

1301:1-3-04 **Insider loans.**

(A) For the purpose of this rule the following definitions apply unless otherwise specified:

(1) "Affiliate" means any company of which a bank is a subsidiary or any other subsidiary of that company.

(2) "Bank" means any banking institution, including any subsidiary of a bank. "Bank" does not include any foreign bank that maintains a branch in the ~~united states~~ United States, whether or not the branch is insured.

(3) "Company" means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, "company" does not include either of the following:

(a) Depository institution;

(b) A corporation the majority of the shares of which are owned by the United States of by any state.

(4)

(a) "Control" of a company or bank means that, directly or indirectly, or acting through or in concert with one or more persons one of the following exists:

(i) A person owns, controls, or has the power to vote twenty-five per cent or more of any class of voting securities of the company or bank;

(ii) A person controls in any manner the election of a majority of the directors or trustees of the company or bank;

(iii) A person has the power to exercise a controlling influence over the management or policies of the company or bank.

(b) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank if either of the following exists:

(i) Both of the following apply:

(a) The person is an executive officer or director of the company or bank;

(b) The person directly or indirectly owns, controls or has the power to vote more than ten per cent of any class of voting securities of the company or bank;

(ii) Both of the following apply:

(a) The person directly or indirectly owns, controls, or has the power to vote more than ten per cent of any class of voting securities of the company or bank;

(b) No other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(c) An individual does not have control, including the power to exercise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual's position as an officer or director of the company or bank.

(d) A person may rebut a presumption established by paragraph (A)(4) of this rule by submitting to the superintendent of financial institutions written materials that, in the superintendent's judgment, demonstrate an absence of control.

(5)

(a) "Director" of a company or bank means any director of the company or bank, whether or not receiving compensation. An advisory director is not considered a director if none of the following apply to the advisory director:

(i) The advisory director is not elected by the shareholders of the company or bank;

(ii) The advisory director is not authorized to vote on matters before the board of directors;

- (iii) The advisory director provides solely general policy advice to the board of directors.
- (b) Extensions of credit to a director of an affiliate of a bank are not subject to paragraphs (C), (E), and (F) of this rule if all of the following apply:
 - (i) The director of the affiliate is excluded, by resolution of the board of directors or by the code of regulations of the bank, from participation in major policymaking functions of the bank, and the director does not actually participate in the major policymaking functions of the bank;
 - (ii) The affiliate does not control the bank;
 - (iii) As determined annually, the assets of the affiliate do not constitute more than ten per cent of the consolidated assets of the company that both:
 - (a) Controls the bank;
 - (b) Is not controlled by any other company;
 - (iv) The director of the affiliate is not otherwise subject to paragraphs (c), (e), and (f) of this rule.
- (c) For purposes of paragraph (C)(5)(b)(i) of this rule, a resolution of the board of directors or the bank's code of regulations may do either of the following:
 - (i) Include the director, by name or by title, in a list of persons excluded from participation in major policy-making functions of the bank;
 - (ii) Not include the director in a list of persons authorized, by name or by title, to participate in major policy-making functions of the bank.
- (6)
 - (a) "Executive officer" of a company or bank means a person who participates or has authority to participate, other than in the capacity of

a director, in major policymaking functions of the company or bank, whether or not the officer has an official title, the title designates the officer an assistant, or the officer is serving without salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are executive officers, unless the officer is excluded, by resolution of the board of directors or by the code of regulations of the bank or company, from participation, other than in the capacity of a director, in major policymaking functions of the bank or company, and the officer does not actually participate in major policymaking functions.

- (b) Extensions of credit to an executive officer of an affiliate of a bank are not subject to paragraphs (C), (E), and (F) of this rule if all of the following apply:
 - (i) The executive officer is excluded, by resolution of the board of directors or by the code of regulations of the bank, from participation in major policymaking functions of the bank, and the executive officer does not actually participate in the major policymaking functions of the bank;
 - (ii) The affiliate does not control the bank;
 - (iii) As determined annually, the assets of the affiliate do not constitute more than ten per cent of the consolidated assets of the company that both:
 - (a) Controls the bank;
 - (b) Is not controlled by any other company;
 - (iv) The executive officer of the affiliate is not otherwise subject to paragraphs (C), (E), and (F) of this rule.
- (c) For purposes of paragraphs (C)(6)(a) and (C)(6)(b)(i) of this rule, a resolution of the board of directors or the bank's code of regulations may do either of the following:
 - (i) Include the executive officer, by name or by title, in a list of persons excluded from participation in major policymaking functions of the bank;

- (ii) Not include the executive officer in a list of persons authorized, by name or by title, to participate in major policymaking functions of the bank.
- (7) "Foreign bank" has the meaning given in section 1119.01 of the Revised Code.
- (8) "Immediate family" means the spouse of an individual, the individual's minor children, and any of the individual's children, including adults, residing in the individual's home.
- (9) "Insider" means an executive officer, director, or principal shareholder, and includes any of their related interests.
- (10) The lending limit for a bank is governed by section 1109.22 of the Revised Code and rule 1301:1-3-01 of the Administrative Code.
- (11) "Pay an overdraft on an account" means to pay an amount upon the order of an account holder in excess of funds on deposit in the account.
- (12) "Person" means an individual or a company.
- (13)
 - (a) "Principal shareholder" means a person, other than an insured bank, that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than ten per cent of any class of voting securities of bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.
 - (b) A principal shareholder of a bank does not include a company of which a bank is a subsidiary.
- (14) "Related interest of a person" means either of the following:
 - (a) A company that is controlled by that person;
 - (b) A political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(15) "Subsidiary" has the meaning given in division (G) of section 1109.53 of the Revised Code, but does not include a subsidiary of a bank.

(B)

(1) An extension of credit is a making or renewal of any loan, a granting of a line of credit, or an extending of credit in any manner whatsoever, and includes all of the following:

- (a) A purchase of securities, assets or obligations under a repurchase agreement;
- (b) An advance by means of an overdraft, cash item, or otherwise;
- (c) Issuance of a standby letter of credit, or other similar arrangement regardless of name or description, or an ineligible acceptance;
- (d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which an insider may be liable as maker, drawer, endorser, guarantor, or surety;
- (e) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for either of the following:
 - (i) Accrued interest;
 - (ii) Taxes, insurance, or other expenses incidental to the existing indebtedness;
- (f) An advance of unearned salary or other unearned compensation for a period in excess of thirty days;
- (g) Any other similar transaction as a result of which a person becomes obligated to pay money, or its equivalent, to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(2) An extension of credit does not include any of the following:

- (a) An advance against accrued salary or other accrued compensation, or an

advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

- (b) A receipt by a bank of a check deposited in or delivered to the bank in the usual course of business unless it results in the carrying of a cash item for or the granting of an overdraft, other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in paragraph (C) of this rule;
- (c) An acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through any of the following:
 - (i) A merger or consolidation of banks or a similar transaction by which a bank acquires assets and assumes liabilities of another bank or similar organization;
 - (ii) Foreclosure on collateral or similar proceeding for the protection of the bank, provided that the indebtedness is not held for a period of more than three years from the date of the acquisition, subject to extension by the superintendent for good cause;
- (d) Either of the following provisions for the protection of a bank:
 - (i) An endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith;
 - (ii) Any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it;
- (e) Indebtedness of fifteen thousand dollars or less arising by reason of any general arrangement by which a bank does either of the following:
 - (i) Acquires charge or time credit accounts;
 - (ii) Makes payments to or on behalf of participants in a bank credit card plan, check credit plan, or similar open-end credit plan, provided both of the following conditions are met:
 - (a) The indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and

compliance with any dollar limit under the arrangement;

(b) The indebtedness is incurred under terms that are not more favorable than those offered to the general public;

(f) Indebtedness of five thousand dollars or less arising by reason of an interest-bearing overdraft credit plan of the type specified in paragraph (C)(5) of this rule;

(g) A discount of promissory notes, bills of exchange, conditional sales, contracts, or similar paper, without recourse.

(3) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business to be a loan, advance, or extension of credit to the depositing bank.

(4) For purposes of paragraph (C) of this rule, an extension of credit by a bank is made at the time the bank enters into a binding commitment to make the extension of credit.

(5) A participation without recourse is an extension of credit by the participating bank, not by the originating bank.

(6)

(a) Except as provided in paragraph (B)(6)(b) of this rule, an extension of credit is made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider.

(b) An extension of credit is not made to an insider under paragraph (B)(6)(a) of this rule if both of the following conditions are met:

(i) The credit is extended on terms that would satisfy the standard set forth in paragraph (C)(1) of this rule for extensions of credit to insiders;

(ii) The proceeds of the extension of credit are used in a bona fide transaction to acquire property, goods, or services for the insider.

(C)

(1)

(a) No bank may extend credit to any insider of the bank or insider of its affiliates unless the extension of credit is both of the following:

(i) Is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this rule and who are not employed by the bank;

(ii) Does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in paragraph (C)(1)(a) or paragraph (C)(5)(b)(ii) of this rule shall prohibit any extension of credit made pursuant to a benefit or compensation program that is both of the following:

(i) Widely available to employees of the bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider;

(ii) Does not give preference to any insider of the bank over other employees of the bank and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

(2)

(a) No bank may extend credit, which term includes granting a line of credit, to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five per cent of the bank's capital, unless both of the following apply:

(i) The extension of credit has been approved in advance by a majority

of the entire board of directors of that bank;

- (ii) The interested party has abstained from participating directly or indirectly in the voting.
 - (b) In no event may a bank extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person exceeds five hundred thousand dollars, except by complying with the requirements of this paragraph (C)(2) of this rule.
 - (c) Approval by the board of directors under paragraphs (C)(2)(a) and (C)(2)(b) of this rule is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (C)(2)(a) of this rule within fourteen months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of paragraph (C)(1) of this rule.
 - (d) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.
- (3) No bank may extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank specified in paragraph (A)(10) of this rule. This prohibition does not apply to an extension of credit by a bank to a company of which the bank is a subsidiary or to any other subsidiary of that company.
- (4)
- (a) A bank may not extend credit to any insider of the bank or insider of its affiliates unless the extension of credit is in an amount that, when aggregated with the amount of all out-standing extensions of credit by the bank to all such insiders, does not exceed the bank's capital.
 - (b)
 - (i) Banks with deposits of less than one hundred million dollars may by resolution of its board of directors increase the general limit

specified in paragraph (C)(4)(a) of this rule to a level not to exceed two times the bank's capital, if all of the following conditions are met:

- (a) The board of directors determines that the higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;
 - (b) The resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to its insider as a percentage of the bank's capital as of the date of the resolution;
 - (c) The bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the superintendent;
 - (d) The bank received a satisfactory composite rating in its most recent report of examination.
- (ii) If a bank has adopted a resolution authorizing a higher limit pursuant to paragraph (C)(4)(b)(i) of this rule and subsequently fails to meet the requirements of paragraph (C)(4)(b)(i)(c) or (C)(4)(b)(i)(d) of this rule, the bank shall not extend any additional credit, including a renewal of any existing extension of credit, to any insider of the bank or its affiliates unless the extension or renewal is consistent with the general limit in paragraph (C)(4)(a) of this rule.

(c)

- (i) The general limit specified in paragraph (C)(4)(a) of this rule does not apply to any of the following:
 - (a) Extensions of credit secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other obligations fully guaranteed as to principal and interest by the United States;
 - (b) 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 of any corporation wholly owned directly or indirectly by the United States;

(c) Extensions of credit secured by a perfected security interest in a segregated deposit account in the lending bank;

(d) Extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, if all of the following conditions are met:

(i) The financial condition of each maker of the consumer paper is reasonably documented in the bank's files or known to its officers;

(ii) 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 the obligation and not on any endorsement or guarantee by the insider;

(iii) The maker of the instrument is not an insider.

(ii) The exceptions in paragraphs (C)(4)(c)(i)(a) to (C)(4)(c)(i)(c) of this rule apply only to the amount of the extensions of credit that are secured in the manner described in the exceptions.

(5)

(a) No bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates on an account at the bank, unless the payment of funds is made in accordance with either of the following:

(i) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment;

(ii) A written, preauthorized transfer of funds from another account of the account holder at the bank.

- (b) The prohibition in paragraph (C)(5)(a) of this rule does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of one thousand dollars or less, if both of the following conditions are met:
 - (i) The account is not overdrawn for more than five business days;
 - (ii) The bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.
- (c) The prohibition in paragraph (C)(5)(a) of this rule does not apply to either:
 - (i) The payment by a bank of an overdraft of a principal shareholder of the bank, unless the principal shareholder is also an executive officer or director; or
 - (ii) The payment by a bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the bank or executive officer, director, or principal shareholder of its affiliates.
- (D) The following restrictions on extensions of credit by a bank to any of its executive officers apply in addition to any restrictions on extensions of credit by a bank to insiders of the bank or its affiliates set forth elsewhere in this rule. The restrictions of this paragraph apply only to executive officers of the bank and not to executive officers of its affiliates.
 - (1) No bank may extend credit to any of its executive officers, and no executive officer of a bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon conditions specified in paragraphs (D)(3) and (D)(4) of this rule.
 - (2) No bank may extend credit in an aggregate amount greater than the amount permitted in paragraph (D)(3)(d) of this rule to a partnership in which one or more of the bank's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (D)(3)(d) of this rule, the total amount of credit extended by a bank to the partnership is considered extended to each executive officer of the bank who is a member of the partnership.
 - (3) A bank is authorized to extend credit to any executive officer of the bank of any

of the following kinds and in any of the following amounts:

- (a) In any amount to finance the education of the executive officer's children;
 - (b) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if any of the following conditions that apply are met:
 - (i) The extension of credit is secured by a first lien on the residence and the residence is owned, or expected to be owned after the extension of credit, by the executive officer;
 - (ii) In the case of a refinancing, that only the amount used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount used for any purposes enumerated in this paragraph (D)(3)(b), are included within this category of credit;
 - (c) In any amount, if the extension of credit is secured in a manner described in paragraphs (C)(4)(c)(i)(a) to (C)(4)(c)(i)(c) of this rule;
 - (d) For any other purpose not specified in paragraphs (D)(3)(a) to (D)(3)(c) of this rule, if the aggregate amount of extensions of credit to that executive officer under this paragraph does not exceed at any one time the higher of two and one half per cent of the bank's capital or twenty-five thousand dollars, but in no event more than one hundred thousand dollars.
- (4) Any extension of credit by a bank to any of its executive officers shall be all of the following:
- (a) Promptly reported to the bank's board of directors;
 - (b) In compliance with the requirements of paragraph (C)(1) of this rule;
 - (c) Preceded by the submission of a detailed current financial statement of the executive officer;
 - (d) Made subject to the condition in writing that the extension of credit will, at the option of the bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount

greater than the amount specified for a category of credit in paragraph (D)(3) of this rule.

(E) No executive officer, director, or principal shareholder of a bank or any of its affiliates shall knowingly receive, or knowingly permit any of that person's related interests to receive, from a bank, directly or indirectly, any extension of credit not authorized under this rule.

(F)

(1) Each bank shall maintain records necessary for compliance with the requirements of this rule.

(2) Any recordkeeping method adopted by a bank shall do both of the following:

(a) Identify, through an annual survey, all insiders of the bank itself;

(b) Maintain records of all extensions of credit to insiders of the bank itself, including the amount and terms of each extension of credit.

(3) Any recordkeeping method adopted by a bank shall maintain records of extensions of credit to insiders of the bank's affiliates by one of the following:

(a) A survey method that includes both of the following:

(i) Identifying, through an annual survey, each insider of the bank's affiliates;

(ii) Maintaining records of the amount and terms of each extension of credit by the bank to those insiders;

(b) A borrower-inquiry method that includes both of the following:

(i) Requiring as part of each extension of credit that the borrower indicate whether the borrower is an insider of an affiliate of the bank;

(ii) Maintaining records that identify the amount and terms of each extension of credit by the bank to borrowers identifying themselves as insiders of affiliates.

- (c) A recordkeeping method other than those identified in paragraphs (F)(3)(a) and (F)(3)(b) of this rule if the superintendent determines that the bank's method is at least as effective as the identified methods.
- (4) A bank that is prohibited by law or by an express resolution of the board of directors of the bank from making an extension of credit to any company or other entity that is covered by this rule as a company is not required to maintain any records of the related interests of the insiders of the bank or its affiliates or to inquire of borrowers whether they are related interests of the insiders of the bank or its affiliates.
- (G) Each executive officer of a bank who becomes indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (D)(3) of this rule, shall, within ten days of the date the indebtedness reaches that level, make a written report to the board of directors of the officer's bank. The report shall state the lender's name, the date and amount of each extension of credit, any security for it, and the purposes for which the proceeds have been or are to be used.
- (H) Each bank shall include with, but not as part of, each report of condition made pursuant to section 1121.21 of the Revised Code a report of all extensions of credit made by the bank to its executive officers since the date of the bank's previous report of condition.
- (I)
 - (1) For the purposes of this paragraph (I) of this rule, the following definitions apply;
 - (a) "Principal shareholder of a bank" means any person, other than an insured bank, or a foreign bank as defined in paragraph (A)(6) of this rule that, directly or indirectly, owns, controls, or has power to vote more than ten per cent of any class of voting securities of the bank. "principal shareholder of a bank" includes a person that controls a principal shareholder, e.g., a person that controls a bank holding company. Shares of a bank, including a foreign bank, bank holding company, or other company owned or controlled by an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.
 - (b) "Related interest" means either of the following:

- (i) Any company controlled by a person;
 - (ii) Any political or campaign committee the funds or services of which will benefit a person or that is controlled by a person. For the purpose of this rule and rule 1301:1-3-05 of the Administrative Code, a related interest does not include a bank or a foreign bank.
- (2)
 - (a) Upon receipt of a written request from the public, a bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at that time from the bank to that person and to all related interests of that person, equaled or exceeded five per cent of the bank's capital or five million dollars, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at that time from the bank to the executive officer or principal shareholder of the bank and to all related interests of that person does not exceed twenty-five thousand.
 - (b) A bank is not required to disclose the specific amounts of individual extensions of credit.
- (3) Each bank shall maintain records of all requests for the information described in paragraph (I)(2)(a) of this rule and the disposition of those requests. These records may be disposed of after two years from the date of the request.
- (J) Each executive officer or director of a bank the shares of which are not publicly traded shall report annually to the board of directors of the bank the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the bank.
- (K) Any bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this rule, other than paragraph (I) of this rule is subject to civil penalties as specified in section 1121.35 of the Revised Code.

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Certification

Date

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