



PRESS RELEASE

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FEDERAL BANKING REGULATORS ISSUE GUIDANCE ON SALES OF 100 PERCENT LOAN PARTICIPATIONS

**Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation
Federal Reserve Board
Office of Thrift Supervision**

FOR IMMEDIATE RELEASE

WASHINGTON, D.C. -- Federal banking regulators today released a joint statement providing uniform guidelines for depository institutions that have programs to originate loans with the intention of selling off the entire underlying loan amount, generally to sophisticated institutional entities.

"If not appropriately structured, these 100 percent loan participation programs can present unwarranted risks to the originating institution, including legal, reputation and compliance risks," said the regulators. According to the statement, which applies only to a small number of mostly very large insured depository institutions, policies for a 100 percent loan participation program should meet the following criteria:

1. The motivations of the parties involved (the originating institution, the borrower, and the participants) should be commercial in nature.
2. Participants should be limited to sophisticated financial and commercial entities and individuals with experience in dealing with loan participations. The originating institution should also have a distribution plan that ensures that the general public does not become the target of marketing efforts for resales by loan participants.



Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. It promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars — insured financial institutions fund its operations.

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3. Only borrowers who meet the originating institution's credit requirements should be placed in these programs.
4. The originating institution should allow potential loan participants to obtain and review appropriate credit and other information on the borrower to enable the participants to make an informed credit decision. Promotional materials should clearly state that the participants and not the originating depository institution are responsible for making the ultimate credit decision based on each participant's own review of information pertaining to the borrower.

The originating institution should establish procedures for ensuring compliance with applicable regulations and consistency with the institution's policies and procedures. The originating institution also should have written participation agreements that set forth the rights and obligations of the parties participating in the program.

The interagency statement, which does not apply to the vast majority of loan participations typically engaged in by insured depository institutions, stems from a 1992 federal case (*Banco Espanol de Credito v. Security Pacific National Bank*) in which the court concluded that a particular 100 percent loan participation did not involve the sale of securities under federal securities laws. The court, however, did not preclude the possibility that programs that depart substantially from the criteria set forth in that particular case may inadvertently involve the sale of securities and be subject to federal securities laws. The criteria in the joint statement are consistent with those set forth in the Banco case to ensure that 100 percent loan participations are structured as commercial undertakings and not as investments in securities.

A copy of the Interagency Statement on Sales of 100 Percent Loan Participations may be obtained by writing to Comptroller of the Currency, Communications Division, Washington, DC 20219; faxing a request to (202) 874-4448; retrieving the document from the OCC's web site at <http://www.occ.gov>; (as an attachment to OCC's press release number 97-40); ordering by phone -- (202) 874-5043; or visiting the OCC's Public Reference Room at 250 E Street, S.W. in Washington, D.C. (9 a.m. - noon and 1- 3 p.m., Monday-Friday).

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