Chapter 208-512A WAC
LIMITS ON LOANS AND EXTENSIONS OF CREDIT

WAC

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WAC 208-512A-001 Promulgation of rules. The division of banks of the department of financial institutions (hereinafter, the "division"), after due and proper notice, and pursuant to the provisions of RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.-050, hereby adopts and promulgates this chapter, effective January 21, 2013.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-001, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-003 Findings and purpose. (1) The director of the division (hereinafter, the "director of banks"), by and through the director of bank's delegated authority from the director of the department of financial institutions under RCW 43.320.040 and 43.320.050, finds and determines, that pursuant to RCW 30.04.030, the division has the broad administrative authority to adopt and promulgate rules and regulations that establish and maintain appropriate standards of safety and soundness with respect to the loans and extensions of credit made by Washington state-chartered banks under Titles 30 and 32 RCW including, without limitation, nonloan investments in derivative and similar transactions.

(2) As of January 21, 2013, the effective date of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter, "Dodd-Frank Act"), codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), a state insured bank may engage in a derivative transaction, as defined in section 5200 (b)(3) of the Revised Statutes of the United States (12 U.S.C. Sec. 84 (b)(3)), only if the law with respect to lending limits of the state in which the state-insured bank is chartered takes into consideration credit exposure to derivative transactions. In addition to making loans, Washington state-chartered banks under Titles 30 and 32 RCW invest in derivative transactions as a regular and often-essential component of their overall investment strategy, including, without limitation, as a tool to manage their liquidity. It is necessary that Washington state law (including statute or regulation, or interpretation of the same by the division), be in compliance with the afore-stated federal statute and preserve the authority of banks under Titles 30 and 32 RCW to continue to engage in derivative transactions on or after January 21, 2013. Therefore, it is prudent and expeditious for the division to assert the full measure of its statutory authority to adopt this chapter so as to clearly set forth the manner in which a bank under Title 30 or 32 RCW may, in addition to its investment in other types of loans and extensions of credit, safely and soundly engage in derivative transactions.

(3) Section 610(a) of the Dodd-Frank Act, amending the National Bank Act, at 12 U.S.C. Sec. 84(b), revises the definition of "loans and extensions of credit" to include credit exposure of a national bank arising from its investment in a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. The aforementioned section 611 of the Dodd-Frank Act redefines "loans and extensions of credit" to include derivative transactions by, in effect, making derivative transactions applicable to state "lending limits" laws. Section 611 of the Dodd-Frank Act does not specifically address repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions. However, the director of banks finds and determines that it serves the convenience and advantage of depositors, borrowers, and the general public that Washington state-chartered banks and savings banks be able to con-

tinue to prudently invest in repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions despite any future contingency that may be made applicable to them by federal banking regulations. Therefore, director of banks further finds and determines that the division may, in its safety and soundness standards for state member banks and state insured banks, respectively, apply the same definition of "loans and extensions of credit" as applicable to national banks under section 610 of the Dodd-Frank Act (12 U.S.C. Sec. 84(b)), but only to the extent required by the board of governors of the Federal Reserve System (hereinafter, the "Federal Reserve Board") or the Federal Deposit Insurance Corporation (hereinafter, the "FDIC").

(4) The director of banks finds and determines that, pursuant to RCW 30.04.111(5) and 30.04.215 (3) and (5), it serves the convenience and advantage of depositors, borrowers, and the general public, and further maintains the fairness of competition between state-chartered banks and national banks, that, on or after January 21, 2013, banks under Title 30 RCW be permitted to continue to invest in derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions as national banks are generally permitted to under the National Bank Act (12 U.S.C. Sec. 84(b)) and applicable rules of the Office of the Comptroller of the Currency (hereinafter, "OCC"), subject to (a) the restrictions, limitations, and requirements applicable to such powers and authorities of national banks, and (b) the authority of the division to adopt and promulgate rules for banks, which, consistent with Title 30 RCW, vary from the precise powers and authorities of national banks.

(5) The director of banks finds and determines that, pursuant to RCW 32.08.157, a mutual or stock savings bank under Title 32 RCW may be permitted to engage in derivative transactions on or after January 21, 2013, the same as for a bank under Title 30 RCW, provided it subjects itself to all of the restrictions, limitations, and requirements for exercise of any powers and authorities under RCW 30.04.111 as set forth in this chapter respecting loans and extensions of credit applicable to banks under Title 30 RCW.

(6) There are certain standards of safety and soundness embodied in definitions of terms and other provisions used in RCW 30.04.111, including, without limitation, the term "capital and surplus," which have heretofore been inconsistent with the standards for computation of lending limits for national banks under the National Bank Act and the OCC rules. Pursuant to RCW 30.04.215 (3) and (5), the director of banks finds and determines that it both serves the convenience and advantage of depositors, borrowers, and the general public, and further maintains the fairness of competition and parity between Washington state-chartered banks and national banks, if the division adopts, for purposes of RCW 30.04.111, the same definition of "capital and surplus" as permitted for national banks, while maintaining the higher general lending limit of twenty percent of "capital and surplus" for banks under Title 30 RCW than exists for national banks under the OCC rules. In addition, the director of banks finds and determines that changes in other definitions of terms and technical provisions, as set forth in this chapter, serve the convenience and advantage of depositors, borrowers, and the general public, and further maintain the fairness of competition and parity between Washington state-chartered banks and national banks.

(7) Since RCW 30.04.111 does not define "loans and extensions of credit" and the words "extensions of credit" are not specified, the director of banks herein exercises the director of bank's broad administrative authority under RCW 30.04.030 and looks to applicable federal banking law and regulation for clarification of the term "extensions of credit," in keeping with well-settled principles of statutory construction. Accordingly, in promulgating and adopting the definition of "loans and extensions of credit" set forth in this chapter, the director of banks is herein guided by the restrictions on insider lending set forth in Federal Reserve Board Regulation O, at 12 C.F.R. Sec. 215.3, to the extent that (a) "extension of credit" has been therein broadly defined by the Federal Reserve Board to include "an extension of credit in any manner whatsoever" and (b) on account of Regulation O having been adopted by the Federal Reserve Board based on comparable principles of safety and soundness in regard to banks.

(8) The director of banks finds and determines that certain powers and authorities of an out-of-state state-chartered bank with a branch or branches in Washington state, which affect the operations of banking and delivery of financial services in Washington state, and which provide certain exceptions to the general lending limit in emergency circumstances, ought to and will be deemed to be exceptions to the general lending limit under RCW 30.04.111, subject to the conditions set forth in this chapter.

(9) These rules and regulations are intended to:

(a) Prevent one person, or a relatively small group of persons who directly benefit from each other or who are engaged in a common enterprise, from borrowing or otherwise obtaining an unduly large amount of a bank's funds or other extension of credit;

(b) Safeguard a bank's depositors by establishing and maintaining standards that promote spreading of a bank's loans and extensions of credit among a relatively large number of persons engaged in different lines of business; and

(c) Prescribe standards of safety and soundness with respect to the credit exposure of a bank to its investment in derivative transactions, and to the extent required by the board of governors of the Federal Reserve System and the Federal Deposit Insurance Corporation for state member banks and state insured banks, respectively, to the credit exposure of a bank to its investment in repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions.

(10) These rules include, without limitation, provisions for:

(a) Defining or further defining or clarifying terms used in RCW 30.04.111;

(b) Establishing limits or requirements other than those specified in RCW 30.04.111 for particular classes or categories of loans and extensions of credit;

(c) Determining when a loan or extension of credit putatively made to a person shall, for purposes of this section, be attributed to another person;

(d) Setting standards for computation of time in relation to determining limits on loans and extensions of credit; and

(e) Implementing and incorporating other changes in limits on loans and extensions of credit necessary to conform to federal statute and rule required or otherwise authorized by RCW 30.04.111.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-003, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-005 "Loans and extensions of credit" and "contractual commitment to advance funds"—Defined. (1) **"Loan or extension of credit"** generally includes:

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

(b) Any credit exposure of a bank arising from a derivative transaction or a securities financing transaction, but only to the extent that a securities financing transaction is required, by the Federal Reserve Board or the FDIC, with respect to state member banks and state insured banks, respectively, to be treated as a loan or extension of credit for purposes of RCW 30.04.111 and this chapter; and

(c) Any contractual commitment to advance funds, and includes a renewal, modification, or extension of the maturity date of a loan or extension of credit.

(2) Notwithstanding any other provision of this section, a "loan or extension of credit" excludes the following:

(a) Special exceptions, conditions and limitations to the general lending limit to the extent set forth in WAC 208-512A-020 through 208-512A-090, inclusive;

(b) A renewal, extension or restructuring of an existing loan, with interest paid current and no further advance of funds, by a bank under the direction and control of a conservator appointed by the director;

(c) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by WAC 208-512A-015), or a new borrower replaces the original borrower, or unless the division determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(d) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(e) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(f) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(g) Amounts paid against uncollected funds in the normal process of collection;

(h) Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, or securities listed in section 5 (c)(1)(C), (D), (E), and (F) of the Home Owners Loan Act and general obligations of a state or subdivision as listed in section 5 (c)(1)(H) of the Home Owners Loan Act, at 12 U.S.C. Sec. 1464 (c)(1)(C), (D), (E), (F), and (H);

(i) Intraday credit exposures arising from a derivative transaction or securities financing transaction; and

(j) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to WAC 208-512A-012, rather than a violation, if:

(i) The originating bank had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's lending limit;

(ii) The participant reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

(iii) The participation was to be funded by close of business of the originating bank's next business day.

As used in this chapter and to the extent used in RCW 30.04.111, the term "loans and extensions of credit," unless otherwise indicated, shall have the meaning set forth in this section. As used in RCW 30.04.111 and this chapter, the terms "loan," "loans," "extension of credit," "extensions of credit," and "loan or extension of credit" refer, as applicable, to the singular or plural of "loans and extensions of credit."

(3) **"Contractual commitment to advance funds"** generally means a bank's obligation to advance funds under a legally binding contractual commitment to make a loan or extension of credit.

(a) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" includes:

(i) A bank's obligation to make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the

customer's contract with the third person, or to make payments upon some other stated condition;

(ii) A bank's obligation to guarantee or act as surety for the benefit of a person; and

(iii) A bank's obligation to advance funds under a standby letter of credit, a put, or other similar arrangement.

(b) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" does not include:

(i) The undisbursed portion of any loan or extension of credit;

(ii) The entire amount of any such commitment that has not yet been drawn upon; and

(iii) Letters of credit and similar instrument:

(A) Which do not guarantee payment;

(B) Which do not provide for payment in the event of a default of a third party; and

(C) In which the issuing bank expects the beneficiary to draw on the issuer.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-005, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-007 Other general chapter definitions. As used in this chapter and to the extent used in RCW 30.04.111, the following additional terms, unless otherwise indicated, mean:

(1) **"ALLL"** means a bank's allowance for loan and lease losses.

(2) **"Bank"** includes a commercial bank chartered and regulated under Title 30 RCW and, to the extent applicable to this chapter pursuant to WAC 208-512A-009, a mutual or stock savings bank chartered and regulated under Title 32 RCW.

(3) **"Borrower"** means:

(a) A person who is named as a borrower or debtor in a loan or extension of credit;

(b) A person to whom a bank has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank; or

(c) Any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the "direct benefit" or the "common enterprise" tests set forth in WAC 208-512A-100.

(4) **"Call report"** means a bank's Consolidated Report of Condition and Income.

(5) **"Capital and surplus"** means:

(a) A bank's Tier 1 and Tier 2 capital as reported in a bank's call report; plus

(b) The balance of a bank's ALLL not included in the bank's Tier 2 capital as reported in the bank's call report.

(6) **"Close of business"** means the time at which a bank closes its accounting records for the business day.

(7) **"Control"** is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons:

(a) Owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(c) Has the power to exercise a controlling influence over the management or policies of another person.

(8) **"Credit derivative"** has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(9) **"Current market value"** means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(10) **"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.

(11) **"Director of banks"** means the director of the division of banks of the department of financial institutions.

(12) **"Division"** means the division of banks of the department of financial institutions.

(13) **"Effective margining arrangement"** means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty created by the derivative transactions covered by the agreement, subject to any monetary threshold requirements as prudently determined by the bank and its counterparty as contained in the master legal agreement.

(14) **"Eligible credit derivative"** means a single-name credit derivative or a standard, nontranched index credit derivative provided that:

(a) The derivative contract meets the requirements of an eligible guarantee, as defined in 12 C.F.R. Part 3, Appendix C, and has been confirmed by the protection purchaser and the protection provider;

(b) Any assignment of the derivative contract has been confirmed by all relevant parties;

(c) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(d) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(e) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(f) If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(g) If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(15) **"Eligible guarantee"** means a guarantee that:

(a) Is written and unconditional;

(b) Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;

(c) Gives the beneficiary a direct claim against the protection provider;

(d) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(e) Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(f) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(g) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and

(h) Is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:

(i) Does not control the bank; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

(16) **"Eligible protection provider"** means:

(a) A sovereign entity (a central government, including the U.S. government, an agency, department, ministry, or central bank);

(b) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(c) A federal home loan bank;

(d) The Federal Agricultural Mortgage Corporation;

(e) A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(f) A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;

(g) A savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, at 12 U.S.C. 1467a;

(h) A securities broker or dealer registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq.;

(i) An insurance company that is subject to the supervision of the Washington state office of insurance commissioner;

(j) A foreign banking organization;

(k) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

(l) A qualifying central counterparty.

(17) **"FDIC"** means the Federal Deposit Insurance Corporation.

(18) **"Federal Reserve Board"** means the board of governors of the Federal Reserve System.

(19) **"Financial instrument"** means stocks, notes, bonds, and debentures traded on a national securities exchange, over-the-counter (OTC) margin stocks as defined in Regulation U, 12 C.F.R. Part 221, commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which banks may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to U.S. dollars. The term "financial instrument" does not include mortgages.

(20) **"OCC"** means the Office of the Comptroller of the Currency.

(21) **"Person"** means: An individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; limited liability company; limited liability partnership; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

(22) **"Qualifying central counterparty"** has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(23) **"Qualifying master netting agreement"** has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(24) **"Readily marketable collateral"** means financial instruments and bullion which are saleable under ordinary circumstances with reasonable promptness at a fair market value determined by daily quotations based on actual transactions on an auction or a similarly available daily bid and ask price market.

(25) **"Readily marketable staple"** means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations. An article comes within this definition if the exact price is easy to determine and the staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral. Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions existing at the time the loan or extension of credit that is secured by the staples is made.

(26) **"Securities financing transaction"** means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(27) **"State insured bank"** denotes a bank, as defined in this chapter, which is an "insured depository institution" as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(28) **"State member bank"** denotes a bank, as defined in this chapter, which is a member of a federal reserve bank as authorized under section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321) and, for purposes of this chapter, has the same meaning as that term is defined in section 3(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(d)).

(29) **"Subsidiary"** means:

(a) Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such person, or is held by it with power to vote;

(b) Any company the election of a majority of whose directors is controlled in any manner by such person; or

(c) Any company with respect to the management or policies of which such person has power, directly or indirectly, to exercise a controlling influence, as determined by the division, after notice and opportunity for hearing.

(30) **"Type I securities"** has the same meaning as set forth in 12 C.F.R. Sec. 1.2(j) and includes:

(a) Obligations of the United States;

(b) Obligations issued, insured, or guaranteed by a department or an agency of the United States government, if the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(c) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a state of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of nonpayment by the third-party obligor(s);

(d) General obligations of a state of the United States or any political subdivision thereof; and

(e) Municipal bonds if the bank is well capitalized as defined as that term is used in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1831o (b)(1).

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-007, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-009 Applicability of chapter. This chapter is applicable, notwithstanding any other provision thereof, only to:

(1) A commercial bank under Title 30 RCW;

(2) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in derivative transactions;

(3) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in securities financing transactions, if:

(a) The mutual or stock savings bank is a state member bank and the Federal Reserve Board has determined that loans and extensions of credit apply to securities financing transactions; or

(b) The FDIC has determined that loans and extensions of credit apply to securities financing transactions in relation to state-chartered banks and savings banks; and

(4) A mutual or stock savings bank under Title 32 RCW that has notified the division, as of January 21, 2013, or thereafter, that it has elected to be regulated by and comply with this chapter, even if it does not invest in derivative transactions or securities financing transactions.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-009, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-010 General limitation on loans and extensions of credit. The total amount of loans and extensions of credit by a bank to a person outstanding at one time and not fully secured by collateral in a manner set forth in WAC 208-512A-011, shall not exceed twenty percent of the capital and surplus of such bank; provided, that a bank shall not be deemed to have violated this section on account of any loan or extension of credit, if such loan or extension of credit would be classified as an exception to the lending limit for national banks or federal savings associations under applicable federal banking laws and rules that existed as of July 28, 1985, or as of any subsequent date not later than July 27, 2003.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-010, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-011 Exception to general limitation—Loans and extensions of credit fully secured by readily marketable collateral. (1) A loan or extension of credit by a bank 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, shall not be subject to any limitations based on capital and surplus.

(2) Notwithstanding subsection (1) of this section, if the total of such loans and extensions of credit, together with loans made under general limitations pursuant to WAC 208-512A-010 exceed forty-five percent of capital and surplus, the division will review the credits as a possible concentration, with regard to both risk diversification within the bank's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 208-512A-010.

(3) Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collat-

eral having a current market value of at least one hundred fifteen percent of the amount of the loan or extension of credit at all times.

(4) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(5) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below one hundred fifteen percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-011, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-012 Exception to general limitation—Nonconforming loans. (1) A loan or extension of credit that was within the limit on loans and extensions of credit when made, will not be deemed a violation of the legal lending limit and 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:

(a) 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

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

(c) In the case of an extension of credit arising from a derivative transaction (or, if required by the FDIC or Federal Reserve Board, a securities financing transaction), and measured by the internal model method described in WAC 208-512A-300, the extension of credit subject to the lending limit increases after execution of the transaction.

(2) A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of subsection (1)(a) or (c) of this section 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.

(3) A bank must bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (1)(b) of this section 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 from taking action.

(4) Notwithstanding any provision of this section, the director of banks may by interpretation and policy statement prescribe standards for treatment of nonconforming extensions of credit that are derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or state member banks, rely upon rules or interpretations of the FDIC or the Federal Reserve Board, as applicable.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-012, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-013 Exception to general limitation—Declining capital—Inability to otherwise effectively operate in marketplace—Director discretion. Notwithstanding any provision of this chapter 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 of banks may, upon written application and in the exercise of his or her discretion, grant a bank temporary permission to fund loans and extensions of credit in excess of such bank's limit on loans and extensions of credit. In the exercise of discretion, the director of banks may further specify conditions for granting such emergency exception and may limit emergency lending authority to particular types or classes of loans and extensions of credit.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-013, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-014 Exception to general limitation—Extenuating facts and circumstances—Standards for division determination—Director of banks' discretion. (1) Notwithstanding any provision of this chapter to the contrary, the director of banks, in his or her discretion, may grant an exception to the limit on loans and extensions of credit based on extenuating facts and circumstances.

(2) In deciding whether to grant an exception under this section, the director of banks 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 the bank's management to handle the proposed transaction and any resulting safety and soundness issues;

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

(f) The extenuating facts and circumstances that warrant an exception in light of the purpose of the limit on loans and extensions of credit set forth in RCW 30.04.111 and this chapter.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-014, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-015 Renewals and additional advances under a contractual commitment to advance funds—Project funding. (1) A bank may renew a contractual commitment to advance funds and complete funding under that commitment if all of the following criteria are met:

(a) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank;

(b) The completion of funding will enable the borrower to complete a project for which the contractual commitment to advance funds was made;

(c) The amount of the additional funding does not exceed the unfunded portion of the bank's contractual commitment to advance funds; and

(d) Such contractual commitment to advance funds, when combined with all other outstanding loans and contractual commitments to advance funds to a borrower, was within the bank's lending limit when entered into, calculated pursuant to WAC 208-512A-200.

(2) In determining whether a contractual commitment to advance funds is within the bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's commitment and that would be excluded from the definition of loan or extension of credit.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-015, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-020 Special rule—Discount of commercial or business paper. A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) This exclusion applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in the fabrication of a product, or to be used for any other business purposes which may reasonably be expected to provide funds for payment of the paper; and

(2) Loans or extensions of credit arising from the discount of paper must bear the full recourse endorsement of the owner; provided, however, that:

(a) Loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; and

(b) If transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-020, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-030 Special rule—Purchase of bankers' acceptances. The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and which are issued by other depositary institutions, is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) Acceptances by a bank of time drafts which do not meet the requirements for discount with a Federal Reserve Bank, are subject to the general twenty percent limitation of WAC 208-512A-010; and

(2) During any period within which a bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to appropriate limitations.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-030, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-040 Special rule—Readily marketable staples. (1) 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 thirty-five percent of capital and surplus, in addition to the general limit set forth in WAC 208-512A-010, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit.

(2) The following additional terms and conditions shall apply to a loan or extension of credit secured by staples:

(a) The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(b) For purposes of such a transaction, "capital and surplus" shall be calculated at thirty-five percent in addition to the general twenty percent limitation.

(c) A "readily marketable staple" means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize

upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral.

(d) Staples eligible for this exception must be nonperishable, may be refrigerated or frozen.

(e) This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date.

(f) Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable staples.

(g) Since commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(h) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than ten months if secured by nonperishable staples, and (ii) not more than six months if secured by refrigerated or frozen staples.

(i) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of the instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by one of these documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(j) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premises.

(k) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with a registrar whose consent is required before the commodities can be withdrawn from the warehouse.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-040, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-050 Special rule—U.S. bonds, notes, certificates of indebtedness, or treasury bills, etc. Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States are excluded from the calculation of the general lending limit in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exception applies only to loans or extensions of credit which are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(2) If the market value of the collateral declines so that the loan is no longer in conformance with this exception and exceeds the general lending limit set forth in WAC 208-512A-010, the loan must be brought into conformance within five business days.

(3) Securities issued by any department, agency, bureau, board, commission or establishment of the United States, or any corporation wholly owned, directly or indirectly, shall not be considered eligible collateral for purposes of this subsection (3), unless such securities shall be direct obligation of or fully guaranteed as to principal and interest by the United States.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-050, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-060 Special rule—Unconditional takeout commitments or guarantees of federal government. 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 be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exclusion will apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(2) For purposes of this exclusion, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(3) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-060, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-070 Special rule—Segregated deposit account in lender bank. Loans or extensions of credit secured by a segregated deposit account in the lending bank are excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(2) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to United States dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit. If the United States dollar value of the deposit falls to the extent that the loan is in nonconformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for a bank to take deposits denominated in foreign currencies.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-070, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-080 Special rule—Sale of bank's assets—Unpaid portion of purchase price. The unpaid portion of the purchase price of a sale of a bank's asset or assets, if secured by such asset or assets, shall be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Any sale of a bank's asset or assets, resulting in an unpaid purchase price exceeding the bank's lending limit must be approved in advance of the sale by the board of directors, including the terms of payment of such unpaid purchase price, and if the purchase is by a director, officer or employee of the bank, shall conform to RCW 30.12.050 and the Federal Reserve Board's Regulation O, at 12 C.F.R. Sec. 215.3.

(2) The bank must ensure that a security interest has been perfected in the collateral, including execution and recording or filing of documents and any other action required by state law.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-080, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-090 Special rule—Discount of negotiable or nonnegotiable installment consumer paper. (1) 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 to a maximum limitation equal to twenty per centum of capital and surplus.

(2) If a 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.

(3) This exception allows a bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to twenty per centum of its capital and surplus if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(4) For purposes of this section:

(a) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale; and

(b) "Consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(5) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the bank's chairman or chief executive officer pursuant to authorization by the board of directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(6) If a loan under this subsection is in default and the dealer or seller of the loan has contractually committed to repurchase the paper, then the loan will be aggregated with the dealer or seller's other outstanding debt for lending limit

purposes and will be subject to the twenty per centum limitation.

(7) If loan payments are received and/or controlled by the dealer or seller of the paper and remitted to the bank, then those loans will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-090, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-100 Combining loans and extensions of credit made to separate persons—Generally. (1) Loans or extensions of credit to one person will be attributed to another person or persons when:

(a) The proceeds of the loans or extensions of credit are intended for or are used for the direct benefit of the other person or persons; or

(b) A "common enterprise" exists between the persons.

(2) The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the "direct benefit" of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction, where the proceeds are used to acquire property, goods, or services.

(3) Determination of whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of the applicable transactions. A "common enterprise" exists when:

(a) The expected source of repayment for each of the multiple loans or extensions of credit is the same for each person; or

(b) Separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own or control more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to persons who are related by common control and (i) are engaged in interdependent business or (ii) there is substantial financial interdependence among them; or

(d) The division determines, based upon a reasonable evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(4) "Substantial financial interdependence" occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments).

(5) Throughout this section, the term "control" is presumed to exist when one or more persons acting in concert, directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person. "Common control" includes control of one person by another person.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-100, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-110 Loans to partnerships, joint ventures, and associations. (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of this chapter, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

(2) Loans or extensions of credit to members of a partnership, joint venture, or association shall be considered loans or extensions of credit to the partnership, joint venture, or association if one or more of the tests set forth in WAC 208-512A-100 is satisfied with respect to one or more of the members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association unless one or more of the tests set forth in WAC 208-512A-100 is satisfied with respect to such other members. The tests set forth in WAC 208-512A-100 shall be deemed satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The rule set forth in subsection (1) of this section is not applicable to limited partners in limited partnerships or to members of joint ventures if such partners or members, by the terms of the partnership or membership agreement, are not to be held liable for the debts or actions of the partnership, joint venture, or association. However, the rules set forth in WAC 208-512A-100 are applicable to such partners or members.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-110, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-120 Loans to limited liability companies. Loans or extensions of credit to a limited liability company shall, for purposes of this chapter, be considered loans or extensions of credit to a corporation, and shall not be subject to the provisions of WAC 208-512A-110.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-120, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-130 Loans to subsidiaries and corporate groups. (1) Loans or extensions of credit to a person and its subsidiaries or to subsidiaries of one person will not be combined where the person and its subsidiaries are not engaged in a "common enterprise" as defined in WAC 208-512A-100(2).

(2) If members of a corporate group (a person and all its subsidiaries) are either:

(a) "Substantially financially interdependent," as defined in WAC 208-512A-100(3); or

(b) Engaged in "common enterprise," as defined in WAC 208-512A-100(2), then the total amount of loans or extensions of credit to these persons must be attributed to each of the other persons in the corporate group.

Conversely, if members of a corporate group are neither substantially financially interdependent nor engaged in "common enterprise," then the loans to different members are separately subject to a twenty percent limitation. In no event may the total amount of loans or extensions of credit by a state bank to a corporate group exceed fifty percent of the bank's capital and surplus.

(3) For purposes of this section, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns, directly or indirectly, more than fifty percent of the voting securities or voting interests of the corporation or limited liability company.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-130, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-200 Computation of time—Calculation date of lending limits. (1) For purposes of determining compliance with RCW 30.04.111 and this chapter, a bank shall determine its lending limit as of the most recent of the following dates:

(a) The last day of the preceding calendar quarter; or

(b) The date on which there is a change in the bank's capital category for purposes of the Federal Deposit Insurance Act, at 12 U.S.C. 1831o (b)(1).

(2) A bank's lending limit calculated in accordance with subsection (1)(a) of this section will be effective as of the earlier of the following dates:

(a) The date on which the bank's call report is submitted; or

(b) The date on which the bank's call report is required to be submitted.

(3) A bank's lending limit calculated in accordance with subsection (1)(b) of this section will be effective on the date that the limit is to be calculated.

(4) If the division determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by subsection (1) of this section, the division may provide written notice to the bank directing it to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-200, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-300 Credit exposure arising from derivative transactions. (1) This section sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's lending limit pursuant to RCW 30.04.111 and this chapter.

(2) Subject to the direction of the division, a bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by means of:

(a) The internal model method;

(b) The conversion factor matrix method; or

(c) The remaining maturity method.

(3) Except as otherwise required by the division, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(4) The division may require a bank to use the internal model method, the conversion factor matrix method, or the remaining maturity method to calculate the credit exposure of derivative transactions if it finds that such method is necessary to promote the safety and soundness of the bank.

(5) The requirements for using the internal model method are as follows:

(a) The credit exposure of a derivative transaction under the internal model method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(b) A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, than the current credit exposure is zero.

(c) A bank may not use the internal model method in its calculation of potential credit exposure to a derivative transaction unless the bank obtains prior approval of the division or unless it is already using the internal model method, as of January 21, 2013, and the division thereafter determines that the bank's internal model method is safe and sound and that bank's management is competent to administer its derivative investment program using such internal model method.

(d) A bank that calculates its credit exposure by using the internal model method may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(6) The credit exposure arising from a derivative transaction under the conversion factor matrix method shall equal and remain fixed at the potential future credit exposure of the derivative transaction as determined at the execution of the transaction by reference to Table 1 below.

Table 1 - Conversion Factor Matrix for Calculating Potential Future Credit Exposure[1]

Original Maturity[2]	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other[3] (includes commodities and precious metals except gold)
1 year or less	0.015	0.015	0.20	0.06

Original Maturity[2]	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other[3] (includes commodities and precious metals except gold)
Over 1 to 3 years	0.030	0.030	0.20	0.18
Over 3 to 5 years	0.060	0.060	0.20	0.30
Over 5 to 10 years	0.120	0.120	0.20	0.60
Over ten years	0.300	0.300	0.20	1.00

[1] For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

[3]Transactions not explicitly covered by any other column in Table 1 are to be treated as "Other."

(7) The credit exposure arising from a derivative transaction under the remaining maturity method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to Table 2 below.

Table 2 - Remaining Maturity Factor for Calculating Credit Exposure

	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other[1] (includes commodities and precious metals except gold)
Multiplicative Factor	1.5%	1.5%	6%	6%

[1]Transactions not explicitly covered by any other column in Table 2 are to be treated as "Other."

(8) Notwithstanding any other provision of this section, a bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement, shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(9) A bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-300, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-310 Securities financing transactions. (1) Only to the extent required by the FDIC, a bank that is a state insured bank shall comply with all rules governing limits on extensions of credit related to a state insured bank's credit exposure to securities financing transactions.

(2) Only to the extent required by the Federal Reserve Board, a bank that is a state member bank shall comply with all rules governing limits on extensions of credit related to a state member bank's credit exposure to securities financing transactions.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-310, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-320 Policies and procedures related to derivative transactions, etc. To fulfill the requirements of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), and the requirements (if any) of the FDIC and the Federal Reserve Board in relation to securities financing transactions by state insured banks and state member banks, respectively, the division may publish and implement policies and procedures, consistent with RCW 30.04.111 and this chapter, related to examination for and supervision and enforcement of WAC 208-512A-300 and 208-512A-310.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-320, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-400 Effect of OCC rules, interpretations and opinions as guidance. Where RCW 30.04.111 and this chapter do not specifically address certain transactions involving loans and extensions of credit, the division may, as necessary, in its interpretations and supervision and enforcement of banks, be guided by applicable rules, interpretations, and opinions of the Office of the Comptroller of the Currency in the interest of a bank's safety and soundness, but only to the extent that such rules, interpretations, and opinions are compatible with the provisions of RCW 30.04.111 and this chapter.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-400, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-500 Loans and extensions of credit to insiders and their immediate family. No provision of Titles 30 and 32 RCW, chapter 208-512 WAC, or this chapter, shall limit the duty of a bank or a bank's affiliate, independent of any requirements of this chapter, to also comply with the provisions of Federal Reserve Board Regulation O,

12 C.F.R. Part 215, which relates to loans and extensions of credit to insiders of a bank or bank affiliate and their immediate family.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-500, filed 1/8/13, effective 2/8/13.]

WAC 208-512A-600 Transitional rules. (1) Loans or extensions of credit that were in violation of RCW 30.04.111 and the former lending limits rules prior to January 21, 2013, will be considered to remain in violation of law until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this chapter. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(2) A bank that has outstanding loans or extensions of credit to a person in violation of RCW 30.04.111 and the former lending limits rules as of January 21, 2013, may make additional advances to such person after those dates if the additional advances are permitted under this chapter. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 and the former lending limits rules prior to January 21, 2013, but are not in conformance with this chapter will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with this chapter may be made on or after January 21, 2013, if the nonconformity is caused by WAC 208-512A-005 (1)(b) and 208-512A-300; however, all loans or extensions of credit made under such renewals or extensions must conform with this chapter no later than June 1, 2013. Loans or extensions of credit which are not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(4) If a bank, prior to January 21, 2013, entered into a legally binding commitment to advance funds on or after such date, and such commitment was in conformance with RCW 30.04.111 and the former lending limits rules, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with this chapter. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation.

(5) As used in this section, "former lending limits rules" means WAC 208-512-210 through 208-512-300, inclusive.

(6) Notwithstanding any other provision of this chapter, a savings bank under Title 32 RCW will not be considered to be in violation of law during the existing contract terms of any loan or extension of credit, which:

(a) In the case of a savings bank under WAC 208-512A-009 (2) or (3), was made and funded prior to June 1, 2013; or

(b) In the case of a savings bank under WAC 208-512A-009(4) but not subject to WAC 208-512A-009 (2) or (3), was made and funded prior to a date, earlier than June 1, 2013, upon which the savings bank gave notice to the division of its election to conform to the provisions of this chapter pursuant to WAC 208-512A-009(4).

(7) Notwithstanding any other provision of this chapter, a renewal or extension of such a loan or extension of credit by a savings bank under subsection (6)(a) and (b) of this section, which is not in conformance with this chapter, may be made if the nonconformity is caused by WAC 208-512A-005 (1)(b) and 208-512A-300; however, any loan or extension of credit made under such renewals or extensions must conform with this chapter no later than December 31, 2013. However, a loan or extension of credit by such a savings bank which is not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(8) A bank will not be deemed to be in violation of law, including this chapter, if:

(a) It is engaged in derivative transactions prior to January 21, 2013;

(b) Uses an internal model method in connection with any part of its derivative transaction program;

(c) It is later determined by the division that the bank's specific internal model method is unsafe and unsound or that the bank's management is not competent to administer its derivative transaction program using such specific internal model method; and

(d) The director of banks does not find that the bank has shown a lack of good faith in its use of a specific internal model method.

(9) In the event of a determination pursuant to subsection (8) of this section, the division will treat the bank's derivative transactions program as "nonconforming" rather than a violation of law. In that event, the director of banks may issue a directive to the bank to exercise reasonable efforts to either bring its derivative transactions program into compliance or, if the director of banks so finds in exceptional cases, unwind its derivative transactions program.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-600, filed 1/8/13, effective 2/8/13.]