agencies are considering
allowing lending institutions to make
real estate loans that do not conform
with established LTV ratio limits up to
an amount not to exceed 15 percent of
the institution's total capital. The
agencies would expect nonconforming
extensions of credit to be adequately
documented, reviewed by senior
management of the lending institution,
and reported to the lender's board of
directors.

The agencies seek public comment on
providing exceptions for nonconforming
loans. Specifically, for each of
Alternatives 1 and 2 separately, the
agencies seek comment on:

(a) Whether allowing an exception for
nonconforming loans should be
considered appropriate;

(b) The level of such an exception, if
appropriate;

(c) Whether total capital is an
appropriate measure for the exception;

(d) What documentation and review
should be considered appropriate for
nonconforming credits beyond the
normal approval process; and

(e) Whether other prudential
requirements or restrictions would be
appropriate to limit the risks associated
with excepted loans.

To further accommodate credit needs,
the agencies seek comment on whether
it would be appropriate to phase-in the
real estate lending standards when they
become effective, by Congressional
mandate, in March 1993, and, if so, how
they should be phased-in and within
what timeframe.

The agencies also propose to exclude
certain types of transactions from LTV
ratio limitations. Specifically, LTV ratio
limitations would not apply to:

(a) Loans guaranteed or insured by
the U.S. government or an agency
thereof, or backed by the full faith and
credit of a state government;

(b) Loans facilitating the sale of real
estate acquired by the lending
institution in the ordinary course of
collecting a debt previously contracted;

(c) Loans where real estate is taken as
additional collateral solely through an
absence of caution by the lender;

(d) Loans renewed, refinanced, or
restructured by the original lender(s) to
the same borrower(s), without the
advancement of new funds; or

(e) Loans originated prior to the
effective date of the proposed
regulation.

With regard to government-
guaranteed or insured credits, comment
is sought on how partially guaranteed or
insured credits should be treated under
this exclusion. The agencies request
comment on whether the above
provision on renewals, refinancing, and
restructurings of loans, including the
limitation on the advancement of new
funds, provides institutions with
sufficient flexibility to meet credit
demands.

The agencies also request comment on
whether the proposed real estate lending
standards contain enough latitude to
avoid hampering the lending programs
that institutions have established to help
fulfill their obligations under the
Community Reinvestment Act, 12 U.S.C.
2901 et seq., particularly those programs
designed to provide credit to low and
moderate income personal. Some of
these programs involve loans with high
LTV ratios but with other characteristics
that enhance their safety such as
government guarantees, public
subsidies, charitable foundation support,
equity substitutes, assured tenant
demand, and the like. The agencies do
not wish to restrict these programs, and
seek comment on how they may be
accommodated within the spirit of the
Congressional directive to set general
standards for real estate lending. One
possibility would be to provide an
exemption for extensions of credit
involving organizations or projects
designed primarily to promote the
economic rehabilitation and
development of low-income areas.
Comment is sought on how such an
exemption could be defined in order to
prevent inappropriate interpretations.

The agencies request comment as to
whether they may distinguish among
lending institutions on the basis of the
institutions' financial and managerial
strength in implementing section 304. In
particular, the agencies request
comment on whether institutions that
qualify as "well capitalized" for
purposes of Prompt Corrective Action
under section 38 of the Federal Deposit
Insurance Act, 12 U.S.C. 1831o, should
be given additional flexibility in the
implementation of the proposed real
estate lending standards, and, if so,
what the nature of that flexibility should
be. Further, the agencies seek comment
on whether such flexibility, if deemed
appropriate, should differentiate
between the above groups of lending
categories, and, if so, in what
manner.

(a) Raw land, preconstruction
development, and construction and land
development loans; and

(b) Improved property, 1-to-4 family
residential property, and home equity
loans.

The agencies solicit comment on the
interaction of this proposed regulation
with risk-based capital requirements. In
addition, public comment is solicited on
all other aspects of the two approaches
being considered and the proposed
regulation.

Finally, the Board is seeking comment
on whether, to what extent, and the
manner in which real estate lending
standards should be imposed on bank
holding companies and their nonbank
subsidiaries. In the Board's view, it is
not clear by virtue of the text of section
304 whether such standards are
applicable to such entities.

Regulatory Flexibility Act Analysis

On the basis of the information
available, the OCC, FDIC, and OTS
independently certify that the proposed
rule will not have a significant economic
impact on a substantial number of small
entities within the meaning of the
Regulatory Flexibility Act (5 U.S.C. 601
et seq.). In developing the proposed rule,
it was the intent of the agencies to
propose prudent standards that are
currently used by sound institutions
and, as such, would not significantly
impact small entities. Nonetheless, the
other agencies join the Board in inviting
comments on the costs and benefits of
the proposed regulation with regard to
real estate lending operations at
banking organizations, the impact on
loan documentation and monitoring,
possible reduction in losses on real
estate lending, and the availability of
credit.

Executive Order No. 12291

The OTS and the OCC have
preliminarily determined that this
proposal does not constitute a "major
rule" within the meaning of Executive
Order No. 12291. Accordingly, a
regulatory impact analysis is not
required. The OTS and the OCC will
issue final regulations that accomplish
the objectives of section 304 of FDICIA
without imposing unnecessary costs on
the economy. Toward that end, the OTS
and the OCC will, in the near future,
publish in the Federal Register a
separate discussion of the costs and
benefits of the regulatory approaches
outlined in the proposed rule.

Commenters are encouraged to take this
supplementary analysis into account
when providing their comments on
this proposed rule.
To assist the OTS and the OCC in evaluating the magnitude of the proposed rule, the OTS and the OCC specifically invite commenters to provide any data they may have on the costs and benefits of the proposed rule with regard to real estate lending operations at bank organizations, the impact on loan documentation, monitoring and processing time, possible reduction in losses on real estate lending, and the availability of credit.

**Paperwork Reduction Act**

The collection of information contained in Alternative 1 of the proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(b)).

If Alternative 1 of the proposed rule becomes final, insured depository institutions will be required to establish written maximum internal loan-to-value ratio lending limits for certain types of real estate loans within or below a permissible supervisory range. Each institution will be required to specify in writing the criteria it will use to qualify loans at loan-to-value ratio ranges up to its established loan-to-value ratio limits.

The annual reporting burden for the collection of information from insured depository institutions is estimated as follows:

<table>
<thead>
<tr>
<th>Estimated number of recordkeepers:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>National banks (OCC)..................</td>
<td>3,750.</td>
</tr>
<tr>
<td>State member banks (Board).........</td>
<td>965.</td>
</tr>
<tr>
<td>State nonmember banks (FDIC)........</td>
<td>7,550.</td>
</tr>
<tr>
<td>Savings associations (OTS)..........</td>
<td>2,200.</td>
</tr>
<tr>
<td>Estimated average burden per recordkeeper:</td>
<td>20 hrs.</td>
</tr>
<tr>
<td>Estimated total annual recordkeeping burden:</td>
<td></td>
</tr>
<tr>
<td>OCC...................................</td>
<td>75,000 hours.</td>
</tr>
<tr>
<td>Board...................................</td>
<td>19,700 hours.</td>
</tr>
<tr>
<td>FDIC...................................</td>
<td>151,000 hours.</td>
</tr>
<tr>
<td>OTS...................................</td>
<td>44,000 hours.</td>
</tr>
</tbody>
</table>

No burden is estimated for Alternative 2 of the proposed rule since no new or additional collection of information is mandated beyond those already required.

Comments concerning the accuracy of this estimate and suggestions on reducing the burden should be sent to Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503; and to the appropriate agency, as follows:

**OCC: Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20229.**

**Board: Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.**

**FDIC: Assistant Executive Secretary (Administration), room F-453, Federal Deposit Insurance Corporation, Washington, DC 20429.**

**OTS: Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.**

**List of Subjects**

12 CFR Part 34

Mortgages, National banks, Real estate appraisals, Real estate lending standards, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve System, Real estate lending standards, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Real estate lending standards, Reporting and recordkeeping requirements, Securities.

12 CFR Part 365

Banks, banking, Credit, Mortgages, Real estate appraisals, Real estate lending standards, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter 1

For the reasons set out in the preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

**PART 34—[AMENDED]**

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


2. For Alternative 1, a new "Subpart D—Real Estate Lending Standards" is proposed to be added to part 34 to read as follows:

   **Subpart D—Real Estate Lending Standards**

   Sec.

   34.61 Purpose and scope.

   34.62 Definitions.

   34.63 Real estate lending loan-to-value restrictions.

   **Subpart D—Real Estate Lending Standards**

   § 34.61 Purpose and scope.

   This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes ranges of maximum permissible loan-to-value ratios to be used by insured national banks in establishing their own internal loan-to-value ratios of real estate loans subject to this subpart.

   § 34.62 Definitions.

   For the purposes of this subpart:

   (a) The term loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

   (b) The term real property or real estate means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

   (c) The term extension of credit means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens or interests in such property.

   (d) The term credit secured by real property means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the
same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term loan origination means the time of inception of an extension of credit.

(f) The term appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the OCC's appraisal regulations (12 CFR part 34, subpart C) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and land development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(h) The term multifamily residential property means residential property containing five or more individual dwelling units.

(i) The term raw land loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term pre-construction development loan means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term construction and land development loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term 1-to-4 family residential property loan means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in 12 CFR part 3, appendix A.

(n) The term home equity loan means an extension of credit secured by a junior lien on or subordinate interest in 1-to-4 family residential property.

(o) The term nonconforming real estate loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 34.63 of this subpart.

§ 34.63 Real estate lending loan-to-value restrictions.

(a) General rule. An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, if the requirements set forth in this subpart are satisfied.

(b) Loan-to-value ratios. (1) Each insured depository institution shall establish internal loan-to-value ratio lending limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine the institution's compliance with this subpart.

(6) An extension of credit subject to this subpart, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this subpart.

(7) Subject to the other provisions of this subpart, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For pre-construction development loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not
Subpart D—Real Estate Lending Standards

§ 34.61 Purpose and scope.

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes maximum loan-to-value ratios applicable to real estate lending by insured national banks.

§ 34.62 Definitions.

For the purposes of this subpart:

(a) The term loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term real property or real estate means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term extension of credit means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term real property loan is a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term loan origination means the time of inception of an extension of credit.

(f) The term appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the OCC's appraisal regulations (12 CFR part 34, subpart C) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flows.

(g) The term financially-responsible guarantor means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(i) The term multifamily residential property means residential property containing five or more individual dwelling units.

(j) The term raw land loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term pre-construction development loan means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term construction and land development loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;
established lender for its permanent financing;
(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or
(vi) Has provided a legally enforceable guaranty(s) from a financially-responsible guarantor(s);
(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;
(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;
(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;
(7) For a 1-to-4 family residential property loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the OCC;
(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;
(9) For a home equity loan, 98 percent of the appraised value or evaluation with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the OCC; and
(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.
(c) Permissible nonconforming real estate loans. An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in appendix A to part 3 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.
(d) Excluded transactions. The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:
(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;
(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;
(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;
(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or
(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].


Stephen R. Steinbrink,
Acting Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set out in the preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 401, 481–486, 601, and 611, respectively); sections 4, 13(j), and 18(o) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and 1828(o), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78q(g), 78q(l), 78q-o(4)(c)(5), 78q-o-1, and 78q-w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3331).

2. For Alternative 1, a new “Subpart C—Real Estate Lending” comprising §§ 208.50 through 208.51 is proposed to be added to part 208, as proposed to be amended at 57 FR 29238, July 1, 1992, to read as follows:

Subpart C—Real Estate Lending

§ 208.50 Definitions.

208.51 Real estate lending loan-to-value restrictions.

Subpart C—Real Estate Lending

§ 208.50 Definitions.

For the purposes of this subpart:
(a) The term loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term real property or real estate means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term extension of credit means the total lending commitment, whether by loan or line of credit, by a lender with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term credit secured by real property means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term loan originations means the time of inception of an extension of credit.

(f) The term appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Federal Reserve’s appraisal regulations, subpart G to part 225 of this chapter, and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements to be financed with the proposed extension of credit; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(h) The term multifamily residential property means residential property containing five or more individual dwelling units.

(i) The term Row Land Loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term Pre-Construction Development Loan means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term Construction and Land Development Loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term Improved Property Loan means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term 1-to-4 Family Residential Property Loan means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained prequalified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in appendix A to part 206.

(n) The term Home Equity Loan means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term nonconforming real estate loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 208.51(b) of this part.

§ 208.51 Real estate lending loan-to-value restrictions.

(a) General rule. An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) Loan-to-value ratios.

(1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this section for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, an insured depository institution may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the institution demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each insured depository institution shall specify in writing the criteria used by the institution to qualify loans at loan-to-value ratio levels up to the institution's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, an insured depository institution shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) An insured depository institution's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the institution's board of directors as being consistent with the safe and sound operation of the institution. These standards shall be subject to examiner review in order to determine compliance with this section.

(6) An extension of credit subject to this section, together with any senior liens on or interests in the real property
securing or being improved by such credit, must not exceed any applicable internal loan-to-value ratio lending limit established by the institution under this section.

(7) Subject to the other provisions of this section, each insured depository institution shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For Raw Land Loans, the maximum permissible loan-to-value ratio shall not exceed 50 to 65 percent of the appraised value or evaluation;

(ii) For Pre-Construction Development Loans, the maximum permissible loan-to-value ratio shall not exceed 55 to 70 percent of the appraised value or evaluation;

(iii) For Construction and Land Development Loans, the maximum permissible loan-to-value ratio shall not exceed 60 to 80 percent of the appraised value or evaluation;

(iv) For Improved Property Loans, the maximum permissible loan-to-value ratio shall not exceed 65 to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 Family Residential Property Loans, the maximum permissible loan-to-value ratio shall not exceed 80 to 95 percent of the appraised value or evaluation;

(vi) For Home Equity Loans, the maximum permissible loan-to-value ratio shall not exceed 80 to 85 percent of the appraised value or evaluation; and

(vii) For 1-to-4 Family Residential Property Loans and Home Equity Loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the Board.

(c) Permissible nonconforming real estate loans. An insured depository institution may make real estate loans that do not conform to the institution’s internal loan-to-value ratio limits established pursuant to this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution’s total capital, as defined in appendix A to part 208, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution’s board of directors.

(d) Excluded transactions. The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, a new “Subpart C—Real Estate Lending” comprising §§ 208.50 through 208.51 is proposed to be added to part 208, as proposed to be amended at 57 FR 29238, July 1, 1992, to read as follows:

Subpart C—Real Estate Lending
Sec. 208.50 Definitions.
208.51 Real estate lending loan-to-value restrictions.

Subpart C—Real Estate Lending
§ 208.50 Definitions.
For purposes of this subpart:

(a) Loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) Real property or real estate means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) Extension of credit means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) Credit secured by real property means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) Loan origination means the time of inception of an extension of credit.

(f) Appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Federal Reserve’s appraisal regulations, subpart C to part 225 of this chapter, and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) Financially-responsible guarantor means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(i) Multifamily residential property means residential property containing five or more individual dwelling units.

(j) Raw Land Loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.
(k) Pre-Construction Development Loan means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) Construction and Land Development Loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) Improved Property Loan means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;
(2) Non-owner-occupied 1-to-4 family residential property;
(3) Multifamily residential property;
(4) Completed commercial property; or
(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) 1-to-4 Family Residential Property Loan means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained prequalified permanent financing; and
(2) A construction loan to a developer or builder that constitutes a category "A" 50 percent risk weight loan under the risk-based capital guidelines set forth in appendix A to part 206.

(o) The term Home Equity Loan means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term nonconforming real estate loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the provisions of paragraphs (b) and (c) of this section.

(q) The term Home Equity Loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 208.51(b) of this part.

§ 208.51 Real estate loan-to-value restrictions.

(a) General rule. An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) Loan-to-value ratios. An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

1. For a Raw Land Loan, 60 percent of the appraised value or evaluation;
2. For a Pre-Construction Development Loan, 65 percent of the appraised value or evaluation;
3. For a Construction and Land Development Loan, 75 percent of the appraised value or evaluation if it involves a project that:
   (i) Will be at least 65 percent owner-occupied;
   (ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;
   (iii) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease; and
   (iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;
4. For other Construction and Land Development Loans, 85 percent of the appraised value or evaluation;
5. For an Improved Property Loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;
6. For an Improved Property Loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;
7. For a 1-to-4 Family Residential Property Loan, 65 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the Board;
8. For a 1-to-4 Family Residential Property Loan without private mortgage insurance, 80 percent of the appraised value or evaluation;
9. For a Home Equity Loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the Board;
10. For a Home Equity Loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) Permissible nonconforming real estate loans. An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 206, and further provided that such nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) Excluded transactions. The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

1. Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;
2. Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;
3. Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;
4. Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s) without the advancement of new funds; or
5. Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:


2. Concluding text is added at the end of paragraph (b)(1) of § 225.25 to read as follows:

§ 225.25 List of permissible nonbanking activities.

(b)(1) * * *

All loans or other extensions of credit made or acquired by a bank holding company or any non-bank subsidiary thereof, if secured by real property or made for the purpose of financing
permanent improvements to real property, must conform to the Real Estate Lending Loan-To-Value Restrictions set forth in § 206.51 of the Board’s Regulation H, 12 CFR part 206.


Jennifer J. Johnson,
Associate Secretary of the Board of Governors of the Federal Reserve System.

Federal Deposit Insurance Corporation 12 CFR Chapter III

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend 12 CFR chapter III, subchapter B as set forth below:

1. For Alternative 1, part 365 is proposed to be added to read as follows:

PART 365—REAL ESTATE LENDING STANDARDS

Sec. 365.1 Purpose and scope.
365.2 Definitions.
365.3 Real estate lending loan-to-value restrictions.


§ 365.1 Purpose and scope.

This part, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes ranges of maximum permissible loan-to-value ratios to be used by insured state banks that are not members of the Federal Reserve System in establishing their own internal loan-to-value ratios for real estate loans subject to this part.

§ 365.2 Definitions.

For purposes of this part:

(a) The term loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) The term real property or real estate means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term extension of credit means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term credit secured by real property means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term loan origination means the time of inception of an extension of credit.

(f) The term appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(i) Is independently and impartially prepared in accordance with the FDIC’s appraisal regulations (12 CFR part 323) and guidance; and

(ii) Reflects a market value that—

(1) For development loans, includes the value of anticipated improvements; and

(2) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(3) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(h) The term multifamily residential property means residential property containing five or more individual dwelling units.

(i) The term real land loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term raw land loan means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term construction and land development loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) Improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) 1-to-4 family residential property loan means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in Appendix A to part 325 of this chapter.

(n) Home equity loan means an extension of credit secured by a junior lien on or subordinate interest in 1-to-4 family residential property.

(o) Nonconforming real estate loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 365.3 of this part.

§ 365.3 Real estate lending loan-to-value restrictions.

(a) General rule. An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this part are satisfied.

(b) Loan-to-value ratios. (1) Each insured depository institution shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory
PART 365—REAL ESTATE LENDING STANDARDS

§ 365.1 Purpose and scope.

This part, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes maximum loan-to-value ratios applicable to real estate lending by insured state banks that are not members of the Federal Reserve System.

§ 365.2 Definitions.

For purposes of this part:
(a) The term loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.
(b) The term real property or real estate means an identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.
(c) The term extension of credit means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.
(d) The term credit secured by real property means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of the credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the
same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term loan origination means the time of inception of an extension of credit.

(f) The term appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(i) is independently and impartially prepared in accordance with the FDIC's appraisal regulations (12 CFR part 323) and guidance; and

(ii) reflects a market value that—

(a) For development and construction lending generally, includes the value of anticipated improvements;

(b) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term financially-responsible guarantor means a guarantor who has both the financial capacity and the willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(i) The term multifamily residential property means residential property containing five or more individual dwelling units.

(j) The term raw land loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term pre-construction development loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term construction and land development loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term improved property loan means an extension of credit secured by one of the following types of real property:

(i) Farmland committed to ongoing agricultural production;

(ii) Non-owner-occupied 1-to-4 family residential property;

(iii) Multifamily residential property;

(iv) Completed commercial property; or

(v) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term 1-to-4 family residential property loan means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(i) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(ii) A construction loan to a developer or builder that constitutes a category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in Paragraph 3 of this chapter.

(o) The term home equity loan means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term nonconforming real estate loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of §365.3 of this part.

§365.3 Real estate lending loan-to-value restrictions.

(a) General rule. An insured depository institution shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this part are satisfied.

(b) Loan-to-value ratios. An extension of credit subject to this part, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(i) For a raw land loan, 60 percent of the appraised value or evaluation;

(ii) For a construction loan, 65 percent of the appraised value or evaluation;

(iii) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(A) Will be at least 65 percent owner-occupied;

(B) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(C) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(D) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(E) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(F) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s);

(G) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(H) For a construction and land development loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(I) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(J) For a 1-to-4 family residential property loan, 65 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the FDIC;

(K) For a 1-to-4 family residential property loan without private mortgage insurance, 60 percent of the appraised value or evaluation;

(L) For a home equity loan, 95 percent of the appraised value or evaluation, with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the FDIC; and

(M) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) Permissible nonconforming real estate loans. An insured depository institution may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the institution's total capital, as defined in Appendix A to part 325 of this chapter, and further provided that such
nonconforming real estate loans are reported as lending exceptions to the institution's board of directors.

(d) Excluded transactions. The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the insured depository institution, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated at Washington, DC, this 23rd day of June, 1992.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the preamble, The Office of Thrift Supervision hereby proposes to amend part 563, subchapter D, chapter V, title 12 of the Code of Federal Regulations, as follows:

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:


2. For Alternative 1, new §§ 563.100, 563.101, and 563.102 are proposed to be added to subpart D of part 563 to read as follows:

§ 563.100 Real estate lending standards; purpose and scope.

This section, and §§ 563.101 and 563.102 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe ranges of maximum permissible loan-to-value ratios to be used by savings associations and their subsidiaries in establishing their own internal loan-to-value ratios for real estate loans subject to these sections.

§ 563.101 Real estate lending standards; definitions.

For the purposes of this section and §§ 563.100 and 563.102 of this subpart:

(a) Loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the extension of credit in determining the loan-to-value ratio.

(b) Real property or real estate means an identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) Extension of credit means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) Credit secured by real property means a loan or line of credit secured wholly or substantially by a lien on or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) Loan origination means the time of inception of an extension of credit.

(f) Appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Office of Thrift Supervision’s appraisal regulations (12 CFR part 564) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(h) The term multifamily residential property means residential property containing five or more individual dwelling units.

(i) The term raw land loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(j) The term pre-construction development loan means an extension of credit, whether or not secured by real property, for the purpose of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(k) The term construction and land development loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(l) The term improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(m) The term 1-to-4 family residential property loan means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing and
(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in part 567 of this chapter.

(n) The term home equity loan means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(o) The term nonconforming real estate loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 563.102 of this subpart.

§ 563.102 Real estate lending; loan-to-value restrictions.

(a) General rule. A savings association shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) Loan-to-value ratios. (1) Each savings association shall establish internal loan-to-value ratio limits within or below the range of maximum permissible loan-to-value ratios contained in this paragraph for the categories of real estate loans specified.

(2) For all categories of real estate loans, the low end of each supervisory range of maximum permissible loan-to-value ratios is considered to be an appropriate benchmark loan-to-value ratio lending limit. For any particular category of real estate loans, a savings association may establish an internal loan-to-value ratio lending limit above the lower end of the supervisory range of maximum permissible loan-to-value ratios if the savings association's demonstrated expertise in that particular type of lending, its assessment of local and regional market conditions, its capital position and asset quality, and other pertinent factors clearly justify such a higher limit.

(3) Each savings association shall specify in writing the criteria used by the association to qualify loans at loan-to-value ratio levels up to the association's established internal loan-to-value ratio lending limits.

(4) For each category of real estate loans, a savings association shall only make a loan at the higher end of the supervisory range of loan-to-value ratios if significant positive features that would mitigate the higher level of risk are present.

(5) A savings association's internal loan-to-value ratio standards shall be reviewed and approved at least annually by the association's board of directors as being consistent with the safe and sound operation of the association. These standards shall be subject to examiner review in order to determine the association's compliance with this section.

(6) An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must be within the applicable internal loan-to-value ratio lending limit established by the savings association under this section.

(7) Subject to the other provisions of this section, each savings association shall establish, within or below the following supervisory ranges of maximum permissible loan-to-value ratios, internal loan-to-value ratio limits for the following types of loans, based on the appraised value or evaluation, as appropriate, of the real property securing or being improved by the loan, determined at the time of loan origination:

(i) For raw land loans, the maximum permissible loan-to-value ratio shall not exceed 50 percent to 65 percent of the appraised value or evaluation;

(ii) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 55 percent to 70 percent of the appraised value or evaluation;

(iii) For construction and land development loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(iv) For improved property loans, the maximum permissible loan-to-value ratio shall not exceed 65 percent to 80 percent of the appraised value or evaluation;

(v) For 1-to-4 family residential property loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation;

(vi) For home equity loans, the maximum permissible loan-to-value ratio shall not exceed 80 percent to 95 percent of the appraised value or evaluation; and

(vii) For 1-to-4 family residential property loans and home equity loans, any portion of these loans exceeding 85 percent of the appraised value or evaluation of the real property securing the loan must be covered by private mortgage insurance acceptable to the OTS.

(c) Permissible nonconforming real estate loans. A savings association may make real estate loans that do not conform to this association's internal loan-to-value ratio limits established pursuant to this section, provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the association's total capital, as defined in part 567 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the association's board of directors.

(d) Excluded transactions. The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the savings association through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced, or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

3. For Alternative 2, new §§ 563.100, 563.101, and 563.102 are proposed to be added to subpart D of part 563 to read as follows:

§ 563.100 Real estate lending standards; purpose and scope.

This section, and §§ 563.101 and 563.102 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(q), prescribe maximum loan-to-value ratios applicable to real estate lending by savings associations and their subsidiaries.

§ 563.101 Real estate lending standards; definitions.

For the purposes of this section and §§ 563.100 and 563.102 of this subpart:

(a) The term loan-to-value ratio means the ratio that is derived at the time of loan origination by dividing an extension of credit by the appraised value or evaluation, whichever may be appropriate, of the property securing or being improved by the extension of credit. However, if a lender holds a junior lien on or a subordinate interest in the real property, the total amount of all senior liens on or interests in the property must be aggregated with the
extension of credit in determining the loan-to-value ratio.

(b) The term real property or real estate means an identified or identifiable parcel or tract of land, together with any improvements and certain rights appurtenant, including any easements, servitudes, rights of way, undivided or future interests, fixtures and other similar interests, but not including any licenses, profits a prendre, mineral rights, timber rights, growing crops, riparian and other water rights, light and air rights, and other similar interests.

(c) The term extension of credit means the total lending commitment, whether by loan or line of credit, by a lender(s) with respect to certain real property, exclusive of any prior liens on or interests in such property.

(d) The term credit secured by real property means a loan or line of credit secured wholly or substantially by a lien or interest in real property for which the lien or interest is central to the extension of credit (i.e., the lender would not have extended credit to the borrower in the same amount or on the same terms in the absence of the lien on or interest in the property). Credit is secured by real property notwithstanding the existence of any other liens on or interests in the property, whether prior, existing, or subsequently acquired.

(e) The term loan origination means the time of inception of an extension of credit.

(f) The term appraised value or evaluation means an opinion or estimate of the market value of adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information, in a written statement, and which—

(1) Is independently and impartially prepared in accordance with the Office of Thrift Supervision's appraisal regulations (12 CFR part 564) and guidance; and

(2) Reflects a market value that—

(i) For development and construction lending generally, includes the value of anticipated improvements; and

(ii) For land development loans, includes the value of the parcel of land and the value of anticipated improvements to be financed with the proposed extension of credit; and

(iii) For construction and development loans, considers, on a discounted basis, the estimated value upon completion of the planned construction or development, at stabilized occupancy and cash flow.

(g) The term financially-responsible guarantor means a guarantor who has both the financial capacity and willingness to provide support for an extension of credit, and whose guarantee does in fact support, either in whole or in part, repayment of the extended credit before or upon maturity.

(h) The term 1-to-4 family residential property means residential property containing less than five individual dwelling units.

(i) The term multifamily residential property means residential property containing five or more individual dwelling units.

(j) The term raw land loan means an extension of credit secured by real property for the purpose of acquiring or holding vacant land.

(k) The term pre-construction development loan means an extension of credit, whether or not secured by real property, for the purposes of improving vacant land prior to the erection of structures. The improvement of vacant land may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) The term construction and land development loan means an extension of credit, whether or not secured by real property, for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

(m) The term improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland committed to ongoing agricultural production;

(2) Non-owner-occupied 1-to-4 family residential property;

(3) Multifamily residential property;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use.

(n) The term 1-to-4 family residential property loan means an extension of credit secured by owner-occupied 1-to-4 family residential property, including:

(1) A construction loan to a prospective owner-occupant who has obtained pre-qualified permanent financing; and

(2) A construction loan to a developer or builder that constitutes a 50 percent risk weight loan under the risk-based capital guidelines set forth in part 567 of this chapter.

(o) The term home equity loan means an extension of credit secured by a junior lien on or subordinated interest in 1-to-4 family residential property.

(p) The term nonconforming real estate loan means an extension of credit secured by real property, or an extension of credit for the purpose of financing permanent improvements to real property, that does not satisfy the terms and limitations of § 563.102 of this subpart.

§ 563.102 Real estate lending loan-to-value restrictions.

(a) General rule. A savings association shall not extend credit secured by real property, or extend credit for the purpose of financing permanent improvements to real property, unless the requirements set forth in this section are satisfied.

(b) Loan-to-value ratios. An extension of credit subject to this section, together with any senior liens on or interests in the real property securing or being improved by such credit, must not exceed any of the following percentages of the real property's appraised value or evaluation, as appropriate, determined at the time of loan origination:

(1) For a raw land loan, 60 percent of the appraised value or evaluation;

(2) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(3) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied; and

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(3) For a raw land loan, 60 percent of the appraised value or evaluation;

(4) For a pre-construction development loan, 65 percent of the appraised value or evaluation;

(5) For a construction and land development loan, 75 percent of the appraised value or evaluation if it involves a project that:

(i) Will be at least 65 percent owner-occupied;

(ii) Is at least 65 percent pre-sold to a buyer(s) with sufficient financial capacity to complete the purchase transaction;

(3) For an improved property loan that:

(i) Is at least 65 percent pre-leased to a tenant(s) with sufficient financial capacity to fulfill all material obligations under the lease;

(iv) Has obtained a valid and binding take-out loan commitment from an established lender for its permanent financing;

(v) Has entered into a valid and binding agreement with a company that has an established reputation and sufficient managerial and financial resources to use or operate the property as a business and to fulfill all material obligations under the agreement; or

(vi) Has provided a legally enforceable guarantee(s) from a financially-responsible guarantor(s).

(4) For all other construction and land development loans, 65 percent of the appraised value or evaluation;

(5) For an improved property loan that amortizes over the life of the loan, 75 percent of the appraised value or evaluation;

(6) For an improved property loan that does not amortize over the life of the loan, 65 percent of the appraised value or evaluation;

(7) For a 1-to-4 family residential property loan, 65 percent of the
appraised value or evaluation with any amount exceeding 80 percent of the appraised value or evaluation covered by private mortgage insurance acceptable to the OTS;

(8) For a 1-to-4 family residential property loan without private mortgage insurance, 80 percent of the appraised value or evaluation;

(9) For a home equity loan, 95 percent of the appraised value or evaluation with any amount exceeding 80 percent of appraised value or evaluation covered by private mortgage insurance acceptable to the OTS; and

(10) For a home equity loan without private mortgage insurance, 80 percent of the appraised value or evaluation.

(c) Permissible nonconforming real estate loans. A savings association may make real estate loans that do not conform to the loan-to-value ratio limitations contained in paragraph (b) of this section provided that the aggregate amount of all such real estate loans does not exceed 15 percent of the association's total capital, as defined in part 567 of this chapter, and further provided that such nonconforming real estate loans are reported as lending exceptions to the association's board of directors.

(d) Excluded transactions. The provisions of paragraphs (b) and (c) of this section shall not apply to extensions of credit:

(1) Guaranteed or insured by the United States government or an agency thereof, or backed by the full faith and credit of a state government;

(2) Facilitating the sale of real estate acquired by the savings association, through foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted in good faith;

(3) Where the real property is taken as additional collateral solely through an abundance of caution by the lender, and the lender does not look principally to the real property as security for the extension of credit;

(4) Renewed, refinanced or restructured by the original lender(s), or its successor(s), to the same borrower(s), without the advancement of new funds; or

(5) Originated prior to [INSERT THE EFFECTIVE DATE OF THE FINAL RULE].

Dated: June 29, 1992.
By the Office of Thrift Supervision.
Timothy Ryan,
Director.

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