



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

DALLAS, TEXAS 75222

January 8, 1993

Notice 93-12

TO: The Chief Executive Officer of each member bank and others concerned in the Eleventh Federal Reserve District

SUBJECT

Amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks); Loans to Holding Companies and Affiliates

CORRECTION TO 92-126

DETAILS

As announced in Notice 92-126 dated December 31, 1992, the Board is revising Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. Pages three and four of Docket No. R-0784 and pages three and four of Docket No. R-0785, which were attached to the notice, were inadvertently switched.

ATTACHMENTS

Copies of the Board's notices (Federal Reserve System Docket No. R-0784 and Docket No. R-0785) as they appear on pages 60979-80 and pages 61016-17, Vol. 57, No. 247, of the Federal Register dated December 23, 1992, are attached.

MORE INFORMATION

For more information, please contact Jane Anne Schmoker at (214) 922-5104. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

FEDERAL RESERVE SYSTEM**12 CFR Part 215**

[Regulation O; Docket No. R-0784]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. The revision will provide that loans to a holding company parent and its affiliates are not subject to Regulation O inasmuch as these transactions are governed by section 23A of the Federal Reserve Act.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550, 106 Stat. 3672 (1992), effective October 28, 1992, has amended section 22(h) of the Federal Reserve Act (Act), 12 U.S.C. § 375b, to exempt from the definition of "principal shareholder" any holding company of which the member bank is a subsidiary and any other subsidiary of that holding company. The Board is revising Regulation O (12 CFR part 215), effective December 17, 1992, to conform to the amendment.

Background

In response to a recommendation of the Board, Congress in HCDA amended section 22(h) to exclude from coverage under that section and Regulation O

lending transactions by a member bank with its parent holding company and that company's subsidiaries, inasmuch as these transactions are governed comprehensively by section 23A of the Act.

The Board has revised the definition of "principal shareholder" in Regulation O to exclude from the definition of "principal shareholder" a "company of which a member bank is a subsidiary." This has the effect of excluding from the coverage of Regulation O loans to a company that owns, controls, or exercises a controlling influence over a member bank, as those relationships are defined in section 2(d) of the Bank Holding Company Act, as well as the related interests of such a parent bank holding company. See 12 CFR 215.2(n); 12 U.S.C. § 1841(d). Covered transactions between a member bank and its holding company and the other subsidiaries of the holding company continue to be governed by section 23A, which the Board believes comprehensively regulates such transactions.

Need for Final Rule Without Comment

The amendment of the statutory definition of "principal shareholder" was effective immediately upon enactment of HCDA, and required no action on the part of the Board to take effect. The amendment also removed the authority of the Board to maintain a definition of the term that did not contain the exception contained in section 22(h). The Board therefore believes that it is necessary to revise Regulation O in order to eliminate a prohibition on lending transactions that is not authorized by the Act, and to clarify that member banks may take immediate advantage of the recent amendment to section 22(h).

The Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on December 17, 1992, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the

objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve the regulatory burden on all member banks, and will increase their ability to make loans and other extensions of credit, while such transactions remain subject to the comprehensive regulatory provisions of section 23A of the Act.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. No. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.2 is amended by revising paragraph (l) to read as follows:

§ 215.2 Definitions.

* * * * *

(l)(1) *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 10 percent of any class of voting securities of a member bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

(2) A principal shareholder of a member bank includes:

(i) a principal shareholder of a company of which the member bank is a subsidiary, and

(ii) a principal shareholder of any other subsidiary of that company.

(3) A principal shareholder of a member bank does not include a company of which a member bank is a subsidiary.

Board of Governors of the Federal Reserve System, December 17, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-31124 Filed 12-22-92; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0785]

**Loans to Executive Officers, Directors,
and Principal Shareholders of Member
Banks; Loans to Holding Companies
and Affiliates**

AGENCY: Board of Governors of the
Federal Reserve System.

ACTION: Proposed rule with request for
comment.

SUMMARY: The Board is proposing to
revise Regulation O to implement recent
amendments to section 22(h) of the
Federal Reserve Act, contained in the
Housing and Community Development
Act of 1992. The Board is requesting
public comment on three exceptions to
the aggregate insider lending limit in
Regulation O and is inviting suggestions
on additional transactions that would
meet the statutory exemptive criteria.

DATES: Comments should be submitted
on or before January 19, 1993.

ADDRESSES: Comments, which should
refer to Docket No. R-0785, may be
mailed to the Board of Governors of the
Federal Reserve System, 20th Street and
Constitution Avenue, NW., Washington,
DC 20551, to the attention of Mr.
William Wiles, Secretary. Comments
addressed to the attention of Mr. Wiles
may be delivered to the Board's mail
room between 8:45 a.m. and 5:15 p.m.,
and to the security control room outside
of those hours. Both the mail room and
the security control room are accessible
from the courtyard entrance on 20th
Street between Constitution Avenue and
C Street, N.W. Comments may be
inspected in room B-1122 between 9
a.m. and 5 p.m. weekdays, except as
provided in section 261.8 of the Board's
Rules Regarding Availability of
Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT:
Gordon Miller, Attorney (202/452-2534),
Legal Division, Board of Governors of
the Federal Reserve System. For the
hearing impaired *only*,
Telecommunications Device for the Deaf
(TDD), Dorothea Thompson (202/452-
3544), Board of Governors of the Federal
Reserve System, 20th and C Streets,
NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The
Housing and Community Development
Act of 1992 (HCDA), Pub. L. 102-550,
106 Stat. 3672 (1992), effective October
28, 1992, amended section 22(h) of the
Federal Reserve Act (Act), 12 U.S.C. §
375b, to authorize the Board to adopt
exceptions from the definition of
"extension of credit" that pose minimal
risk to the lending bank. The Board is
proposing three exceptions to the
aggregate lending limit in Regulation O
(12 CFR part 215) to implement this
amendment.

Background

The Federal Deposit Insurance
Corporation Improvement Act of 1991
(FDICIA), Pub. L. 102-242, 105 Stat.
2355 (1991), amended section 22(h) of
the Act, effective May 18, 1992, by
establishing a new 100 percent of
capital limit on the aggregate amount of
credit a member bank may extend to its
insiders and their related interests as a
class.¹ Unlike the single borrower
lending limit under section 22(h), the
new aggregate lending limit did not

¹ FDICIA also authorized the Board by regulation
to make exceptions to this limit, subject to certain
requirements and restrictions, for member banks
with less than \$100 million in deposits. See 12
U.S.C. § 375b(5)(C). The Board has exercised this
authority for the one-year period ending May 18,
1993. 12 CFR 215.4(d)(2).

incorporate the exceptions from the loan to one borrower rule found in the National Bank Act. See 12 U.S.C. § 84. In addition, FDICIA eliminated the flexibility the Board previously had enjoyed under section 22(h) to exclude from coverage credit transactions that posed no risk to the bank. As a result, a bank was required to include certain loans when calculating its aggregate insider lending limit under Regulation O that it was not required to include when calculating its single borrower lending limit under Regulation O.

In order to reduce this inconsistency between the individual and aggregate lending limits in Regulation O, the Board recommended that Congress restore to the Board the ability to make exceptions to the lending limit. Congress responded in HCDA by granting the Board the authority to make exceptions by regulation to the definition of "extension of credit" in section 22(h) of the Act for transactions that the Board determines pose minimal risk. The legislative history of this provision states that the Board should make a "zero-based review" of all exceptions, rather than to adopt the exceptions under the National Banking Act as a whole. See 138 Cong. Rec. S17,914-15 (daily ed. Oct. 8, 1992).

Discussion of Issues

Under the concentration of credit rules of the National Bank Act, certain categories of loans or extensions of credit are deemed, as a result of the manner in which they are collateralized, to pose minimal risk of loss to a bank, and the ability of a national bank to engage in such transactions is made subject to relaxed quantitative limitations or is not subject to any quantitative limitations at all. See 12 U.S.C. § 84. The Board proposes to adopt three of these categories as exceptions from the definition of "extension of credit" as it applies to the aggregate lending limit at section 215.4(d) of Regulation O. These three categories are:

- (1) Extensions of credit secured by obligations of the United States or other obligations fully guaranteed as to principal and interest by the United States;
- (2) Extensions of credit to or secured by commitments or guarantees of the United States or its agencies; and
- (3) Extensions of credit secured by a segregated deposit account with the lending bank.

The Board therefore proposes and requests public comment on these three categories as an initial group of exceptions to the aggregate lending limit under Regulation O. The Board also

requests public comment on any other categories of extensions of credit which should be included, either with or without quantitative limitations, as additional exceptions to the aggregate lending limit.

By making these exceptions effective only with respect to the aggregate lending limit, the general prohibitions in Regulation O on extensions of credit to insiders, found in §§ 215.4(a) and (b), remain in effect as safeguards against abuse of these exceptions.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve their regulatory burden and will increase the ability of small institutions to make loans and other extensions of credit that pose little or no risk of loss to the member bank, and to attract and retain outside directors to whom such loans and other extensions of credit may be made in the same manner and to the same extent as they may be made to persons who are not insiders of the bank.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.4 is amended by adding a new subparagraph (d)(3) to read as follows:

§ 215.4 General prohibitions.

(a) * * *

* * * * *

(d) * * *

(3) *Exceptions.* The general limit specified in paragraph (d)(1) of this section does not apply to:

(i) Extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States;

(ii) 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 or any corporation wholly owned directly or indirectly by the United States; or

(iii) Extensions of credit secured by a segregated deposit account in the member bank.

Board of Governors of the Federal Reserve System, December 17, 1992.

Williams W. Wiles,
Secretary of the Board.

[FR Doc. 92-31125 Filed 12-22-92; 8:45 am]

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FEDERAL RESERVE BANK OF DALLAS

P.O. BOX 655906

DALLAS, TX 75265-5906