

187—9.3(17A,524) Leasing.

9.3(1) Definitions. For purposes of this rule, the term:

“Aggregate rentals payable” shall include the total of minimum lease payments (net of unearned income) that the lessee is obligated to make or can be required to make plus any guarantee of the residual value or of rental payments beyond the lease term by an eligible guarantor, provided the guarantor is financially capable of discharging the obligation.

“Bank officer” means an administrative official of the bank elected by the state bank’s board of directors to carry out the bank’s operating rules, including the bank’s loan and lease policies.

“Full payout lease” shall be one in which the lessor’s service is limited to the financing of the asset, with the lessee paying all other costs, including maintenance and taxes, and has the option of purchasing the asset at the end of the lease for a nominal price. The lease shall be fully amortized over the term of the lease or lifetime of the asset, whichever is less.

“Inception of the lease” means the date of the lease agreement or commitment, if earlier, or the date the lease is purchased by the state bank. For purposes of this definition, a commitment shall be in writing, signed by the parties in interest to the transaction, and shall specifically set forth the principal terms of the transaction. However, if the property covered by the lease is a fixture yet to be constructed or has not been acquired by the lessor at the date of the lease agreement or commitment, the inception of the lease shall be the date that construction of the property is completed or the property is acquired by the lessor. The inception date of a lease assumed in a business combination accounted for as a purchase is the date the combination is recorded for accounting purposes.

“Independent third-party appraiser” means an individual not involved with the lease transaction, except as the appraiser, with no direct or indirect interest, financial or otherwise, in the property appraised or the parties involved with the transaction. The bank shall take appropriate steps to ensure the appraiser exercises independent judgment and that the appraisal is adequate.

“Lease servicer” means an entity that collects monthly principal and interest payments from the lessee and then forwards the payments to the purchasing institution or maintains lease records for a fee.

“Leasing company” means an enterprise that makes leases or assembles leases for resale to a bank. Leases acquired by a state bank from an affiliated leasing company will be treated for purposes of this rule the same as if the lease was originated by the bank itself. In determining if an affiliate relationship exists, the provisions of Iowa Code section 524.1101 shall apply.

“Lessee” means the party using the leased property.

“Lessor” means the party owning the leased property.

“Residual value” means the estimated fair value of the leased property at the end of the lease term.

9.3(2) General direct and purchased lease guidelines.

a. The board of directors of the state bank shall formulate and maintain a written lease policy that is appropriate for the size, nature and scope of the bank’s operation. Each policy must be comprehensive and consistent with safe and sound banking practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The bank’s lease policy, at a minimum, should:

- (1) Identify acceptable lease servicers and lessors (purchased leases only).
- (2) Establish aggregate volume of paper to be purchased from approved servicers and lessors (purchased leases only).
- (3) Identify geographic area where the bank will consider purchasing or originating leases.
- (4) Establish lease portfolio diversification standards.
- (5) Set appropriate terms and conditions by type of leases.
- (6) Establish lease origination and approval procedures.
- (7) Establish prudent underwriting standards.
- (8) Establish lease administration procedures.
- (9) Establish appraisal and evaluation programs.
- (10) Monitor the portfolio and provide timely reports to the board of directors.
- (11) Set forth permitted exceptions to the policy.

When formulating the lease policy, the board should consider both internal and external factors, such as size and condition of the state bank, expertise of the lending staff, avoidance of undue concentrations of risk, and general market conditions.

b. Whether the bank is serving as lessor or acquiring a lease through purchase, a bank officer shall perform an independent credit analysis of the lessee.

c. The bank or an affiliated leasing company shall obtain collateral values, lien status, lease agreements, participation agreements, and title documentation within 45 calendar days from the date of inception with original documentation being maintained in the bank's or affiliated leasing company's credit files.

d. A bank officer, an officer of an affiliated lease originator, or an independent third-party appraiser shall conduct at inception, and then at least annually thereafter, an inspection of the leased tangible personal property, unless prior approval to waive the inspection requirements has been obtained from the superintendent.

For a lease to a governmental unit, the bank shall conduct an inspection at time of inception or maintain written verification by an official of the governmental unit to confirm the existence of the leased property.

e. Ongoing documentation requirements to support the lease shall be the same as if the bank had made a direct loan to the lessee for purchase of the asset being leased.

f. The lease shall be a full-payout, noncancelable obligation of the lessee with the obligation serving the same purpose as other forms of bank financing. For purposes of this rule, a lease to a governmental unit which contains a fiscal funding clause would be considered a noncancelable lease if the likelihood of exercise of the fiscal funding clause is assessed as being remote.

g. Property covered by the lease shall be limited to tangible personal property, excluding livestock. In addition, a state bank may purchase or construct a municipal building, such as a school building, or other similar public facility and, as holder of legal title, lease the same to a municipality or other public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall address liability issues and shall provide that upon its expiration the lessee will become owner of the building or facility.

h. The lease shall require rental payments to be made on a periodic basis, but no less frequently than annually.

i. The term of a lease shall not exceed seven years if made to a nongovernmental unit or ten years if made to a governmental unit without the prior approval of the superintendent.

j. Aggregate rentals payable by the customer under leases of personal property shall conform to the limits imposed by Iowa Code section 524.904.

k. All lease receivables shall be booked in accordance with the instructions for preparation of the consolidated reports of condition and income.

l. Unguaranteed residual value established by the lessor for any lease, whether originated by the state bank or acquired through purchase, shall not exceed 25 percent of the original cost of the leased property. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party which is not an affiliate of the bank may exceed 25 percent of the original cost of property where the bank has determined and can provide full supporting documentation that the guarantor has the resources to meet the guarantee.

While this guideline prohibits unguaranteed residual values to exceed 25 percent of the original cost, the estimated residual value shall be reasonable in relation to the type of property leased so the primary risk taken by the bank is the creditworthiness of the lessee and not the market value of the leased property. All estimated residual values shall be reviewed at least annually.

If the state bank carries the estimated residual value on its books and a review of the estimated residual value results in a lower estimate than had been previously established, the accounting for the transactions shall be revised using the new estimate. The resulting reduction in the net investment shall be recognized as a loss in the period in which the estimate is changed. An upward adjustment of the residual value shall not be made.

m. Consumer leases, whether originated or purchased by a state bank, shall conform to Iowa Code section 537.3202 and Chapter 5 of the Truth-in-Lending Act (15 U.S.C. 1601 et seq.).

n. If an affiliate of a state bank is regarded as the originator of a lease, the affiliate shall be subject to provisions of Iowa Code section 524.1105.

9.3(3) *Specific purchased lease guidelines.*

a. If the obligations acquired carry full recourse endorsements, guaranty, or an agreement to repurchase of the lessor or servicer negotiating the sale of the leases, then the endorser, guarantor, or repurchaser shall also be deemed to be a customer of the bank. This customer's obligation would be limited to 15 percent of aggregate capital of the state bank.

b. Financial information or evidence of insurance coverage for errors, omissions, and fraudulent acts shall be obtained no less frequently than annually on any lease servicer. The financial information shall be evaluated to determine the creditworthiness of the lease servicer. The insurance coverage shall be in an amount sufficient for the volume of leases being serviced by the lease servicer. This documentation is to be maintained on file by the bank.

9.3(4) *Specific direct leasing guidelines.* Acceptable methods of accounting for investment tax credits shall be used.

9.3(5) *Exempted transactions.* In some instances, it may be appropriate, in light of all relevant credit considerations, to originate or purchase leases that do not conform with the requirements of 9.3(2) "c," "d," and "e." The outstanding aggregate rentals payable of all originated and purchased leases that fall into this category shall not exceed 25 percent of aggregate capital as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent. These exempted leases shall be identified by the board of directors by name and outstanding balance and shall be reviewed by the board no less frequently than annually. Examiners, during the course of their examinations, will determine whether these exempted leases are adequately documented and appropriate in light of overall safety and soundness considerations. No leases to directors, officers, or substantial shareholders or their related interests shall be allowed in the exempted category of this subrule.

This rule is intended to implement Iowa Code section 524.908.

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