



FEDERAL RESERVE BANK  
OF DALLAS

September 13, 1994

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

DALLAS, TEXAS  
75265-5906

**Notice 94-96**

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

**SUBJECT**

**Amendments to Regulation E  
(Electronic Fund Transfers) and  
Revised Pamphlet for Regulation O  
(Loans to Executive Officers, Directors,  
and Principal Shareholders  
of Member Banks)**

**DETAILS**

The Board of Governors of the Federal Reserve System has published amendments in slip-sheet form to Regulation E, effective June 1994. The new slip sheet should be inserted in your regulations binder.

The Board has also revised Regulation O, effective February 18, 1994. Technical amendments and corrections to Regulation O, effective July 19, 1994, were distributed in Notice 94-78. The amendments and corrections should be retained in your Regulations binder along with the revised pamphlet.

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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 slip sheet and the revised pamphlet are enclosed.

## MORE INFORMATION

For more information on Regulation E, please contact Eugene Coy at (214) 922-6201. For more information regarding Regulation O, please contact Jane Anne Schmoker at (214) 922-5101.

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.*

# Amendments to Regulation E Electronic Fund Transfers

June 1994\*

1. *Effective March 4, 1985, section 205.13(a)(1) is amended by changing "Civil Aeronautics Board" to "secretary of transportation".*
2. *Effective December 26, 1989, section 205.13(a)(1) is amended by changing "Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation)" to "Office of Thrift Supervision".*
3. *Effective November 15, 1987, section 205.14 is amended by revising paragraphs (a)(2) and (b) to read as follows:*

(2) Sections 205.7, 205.8, and 205.9 shall require the service-providing institution to provide those disclosures and documentation that are within its knowledge and the purview of its relationship with the consumer. The service-providing institution need not furnish a periodic statement to the consumer under section 205.9(b) if the service-providing institution—

- (i) Issues a debit card, to be used by the consumer to initiate electronic fund transfers, that bears the name of the service-providing institution and an address or telephone number that can be used to contact the service-providing institution;
- (ii) Transmits the applicable transaction-identification information specified by section 205.9(b)(1) to the con-

sumer's account-holding institution, in the format prescribed by the automated clearing house system used to clear the fund transfers;

(iii) Discloses to the consumer, in addition to the information required by section 205.7, that the service-providing institution (not the account-holding institution) is responsible for all electronic fund transfers made with the debit card, and that all inquiries and error notices related to such transfers should be directed to the service-providing institution; that the service-providing institution will not issue a periodic statement, and that the consumer should retain all terminal receipts to verify transactions; and that the consumer must notify the service-providing institution concerning loss or theft of the debit card;

(iv) Provides on or with the receipts required by section 205.9(a) the address and telephone number to be used for inquiries and error notices and for reporting the loss or theft of the debit card; and

(v) Extends the time period set forth in section 205.6(b)(1) for notice of loss or theft of a debit card, from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods set forth in sections 205.6(b)(2) and 205.11(b)(1) for reporting unauthorized transfers or alleged errors, from 60 days to 90 days following the transmittal of a periodic statement.

\* A complete Regulation E, as amended effective February 28, 1994, consists of—

- the regulation pamphlet dated December 1984 (see inside cover) and
- this slip sheet.

Items 4 and 6 are new. The other items were included in the August 1992 slip sheet.

\* \* \* \* \*

(b) *Compliance by account-holding institutions.* An account-holding institution described in paragraph (a) of this section

need not comply with the requirements of the act and this regulation with respect to electronic fund transfers to or from the consumer's account made by the service-providing institution, except that the account-holding institution shall:

(1) Comply with section 205.9 by providing a periodic statement and describing each transaction from the service-providing institution that is debited or credited to the consumer's account in accordance with section 205.9(b);<sup>13</sup> but the account-holding institution has no liability for failure to provide this information if the failure is due to its not having received the necessary information from the service-providing institution in the prescribed format; and

(2) Comply with section 205.11 by promptly providing to the service-providing institution, upon its request, information or copies of documents required for the purpose of investigating alleged errors or for furnishing copies of documents to the consumer; and by honoring debits to the account in accordance with section 205.11(f)(2).

<sup>13</sup> Account-holding institutions shall not be required to furnish the terminal location as part of the transaction description until July 1, 1990. In addition, account-holding institutions with assets of \$25 million or less shall not be required to comply with section 205.9(b) until July 1, 1990.

4. *Effective February 28, 1994, a new section 205.15 is added as follows:*

**SECTION 205.15—Electronic Fund Transfer of Government Benefits\***

(a) *Government agency subject to regulation.*

(1) A government agency is deemed to be a financial institution for purposes of the act and regulation if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency

shall comply with all applicable requirements of the act and regulation, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by section 205.9(b) if the agency makes available to the consumer—

(1) the consumer's account balance, through a readily available telephone line and at a terminal (which may include providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions for at least 60 days preceding the date of a request by the consumer. The account history shall be provided promptly in response to an oral or written request.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, pursuant to paragraph (c) of this section, shall comply with the following requirements:

(1) *Initial disclosures.* The agency shall modify the disclosures under section 205.7(a) by providing—

(i) *Account-balance information.* The means by which the consumer may obtain information concerning

\* Compliance with this section is optional until March 1, 1997, when compliance becomes mandatory.

the account balance, including a telephone number. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in substitution for the periodic-statement disclosure required by section 205.7(a)(6), and a telephone number that can be used to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(iii) *Error-resolution notice.* A notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by section 205.7(a)(10).

(2) *Annual error-resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by section 205.8(b).

(3) *Limitations on liability.* For purposes of section 205.6(b)(2) and (3), in regard to a consumer's reporting within 60 days any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with the transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of section 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

5. *Effective November 15, 1987, appendix A is amended by revising the introductory language and by adding section A(11) as follows:*

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(a)(3), (b)(2), and (b)(3); 205.6(a)(3); 205.7; and 205.14(a)(2) \* \* \*

\* \* \* \* \*

**SECTION A(11)—Disclosure from Service-Providing Institution That Does Not Send Periodic Statements (§ 205.14(a)(2))**

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US, (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the (name of service) service and for resolving any errors in transactions made with your (name of card) card.

We will not send you a periodic statement listing transactions that you make using your (name of card) card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR (NAME OF CARD) CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at (telephone number and address) (the telephone number and address indicated below).

IF YOUR (NAME OF CARD) CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at (telephone number and address).

6. *Effective February 28, 1994, appendix A is amended by adding new sections A(12) and A(13) as follows:*

**SECTION A(12)—Disclosure by Government Agencies of Information About Obtaining Account Balances and Account Histories**  
(§ 205.15(d)(1)(i) and (ii))

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM) (a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

**SECTION A(13)—Disclosure of Error-Resolution Procedures for Government Agencies That Do Not Provide Periodic Statements**  
(§ 205.15(d)(1)(iii) and (d)(2))

*In Case of Errors or Questions About Your Electronic Transfers*

Telephone us at [telephone number]  
or

Write us at [address]

as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above].

7. *Effective May 1, 1992, appendix B is amended to read as follows:*

**APPENDIX B—Federal Enforcement Agencies**

The following list indicates which federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 USC 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 USC 3101).

*National banks, and federal branches and federal agencies of foreign banks*

District office of the Office of the Comptroller of the Currency for the district in which the institution is located

*State member banks, 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*

Federal Reserve Bank serving the District in which the institution is located

*Nonmember insured banks and insured state branches of foreign banks*

Federal Deposit Insurance Corporation regional director for the region in which the institution is located

*Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).*

Office of Thrift Supervision for the region in which the institution is located

*Federal credit unions*

Division of Consumer Affairs  
National Credit Union Administration  
2025 M Street, N.W.  
Washington, D.C. 20456

*Air carriers*

Assistant General Counsel for  
Aviation Enforcement and Proceedings  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

*Brokers and dealers*

Division of Market Regulation  
Securities and Exchange Commission  
Washington, D.C. 20549

*Retail, department stores, consumer finance companies, certain other financial institutions, and all nonbank debit card issuers*

Federal Trade Commission  
Electronic Fund Transfers  
Washington, D.C. 20580

## ELECTRONIC FUND TRANSFER ACT

8. *Effective December 19, 1991, section 917(a) of the Electronic Fund Transfer Act is amended by revising paragraph (1) and by adding a sentence following paragraph (5) to read as follows:*

### SECTION 917—Administrative Enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), 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 Board; and  
(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

\* \* \* \* \*

The terms used in paragraph (1) that are not defined in this title 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).

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

12 CFR 215; as amended effective February 18, 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.

June 1994

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# Regulation O

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

12 CFR 215; as amended effective February 18, 1994

### 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), 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 A 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 A 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 or principal shareholders, or the related interests of such persons.

#### SECTION 215.2—Definitions

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

(a) *Affiliate* means any company of which a member bank is a subsidiary or any other subsidiary of that company.

(b) *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) an insured 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.

(c) (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 (c)(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.

(d) *Director of a member bank* means any director of a member bank, whether or not receiving compensation. An advisory director is not considered a director if the advisory director—

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

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

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

(e) (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.<sup>1</sup> 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) Extensions of credit to an executive officer of an affiliate of a member bank (other than a company that controls the bank)

shall not be subject to sections 215.4, 215.6, and 215.8 of this part, provided that—

(i) the executive officer of the affiliate 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 affiliate and the member bank, and does not actually participate in such major policymaking functions; and

(ii) the executive officer is not otherwise subject to such requirements as a director or principal shareholder.

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

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

(i) 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,<sup>2</sup> 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 consol-

<sup>1</sup> 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.

<sup>2</sup> 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.

dated report of condition filed under 12 USC 1817(a)(3);

(2) any subordinated notes and debentures that comply with requirements of the appropriate federal banking agency for addition to the member bank's capital structure and are reported on its most recent consolidated report of condition filed under 12 USC 1817(a)(3); and

(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).

(j) *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)(3)(B).

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

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

(m) (1) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

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

(n) *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.

(o) *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 part;

(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) 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;

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

(7) 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;

(5) indebtedness of \$15,000 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, 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;

(6) indebtedness of \$5,000 or less arising by reason of an interest-bearing overdraft credit plan of the type specified in section 215.4(e) of this part; or

(7) a discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, without recourse.

(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 section 215.4 of this part, 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) *Tangible-economic-benefit rule.*

(1) *In general.* An extension of credit is considered made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider.

(2) *Exception.* An extension of credit is not considered made to an insider under paragraph (f)(1) of this part if—

(i) the credit is extended on terms that would satisfy the standard set forth in section 215.4(a) of this part for extensions of credit to insiders; and

(ii) the proceeds of the extension of credit are used in a bona fide transaction to acquire property, goods, or services from the insider.

#### SECTION 215.4—General Prohibitions

(a) *Terms and creditworthiness.* No member bank may extend credit to any insider of the bank or insider of its affiliates 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 insider of the bank or insider of its affiliates 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 insider of the bank or insider of its affiliates 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 (b).

(3) Approval by the board of directors under paragraphs (b)(1) and (b)(2) 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) of this part.

(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) *Individual lending limit.* No member bank may extend credit to any insider of the bank or insider of its affiliates 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 section 215.2(i) of this part. This prohibition does not apply to an extension of credit by a member bank to a com-

pany 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 of the bank or insider of its affiliates 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(i) of this part).

(2) *Member banks with deposits of less than \$100,000,000.*

(i) 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 to a level not to exceed two times the bank's unimpaired capital and unimpaired surplus, if—

(A) 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;

(B) 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;

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

(D) the bank received a satisfactory composite rating in its most recent report of examination.

(ii) If a member bank has adopted a resolution authorizing a higher limit pursuant to paragraph (d)(2)(i) of this section and subsequently fails to meet the requirements of paragraphs (d)(2)(i)(C) or (d)(2)(i)(D) of this section, the member

bank shall not extend any additional credit (including a renewal of any existing extension of credit) to any insider of the bank or its affiliates unless such extension or renewal is consistent with the general limit in paragraph (d)(1) of this section.

(3) *Exceptions.*

(i) The general limit specified in paragraph (d)(1) of this section does not apply to the following:

(A) extensions of credit secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(B) 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;

(C) extensions of credit secured by a perfected security interest in a segregated deposit account in the lending bank; or

(D) extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, provided that—

(1) the financial condition of each maker of such consumer paper is reasonably documented in the bank's files or known to its officers;

(2) 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 the obligation and not upon any endorsement or guarantee by the insider; and

(3) the maker of the instrument is not an insider.

(ii) The exceptions in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this

section apply only to the amount of such extensions of credit that are secured in the manner described herein.

(e) *Overdrafts.*

(1) No member bank may pay an overdraft of an executive officer or director of the bank<sup>3</sup> on an account at the bank, unless the payment of funds is made in accordance with—

(i) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or

(ii) a written, preauthorized transfer of funds from another account of the account holder at the bank.

(2) The prohibition in paragraph (e)(1) of this section does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of \$1,000 or less, provided—

(i) the account is not overdrawn for more than five business days, and

(ii) 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

The following restrictions on extensions of credit by a member bank to any of its executive officers apply in addition to any restrictions on extensions of credit by a member bank to insiders of itself or its affiliates set forth elsewhere in this part. The restrictions of this section apply only to executive officers of the member bank and not to executive officers of its affiliates.

(a) No member bank may extend credit to any of its executive officers, and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, ex-

<sup>3</sup> 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.



cept 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) of this section, 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) with the specific prior approval of the board of directors, in any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided—

(i) 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

(ii) in the case of a refinancing, that only the amount thereof used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this paragraph (c)(2), are included within this category of credit;

(3) in any amount, if the extension of credit is secured in a manner described in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of section 215.4 of this part; and

(4) for any other purpose not specified in paragraphs (c)(1) through (c)(3) of this section, if the aggregate amount of extensions of credit to that executive 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 or any of its affiliates 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) of this part, shall be reduced in amount by March 10, 1980, to be in compliance with the lending limit in section 215.4(c) of this part. 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) of this part 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 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

(a) *In general.* Each member bank shall maintain records necessary for compliance with the requirements of this part.

(b) *Recordkeeping for insiders of the member bank.* Any recordkeeping method adopted by a member bank shall—

- (1) identify, through an annual survey, all insiders of the bank itself; and
- (2) maintain records of all extensions of credit to insiders of the bank itself, including the amount and terms of each such extension of credit.

(c) *Recordkeeping for insiders of the member bank's affiliates.* Any recordkeeping method adopted by a member bank shall maintain records of extensions of credit to insiders of the member bank's affiliates by—

- (1) *Survey method.*
  - (i) identifying, through an annual survey, each insider of the member bank's affiliates; and
  - (ii) maintaining records of the amount and terms of each extension of credit by the member bank to such insiders; or
- (2) *Borrower-inquiry method.*
  - (i) requiring as part of each extension of credit that the borrower indicate whether the borrower is an insider of an affiliate of the member bank; and
  - (ii) maintaining records that identify the amount and terms of each extension of

credit by the member bank to borrowers so identifying themselves.

(3) *Alternative recordkeeping methods for insiders of affiliates.* A member bank may employ a recordkeeping method other than those identified in paragraphs (c)(1) and (c)(2) of this section if the appropriate identified in paragraphs (c)(1) and (c)(2) of this section if the appropriate federal banking agency determines that the bank's method is at least as effective as the identified methods.

(d) *Special rule for noncommercial lenders.* A member bank that is prohibited by law or by an express resolution of the board of directors of the bank from making an extension of credit to any company or other entity that is covered by this part as a company is not required to maintain any records of the related interests of the insiders of the bank or its affiliates or to inquire of borrowers whether they are related interests of the insiders of the bank or its affiliates.

#### SECTION 215.9—Reports by Executive Officers

Each executive officer 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) of this part, 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 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<sup>4</sup> (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—

- (i) any company controlled by a person; or
- (ii) 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.*

(1) 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, 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 part (other than section 215.11 of this part) 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

<sup>4</sup> The term “stockholder of record” appearing in 12 USC 1972(2)(G) is synonymous with the term “person.”

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 1971 and 1972, 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 commercial lending company is organized under state law.

(b) “*Company*,” “*control of a company or bank*,” “*executive officer*,” “*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.<sup>5</sup>

(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;<sup>6</sup> and

(3) a description of the terms and condi-

<sup>5</sup> 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.

<sup>6</sup> 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.

tions (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(a)(12)) 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 Comptroller, 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 re-

ports 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.

# Statutory Authority

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## REVISED STATUTES

### SECTION 5200—Lending Limits

(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

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(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); Nov. 10, 1978 (92 Stat. 3665); and Oct. 15, 1982 (96 Stat. 1522).]

(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;

(B) does not involve more than the normal risk of repayment or present other unfavorable features; and

(C) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(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; or

(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 re-

lated 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) (i) 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.

(ii) The Board may, by regulation, make exceptions to clause (i) for transactions that the Board determines pose minimal risk.

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

(F) The term “*principal shareholder*”—

(i) 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; and

(ii) does not include a company of which a member bank is a subsidiary.

(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 prescribe 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); Dec. 19, 1991 (105 Stat. 2355); and Oct. 28, 1992 (106 Stat. 3895, 4086).]

## BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

### SECTION 106—Tie-In Arrangements

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(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 con-

sideration 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 additional 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 authority 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

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(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).]