FEDERAL RESERVE BANK
OF DALLAS

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

June 28, 1994

DALLAS, TEXAS
75265-5906

Notice 94-64

TO: The Chief Executive Officer of each financial institution in the Eleventh Federal Reserve District

SUBJECT

Revised Pamphlets for Regulation A (Extensions of Credit by Federal Reserve Banks), Regulation O (Loans to Executive Officers, Directors and Principal Shareholders of Member Banks), and Regulation AA (Unfair or Deceptive Acts or Practices)

DETAILS

The Board of Governors of the Federal Reserve System has revised Regulation A, effective January 30, 1994. In addition, the Board revised Regulation O, effective May 18, 1992, and Regulation AA, effective May 1, 1992. Due to a limited supply, this Bank was unable to distribute the Regulation O and the Regulation AA pamphlets earlier. We regret any inconvenience this may have caused.

Amendments to Regulation O in slip-sheet form were distributed in Notice 93-47 and Notice 93-72. Additional amendments were distributed in Notice 94-31. The amendments should be retained in your Regulations binder along with the revised pamphlet. No amendments to Regulation AA have been distributed.

For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

ENCLOSURES

The revised pamphlets are enclosed.

MORE INFORMATION

For more information regarding Regulation A, please contact the Discount and Credit Department at (214) 922-5333. For more information regarding Regulation O, please contact Jane Anne Schmoker at (214) 922-5101. For more information regarding Regulation AA, please contact Eugene Coy at (214) 922-6201.

For additional copies of this Bank's notice or the pamphlets, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

Board of Governors of the Federal Reserve System

Regulation A
Extensions of Credit by Federal Reserve Banks

12 CFR 201; as amended effective January 30, 1994

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

May 1994

Contents

Regulation A
Extensions of Credit by Federal Reserve Banks

12 CFR 201; as amended effective January 30, 1994

SECTION 201.1—Authority, Scope and Purpose

(a) *Authority and scope.* This part* is issued under the authority of sections 10A, 10B, 13, 13A, and 19 of the FRA (12 USC 347a, 347b, 343 et seq., 347c, 348 et seq., 374, 374a, and 461), other provisions of the FRA, and section 7(b) of the International Banking Act of 1978 (12 USC 347d) and relates to extensions of credit by Federal Reserve Banks to depository institutions and others.

(b) *Purpose.* This part establishes rules under which Federal Reserve Banks may extend credit to depository institutions and others. Extending credit to depository institutions to accommodate commerce, industry, and agriculture is a principal function of Federal Reserve Banks. While open market operations are the primary means of affecting the overall supply of reserves, the lending function of the Federal Reserve Banks is an effective method of supplying reserves to meet the particular credit needs of individual depository institutions. The lending functions of the Federal Reserve System are conducted with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

SECTION 201.2—Definitions

For purposes of this part, the following definitions shall apply:

(a) *Appropriate federal banking agency* has the same meaning as in section 3 of the FDI Act (12 USC 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 USC 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 USC 1831o(b)(1)(E)) and the implementing regulations.

(c) (1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is—

(i) an insured bank as defined in section 3 of the FDI Act (12 USC 1813(h)) or a bank which is eligible to make application to become an insured bank under section 5 of such act (12 USC 1815);

(ii) a mutual savings bank as defined in section 3 of the FDI Act (12 USC 1813(f)) or a bank which is eligible to make application to become an insured bank under section 5 of such act (12 USC 1815);

(iii) A savings bank as defined in section 3 of the FDI Act (12 USC 1813(g)) or a bank which is eligible to make application to become an insured bank under section 5 of such act (12 USC 1815);

(iv) An insured credit union as defined in section 101 of the Federal Credit Union Act (12 USC 1752(7)) or a credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 USC 1781);

(v) A member as defined in section 2 of the Federal Home Loan Bank Act (12 USC 1422(4)); or

(vi) A savings association as defined in section 3 of the FDI Act (12 USC 1813(b)) which is an insured depository institution as defined in section 3 of the act (12 USC 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the act (12 USC 1815(a)).

(2) The term *depository institution* does not include a financial institution that is not required to maintain reserves under Regulation D (12 CFR 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does

* The words "this part," as used herein, mean Regulation A (Code of Federal Regulations, title 12, chapter II, part 201).

business, and does not do business with the general public.

(d) *Liquidation loss* means the loss that any deposit insurance fund in the FDIC would have incurred if the FDIC had liquidated the institution—

(1) in the case of an undercapitalized insured depository institution, as of the end of the later of—

(i) 60 days—

(A) in any 120-day period;

(B) during which the institution was an undercapitalized insured depository institution; and

(C) during which advances or discounts were outstanding to the depository institution from any Federal Reserve Bank; or

(ii) the 60-calendar-day period following the receipt by a Federal Reserve Bank of a written certification from the chairman of the Board of Governors or the head of the appropriate federal banking agency that the institution is viable.

(2) in the case of a critically undercapitalized insured depository institution, as of the end of the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution.

(e) *Increased loss* means the amount of loss to any deposit insurance fund in the FDIC that exceeds the liquidation loss due to—

(1) an advance under section 10B(1)(a) of the FRA that is outstanding to an undercapitalized or critically undercapitalized insured depository institution without payment having been demanded as of the end of the periods specified in paragraphs (d)(1) and (2) of this section; or

(2) an advance under section 10B(1)(a) of the Federal Reserve Act that is made after the end of such periods.

(f) *Excess loss* means the lesser of the increased loss or that portion of the increased loss equal to the lesser of—

(1) the loss the Board of Governors or any Federal Reserve Bank would have incurred on the amount by which advances under section 10B(1)(a) exceed the amount of advances outstanding at the end of the periods specified in paragraphs (d)(1) and (2) of this section if those increased advances had been unsecured; or

(2) the interest received on the amount by which the advances under section 10B(1)(a) exceed the amount of advances outstanding, if any, at the end of the periods specified in paragraphs (d)(1) and (2) of this section.

(g) *Transaction account and nonpersonal time deposit* have the meanings specified in Regulation D (12 CFR 204).

(h) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 USC 1813(c)(2)) that—

(1) is not a critically undercapitalized insured depository institution; and

(2) (i) is deemed to be undercapitalized under section 38 of the FDI Act (12 USC 1831o(b)(1)(C)) and the implementing regulations; or

(ii) has received from its appropriate federal banking agency a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by its appropriate federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(i) *Viable,* with respect to a depository institution, means that the Board of Governors or the appropriate federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate federal banking agency has accepted a capital restoration plan for the depository institution under 12 USC 1831o(e)(2) and the depository institution is complying with that plan.

SECTION 201.3—Availability and Terms

(a) *Adjustment credit.* Federal Reserve Banks extend adjustment credit on a short-term basis to depository institutions to assist in meeting temporary requirements for funds or to cushion more persistent shortfalls of funds pending an orderly adjustment of a borrowing institution's assets and liabilities. Such credit generally is available only for appropriate purposes and after reasonable alternative sources of funds have been fully used, including credit from special industry lenders such as Federal Home Loan Banks, the National Credit Union Administration's Central Liquidity Facility, and corporate central credit unions. Adjustment credit is usually granted at the basic discount rate, but under certain circumstances a special rate or rates above the basic discount rate may be applied.

(b) *Seasonal credit.* Federal Reserve Banks extend seasonal credit for periods longer than those permitted under adjustment credit to assist smaller depository institutions in meeting regular needs for funds arising from expected patterns of movement in their deposits and loans. A special rate or rates at or above the basic discount rate may be applied to seasonal credit.

(1) Seasonal credit is only available if—

(i) the depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as certain percentages, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year);

(ii) the Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks; and

(iii) similar assistance is not available from special industry lenders.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(c) *Extended credit.* Federal Reserve Banks extend credit to depository institutions under extended credit arrangements where similar assistance is not reasonably available from other sources, including special industry lenders. Such credit may be provided where there are exceptional circumstances or practices affecting a particular depository institution including sustained deposit drains, impaired access to money market funds, or sudden deterioration in loan-repayment performance. Extended credit may also be provided to accommodate the needs of depository institutions, including those with longer-term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions over a longer period, particularly at times of deposit disintermediation. A special rate or rates above the basic discount rate may be applied to extended credit.

(d) *Emergency credit for others.* In unusual and exigent circumstances, a Federal Reserve Bank may, after consultation with the Board of Governors, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. The rate applicable to such credit will be above the highest rate in effect for advances to depository institutions. Where the collateral used to secure such credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, an affirmative vote of five or more members of the Board of Governors is required before credit may be extended.

SECTION 201.4—Limitations on Availability and Assessments

(a) *Advances to or discounts for undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only—

(1) if, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during

which the institution is an undercapitalized insured depository institution; or

(2) during the 60 calendar days after the receipt of a written certification from the chairman of the Board of Governors or the head of the appropriate federal banking agency that the borrowing depository institution is viable; or

(3) after consultation with the Board of Governors.[1]

(b) *Advances to or discounts for critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only—

(1) during the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) after consultation with the Board of Governors.[2]

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that it pays to the FDIC due to any excess loss. Each Federal Reserve Bank shall be assessed that portion of the amount that the Board of Governors pays to the FDIC that is attributable to an extension of credit by that Federal Reserve Bank, up to 1 percent of its capital as reported at the beginning of the calendar year in which the assessment is made. The Board of Governors will assess all of the Federal Reserve Banks for the remainder of the amount it pays to the FDIC in the ratio that the capital of each Federal Reserve Bank bears to the total capital of all Federal Reserve Banks at the beginning of the calendar year in which the assessment is made, provided, however, that if any assessment exceeds 50 percent of the total capital and surplus of all Federal Reserve Banks, whether to distribute the excess over such 50 percent shall be made at the discretion of the Board of Governors.

[1] In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph.

[2] See footnote 1 in section 201.4(a)(3).

(d) *Information.* Before extending credit a Federal Reserve Bank should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution.

SECTION 201.5—Advances and Discounts

(a) Federal Reserve Banks may lend to depository institutions either through advances secured by acceptable collateral or through the discount of certain types of paper. Credit extended by the Federal Reserve Banks generally takes the form of an advance.

(b) Federal Reserve Banks may make advances to any depository institution if secured to the satisfaction of the Federal Reserve Bank. Satisfactory collateral generally includes United States government and federal-agency securities, and, if of acceptable quality, mortgage notes covering one- to four-family residences, state and local government securities, and business, consumer, and other customer notes.

(c) If a Federal Reserve Bank concludes that a depository institution will be better accommodated by the discount of paper than by an advance, it may discount any paper endorsed by the depository institution that meets the requirements specified in the FRA.

SECTION 201.6—General Requirements

(a) *Credit for capital purposes.* Federal Reserve credit is not a substitute for capital.

(b) *Compliance with law and regulation.* All credit extended under this part shall comply with applicable requirements of law and of this part. Each Federal Reserve Bank—

(1) shall keep itself informed of the general character and amount of the loans and investments of depository institutions with a view to ascertaining whether undue use is being made of depository-institution credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and

(2) shall consider such information in determining whether to extend credit.

(c) *Information.* A Federal Reserve Bank shall require any information it believes appropriate or desirable to ensure that paper tendered as collateral for advances or for discount is acceptable and that the credit provided is used in a manner consistent with this part.

(d) *Indirect credit for others.* No depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

SECTION 201.7—Branches and Agencies

(a) Except as may be otherwise provided, this part shall be applicable to United States branches and agencies of foreign banks subject to reserve requirements under Regulation D (12 CFR 204) in the same manner and to the same extent as depository institutions.

SECTION 201.8—Federal Intermediate Credit Banks

(a) A Federal Reserve Bank may discount for any Federal Intermediate Credit Bank agricultural paper or notes payable to and bearing the endorsement of the Federal Intermediate Credit Bank that cover loans or advances made under subsections (a) and (b) of section 2.3 of the Farm Credit Act of 1971 (12 USC 2074) and that are secured by paper eligible for discount by Federal Reserve Banks. Any paper so discounted shall have a period remaining to maturity at the time of discount of not more than nine months.

SECTION 201.9—No Obligation to Make Advances or Discounts

(a) A Federal Reserve Bank shall have no obligation to make, increase, renew, or extend any advance or discount to any depository institution.

SECTION 201.51—Short-Term Adjustment Credit for Depository Institutions

The rates for short-term adjustment credit provided to depository institutions under section 201.3(a) of Regulation A are:

Federal Reserve Bank	*Rate*	*Effective*
Boston	3.0	July 2, 1992
New York	3.0	July 2, 1992
Philadelphia	3.0	July 2, 1992
Cleveland	3.0	July 6, 1992
Richmond	3.0	July 2, 1992
Atlanta	3.0	July 2, 1992
Chicago	3.0	July 2, 1992
St. Louis	3.0	July 7, 1992
Minneapolis	3.0	July 2, 1992
Kansas City	3.0	July 2, 1992
Dallas	3.0	July 2, 1992
San Francisco	3.0	July 2, 1992

SECTION 201.52—Extended Credit for Depository Institutions

(a) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under section 201.3(b)(1) is a flexible rate that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for short-term adjustment credit as set out in section 201.51.

Federal Reserve Bank	*Rate*	*Effective*
Boston	3.0	July 2, 1992
New York	3.0	July 2, 1992
Philadelphia	3.0	July 2, 1992
Cleveland	3.0	July 6, 1992
Richmond	3.0	July 2, 1992
Atlanta	3.0	July 2, 1992
Chicago	3.0	July 2, 1992
St. Louis	3.0	July 7, 1992
Minneapolis	3.0	July 2, 1992
Kansas City	3.0	July 2, 1992
Dallas	3.0	July 2, 1992
San Francisco	3.0	July 2, 1992

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or

where there are exceptional circumstances or practices involving a particular institution under section 201.3(b)(2) are:

Federal Reserve Bank	*Rate*	*Effective*
Boston	3.0	July 2, 1992
New York	3.0	July 2, 1992
Philadelphia	3.0	July 2, 1992
Cleveland	3.0	July 6, 1992
Richmond	3.0	July 2, 1992
Atlanta	3.0	July 2, 1992
Chicago	3.0	July 2, 1992
St. Louis	3.0	July 7, 1992
Minneapolis	3.0	July 2, 1992
Kansas City	3.0	July 2, 1992
Dallas	3.0	July 2, 1992
San Francisco	3.0	July 2, 1992

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for short-term adjustment credit, as set out in section 201.51, plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

SECTION 10B*—Advances to Individual Member Banks

(a) Any Federal Reserve Bank, under rules and regulations prescribed by the Board of Governors of the Federal Reserve System, may make advances to any member bank on its time or demand notes having maturities of not more than four months and which are secured to the satisfaction of such Federal Reserve Bank. Notwithstanding the foregoing, any Federal Reserve Bank, under rules and regulations prescribed by the Board of Governors of the Federal Reserve System, may make advances to any member bank on its time notes having such maturities as the Board may prescribe and which are secured by mortgage loans covering a one-to-four family residence. Such advances shall bear interest at a rate equal to the lowest discount rate in effect at such Federal Reserve Bank on the date of such note.

[12 USC 347b(a). As added by act of Feb. 27, 1932 (47 Stat. 56); and amended by acts of Feb. 3, 1933 (47 Stat. 794); March 9, 1933 (48 Stat. 7); Aug. 23, 1935 (49 Stat. 705); Oct. 18, 1974 (88 Stat. 1368); March 31, 1980 (94 Stat. 140); and Dec. 19, 1991 (105 Stat. 2279).]

(b) *Limitations on advances.*

(1) Except as provided in paragraph (2), no advances to any undercapitalized depository institution by any Federal Reserve bank under this section may be outstanding for more than 60 days in any 120-day period.

(2) (A) If—

(i) the head of the appropriate Federal banking agency certifies in advance in writing to the Federal Reserve bank that any depository institution is viable; or

(ii) the Board conducts an examination of any depository institution and the Chairman of the Board certifies in writing to the Federal Reserve bank that the institution is viable,

the limitation contained in paragraph (1) shall not apply during the 60-day period beginning on the date such certification is received.

(B) The 60-day period may be extended for additional 60-day periods upon receipt by the Federal Reserve bank of additional written certifications under subparagraph (A) with respect to each such additional period.

(C) The authority of the head of any agency to issue a written certification of viability under this paragraph may not be delegated to any other person.

(D) Notwithstanding paragraph (1), an undercapitalized depository institution which does not have a certificate of viability in effect under this paragraph may have advances outstanding for more than 60 days in any 120-day period if the Board elects to treat—

(i) such institution as critically undercapitalized under paragraph (3); and

(ii) any such advance as an advance described in subparagraph (A)(i) of paragraph (3).

(3) (A) Notwithstanding any other provision of this section, if—

(i) in the case of any critically undercapitalized depository institution—

(I) any advance under this section to such institution is outstanding without payment having been demanded as of the end of the 5-day period beginning on the date the institution becomes a critically undercapitalized institution; or

(II) any new advance is made to such institution under this section after the end of such period; and

(ii) after the end of that 5-day period, any deposit insurance fund in the Federal Deposit Insurance Corporation incurs a loss exceeding the loss that the Corporation would have incurred if it had liquidated that institution as of the end of that period,

the Board shall, subject to the limitations in subparagraph (B), be liable to the Federal Deposit Insurance Corporation for

* Previously section 10(b), this section was redesignated by act of Dec. 19, 1991 (105 Stat. 2279).

the excess loss, without regard to the terms of the advance or any collateral pledged to secure the advance.

(B) The liability of the Board under subparagraph (A) shall not exceed the lesser of the following:

(i) The amount of the loss the Board or any Federal Reserve bank would have incurred on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A) if those increased advances had been unsecured.

(ii) The interest received on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A).

(C) The Board shall pay the Federal Deposit Insurance Corporation the amount of any liability of the Board under subparagraph (A).

(D) The Board shall report to the Congress on any excess loss liability it incurs under subparagraph (A), as limited by subparagraph (B)(i), and the reasons therefore, not later than 6 months after incurring the liability.

(4) A Federal Reserve bank shall have no obligation to make, increase, renew, or extend any advance or discount under this Act to any depository institution.

(5) (A) The term "*appropriate Federal banking agency*" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(B) The term "*critically undercapitalized*" has the same meaning as in section 38 of the Federal Deposit Insurance Act.

(C) The term "*depository institution*" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(D) The term "*undercapitalized depository institution*" means any depository institution which—

(i) is undercapitalized, as defined in section 38 of the Federal Deposit Insurance Act; or

(ii) has a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution.

(E) A depository institution is "*viable*" if the Board or the appropriate Federal banking agency determines, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution—

(i) is not critically undercapitalized;

(ii) is not expected to become critically undercapitalized; and

(iii) is not expected to be placed in conservatorship or receivership.

[12 USC 347b(b). As added by act of Dec. 19, 1991 (105 Stat. 2279).]

SECTION 13—Powers of Federal Reserve Banks

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3. Discounts for Individuals, Partnerships, and Corporations

In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members, may authorize any Federal Reserve Bank, during such periods as the said Board may determine, at rates established in accordance with the provisions of section 14, subdivision (d), of this Act, to discount for any individual, partnership, or corporation, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve Bank: *Provided,* That before discounting any such note, draft, or bill of exchange for an individual or a partnership or corporation the Federal Reserve Bank shall obtain evidence that such individual, partnership, or corporation is unable to secure adequate credit accommodations from other banking institutions. All such discounts for individuals, partnerships, or corporations shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

[12 USC 343. As added by act of July 21, 1932 (47 Stat. 715) and amended by acts of Aug. 23, 1935 (49 Stat. 714) and Dec. 19, 1991 (105 Stat. 2386).]

* * * * *

13. Advances to Individuals, Partnerships, and Corporations on Obligations of United States

Subject to such limitations, restrictions and regulations as the Board of Governors of the Federal Reserve System may prescribe, any Federal Reserve Bank may make advances to any individual, partnership or corporation on the promissory notes of such individual, partnership or corporation secured by direct obligations of the United States or by any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, any agency of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal Reserve Bank, subject to the review and determination of the Board of Governors of the Federal Reserve System.

[12 USC 347c. As added by act of March 9, 1933 (48 Stat. 7) and amended by act of Sept. 21, 1968 (82 Stat. 856).]

14. Receipt of Deposits from, Discount Paper Endorsed by, and Advances to Foreign Banks

Subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System, each Federal Reserve Bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch or agency is maintaining reserves with such Reserve Bank pursuant to section 7 of the International Banking Act of 1978. In exercising any such powers with respect to any such branch or agency, each Federal Reserve Bank shall give due regard to account balances being maintained by such branch or agency with such Reserve Bank and the proportion of the assets of such branch or agency being held as reserves under section 7 of the International Banking Act of 1978.

[12 USC 347d. As added by act of Sept. 17, 1978 (92 Stat. 621).]

SECTION 19—Bank Reserves

(b) *Reserve requirements*

* * * * *

(7) *Discount and borrowing.* Any depository institution in which transaction accounts or nonpersonal time deposits are held shall be entitled to the same discount and borrowing privileges as member banks. In the administration of discount and borrowing privileges, the Board and the Federal Reserve banks shall take into consideration the special needs of savings and other depository institutions for access to discount and borrowing facilities consistent with their long-term asset portfolios and the sensitivity of such institutions to trends in the national money markets.

[12 USC 461(b)(7). As amended by acts of Sept. 21, 1966 (80 Stat. 823) and March 31, 1980 (94 Stat. 133).]

Board of Governors of the Federal Reserve System

Regulation O
Loans to Executive Officers Directors and Principal Shareholders of Member Banks

12 CFR 215; as amended effective May 18, 1992

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

July 1992

Contents

Regulation O
Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

12 CFR 215; as amended effective May 18, 1992

SUBPART A—LOANS BY MEMBER BANKS TO THEIR EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS

SECTION 215.1—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued pursuant to sections 11(i), 22(g), and 22(h) of the Federal Reserve Act (12 USC 248(i), 375a, and 375b), 12 USC 1817(k)(3), and section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102-242, 105 Stat. 2236 (1991).

(b) *Purpose and scope.* This subpart governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a bank holding company of which the member bank is a subsidiary, and (3) any other subsidiary of that bank holding company. It also applies to any extension of credit by a member bank to (1) a company controlled by such a person and (2) a political or campaign committee that benefits or is controlled by such a person. This subpart also implements the reporting requirements of 12 USC 375a concerning extensions of credit by a member bank to its executive officers and of 12 USC 1817(k) concerning extensions of credit by a member bank to its executive officers and principal shareholders.

SECTION 215.2—Definitions

For the purpose of this subpart, the following definitions apply unless otherwise specified:

(a) *Company* means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, the term does not include—

(1) a depository institution (as defined in 12 USC 1813) or

(2) a corporation the majority of the shares of which are owned by the United States or by any state.

(b)(1) *Control of a company or bank* means that a person directly or indirectly, or acting through or in concert with one or more persons—

(i) owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank;

(ii) controls in any manner the election of a majority of the directors of the company or bank; or

(iii) has the power to exercise a controlling influence over the management or policies of the company or bank.

(2) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank if—

(i) the person is (A) an executive officer or director of the company or bank and (B) directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

(ii) (A) the person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank, and (B) no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(3) An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual's position as an officer or director of the company or bank.

(4) A person may rebut a presumption established by paragraph (b)(2) of this section by submitting to the appropriate federal banking agency (as defined in 12 USC 1813(q)) written materials that, in the

agency's judgment, demonstrate an absence of control.

(c) *Director of a member bank* includes—

(1) any director of a member bank, whether or not receiving compensation,

(2) any director of a company of which the member bank is a subsidiary, and

(3) any director of any other subsidiary of that company. An advisory director is not considered a director if the advisory director—

(i) is not elected by the shareholders of the company or bank,

(ii) is not authorized to vote on matters before the board of directors, and

(iii) provides solely general policy advice to the board of directors.

(d)(1) *Executive officer* of a company or bank means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank, whether or not the officer has an official title, the title designates the officer an assistant, or the officer is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation (other than in the capacity of a director) in major policymaking functions of the bank or company, and the officer does not actually participate therein.

(2) For the purpose of sections 215.4 and 215.7 of this part, an executive officer of a member bank includes an executive officer of a company of which the member bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolutions of the boards of directors of both the subsidiary and the member bank and does not actually participate in such major policymaking functions.

(e) *Foreign bank* has the meaning given in 12 USC 3101(7).

(f) *Insider* means an executive officer, director, or principal shareholder, and includes any related interest of such a person.

(g) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(h) The *lending limit* for a member bank is an amount equal to the limit on loans to a single borrower established by section 5200 of the Revised Statutes,[2] 12 USC 84. This amount is 15 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. The lending limit also includes any higher amounts that are permitted by section 5200 of the Revised Statutes for the types of obligations listed therein as exceptions to the limit. A member bank's unimpaired capital and unimpaired surplus equals the sum of—

(1) the "total equity capital" of the member bank reported on its most recent consolidated report of condition filed under 12 USC 1817(a)(3),

(2) any subordinated notes and debentures approved as an addition to the member bank's capital struction by the appropriate federal banking agency, and

[1] The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties, including discretion in the making of loans, but who do not participate in the determination of major policies of the bank or company and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank or company.

[2] Where state law establishes a lending limit for a state member bank that is lower than the amount permitted in section 5200 of the Revised Statutes, the lending limit established by applicable state laws shall be the lending limit for the state member bank.

(3) any valuation reserves created by charges to the member bank's income reported on its most recent consolidated report of condition filed under 12 USC 1817(a)(3).

(i) *Member bank* means any banking institution that is a member of the Federal Reserve System, including any subsidiary of a member bank. The term does not include any foreign bank that maintains a branch in the United States, whether or not the branch is insured (within the meaning of 12 USC 1813(s)) and regardless of the operation of 12 USC 1813(h) and 12 USC 1828(j)(2).

(j) *Pay an overdraft on an account* means to pay an amount upon the order of an ac count holder in excess of funds on deposit in the account.

(k) *Person* means an individual or a company.

(*l*) *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 contolled by a member of an individual's immedite family are considered to be held by the individual. A principal shareholder of a member bank includes—

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

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

(m) *Related interest* of a person means—

(1) a company that is controlled by that person, or

(2) a political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(*n*) *Subsidiary* has the meaning given in 12 USC 1841(d), but does not include a subsidiary of a member bank.

SECTION 215.3—Extension of Credit

(a) An extension of credit is a making or renewal of any loan, a granting of a line of credit or an extending of credit in any manner whatsoever, and includes—

(1) a purchase under repurchase agreement of securities, other assets, or obligations;

(2) an advance by means of an overdraft, cash item, or otherwise;

(3) issuance of a standby letter of credit (or other similar arrangement regardless of name or description) or an ineligible acceptance, as those terms are defined in section 208.8(d) of this chapter;

(4) an acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which an insider may be liable as maker, drawer, endorser, guarantor, or surety;

(5) a discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse; but the acquisition of such paper by a member bank from another bank, without recourse, shall not be considered a discount by the member bank for the other bank;

(6) an increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (i) accrued interest or (ii) taxes, insurance, or other expenses incidental to the existing indebtedness;

(7) an advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(8) any other similar transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(b) An extension of credit does not include—

(1) an advance against accrued salary or other accrued compensation, or an advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

(2) a receipt by a bank of a check deposited in or delivered to the bank in the usual course of business unless it results in the

carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in section 215.4(e) of this part;

(3) an acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through (i) a merger or consolidation of banks or a similar transaction by which a bank acquires assets and assumes liabilities of another bank or similar organization or (ii) foreclosure on collateral or similar proceeding for the protection of the bank, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, subject to extension by the appropriate federal banking agency for good cause;

(4) (i) an endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith or (ii) any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it; or

(5) indebtedness of $5,000 or less arising by reason of any general arrangement by which a bank—

(i) acquires charge or time credit accounts or

(ii) makes payments to or on behalf of participants in a bank credit card plan, check credit plan, interest-bearing overdraft credit plan of the type specified in section 215.4(e) of this part, or similar open-end credit plan, provided—

(A) the indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement, and

(B) the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(c) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business considered to be a loan, advance, or extension of credit to the depositing bank.

(d) For purposes of sections 215.4(b) and (c) below, an extension of credit by a member bank is considered to have been made at the time the bank enters into a binding commitment to make the extension of credit.

(e) A participation without recourse is considered to be an extension of credit by the participating bank, not by the originating bank.

(f) An extension of credit is considered made to a person covered by this part to the extent that the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred to, such a person.

SECTION 215.4—General Prohibitions

(a) *Terms and creditworthiness.* No member bank may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person unless the extension of credit—

(1) is made on substantially the same terms (including interest rates and collateral) as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this part and who are not employed by the bank, and

(2) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) *Prior approval.* (1) No member bank may extend credit (which term includes granting a line of credit) to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus, unless—

(i) the extension of credit has been approved in advance by a majority of the

entire board of directors of that bank, and

(ii) the interested party has abstained from participating directly or indirectly in the voting.

(2) In no event may a member bank extend credit to any one of its executive officers, directors, or principal shareholders, or to any related interest of that person, in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph.

(3) Approval by the board of directors under paragraph (b)(1) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of section 215.4(a) above.

(4) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) *Lending limit.* No member bank may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in secton 215.2(h) of this part. This prohibition does not apply to an extension of credit by a member bank to a company of which the member bank is a subsidiary or to any other subsidiary of that company.

(d) *Aggregate lending limit.*

(1) *General limit.* A member bank may not extend credit to any insider unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all of its insiders, does not exceed the bank's unimpaired capital and unimpaired surplus (as defined in section 215.2(h) of this part).

(2) *Member banks with deposits of less than $100,000,000.* A member bank with deposits of less than $100,000,000 may by resolution of its board of directors increase the general limit specified in paragraph (d)(1) of this section for the one-year period ending May 18, 1993, to a level not to exceed two times the bank's unimpaired capital and unimpaired surplus, if—

(i) the board of directors determines that such higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(ii) the resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to its insiders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(iii) the bank has submitted the resolution to the appropriate federal banking agency (as defined in 12 USC 1813(q)) with a copy to the Board of Governors; and

(iv) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the appropriate federal banking agency.

(e) *Overdrafts.* No member bank may pay an overdraft of an executive officer or director of the bank[3] on an account at the bank, unless the payment of funds is made in accordance with (1) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (2) a written, preauthorized transfer of funds from another account of the account holder at the bank. This prohibition does not apply to payment of inadvertent overdrafts on an account in an ag-

[3] This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank , unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank.

gregate amount of $1,000 or less, provided (1) the account is not overdrawn for more than five business days, and (2) the member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

SECTION 215.5—Additional Restrictions on Loans to Executive Officers of Member Banks

(a) No member bank may extend credit to any of its executive officers,[4] and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in paragraphs (c) and (d) of this section.

(b) No member bank may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(3) of this section to a partnership in which one or more of the bank's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(3) below, the total amount of credit extended by a member bank to such partnership is considered to be extended to each executive officer of the member bank who is a member of the partnership.

(c) A member bank is authorized to extend credit to any executive officer of the bank—

(1) in any amount to finance the education of the executive officer's children;

(2) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(3) for any other purpose not specified in section 215.5(c)(1) and (2), if the aggregate amount of loans to that officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's capital and unimpaired surplus or $25,000, but in no event more than $100,000.

(d) Any extension of credit by a member bank to any of its executive officers shall be—

(1) promptly reported to the member bank's board of directors;

(2) in compliance with the requirements of section 215.4(a) of this part;

(3) preceded by the submission of a detailed current financial statement of the executive officer; and

(4) made subject to the condition in writing that the extension of credit will, at the option of the member bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (c) of this section.

SECTION 215.6—Prohibition on Knowingly Receiving Unauthorized Extension of Credit

No executive officer, director, or principal shareholder of a member bank shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this part.

SECTION 215.7—Extensions of Credit Outstanding on March 10, 1979

(a) Any extension of credit that was outstanding on March 10, 1979, and that would, if made on or after March 10, 1979, violate section 215.4(c) above, shall be reduced in amount by March 10, 1980, to be in compliance with the lending limit in section 215.4(c). Any renewal or extension of such an extension of credit on or after March 10, 1979, shall be made only on terms that will bring the extension of credit into compliance with the lending limit of section 215.4(c) by March 10, 1980. However, any extension of credit made before March 10, 1979, that bears a specific maturity date of March 10, 1980, or later, shall be repaid in accordance with its

[4] Sections 215.5, 215.9, and 215.10 of this part implement section 22(g) of the Federal Reserve Act. For the purposes of those sections, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or any other subsidiary of that bank holding company.

repayment schedule in existence on or before March 10, 1979.

(b) If a member bank is unable to bring all extensions of credit outstanding on March 10, 1979, into compliance as required by paragraph (a) of this section, the member bank shall promptly report that fact to the Comptroller of the Currency, in the case of a national bank, or to the appropriate Federal Reserve Bank, in the case of a state member bank, and explain the reasons why all the extensions of credit cannot be brought into compliance. The Comptroller or the Reserve Bank, as the case may be, is authorized, on the basis of good cause shown, to extend the March 10, 1980, date for compliance for any extension of credit for not more than two additional one-year periods.

SECTION 215.8—Records of Member Banks

Each member bank shall maintain records necessary for compliance with the requirements of this part. These records shall (a) identify all executive officers, directors, and principal shareholders of the member bank and the related interests of these persons and (b) specify the amount and terms of each extension of credit by the member bank to these persons and to their related interests. Each member bank shall request at least annually that each executive officer, director, or principal shareholder of the member bank identify the related interests of that person.

SECTION 215.9—Reports by Executive Officers

Each executive officer[5] of a member bank who becomes indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in section 215.5(c) above, shall, within 10 days of the date the indebtedness reaches such a level, make a written report to the board of directors of the officer's bank. The report shall state the lender's name, the date and amount of each extension of credit, any security for it, and the purposes for which the proceeds have been or are to be used.

SECTION 215.10—Report on Credit to Executive Officers

Each member bank shall include with (but not as part of) each report of condition (and copy thereof) filed pursuant to 12 USC 1817(a)(3) a report of all extensions of credit made by the member bank to its executive officers[6] since the date of the bank's previous report of condition.

SECTION 215.11—Disclosure of Credit from Member Banks to Executive Officers and Principal Shareholders

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) "Principal shareholder of a member bank" means any person[7] (other than an insured bank, or a foreign bank as defined in 12 USC 3101(7)) that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(2) "Related interest" means (A) any company controlled by a person or (B) any political or campaign committee the funds or services of which will benefit a person or that is controlled by a person. For the purpose of this section and subpart B, a related interest does not include a bank or a foreign bank (as defined in 12 USC 3101(7)).

(b) *Public disclosure.* (i) Upon receipt of a written request from the public, a member bank shall make available the names of

[5] See note 4.

[6] See note 4.

[7] The term "stockholder of record" appearing in 12 USC 1972(2)(G) is synonymous with the term "person."

each of its executive officers[8] and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at such time from the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000.

(ii) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

SECTION 215.12—Reporting Requirement for Credit Secured by Certain Bank Stock

Each executive officer or director of a member bank the shares of which are not publicly traded shall report annually to the board of directors of the member bank the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the member bank.

SECTION 215.13—Civil Penalties

Any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this subpart (other than section 215.11) is subject to civil penalties as specified in section 29 of the Federal Reserve Act (12 USC 504).

SUBPART B—REPORTS ON INDEBTEDNESS OF EXECUTIVE OFFICERS AND PRINCIPAL SHAREHOLDERS TO CORRESPONDENT BANKS

SECTION 215.20—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued pursuant to section 11(i) of the Federal Reserve Act (12 USC 248(i) and 12 USC 1972(2)(F)(vi).

(b) *Purpose and scope.* This subpart implements the reporting requirements of title VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA) (Pub. L. 95-630), as amended by the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320), 12 USC 1972(2)(G). Title VIII prohibits (1) preferential lending by a bank to executive officers, directors, and principal shareholders of another bank when there is a correspondent account relationship between the banks, and (2) the opening of a correspondent account relationship between banks when there is a preferential extension of credit by one of the banks to an executive officer, director, or principal shareholder of the other bank.

SECTION 215.21—Definitions

For the purposes of this subpart, the following definitions apply unless otherwise specified:

(a) *"Bank"* has the meaning given in 12 USC 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a state of the United States or in the District of Columbia or the commerical lending company is organized under state law.

[8] For purposes of this section and subpart B, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless the executive officer is also an executive officer of the member bank.

(b) *"Company," "control of a company or bank," "executive officer,"*[9] *"extension of credit," "immediate family,"* and *"person"* have the meanings provided in subpart A.

(c) *"Correspondent account"* is an account that is maintained by a bank with another bank for the deposit or placement of funds. A correspondent account does not include—

(1) time deposits at prevailing market rates, and

(2) an account maintained in the ordinary course of business solely for the purpose of effecting federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(d) *"Correspondent bank"* means a bank that maintains one or more correspondent accounts for a member bank during a calendar year that in the aggregate exceed an average daily balance during that year of $100,000 or 0.5 percent of such member bank's total deposits (as reported in its first consolidated report of condition during that calendar year), whichever amount is smaller.

(e) *"Principal shareholder"* and *"related interest"* have the meanings provided in section 215.10 of subpart A.

SECTION 215.22—Report by Executive Officers and Principal Shareholders

(a) *Annual report.* If during any calendar year an executive officer or principal shareholder of a member bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank of the member bank, the executive officer or principal shareholder shall, on or before January 31 of the following year, make a written report to the board of directors of the member bank.[10]

(b) *Contents of report.* The report required by this section shall include the following information:

(1) the maximum amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests to each of the member banks's correspondent banks during the calendar year;

(2) the amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests outstanding to each of the member bank's correspondent banks as of ten business days before the report required by this section is filed;[11] and

(3) a description of the terms and conditions (including the range of interest rates, the original amount and date, maturity date, payment terms, security, if any, and any other unusual terms or conditions) of each extension of credit included in the indebtedness reported under paragraph (b)(1) of this section.

(c) *Definitions.* For the purposes of this section—

(1) "Indebtedness" means an extension of credit, but does not include:

(i) commercial paper, bonds, and debentures issued in the ordinary course of business; and

(ii) consumer credit (as defined in 12 CFR 226.2(p)) in an aggregate amount of $5,000 or less from each of the member bank's correspondent banks, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(2) "Maximum amount of indebtedness" means, at the option of the reporting person, either (i) the highest outstanding indebtedness during the calendar year for which the report is made, or (ii) the highest end of the month indebtedness outstanding during the calendar year for which the report is made.

(d) *Retention of reports at member banks.* The reports required by this section shall be retained at the member bank for a period of three years. The Reserve Bank or the Comp-

[9] See note 8.

[10] Persons reporting under this section are not required to include information on extensions of credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationships with such other person.

[11] If the amount of indebtedness outstanding to a correspondent bank 10 days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.

troller, as the case may be, may require these reports to be retained by the bank for an additional period of time. The reports filed under this section are not required by this regulation to be made available to the public and shall not be filed with the Reserve Bank or the Comptroller unless specifically requested.

(e) *Member bank's responsibility.* Each member bank shall advise each of its executive officers and each of its principal shareholders (to the extent known by the bank) of the reports required by this section and make available to each of these persons a list of the names and addresses of the member bank's correspondent banks.

SECTION 215.23—Disclosure of Credit from Correspondent Banks to Executive Officers and Principal Shareholders

(a) *Public disclosure.* (i) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, any correspondent bank of the member bank had outstanding, at any time during the previous calendar year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from all correspondent banks of the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding from all correspondent banks of the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000 at any time during the previous calendar year.

(ii) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(b) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (a) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

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(a)(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) For the purposes of this section—

(1) the term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and, to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) the term "person" shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(c) The limitations contained in subsection (a) shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or 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 shall not be subject to any limitation based on capital and surplus.

(5) Loans or 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 shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any

financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2).

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d)(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

[12 USC 84. As amended by acts of June 22, 1906 (34 Stat. 451); Sept. 24, 1918 (40 Stat. 967); Oct. 22, 1919 (41 Stat. 296); Feb. 25, 1927 (44 Stat. 1229); May 20, 1933 (48 Stat. 72); June 16, 1933 (48 Stat. 191); Aug. 23, 1935 (49 Stat. 713); June 11, 1942 (56 Stat. 356); July 15, 1949 (63 Stat. 440); Aug. 25, 1958 (72 Stat. 841); Sept. 9, 1959 (72 Stat. 488); Sept. 28, 1962 (76 Stat. 672); Joint Resolution of May 25, 1967 (81 Stat. 29); June 23, 1972 (86 Stat. 270); Oct. 15, 1982 (96 Stat. 1508); and Jan. 12, 1983 (96 Stat. 2509).]

FEDERAL RESERVE ACT

SECTION 22—Offenses of Examiners, Member Banks, Officers, and Directors

* * * * *

(g) *Loans to executive officers by members banks.* (1) Except as authorized under this subsection, no member bank may extend credit in any manner to any of its own executive officers. No executive officer of any member bank may become indebted to that member bank except by means of an extension of credit which the bank is authorized

to make under this subsection. Any extension of credit under this subsection shall be promptly reported to the board of directors of the bank, and may be made only if—

(A) the bank would be authorized to make it to borrowers other than its officers;

(B) it is on terms not more favorable than those afforded other borrowers;

(C) the officer has submitted a detailed current financial statement; and

(D) it is on condition that it shall become due and payable on demand of the bank at any time when the officer is indebted to any other bank or banks on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3), and (4) in an aggregate amount greater than the amount of credit of the same category that could be extended to him by the bank of which he is an officer.

(2) With the specific prior approval of its board of directors, a member bank may make a loan to any executive officer of the bank if, at the time the loan is made—

(A) it is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence, and

(B) no other loan by the bank to the officer under authority of this paragraph is outstanding.

(3) A member bank may make extensions of credit to any executive officer of the bank, to finance the education of the children of the officer.

(4) A member bank may make extensions of credit not otherwise specifically authorized under this subsection to any executive officer of the bank, in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency.

(5) Except to the extent permitted under paragraph (4), a member bank may not extend credit to a partnership in which one or more of its executive officers are partners having either individually or together a majority interest. For the purposes of paragraph (4), the full amount of any credit so extended shall be considered to have been extended to each officer of the bank who is a member of the partnership.

(6) Whenever an executive officer of a member bank becomes indebted to any bank or banks (other than the one of which he is an officer) on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3), and (4) in an aggregate amount greater than the aggregate amount of credit of the same category that could lawfully be extended to him by the bank, he shall make a written report to the board of directors of the bank, stating the date and amount of each such extension of credit, the security therefor, and the purposes for which the proceeds have been or are to be used.

(7) This subsection does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

(8) Each day that any extension of credit in violation of this subsection exists is a continuation of the violation for the purposes of section 8 of the Federal Deposit Insurance Act.

(9) Each member bank shall include with (but not as part of) each report of condition and copy thereof filed under section 7(a)(3) of the Federal Deposit Insurance Act a report of all loans under authority of this subsection made by the bank since its previous report of condition.

(10) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms as it deems necessary to effectuate the purposes and to prevent evasions of this subsection.

[12 USC 375a. As added by act of June 16, 1933 (48 Stat. 182); amended by Public Resolution approved June 14, 1935 (49 Stat. 375); and by acts of Aug. 23, 1935 (49 Stat. 716); April 25, 1938 (52 Stat. 223); June 20, 1939 (53 Stat. 842); July 3, 1967 (81 Stat. 109) and Nov. 10, 1978 (92 Stat. 3665).]

(h) *Extensions of credit to executive officers, directors, and principal shareholders of member banks.* (1) No member bank may extend

credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), and (6).

(2) A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

(A) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank; and

(3) A member bank may extend credit to a person, described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by regulation of the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) only if—

(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

(B) the interested party has abstained from participating, directly or indirectly, in the deliberations or voting on the extension of credit.

(4) A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes. For purposes of this paragraph, section 5200 of the Revised Statutes shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

(5)(A) A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

(B) The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

(C) The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than $100,000,000 in deposits if the Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.

(6)(A) If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

(B) Subparagraph (A) does not prohibit a member bank from paying funds in accordance with—

(i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; and

(ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

(7) No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this subsection.

(8) For purposes of this subsection, any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a

subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.

(9) For purposes of this subsection:

(A)(i) Except as provided in clause (ii), the term "*company*" means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

(ii) The term "company" does not include—

(I) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act); or

(II) a corporation the majority of the shares of which are owned by the United States or by any State.

(B) A person *controls* a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons—

(i) owns, controls, or has the power to vote 25 percent or more of any class of the company's voting securities;

(ii) controls in any manner the election of a majority of the company's directors; or

(iii) has the power to exercise a controlling influence over the company's management or policies.

(C) A person is an "*executive officer*" of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

(D) A member bank *extends credit* by making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which a person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank.

(E) The term "*member bank*" includes any subsidiary of a member bank.

(F) The term "*principal shareholder*" means any person 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.

(G) A "*related interest*" of a person is—

(i) any company controlled by that person; and

(ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(H) The term "*subsidiary*" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(10) The Board of Governors of the Federal Reserve System may prescribed such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this subsection.

[12 USC 375b. As added by act of Nov. 10, 1978 (92 Stat. 3644) and amended by acts of Oct. 15, 1982 (96 Stat. 1520, 1522) and Dec. 19, 1991 (105 Stat. 2355).]

BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

SECTION 106—Tie-In Arrangements

* * * * *

(b)(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some ad-

ditional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit. The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who 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 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who 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 per centum of any class of voting securities of, the bank desiring to open the account, or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who 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 per centum of any class of voting securities of, another bank, or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the same meaning given it in section 23A of the Federal Reserve Act and the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(F)(i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of section 106(b)(2) shall forfeit and pay a civil penalty of not more than $1,000 per

day for each day during which such violation continues: *Provided,* That the agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(viii) All penalties collected under au-

thority of this section shall be covered into the Treasury of the United States.

(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintain a corresponding account in the name of such bank. Such report shall include the following information:

(*1*) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(*2*) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political campaign committee the funds or services of which will benefit such executive officer or stockholder;

(*3*) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(*4*) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.

(H) For the purpose of this paragraph—

(i) the term "bank" includes a mutual savings bank;

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 22 (h) of the Federal Reserve Act (12 U.S.C. 375b).

[12 USC 1972. As amended by acts of Nov. 10, 1978 (92 Stat. 3690) and Oct. 15, 1982 (96 Stat. 1520, 1523, 1526).]

FEDERAL DEPOSIT INSURANCE ACT

SECTION 7—Change in Control of Banks

* * * * *

(k) *Annual report to Federal banking agency.* The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or principal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

[12 USC 1817(k). As added by act of Nov. 10, 1978 (92 Stat. 3683) and amended by act of Oct. 15, 1982 (96 Stat. 1527).]

Board of Governors of the Federal Reserve System

Regulation AA
Unfair or Deceptive Acts or Practices

12 CFR 227; as amended effective May 1, 1992

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

August 1992

Contents

Regulation AA
Unfair or Deceptive Acts or Practices

12 CFR 227; as amended effective May 1, 1992

SUBPART A—CONSUMER COMPLAINTS

SECTION 227.1—Definitions

For the purposes of this part,[1] unless the context indicates otherwise, the following definitions apply:

(a) *Board* means the Board of Governors of the Federal Reserve System.

(b) *Consumer complaint* means an allegation by or on behalf of an individual, group of individuals, or other entity that a particular act or practice of a state member bank is unfair or deceptive, or in violation of a regulation issued by the Board pursuant to a federal statute, or in violation of any other act or regulation under which the bank must operate.

(c) *State member bank* means a bank that is chartered by a state and is a member of the Federal Reserve System.

(d) Unless the context indicates otherwise, "bank" shall be construed to mean a "state member bank," and "complaint" to mean a "consumer complaint."

SECTION 227.2—Consumer-Complaint Procedure

(a) *Submission of complaints.* (1) Any consumer having a complaint regarding a state member bank is invited to submit it to the Federal Reserve System. The complaint should be submitted in writing, if possible, and should include the following information:

(i) a description of the act or practice that is thought to be unfair or deceptive, or in violation of existing law or regulation, including all relevant facts;

(ii) the name and address of the bank that is the subject of the complaint; and

(iii) the name and address of the complainant.

(2) Consumer complaints should be made to:

(i) the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; or

(ii) the Federal Reserve Bank of the District in which the bank is located. The addresses of the Federal Reserve Banks are as follows:

Federal Reserve Bank of Boston
600 Atlantic Avenue
Boston, Massachusetts 02106

Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045

Federal Reserve Bank of Philadelphia
100 North 6th Street
Philadelphia, Pennsylvania 19105

Federal Reserve Bank of Cleveland
1455 East Sixth Street
Cleveland, Ohio 44101

Federal Reserve Bank of Richmond
701 E. Byrd Street
Richmond, Virginia 23219

Federal Reserve Bank of Atlanta
104 Marietta Street, N.W.
Atlanta, Georgia 30303

Federal Reserve Bank of Chicago
230 South LaSalle Street
Chicago, Illinois 60690

Federal Reserve Bank of St. Louis
411 Locust Street
St. Louis, Missouri 63166

Federal Reserve Bank of Minneapolis
250 Marquette Avenue
Minneapolis, Minnesota 55480

Federal Reserve Bank of Kansas City
925 Grand Avenue
Kansas City, Missouri 64198

Federal Reserve Bank of Dallas
400 South Akard Street
Dallas, Texas 75222

[1] The words "this part," as used herein, mean title 12, chapter II, part 227 of the Code of Federal Regulations, cited as 12 CFR 227 and designated as Regulation AA.

Federal Reserve Bank of San Francisco
400 Sansome Street
San Francisco, California 94120

(b) *Response to complaints.* Within 15 business days of receipt of a written complaint by the Board or a Federal Reserve Bank, a substantive response or an acknowledgment setting a reasonable time for a substantive response will be sent to the individual making the complaint.

(c) *Referrals to other agencies.* Complaints received by the Board or a Federal Reserve Bank regarding an act or practice of an institution other than a state member bank will be forwarded to the federal agency having jurisdiction over that institution.

SUBPART B—CREDIT PRACTICES RULE

SECTION 227.11—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued by the Board under section 18(f) of the Federal Trade Commission Act, 15 USC 57a(f) (§ 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93-637).

(b) *Purpose.* Unfair or deceptive acts or practices in or affecting commerce are unlawful under section 5(a)(1) of the Federal Trade Commission Act, 15 USC 45(a)(1). This subpart defines unfair or deceptive acts or practices of banks in connection with extensions of credit to consumers.

(c) *Scope.* This subpart applies to all banks and their subsidiaries, except savings banks that are members of the Federal Home Loan Bank System. Compliance is to be enforced by—

(1) the Comptroller of the Currency, in the case of national banks, banks operating under the code of laws for the District of Columbia, and federal branches and federal agencies of foreign banks;

(2) the Board of Governors of the Federal Reserve System, in the case of banks that are members of the Federal Reserve System (other than banks referred to in paragraph (c)(1) of this section), branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(3) the Federal Deposit Insurance Corporation, in the case of banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in paragraphs (c)(1) and (c)(2) of this section), and insured state branches of foreign banks.

(4) the terms used in paragraph (c) of this section that are not defined in the Federal Trade Commission Act or in section 3(s) of the Federal Deposit Insurance Act (12 USC 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 USC 3101).

SECTION 227.12—Definitions

For the purposes of this subpart, the following definitions apply:

(a) "Consumer" means a natural person who seeks or acquires goods, services, or money for personal, family, or household use other than for the purchase of real property.

(b)(1) "Cosigner" means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) "Cosigner" includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a "cosigner," whether or not the person is designated as such on the credit obligation.

(c) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(d) "Household goods" means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents. The term "household goods" does not include—

(1) works of art;

(2) electronic entertainment equipment (other than one television and one radio);

(3) items acquired as antiques; that is, items over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character; and

(4) jewelry (other than wedding rings).

(e) "Obligation" means an agreement between a consumer and a creditor.

(f) "Person" means an individual, corporation, or other business organization.

SECTION 227.13—Unfair Credit-Contract Provisions

It is an unfair act or practice for a bank to enter into a consumer credit obligation that contains, or to enforce in a consumer credit obligation purchased by the bank, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the state of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless—

(1) the assignment by its terms is revocable at the will of the debtor;

(2) the assignment is a payroll deduction plan or preauthorized-payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) the assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase-money security interest.

SECTION 227.14—Unfair or Deceptive Practices Involving Cosigners

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is—

(1) a deceptive act or practice for a bank to misrepresent the nature or extent of cosigner liability to any person; and

(2) an unfair act or practice for a bank to obligate a cosigner unless the cosigner is informed prior to becoming obligated of the nature of the cosigner's liability.

(b) *Disclosure requirement.* (1) A clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The disclosure statement shall be substantially similar to the following statement and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against

you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record.

This notice is not the contract that makes you liable for the debt.

(2) In the case of open-end credit, the disclosure statement shall be given to the cosigner prior to the time that the cosigner becomes obligated for fees or transactions on the account.

(3) A bank that is in compliance with this paragraph may not be held in violation of paragraph (a)(2) of this section.

SECTION 227.15—Unfair Late Charges

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a bank to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) For the purposes of this section, "collecting a debt" means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

SECTION 227.16—State Exemptions

(a) *General rule.* (1) An appropriate state agency may apply to the Board for a determination that—

(i) there is a state requirement or prohibition in effect that applies to any transaction to which a provision of this subpart applies; and

(ii) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this subpart.

(2) If the Board makes such a determination, the provision of this subpart will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

(b) *Applications.* The procedures under which a state agency may apply for an exemption under this section are the same as those set forth in appendix B to Regulation Z (12 CFR 226).

Federal Trade Commission Act
Section 18(f)

15 USC 57a(f); 88 Stat. 2193, 2196; Pub. L. 93-637 (January 4, 1975)

SECTION 18

* * * * *

(f)(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks or savings and loan institutions described in paragraph (3) subject to its jurisdiction. The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3)) and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4)) shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect each such Board shall promulgate substantially similar regulations prohibiting acts or practices of banks or savings and loan institutions described in paragraph (3) as the case may be, which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless (A) any such Board finds that such acts or practices of banks or savings and loan institutions described in paragraph (3), or Federal credit unions described in paragraph (4), as the case may be, are not unfair or deceptive, or (B) the Board of Governors of the Federal Reserve System finds that implementation of similar regulations with respect to banks, savings and loan institutions or Federal credit unions would seriously conflict with essential monetary and payments systems policies of such Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

(2) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, banks operating under the code of law for the District of Columbia, and Federal branches and Federal agencies of foreign banks, by the division of consumer affairs established by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks and banks operating under the code of law for the District of Columbia), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks, by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

(3) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act with respect to savings associations as defined in section 3 of the Federal Deposit Insurance Act.

(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786).Statutory Provisions

(5) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

(6) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

(7) Each agency exercising authority under this subsection shall transmit to the Congress each year a detailed report on its activities under this paragraph during the preceding calendar year.

The terms used in this paragraph that are not defined in the Federal Trade Commission Act or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

[15 USC 57a(f). As amended by acts of July 23, 1979 (93 Stat. 95); March 31, 1980 (94 Stat. 174); Aug. 10, 1987 (101 Stat. 655); Aug. 9, 1989 (103 Stat. 441); and Dec. 19, 1991 (105 Stat. 2302).]