

OCC: LEGAL LENDING LIMIT GUIDANCE - LOAN PURCHASE ACTIVITIES (National Banks and Federal Savings Associations)

I. INTRODUCTION

The Office of the Comptroller of the Currency (OCC) has issued a bulletin to provide banks with guidance regarding the applicability of the legal lending limit (LLL) to purchased loans.

The bulletin provides: a) background information on loan purchase activities and the LLL; and b) guidance on the applicability of the LLL to purchased loans and types of recourse arrangements.

II. BACKGROUND

Unless an exception applies, all loans and extensions of credit made by banks are subject to the LLL, which provides limitations on the total amount of loans and extensions of credit to any one borrower. Whether a loan that a bank purchases is attributable to the seller under the LLL regulation depends on specific facts and circumstances. Consequently, bank management would typically consider more information than it would for in-house originations when determining compliance with the LLL regulation for purchased loans.

III. GUIDANCE

Aggregate exposures attributable to a single seller must be within the bank's LLL. Loans are attributable to a seller under 12 CFR 32.2(q)(1)(iii) if the bank has direct or indirect recourse to the seller. Direct or indirect recourse can be explicit or implied. Explicit recourse is generally provided under contractual arrangement or other written agreement between the bank and the seller. Implied recourse is established through the bank's course of dealing or conduct with a seller even if the contract or written agreement with the provider does not contain explicit recourse.

The following are examples of explicit and implied recourse scenarios:

- **Explicit recourse:** Examples include a requirement or contractual obligation to substitute or repurchase defaulted loans or refill a reserve account, even if no substitutions, repurchases, or replenishments of the reserve account have occurred to date.
- **Implied recourse:** Examples include when the seller has routinely substituted or repurchased loans or refilled or replenished a reserve account even when the contract does not require those actions.

If the bank does not have explicit or implied recourse to the seller, the loans are generally not attributable to the seller under 12 CFR 32.2(q)(1)(iii). In such cases, the purchased loans would

generally be attributable under the LLL regulation to only the named borrowers on the loans, unless the direct benefit or common enterprise tests under 12 CFR 32.5 are met or other provisions under the LLL regulation warrant attribution to another party.

The foregoing Compliance Update is for informational purposes only, and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.