

analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

(v) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(3) *Restructured loans*—(i) *Non-combination rule*. Notwithstanding paragraphs (a) through (e) of this section, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities (i.e., public-sector obligors) that qualified for a separate lending limit under paragraph (f)(1) of this section are consolidated under a central obligor in a qualifying restructuring, such loans will not be aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. Such loans (other than loans originally attributed to the central obligor in their own right) will not be considered obligations of the central obligor and will continue to be attributed to the original public-sector obligor for purposes of the lending limit.

(ii) *Qualifying restructuring*. Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (f)(3)(i) of this section only if they are restructured in a sovereign debt restructuring approved by the OCC, upon request by a bank for application of the non-combination rule. The factors that the OCC will use in making this determination include, but are not limited to, the following:

(A) Whether the restructuring involves a substantial portion of the

total commercial bank loans outstanding to the foreign government, its agencies, and instrumentalities;

(B) Whether the restructuring involves a substantial number of the foreign country's external commercial bank creditors;

(C) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management; and

(D) Whether the restructuring includes features of debt or debt-service reduction.

(iii) *50 percent aggregate limit*. With respect to any case in which the non-combination process under paragraph (f)(3)(i) of this section applies, a national bank's loans and other extensions of credit to a foreign government, its agencies and instrumentalities, (including restructured debt) shall not exceed, in the aggregate, 50 percent of the bank's capital and surplus.

§ 32.6 Nonconforming loans.

(a) A loan, within a bank's legal lending limit when made, will not be deemed a violation but will be treated as nonconforming if the loan is no longer in conformity with the bank's lending limit because—

(1) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, the lending limit or capital rules have changed; or

(2) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value.

(b) A bank must use reasonable efforts to bring a loan that is nonconforming as a result of paragraph (a)(1) of this section into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(c) A bank must bring a loan that is nonconforming as a result of circumstances described in paragraph (a)(2) of this section into conformity with the bank's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.