FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 81-229
December 7, 1981

TEMPORARY AMENDMENT TO REGULATION D
(MODIFICATION OF TWO-YEAR PHASE-IN
OF RESERVE REQUIREMENTS FOR
DE NOVO DEPOSITORY INSTITUTIONS)

TO ALL DEPOSITORY INSTITUTIONS IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

Printed on the following pages are copies of a press release dated November 23, 1981 and Federal Register document issued on November 19, 1981 by the Board of Governors announcing a temporary modification to Regulation D concerning the two-year phase-in of reserve requirements for de novo depository institutions. The modification provides that the phase-in will apply only to institutions that commenced business on or after November 18, 1981 and have reservable liabilities under $50 million.

As noted in both the press release and Federal Register document, the Board intends to adopt a revised phase-in rule of this nature as a final rule and is considering making its final rule applicable to all depository institutions, including those engaged in business before November 18, 1981. Comments on these considerations are requested by December 21, 1981. Your comments, which should refer to Docket No. R-0374, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

Questions regarding these proposals may be directed to Richard D. Ingram at the Head Office, Ext. 6333; William L. Wilson, El Paso Branch, (915) 544-4730; C. O. Holt, Jr., Houston Branch, (713) 659-4433; or Tony G. Valencia, San Antonio Branch, (512) 224-2141.

Additional copies of this circular will be furnished upon request to the Department of Communications, Financial and Community Affairs, Ext. 6289.

Sincerely yours,

William H. Wallace

William H. Wallace
First Vice President

FEDERAL RESERVE press release

For immediate release November 23, 1981

The Federal Reserve Board today amended, temporarily, its Regulation D (reserve requirements) to provide that the two-year period for phasing in reserve requirements of new depository institutions will apply only to institutions that commenced business on or after November 18, 1981 that have reservable liabilities under $50 million.

At the same time, the Board said that it intends to adopt a revised phase-in rule of this nature as a final rule, and that it was considering making its final rule applicable to all depository institutions, including those engaged in business before November 18, 1981. The Board asked for comment by December 21.

The phase-in rule of Regulation D for new institutions was meant to assist them during their start-up period. As revised, the rule is expected to have the same effect and not to affect small institutions. The Board said it was taking this action to prevent reserve avoidance by bank holding companies that open out-of-state banking subsidiaries.

The Board's notice, providing a full explanation of its action and proposal, is attached.

Attachment

FEDERAL RESERVE SYSTEM

Regulation D

[12 CFR PART 204]

[Docket No. R-0374]

RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

De Novo Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary rule and request for public comment.

SUMMARY: The Board of Governors has amended Regulation D--Reserve Requirements of Depository Institutions (12 CFR Part 204) to modify the two-year phase-in of reserve requirements that is accorded to de novo depository institutions. Under the amendment, the two-year phase-in of reserve requirements will apply only as long as the institution has total reservable liabilities of less than $50 million. This amendment assures that a two-year phase-in of reserve requirements will not be available to new institutions commencing business on or after November 18, 1981, that experience rapid growth in deposits that would otherwise not be subject to full reserve requirements and will be available only as a benefit to smaller institutions during their start-up period. This rule is being adopted on a temporary basis in order to provide the public with an opportunity to comment on this issue.

EFFECTIVE DATE: November 19, 1981. Comments must be received by December 21, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the rule to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or should be delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Paul S. Pilecki, Senior Attorney (202/452-3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 (Title I of P.L. 96-221; 94 Stat. 132) provides an eight-year phase-in of reserve requirements for nonmember depository institutions existing on July 1, 1979. Neither the Monetary Control Act nor the Federal Reserve Act explicitly provide for a phase-in of reserve requirements for de novo depository

institutions. However, when Regulation D was revised in 1980 to implement the Monetary Control Act, in order to assure an orderly transition for de novo institutions, the Board provided a 24-month adjustment period to institutions that commenced business after July 1, 1979. Such a phase-in had been established by the Board in 1976 for de novo member banks.

Effective February 17, 1981, Delaware law permits out-of-state bank holding companies to acquire stock in de novo state-chartered banks and national banks having their principal banking offices in Delaware (Del. Code Ann., Title 5, § 801 et seq.). The Delaware statute establishes minimum requirements for capital and numbers of employees and certain other conditions of operation of such banks. The Board has considered recently the application of a bank holding company to acquire such an institution and is aware of steps being taken by other money center and large regional banks to establish banking affiliates in Delaware.

The principal reasons for establishing banks in Delaware by out-of-state bank holding companies are to avoid higher state and local tax rates in the holding company's principal state of operation or to avoid more constraining usury limitations in such states. The prospects of attracting new business in the Delaware market appear to be minimal. Indeed, the Delaware statute limits banks owned by the out-of-state holding company to one office and the bank is required to be operated in a manner and at a location that is not likely to attract customers from the general public in Delaware to the substantial detriment of existing banking institutions located there. Consequently, it is likely that most of the business at banks in Delaware established by out-of-state bank holding companies would otherwise have been booked at their non-Delaware affiliates. Under these circumstances, liabilities against which full reserve requirements have been maintained or would be maintained would be subject to lower reserve requirements thereby providing a further benefit to such out-of-state bank holding companies. In addition, in states that permit multibank holding companies, the reserve requirement savings would apply in the case of the formation of a de novo institution and shifting of assets and liabilities from existing affiliated banks.

The two-year reserve requirement phase-in provision was not intended to enable a depository institution that maintains full reserve requirements to reduce its current reserve burden. In this regard, the de novo phase-in was established so that new institutions would not be disadvantaged during their start-up period. The Board believes that where an institution achieves rapid growth, the de novo phase-in is no longer necessary. In light of these concerns, including the potential impact upon Treasury revenues and monetary control, the Board has amended Regulation D on a temporary basis to eliminate the de novo phase-in of reserve requirements for institutions that grow rapidly. Under the amendment, the de novo phase-in is limited to only those institutions

that have less than $50 million of total reservable liabilities.[1/] That is, a de novo institution that commences business after November 18, 1981, would receive the two-year phase-in of reserve requirements only so long as its total reservable liabilities remained below $50 million. This approach eliminates the possibility that institutions would reduce substantially their required reserves by shifting liabilities to de novo depository institution affiliates, thus limiting the potential for Treasury revenue losses and monetary control problems. At present, the amendment will apply only to depository institutions that commence business on or after November 18, 1981. However, the Board in adopting a final rule, intends to apply this provision to all depository institutions, including those that commenced business prior to November 18, 1981. Accordingly, the Board requests comment on whether a grandfather provision should be established if the rule is adopted on a permanent basis. In addition, the Board requests comment on whether the rule should apply only to depository institutions that are affiliated with other depository institutions.

The Board believes that this rule will not affect small entities, since it applies to depository institutions that have total deposits of $50 million or more. An initial regulatory flexibility analysis in compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. § 603) is available through the Board's Freedom of Information Office (202/452-2407).

This action was taken by the Board in order to assure that the phase-in of reserve requirements for de novo depository institutions is not used as a reserve avoidance device. If the phase-in for de novo institutions were left in its present form, rapidly growing depository institutions could avoid reserve requirements, resulting in complications to some degree for monetary control. In view of this consideration, the Board finds that application of the notice and public participation provisions of 5 U.S.C. § 553 to this action would be contrary to the public interest, and that good cause exists for making this action effective immediately.

To aid in consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comment or argument. All material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received by December 21, 1981. All material submitted should include the Docket No. R-0374. Such material will be made available for inspection and copying upon request except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

1/ U.S. agencies and branches of foreign banks receive a de novo phase-in only if the new institution represents the first presence of the foreign bank in the U.S. Thereafter, new U.S. offices of the foreign bank are subject to the same reserve requirements as their affiliated U.S. offices. Thus, the potential for reserve savings from shifting liabilities to de novo offices does not exist for these institutions.

Pursuant to its authority under sections 11(c), 19, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. §§ 248(c), 461, 601 et seq., 611 et seq.) and under section 7 of the International Banking Act of 1978 (12 U.S.C. § 3105), the Board amends Regulation D (12 CFR Part 204) effective November 19, 1981, by revising paragraph (e) of section 204.4, to read as follows:

SECTION 204.4 -- TRANSITIONAL ADJUSTMENTS

* * * * *

(e) De novo institutions. (1) The required reserves of any depository institution that was not engaged in business on September 1, 1980, shall be computed under section 204.3 in accordance with the following schedule:

Maintenance periods occurring during successive quarters after entering into business	Percentage of reserve requirement to be maintained
1	40
2	45
3	50
4	55
5	65
6	75
7	85
8 and succeeding	100

This subparagraph shall also apply to a United States branch or agency of a foreign bank if such branch or agency is the foreign bank's first office in the United States. Additional branches or agencies of such a foreign bank shall be entitled only to the remaining phase-in available to the initial office.

(2) Notwithstanding subparagraph (1), the required reserves of any depository institution that:

(i) was not engaged in business on November 18, 1981; and

(ii) has $50 million or more in daily average total transaction accounts, nonpersonal time deposits and Eurocurrency liabilities for any computation period after commencing business

shall maintain 100 per cent of the required reserves computed under section 204.3 starting with the maintenance period that begins eight days after the computation period during which such institution has daily average total transaction accounts, nonpersonal time deposits and Eurocurrency liabilities of $50 million or more.

By order of the Board of Governors, November 19, 1981.

(Signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]