

Bank may be interested in repurchasing the participation and in making other loans under the pilot program in similar circumstances to those described above.

Analysis

The lending limit pilot program, 12 C.F.R. § 32.7, permits approved national banks to make certain types of loans under special limits that apply in addition to the Bank's basic lending limit of 15 percent of capital and surplus, 12 U.S.C. § 84 and 12 C.F.R. § 32. The program's special limit for residential real estate loans applies to loans and extensions of credit secured by a perfected first-lien security interest in 1-4 family residential real estate in an amount that does not exceed 80 percent of the appraised value of the collateral (LTV Limit) at the time the loan or extension of credit is made.

The collateral for both of the Bank's loans is 1-4 family residential real estate and the mortgage loan and the two loans combined conformed with the LTV Limit at the time the loans were made. Further, the combined loans conformed with the quantitative restrictions in the pilot program.¹ The sole interpretive question therefore is whether the security interest for the home equity loan that is second to no other lien holder satisfies the "first-lien security interest" requirement for purposes of this lending limit pilot program. I find that it does and that both loans are eligible for the special limit in the pilot program for residential real estate loans. There is no supervisory purpose in requiring the Bank to incur the expense of rewriting the loans as a single secured credit.² To hold otherwise would elevate form over substance and impose unnecessary regulatory burden and expense on the Bank without improving the Bank's security. Accordingly, within the restrictions set forth in the pilot program, the Bank may repurchase the participation³ and make other loans in similar circumstances to those described here.

I trust the foregoing is responsive to your inquiry. If you have any questions, please contact me at (202) 874-5300.

Sincerely,

/s/ Jonathan Fink

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¹ See 12 C.F.R. § 32.7(a)(1), (4) and (5).

² Moreover, in a situation in which one of the two extensions of credit were a revolving line of credit, a requirement that the loan and the revolving line of credit be rewritten as a single secured exposure could be difficult to comply with.

³ The combined exposure to the borrower must comply with the LTV Limit at the time of the repurchase.