

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10559**]
July 30, 1992]

PROPOSED UNIFORM STANDARDS FOR REAL ESTATE LENDING

Comments Invited by August 31, 1992

*To All State Member Banks, Bank Holding Companies,
and Branches and Agencies of Foreign Banks in the
Second Federal Reserve District, and Others Concerned:*

In order to implement the requirements of Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, the Federal banking agencies have proposed uniform regulations prescribing standards for real estate lending. Following is the text of a statement issued by the Board of Governors of the Federal Reserve System in that regard:

The Federal Reserve Board has 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).

Comments should be received by August 31, 1992.

The proposal prescribes standards for extensions of credit secured by liens on real estate or made for the purpose of financing permanent improvements to real estate.

The proposed standards have been developed in consultation with the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation.

The four Federal banking agencies are required by FDICIA to adopt uniform regulations by September 1992, to become effective by March 1993.

Enclosed is the text of the interagency notice, which has been reprinted from the *Federal Register* of July 16; additional, single copies can be obtained at this Bank (33 Liberty Street) from the Issues Division on the first floor, or by calling our Circulars Division (Tel. No. 212-720-5215 or 5216). Comments pertaining to the Board's proposed changes to its Regulations H, "Membership of State Banking Institutions in the Federal Reserve System," and Y, "Bank Holding Companies and Change in Bank Control," which begin on page 9 of the enclosed *Federal Register* notice, should be submitted by August 31, and may be sent to the Board of Governors, as specified in the notice, or to our Domestic Banking Department. Comments relating to the other regulatory proposals should be sent to the appropriate Federal banking agency, as indicated in the notice.

E. GERALD CORRIGAN,
President.

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federal register

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**Proposals Regarding
Real Estate Lending Standards**
Comments Invited by August 31, 1992

Part V

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 34

Federal Reserve System
12 CFR Parts 208 and 225

**Federal Deposit
Insurance Corporation**
12 CFR Part 365

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 563

[Enc. Cir. No. 10559]

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 34**

[Docket No. 92-12]

FEDERAL RESERVE SYSTEM**12 CFR Parts 208 and 225**

[Regulation H; Regulation Y; Docket No. R-0765]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 365**

RIN 3064-AB05

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 563**

[No. 92-284]

RIN 1550-AA56

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

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 (OCC): Office of the Comptroller of the Currency, Communications Division, 250 E St. SW., Washington, DC 20219, attention: Docket No. 92-12. Comments will be available for public inspection and photocopying at the same location.

Board of Governors of the Federal Reserve System (Board): Comments, which should refer to Docket No. R-0765, 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-1122 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) 898-3838). 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 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: OCC: Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874-5170; William W. Templeton, Attorney, Legal Advisory Services Division, (202) 874-5320; Mitchell Stengel, Financial Economist, Banking Research and Statistics, (202) 874-5240.

Board: Roger T. Cole, Assistant Director (202) 452-2618, Rhoger H Pugh, Manager (202) 728-5883, or Todd A. Glissman, Supervisory Financial Analyst (202) 452-3953, Division of Banking Supervision and Regulation; or Scott G. Alvarez, Associate General Counsel (202) 452-3583, or Brian E.J. Lam, Attorney (202) 452-2067, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544.

FDIC: Robert F. Mialovich, Associate Director, Division of Supervision, (202) 898-6918; Robert Walsh, Examination Specialist, Division of Supervision, (202) 898-6911; Garfield Gimber, Examination Specialist, Division of Supervision, (202) 898-6913; Martha L. Coulter, Counsel, Legal Division, (202) 898-7348, Federal Deposit Insurance Corporation, Washington, DC 20429.

OTS: John C. Price, Jr., Deputy Assistant Director for Policy, (202) 906-5745; Robert Fishman, Program Manager for Credit Risk, (202) 906-5672; William J. Magrini, Project Manager for Credit Policy, (202) 906-5744, Supervision

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Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906-7133, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991¹ (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.²

¹ Public Law No. 102-242, 105 Stat. 2236, 2354 (1991); 12 U.S.C. 1828(o); 12 U.S.C. 371(a).

² The Board proposes to apply the proposed standards to bank holding companies and their nonbank subsidiaries.

The FDIC and the Board are considering application of the proposed standards not only to insured depository institutions but also to their lending subsidiaries. Under the OCC's existing regulations, provisions of Federal banking statutes and regulations applicable to national banks are generally applicable to their operating subsidiaries and to bank service corporations. 12 CFR 5.34(d)(2) and 5.35(e)(3)(i) (1992). In addition, under section 24(d) of the Federal Deposit Insurance Act, 12 U.S.C. 1831a(d), as of December 19, 1992, subsidiaries of insured state banks will generally be prohibited from engaging in activities that are not permissible for subsidiaries of national banks unless the FDIC

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 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 or evaluation 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

has determined that the activity does not pose a significant threat to the appropriate deposit insurance fund.

With regard to savings associations, the OTS is considering application of the proposed standards to all savings and loan service corporations and subsidiaries.

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.³ 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:

Category of real estate loan	Range of maximum permissible LTV ratios (percent)
Raw land	50 to 65
Pre-construction development..	55 to 70
Construction and land development.	65 to 80
Improved Property ¹	65 to 80
1-to-4 family residential property (owner-occupied).	80 to 95 ²
Home equity	80 to 95 ²

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) multi-family residential property; (d) completed commercial property; or (e) other income-producing property that has been completed and is available for occupancy and use.

² 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

³ 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;

(d) What criteria examiners should use in assessing the adequacy of LTV ratios used by lenders in light of regulatory guidance; and

(e) The means by which the agencies could ensure appropriate and consistent interpretation of LTV ratio guidance by both lenders and examiners.

Alternative 2

Uniform Loan-to-Value Ratio Standard.

With this approach, the agencies propose to establish uniform maximum LTV ratios for specific categories of real estate loans as follows:

Category of real estate loan	Maximum LTV ratio (percent)
Raw land.....	60
Pre-construction development.	65
Construction and land development.	75 (If certain conditions are met; otherwise, 65%)
Improved property.....	75 (If the credit amortizes; otherwise, 65%)
1-to-4 family residential property (owner-occupied).	95 (With private mortgage insurance ("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; and

(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. Specially, 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 abundance of caution by the lender;

(d) Loans renewed, refinance, 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 following two 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(h)).

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:

Estimated number of recordkeepers:	
National banks (OCC) ..	3,750.
State member banks (Board).	985.
State nonmember banks (FDIC).	7,550.
Savings associations (OTS).	2,200.
Estimated average burden per recordkeeper..	20 hrs.
Estimated total annual recordkeeping burden:	
OCC	75,000 hours.
Board	19,700 hours.
FDIC.....	151,000 hours.
OTS.....	44,000 hours.

No burden is estimated for Alternative 2 of the proposed rule since no new or additional collection of information are 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 20219.

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 I

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:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j-3; 12 U.S.C. 1828(o); 12 U.S.C. 3331 *et seq.*

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 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 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 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 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 § 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, unless 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 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

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 OCC.

(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 subpart, 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].

3. For Alternative 2, 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 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 *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 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 12 CFR Part 3, Appendix A.

(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 § 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, unless the requirements set forth in this subpart 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;

(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, 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, 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 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].

Dated: June 26, 1992.

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), 461, 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, 781(b), 781(g), 781(i), 780–4(c)(5), 78q, 78q–1, and 78w, 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 3331–3351).

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

Sec.

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(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 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 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; 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 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 208.

(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'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 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 65 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 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 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 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; 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 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in appendix A to part 208.

(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 § 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.* 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;
 - (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, 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;
- (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 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 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].

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

Authority: 12 U.S.C. 1817(j)(13), 1818(b), 1828(o), 1831i, 1843(c)(8), 1844(b), 1972(f), 3106, 3108, 3907, 3909, 3310, 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)).

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.

Dated: June 28, 1992.

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.

Authority: 12 U.S.C. 1828(o).

§ 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—

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

(2) Reflects a market value that—

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

(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) *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 subordinated 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

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 part.

(6) 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 applicable internal loan-to-value ratio lending limit established by the institution under this part.

(7) Subject to the other provisions of this part, 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 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 FDIC.

(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 part, 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].

2. For Alternative 2, 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.

Authority: 12 U.S.C. 1828(o).

§ 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 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—

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

(2) Reflects a market value that—

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

(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 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 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 category 3, 50 percent risk weight loan under the risk-based capital guidelines set forth in Appendix A to part 325 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:

(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;

(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, 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;

(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 FDIC; 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 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:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468; 12 U.S.C. 1817, 1828; 12 U.S.C. 3806; 42 U.S.C. 4106; Sec. 304, Pub. L. 102-242, 105 Stat. 2236.

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 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 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 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 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 not exceed any 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 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 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 the 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(o), 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 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 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;

(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;

(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, 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 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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