

ticipations therein, to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and liabilities incurred in borrowing from the Export-Import Bank of the United States.

§ 83. Loans by bank on its own stock

(a) General prohibition

No national bank shall make any loan or discount on the security of the shares of its own capital stock.

(b) Exclusion

For purposes of this section, a national bank shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(R.S. § 5201; Pub. L. 106-569, title XII, § 1207(a), Dec. 27, 2000, 114 Stat. 3034.)

CODIFICATION

R.S. § 5201 derived from act June 3, 1864, ch. 106, § 35, 13 Stat. 110, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2000—Pub. L. 106-569 amended section catchline and text generally. Prior to amendment, text read as follows: “No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section 192 of this title.”

§ 84. Lending limits

(a) Total loans and extensions of credit

(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) Definitions

For the purposes of this section—

(1) the term “loans and extensions of credit” shall include—

(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;

(2) the term “person” shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization; and

(3) the term “derivative transaction” includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(c) Exceptions

The limitations contained in subsection (a) of this section shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers’ acceptances of the kind described in section 372 of this title and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending

bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d) Authority of Comptroller of the Currency

(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

(R.S. §5200; June 22, 1906, ch. 3516, 34 Stat. 451; Sept. 24, 1918, ch. 176, §6, 40 Stat. 967; Oct. 22, 1919, ch. 79, §1, 41 Stat. 296; Feb. 25, 1927, ch. 191, §10, 44 Stat. 1229; May 20, 1933, ch. 35, §1, 48 Stat. 73; June 16, 1933, ch. 89, §26(a), 48 Stat. 191; Aug. 23, 1935, ch. 614, title III, §321(b), 49 Stat. 713; June 11, 1942, ch. 404, §8, 56 Stat. 356; July 15, 1949, ch. 338, title VI, §602(b), 63 Stat. 440; July 22, 1937, ch. 517, §15(a), as added Aug. 14, 1946, ch. 964, §5, 60 Stat. 1079; amended Pub. L. 85-748, §1(c), Aug. 25, 1958, 72 Stat. 841; Pub. L. 86-251, §3, Sept. 9, 1959, 73 Stat. 488; Pub. L. 87-723, §4(c)(4), Sept. 28, 1962, 76 Stat. 672; Pub. L. 90-19, §27(b), May 25, 1967, 81 Stat. 29; Pub. L. 92-318, title I, §133(c)(2), June 23, 1972, 86 Stat. 270; Pub. L. 97-320, title IV, §401(a), Oct. 15, 1982, 96 Stat. 1508; Pub. L. 97-457, §17(a), Jan. 12, 1983, 96 Stat. 2509; Pub. L. 111-203, title VI, §610(a), July 21, 2010, 124 Stat. 1611.)

REFERENCES IN TEXT

Section 372 of this title, referred to in subsec. (c)(2), was in the original a reference to "section 13 of the Federal Reserve Act". Provisions of section 13 describing bankers' acceptances are classified to section 372 of this title. Other provisions of section 13 are classified to sections 342 to 347, 347c, 347d of this title.

CODIFICATION

R.S. §5200 derived from act June 3, 1864, ch. 106, §29, 13 Stat. 108, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-203, §610(a)(1), substituted "shall include—" for "shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and, to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and" and added subpars. (A) to (C).

Subsec. (b)(3). Pub. L. 111-203, §610(a)(2), (3), added par. (3).

1983—Subsec. (b)(1). Pub. L. 97-457 inserted a comma before "to the extent specified by the Comptroller of the Currency".

1982—Pub. L. 97-320 amended section generally. Prior to amendment, section read as follows: "The total obligations to any national banking association of any person, copartnership, association, or corporation shall at no time exceed 10 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. The term 'obligations' shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such association and the liability of the indorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such association and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. Such limitation of 10 per centum shall be subject to the following exceptions:

"(1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing

values shall not be subject under this section to any limitation based upon such capital and surplus.

“(2) Obligations arising out of the discount of commercial or business paper actually owned by the person, copartnership, association, or corporation negotiating the same shall not be subject under this section to any limitation based upon such capital and surplus.

“(3) Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment shall not be subject under this section to any limitation based upon such capital and surplus.

“(4) Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under paragraph (2) of this section, having a maturity of not more than six months, and owned by the person, corporation, association, or copartnership indorsing and negotiating the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(5) Obligations in the form of banker's acceptances of other banks of the kind described in section 372 of this title shall not be subject under this section to any limitation based upon such capital and surplus.

“(6) Obligations of any person, copartnership, association or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such obligation, and to an additional increase of limitation of 5 per centum of such capital and surplus in addition to such 25 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 120 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 30 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 125 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 35 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 130 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 40 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 135 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 45 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 140 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association, or corporation arising from the same transactions and/or secured by the identical staples for more than ten months. Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents, warehouse receipts, or other such documents transferring or securing title covering refrigerated or frozen readily marketable staples when such property is fully covered by insurance, shall be subject under this

section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association or corporation arising from the same transactions and/or secured by the identical staples for more than six months.

“(7) Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the notes covered by such documents shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus. Obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which bear a full recourse endorsement or unconditional guarantee of the seller and are secured by the cattle being sold, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(8) Obligations of any person, copartnership, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, shall (except to the extent permitted by rules and regulations prescribed by the Comptroller of the Currency, with the approval of the Secretary of the Treasury) be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(9) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any State, or to any receiver, conservator, or superintendent of banks, or to any other agent, in charge of the business and property of any such association or banking institution, when such loans are approved by the Comptroller of the Currency, shall not be subject under this section to any limitation based upon such capital and surplus.

“(10) Obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that such obligations are secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any Federal Reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States: *Provided*, That such guaranties, agreements, or commitments are unconditional and must be performed by payment of cash or its equivalent within sixty days after demand. The Comptroller of the Currency is authorized to define the terms herein used if and when he may deem it necessary.

“(11) Obligations of a local public agency (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) or of a public housing agency (as defined in the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]) which have a maturity of not more than eighteen months shall not be subject under this section to any limitation, if such obligations are secured by an agreement between the obligor agency and the Secretary of Housing and Urban Development in which the agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the

payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity, which monies under the terms of said agreement are required to be used for that purpose.

“(12) Obligations insured by the Secretary of Agriculture pursuant to the Bankhead-Jones Farm Tenant Act, as amended [7 U.S.C. 1000 et seq.], or the Act of August 28, 1937, as amended (relating to the conservation of water resources), or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

“(13) Obligations as endorser or guarantor of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person, copartnership, association, or corporation transferring the same, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus: *Provided, however,* That if the bank's files or the knowledge of its officers of the financial condition of each maker of such obligations is reasonably adequate, and upon certification by an officer of the bank designated for that purpose by the board of directors of the bank, that the responsibility of each maker of such obligations has been evaluated and the bank is relying primarily upon each such maker for the payment of such obligations, the limitations of this section as to the obligations of each such maker shall be the sole applicable loan limitation: *Provided further,* That such certification shall be in writing and shall be retained as part of the records of such bank.

“(14) Obligations of the Student Loan Marketing Association shall not be subject to any limitation based upon such capital and surplus.”

1972—Par. (14). Pub. L. 92-318 added par. (14).

1967—Par. (11). Pub. L. 90-19 substituted “Secretary of Housing and Urban Development” for “Housing and Home Finance Administrator or the Public Housing Administration” and “Secretary” for “Administrator or Administration” wherever appearing, respectively.

1962—Par. (12). Pub. L. 87-723 inserted “or title V of the Housing Act of 1949” before “shall be subject under this section”.

1959—Par. (6). Pub. L. 86-251, §3(a), substituted “secured by” for “secured upon” and inserted exception with respect to obligations secured by documents transferring or securing title covering refrigerated or frozen readily marketable staples.

Par. (7). Pub. L. 86-251, §3(b), inserted exception with respect to obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle.

Par. (8). Pub. L. 86-251, §3(c), struck out “in the form of notes” after “corporation”.

Par. (13). Pub. L. 86-251, §3(d), added par. (13).

1958—Par. (12). Pub. L. 85-748 amended section 15(a) of act July 22, 1937, as added by act Aug. 14, 1946, by inserting sentence amending R.S. §5200 by adding par. (12).

1949—Par. (11). Act July 15, 1949, added par. (11).

1942—Par. (10). Act June 11, 1942, added par. (10).

1935—Par. (8). Act Aug. 23, 1935, inserted “Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States”.

1933—Par. (1). Act June 16, 1933, inserted provision relating to obligations of a corporation and its subsidiaries in second sentence.

Par. (9). Act May 20, 1933, added par. (9).

1927—Act Feb. 25, 1927, reenacted section, subdividing it into eight numbered exceptions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title VI, §610(c), July 21, 2010, 124 Stat. 1612, provided that: “The amendments made by this section [amending this section and section 1464 of this title] shall take effect 1 year after the transfer date.”

[For definition of “transfer date” as used in section 610(c) of Pub. L. 111-203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-320, title IV, §401(b), Oct. 15, 1982, 96 Stat. 1510, provided that: “This section [amending this section] shall take effect upon the expiration of one hundred and eighty days after the date of its enactment [Oct. 15, 1982].”

REPEALS

Repealing provisions of Consolidated Farmers Home Administration Act of 1961 as not having the effect of repealing the amendment to this section enacted by act July 22, 1937, §15(a), as added Aug. 14, 1946, see section 341(a) of Pub. L. 87-128, title III, Aug. 8, 1961, 75 Stat. 318, set out as a note under section 1921 of Title 7, Agriculture.

SAVINGS PROVISION

Act June 16, 1933, ch. 89, §26(b), 48 Stat. 191, provided: “The amendment made by this section [amending this section] shall not apply to such obligations of subsidiaries held by such association on the date this section takes effect.”

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

APPLICATION TO DISTRICT OF COLUMBIA

Provisions of this section were made applicable to banks, etc., in the District of Columbia by act Mar. 4, 1933, ch. 274, §3, 47 Stat. 1567.

§ 85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under title 62 of the Revised Statutes. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona