FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 82-47
April 20, 1982

REGULATION D

Reserves of Depository Institutions

Final Rule on Two-year Phase-in for Reserve
Requirements of New Depository Institutions

TO THE FINANCIAL INSTITUTION ADDRESSED
IN THE ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System announced a final rule regarding a temporary amendment to Regulation D in effect since November 1981. Enclosed is the Board's press release and the Federal Register document related to the two-year phase-in period for reserve requirements for new depository institutions. The amendment provides that the phase-in applies only to institutions that began business on or after November 18, 1981 and have total reservable liabilities under $50 million.

Additionally, the Board amended Regulation D's reporting requirements to require weekly reporting of deposits by depository institutions that are experiencing above normal growth. An institution with total deposits of less than $15 million may report quarterly until its deposits exceed $15 million for two consecutive quarters. Under the amendment, the Board may require a switch to weekly reporting at any time the institution exhibits above normal growth.

If you have any questions regarding the amendments, please contact Thomas H. Rust of this Bank, Ext. 6333; William L. Wilson, El Paso Branch, (915) 455-4730; Sammie C. Clay, Houston Branch, (713) 659-4433; or Tony G. Valencia, San Antonio Branch, (512) 224-2141.

Additional copies of this circular and enclosure 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

Enclosure

FEDERAL RESERVE press release

For immediate release March 30, 1982

The Federal Reserve Board today made final a temporary amendment of its Regulation D -- reserves of depository institutions -- providing that the two-year period for phasing in reserve requirements of new depository institutions applies only to institutions that

--Commenced business on or after November 18, 1981, and that

--Have total reservable liabilities under $50 million.

The amendment has been in effect as a temporary rule since last November to prevent bank holding companies that open out-of-state banks from avoiding reserve requirements. The Board made the rule final after considering comment received on the temporary rule.

In its final form the amendment applies, as it did temporarily, to all institutions that began business on or after November 18, 1981. The Board had requested comment on the questions whether it should apply only to institutions affiliated with another depository institution, and whether a grandfather date should be included.

Additionally, the Board amended Regulation D's reporting requirements to confirm that weekly reporting of deposits rather than quarterly reporting for purposes of reserve assessment is required by depository institutions that, in the Board's opinion, are experiencing above normal growth. An institution with total deposits of less than $15 million may report quarterly until its deposits exceed $15 million for two consecutive quarters. Under the amendment to reporting requirements, the Board may require a switch to weekly reporting at any time the institution exhibits above normal growth.

The amendments are designed to limit exceptions to reserve maintenance and reporting requirements to the beneficiaries originally intended. The two-year phase-in to full reserve maintenance was intended to avoid disadvantaging new institutions during their start-up period. The Board believes the phase-in is not appropriate for institutions that expand rapidly after establishment. Similarly, the quarterly reporting exception was designed to lighten the reporting burden of very small institutions and was not designed for, and is not appropriate for, institutions experiencing rapid growth.

In adopting these amendments the Board noted that since Regulation D was rewritten in 1980 to conform to the Monetary Control Act (which made many banks and thrift institutions not previously subject to Federal Reserve reserve requirements liable for reserves on their transactions and non-personal time deposits), Delaware law has been revised to permit out-of-state bank holding companies to establish new banks there. This provision of Delaware law is being used to avoid higher state and local tax rates in the bank holding company's home state or to avoid constraining usury laws. Under the 1980 phase-in rule, the Board noted, deposits moved to these new banks that would otherwise be liable to full reserve requirements would be subject to lower reserve requirements.

The Board has consequently amended Regulation D as noted above to assure that the phase-in of reserve requirements for new depository institutions is not used for reserve avoidance.

For reasons of equity the Board did not apply the phase-in amendment to institutions that commenced business before November 18, 1981.

The Board's notice is attached.

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FEDERAL RESERVE SYSTEM

Regulation D

[12 CFR PART 204]

[Docket No. R-0374]

RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

Phase-in of Reserve Requirements for De Novo Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

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. This action makes permanent a temporary rule adopted by the Board on November 19, 1981. Under the amendment, the two-year phase-in of reserve requirements will apply to a depository institution that commenced business after November 17, 1981, only as long as that 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 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. Additionally, the Board of Governors has adopted a technical amendment to Regulation D to require depository institutions that are experiencing above normal growth to report deposits and maintain reserves on a weekly basis prior to reporting $15 million or more in total deposits for two consecutive quarterly periods.

EFFECTIVE DATE: April 28, 1982

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), Paul S. Pilecki, Senior Attorney (202/452-3281), or Robert G. Ballen, Attorney (202/452-3265), 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 provides 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 certain other conditions of operation of such banks. The Board recently has considered the application of a bank holding company to acquire such an institution in Delaware, 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 the state 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, reserve requirement savings would occur in the case of the formation of a de novo institution and the shifting of assets and liabilities from existing affiliated banks.[1/]

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 monetary control, the Board on November 19, 1981, requested public comment and amended Regulation D on a temporary basis

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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.

to eliminate the de novo phase-in of reserve requirements for institutions that grow rapidly. Under the temporary amendment, the de novo phase-in was limited to only those institutions that have less than $50 million of total reservable liabilities. The temporary amendment applied only to depository institutions that commenced business after November 17, 1981.

The period for public comment on the temporary rule ended on December 21, 1981. Comments were received from nine respondents, primarily depository institutions. The majority of the respondents supported adoption of the temporary rule on a permanent basis on the grounds that multibank organizations should not be able to use the de novo phase-in to reduce the aggregate required reserves for the organization, reserve avoidance possibilities that the de novo phase-in offers will distort reported deposit flows and introduce a further source of "noise" into the reserve aggregates and their relationship to the money supply, and the de novo phase-in is not intended to benefit depository institutions that hold more than $50 million in reservable liabilities. Respondents that opposed adoption of the temporary rule on a permanent basis argued that the de novo institutions in question will be generating their own business, incurring the same start-up costs and administrative efforts as any other de novo competitor and it is unfair to impose higher reserve requirements merely because they are created by existing bank holding companies. After consideration of the comments received, the Board, for the reasons articulated by the commentators supporting the temporary rule, has decided to adopt the temporary rule on a permanent basis.

At the time the Board adopted the temporary rule, it specifically requested comment on whether any permanent rule should apply only to depository institutions that commenced business after November 17, 1981. The majority of the respondents that addressed this issue opposed inclusion of a grandfather clause in the final rule because they believed it is unfair that depository institutions commencing business prior to November 18, 1981, should receive benefits denied other similarly situated institutions simply because of their establishment early in time. These respondents also argued that imposition of full reserves on depository institutions that commenced business prior to November 18, 1981, is not unfair since depository institutions should anticipate that regulation changes will alter their reserve burden and that full reserve requirements will be applied prospectively only. The respondents that supported inclusion of a grandfather provision in the final rule argued that it is unfair to apply the rule to an institution that commenced business prior to the adoption of the temporary rule because such an institution structured its operations based upon good faith reliance on the reasonable expectation that the phase-in would be available. The Board has decided that equity considerations make it appropriate to adopt a grandfather clause in the final rule.

The Board also specifically requested comment on whether the final rule should apply only to depository institutions that are affiliated with one or more depository institutions. All of the respondents that commented on this aspect of the rule favored the application of the final rule to all de novo depository institutions, regardless of their affiliations. Accordingly, the Board has decided to apply the rule to depository institutions regardless of their affiliations. Any depository institution that experiences such rapid growth as to report reservable liabilities of $50 million or more within the first two years of operation no longer needs the assistance of the de novo phase-in, regardless of whether it is affiliated with another depository institution.

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

In connection with this matter, the Board also has adopted a technical amendment to Regulation D to require depository institutions that are experiencing above normal growth to report on a weekly, rather than quarterly, basis prior to reporting $15 million or more in total deposits for two consecutive quarterly periods. Under Regulation D, depository institutions that have total deposits of less than $15 million may report deposits once each calendar quarter and maintain reserves against such deposits for a corresponding three-month period (12 CFR § 204.3(d)). A depository institution that has less than $15 million in total deposits generally qualifies for quarterly reporting until it reports total deposits of $15 million or more for two consecutive calendar quarters. The quarterly reporting procedure was adopted in recognition that many very small depository institutions may not be equipped to report to the Federal Reserve and to maintain reserves on a weekly basis. Moreover, since such institutions typically exhibit relatively stable deposit patterns, weekly reports were not deemed necessary for measurement and control of the money aggregates. This amendment clarifies that quarterly reporting was not designed, and is not appropriate, for institutions that have experienced rapid growth far beyond $15 million. Quarterly reporting in the context of the rapidly growing institution also offers the potential for reserve avoidance as fully reservable deposits are shifted by one depository institution to an affiliate depository institution that has less than $15 million in deposits shortly after this smaller affiliate has filed its quarterly report. Accordingly, the Board has confirmed that quarterly reporting and reserve maintenance does not apply to rapidly growing depository institutions.

In adopting this technical amendment, the Board has dispensed with the public notice and participation provisions of 5 U.S.C. § 553(b) because this action merely clarifies an existing Board interpretation of its regulation. In addition, the Board believes that information is needed from such rapidly growing depository institutions on a timely basis in order to assure the accuracy of monetary statistics. Accordingly, the Board believes that observance of public notice and procedure with regard to this amendment are impracticable and unnecessary.

Pursuant to its authority under sections 11(a), 11(c), 19, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. §§ 248(a), 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 April 23, 1982 as follows:

1. Paragraph (d)(3) of section 204.3 is amended by adding at the end thereof a new sentence to read as follows:

SECTION 204.3 -- COMPUTATION AND MAINTENANCE

* * * * *

(d) ***

(3) *** The Board may require any depository institution that is experiencing above normal growth to report on a weekly basis prior to reporting $15 million or more in total deposits for two consecutive calendar quarters.

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2. 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 also shall 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 be 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.

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By order of the Board of Governors, March 30, 1982.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]