

RCW 30A.04.111 Limit on loans and extensions of credit to one person—Exceptions—Definitions—Rules—Nonconforming loans and extensions of credit. (1) The total loans and extensions of credit by a bank to a person outstanding at any one time shall not exceed twenty percent of the capital and surplus of such bank. A loan or extension of credit made by a bank does not violate this section if the loan or extension of credit would qualify for an exception to the lending limit for a national bank under rules adopted by the United States office of the comptroller of the currency, or successor federal agency with authority over national banks and federal savings associations.

(2) For the purposes of this section, the terms "borrower," "capital and surplus," "derivative transaction," "loans and extensions of credit," and "person" shall have the same meaning as those terms are defined in section 32.2 of Title 12 of the United States Code of Federal Regulations, 12 C.F.R. Sec. 32.2, except that "loans and extensions of credit" also includes repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions between a bank and a borrower if the federal deposit insurance corporation requires such treatment for a state insured bank or the board of governors of the federal reserve system requires such treatment for member state banks.

(3) The director may prescribe rules to administer and carry out the purposes of this section, including without limitation rules (a) to define or further define terms used in this section, (b) to establish limits or requirements other than those specified in this section for particular classes or categories of loans and extensions of credit, (c) to determine when a loan putatively made to a person shall, for purposes of this section, be attributed to another person, (d) to set standards for computation of time in relation to determining limits on loans and extensions of credit, and (e) to implement and incorporate other changes in limits on loans and extensions of credit necessary to conform to federal statute and rule required or otherwise authorized by this section. In adopting the rules, the director shall be guided by rulings of the United States comptroller of the currency, or successor federal banking regulator, that govern limits on loans and extensions of credit applicable to national banks and federal savings associations. In lieu of the adoption by the department of a rule applicable to specific types of transactions, a bank, unless otherwise approved by the director, shall conform to all applicable rulings of the comptroller of the currency, or successor federal banking regulator, which (i) relate to national banks and federal savings associations, (ii) govern such specific types of transactions or circumstances, and (iii) are consistent with this section and the department's adopted rules.

(4) (a) A loan or extension of credit that was within the limit on loans and extensions of credit when made is not a violation but will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's limit on loans and extensions of credit because:

(i) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(ii) Collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value.

(b) A bank shall make reasonable efforts to bring a loan or extension of credit that is nonconforming under (a) (i) of this subsection into conformity with the bank's limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(c) A bank must bring a loan or extension of credit that is nonconforming under (a) (ii) of this subsection into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's control prevent the bank or trust company from taking action.

(d) Notwithstanding any provision of this subsection (4), the director may by rule or interpretation prescribe standards for treatment of nonconforming extensions of credit that are derivatives transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or member state banks, rely upon rules or interpretations of the federal deposit insurance corporation or the board of governors of the federal reserve system, as applicable.

(5) Notwithstanding any provision of this section to the contrary, in the event that a bank's capital declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the director may, upon written application and in the exercise of the director's discretion, grant the bank temporary permission to fund loans and extensions of credit in excess of the bank's limit on loans and extensions of credit under this section. In the exercise of discretion, the director may further specify conditions for granting such emergency exception and may limit emergency lending authority under this section to particular types or classes of loans and extensions of credit.

(6) Notwithstanding any provision of this section to the contrary, the director, in the exercise of discretion, may grant an exception to the limit on loans and extensions of credit otherwise required by this section, based on extenuating facts and circumstances. In deciding whether to grant an exception under this subsection, the director shall consider:

(a) The proposed transaction for which the exception is sought;

(b) How the requested exception would affect the capital adequacy and safety and soundness of the requesting bank if the exception is not granted or, if the exception is granted, if the proposed borrower should ultimately default;

(c) How the requested exception would affect the loan portfolio diversification of the requesting bank;

(d) The competency of management to handle the proposed transaction and any resulting safety and soundness issues;

(e) The marketability and value of the proposed collateral; and

(f) The extenuating facts and circumstances that warrant an exception in light of the purpose of limit on loans and extensions of credit set forth in this section. [2014 c 37 § 110; 2013 c 76 § 3; 2010 c 88 § 10; 1995 c 344 § 1; 1994 c 92 § 12; 1986 c 279 § 3. Formerly RCW 30.04.111.]

Effective date—2010 c 88: See RCW 32.50.900.