



FEDERAL RESERVE BANK  
OF DALLAS

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

DALLAS, TEXAS  
75265-5906

April 28, 1995

**Notice 95-42**

**TO:** The Chief Executive Officer of each  
state member bank and bank holding company  
in the Eleventh Federal Reserve District

**SUBJECT**

**Request for Public Comment on a  
Proposed Amendment to Regulation O  
(Loans to Executive Officers, Directors, and  
Principal Shareholders of Member Banks)**

**DETAILS**

The Board of Governors of the Federal Reserve System requested public comment on a proposed amendment to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks).

The amendment would conform the definition of unimpaired capital and unimpaired surplus in Regulation O's definition of lending limit to the definition of capital and surplus recently adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The proposed rule would also reduce the recordkeeping burden for member banks monitoring lending to their insiders and their related interests.

The Board must receive comments by May 22, 1995. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0875.

**MORE INFORMATION**

For more information, please contact Jane Anne Schmoker at (214) 922-5101. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

*Robert D. McTeer, Jr.*

## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 215**

**[Regulation O; Docket No. R-0875]**

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

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

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**SUMMARY:** The Board is proposing an amendment to Regulation O to conform the definition of unimpaired capital and unimpaired surplus in the regulation's definition of lending limit to the definition of capital and surplus recently adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The proposed rule would reduce the recordkeeping burden for member banks monitoring lending to their insiders and their related interests.

**DATES:** Comments should be submitted on or before May 22, 1995.

**ADDRESSES:** Comments should refer to Docket No. R-0875, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B-2222 of the Eccles

Building between 8:45 am and 5:15 pm weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 am and 5:00 pm weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

**FOR FURTHER INFORMATION CONTACT:** Gregory Baer, Managing Senior Counsel (202/452-3236), or Gordon Miller, Attorney (202/452-2534), Legal Division; or William G. Spaniel, Assistant to the Director (202/452-3469), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Board's Regulation O (12 CFR Part 215) implements the insider lending prohibitions of section 22(h) of the Federal Reserve Act. Section 215.2(i) of the regulation (12 CFR 215.2(i)) defines the limit for loans to any insider of a member bank and insider of the bank's affiliates as an amount equal

to the limit on loans to a single borrower established by the National Bank Act (12 U.S.C. 84). That amount is 15 percent of the bank's unimpaired capital and unimpaired surplus for loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus for loans that are fully secured by certain readily marketable collateral.<sup>1/</sup>

Although Regulation O adopts the percentage limits used in the National Bank Act, Regulation O provides its own definition of what constitutes unimpaired capital and unimpaired surplus. Unimpaired capital and unimpaired surplus are equal to the sum of (i) "total equity capital" as reported on the bank's most recent consolidated report of condition, (ii) any subordinated notes and debentures that comply with requirements of the bank's primary regulator for inclusion in the bank's capital structure and are reported on the bank's most recent consolidated report of condition, and (iii) any valuation reserves created by charges to the bank's income and reported on the bank's most recent consolidated report of condition. 12 CFR 215.2(i).

The Office of the Comptroller of the Currency (OCC) has recently revised its regulatory definition of unimpaired capital and unimpaired surplus

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<sup>1/</sup> The lending limit also includes any higher amounts that are permitted by the exceptions included in 12 U.S.C. 84. Where state law establishes a lower lending limit for a state member bank, that lower lending limit is the lending limit for the state member bank.

for purposes of implementing the single borrower limit of the National Bank Act. See 59 FR 8533, February 15, 1995. Under that revised definition, a national bank's "capital and surplus" are equal to Tier 1 and Tier 2 capital included in the calculation of the bank's risk-based capital together with the amount of the bank's allowance for loan and lease losses not included in this calculation. 12 CFR 32.2(b).

The Board is proposing to amend Regulation O to conform its definition of unimpaired capital and unimpaired surplus to the OCC's revised definition of capital and surplus. In substantially all cases, the Board believes that calculating the insider lending limits of Regulation O using the revised definition would not significantly increase or decrease a bank's insider lending limit. The elimination of the separate definition of unimpaired capital and unimpaired surplus in Regulation O therefore is expected to create minimal disruption in lending by member banks to their insiders and to insiders of their affiliates, while eliminating duplication in the calculation of lending limits for national banks and for state member banks with state lending limits identical to national bank lending limits.

Initial Regulatory Flexibility Analysis

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

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposed rule would apply to all member banks, regardless of size. The Board has determined that its proposed rule would impose no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. In addition, the proposed rule is not expected to have a negative economic impact on small institutions. Instead, the proposed rule is expected to relieve the regulatory burden on a large majority of member banks.

#### Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507; 5 CFR 1320.13), the Board will review its proposed amendment to Regulation O under authority delegated to the Board by the

Office of Management and Budget after considering comments received during the public comment period.

**List of Subjects in 12 CFR Part 215**

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

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 215 as set forth below:

**PART 215--LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND  
PRINCIPAL SHAREHOLDERS OF MEMBER BANKS  
(REGULATION O)**

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

**Authority:** 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. No. 102-242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

- a. The last sentence of paragraph (i) introductory text is revised;
- b. Paragraphs (i)(1) and (i)(2) are revised; and
- c. Paragraph (i)(3) is removed.

The revisions read as follows:

**§ 215.2 Definitions.**



\* \* \* \* \*

(i) \* \* \* A member bank's unimpaired capital and unimpaired surplus equals:

(1) A bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

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By order of the Board of Governors of the Federal Reserve System, April 14, 1995.

(signed) William W. Wiles

William W. Wiles,  
Secretary of the Board.