FEDERAL RESERVE BANK
OF DALLAS

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

July 7, 1995

DALLAS, TEXAS
75265-5906

Notice 95-62

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

SUBJECT

Final 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 has issued an amendment to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks).

The amendment conforms 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 rule would also reduce the recordkeeping burden for member banks monitoring lending to their insiders and their related interests.

ATTACHMENT

A copy of the Board's notice as it appears on pages 31053-54, Vol. 60, No. 113, of the Federal Register dated June 13, 1995, is attached.

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.

This publication was digitized and made available by the Federal Reserve Bank of Dallas' Historical Library (FedHistory@dal.frb.org)

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.

Rules and Regulations

Federal Register
Vol. 60, No. 113
Tuesday, June 13, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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: Final rule.

SUMMARY: The Board is adopting an amendment to Regulation O to conform the definition of unimpaired capital and unimpaired surplus used in calculating a bank's Regulation O 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 final rule will reduce the regulatory burden for member banks monitoring lending to their insiders.

EFFECTIVE DATE: Effective July 1, 1995.

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.[1]

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 have been defined as 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 for purposes of implementing the single borrower limit of the National Bank Act. *See* 60 FR 8,533, 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).

On April 20, 1995 (60 FR 19,689), the Board proposed to amend Regulation O to conform its definition of unimpaired capital and unimpaired surplus to the OCC's revised definition of capital and surplus. As stated in the notice of proposed rulemaking, the Board believes that in substantially all cases 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 confusion and duplication of effort caused by requiring banks to calculate capital two different ways for two regulations.

The Board received 24 written comments, including comments from 11 banks, 3 bank holding companies, 6 Federal Reserve Banks, and 4 trade associations. Twenty-three commenters supported the Board's amendment. All commenters in support felt that the amendment would make recordkeeping simpler and more consistent, and several also noted that the amendment would not significantly change their lending level. Two commenters noted that the amendment would both greatly reduce its recordkeeping burden and help its compliance.

One commenter opposed the amendment and expressed concern that a bank's Tier 1 and Tier 2 capital did not include certain intangible assets, and that eliminating these assets could harm some community banks by effectively reducing their lending limits. One bank holding company supporting the amendment also noted that some of its affiliated banks would have their lending limits reduced because of the goodwill on their books. The Board believes, however, that few small community banks have a sufficient amount of intangible assets, such as goodwill or purchased mortgage servicing rights, on their books to cause a significant reduction of their insider lending limits from their current levels. Accordingly, after reviewing the public comments, the Board is adopting the amendment as proposed.

Determination of Effective Date

Because the final rule adjusts a requirement on insured depository institutions, the final rule will become effective July 1, 1995, the first day of the calendar quarter after the date of the final rule's publication. *See* 12 U.S.C. 4802(b). For the foregoing reason, the final rule will become effective without regard for the 30-day period provided for in 5 U.S.C. 553(d).

[1] 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.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis when the agency publishes a final rule. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 604(b))—a succinct statement of the need for, and the objectives of, the rule, and a summary of the issues raised by the public comments received, the agency assessment thereof, and any changes made in response thereto—are contained in the supplementary information above. No significant alternatives to the final rule were considered by the agency.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendment to Regulation O will not have a significant economic impact on a substantial number of small entities, and that any impact on those entities should be positive. The amendment will reduce the regulatory burden for most banks by simplifying the calculation of lending limits without significantly changing the amount of the limit, and will have no effect in other cases.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Board reviewed the information collection requirements of its amendment to Regulation O under authority delegated to the Board by the Office of Management and Budget (5 CFR Part 1320, Appendix A) after considering comments received during the public comment period.

The recordkeeping requirements are authorized by 12 U.S.C. 375a(6) and (10), 375b(7), and 1972(2)(G). This information is required to prevent preferential lending by a member bank to its executive officers, directors, principal shareholders, and their related interests. The amendment is not estimated to change the annual burden of recordkeeping associated with Regulation O for state member banks, which is estimated to be 6,255 hours.

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 is amending 12 CFR part 215 as follows:

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

1. The authority citation for part 215 is revised 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. 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) The 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 USC 1817(a)(3); and

(2) The balance of the 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).

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–14413 Filed 6–12–95; 8:45 am]

BILLING CODE 6210–01–P